

20-6548

Supreme Court, U.S.
FILED

AUG 19 2020

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

19-5545-Case No.

3:10-CR-0001-1, 3:15-CR-0057 (OCN#)

Tamral Guzman — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Sixth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Tamral Guzman
(Your Name)

P.O. Box 5000
(Address)

Tallahassee, FL 32314
(City, State, Zip Code)

N/A
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1.) Isn't it depriving the defendant of her 5th and 6th Amendment rights by the district court denying her ineffective assistance claim due to the attorney's failure to argue an Ex Post Facto Violation without further review or an evidentiary hearing?
- 2.) Isn't it depriving the defendant of her 5th and 6th Amendment rights by the district court's failure to call witnesses without further review or evidentiary hearing?
- 3.) Isn't it violation of the defendant's 5th and 6th Amendment rights for the district court to deny her claim of ineffective assistance for ignoring multiple variances between the indictment and evidence produced at trial that her attorney either failed to challenge or didn't challenge in a timely manner?
- 4.) Doesn't it deprive defendant of her 5th and 6th Amendment rights for the district court to fail to subpoena the deposit records or show exhibit to prove why the money laundering and structuring counts fail?
5. Doesn't it violate the defendant of her 14th Amendment rights by receiving a cruel and harsh sentence being a first time offender?

LIST OF PARTIES

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

☒ [X] 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:

U.S. Attorney Eastern District of Tennessee - J. Douglas Overbay
800 Market Street Suite 211, Knoxville, TN 37902
(865)-545-4167
Asst. U.S. Attorney Samuel R. Fitzpatrick + Frank McRoy Dale Jr.
800 Market Street Suite 211, Knoxville, TN 37902
Appointed Counsel Mr. Michael B. Menefee
6th Circuit Eastern District of Tennessee Judge Clifford Shirley
and Thomas Varlan

RELATED CASES

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Opinion of the United States Court of Appeal
APPENDIX B	Order from Appeals Court Denying Rehearing
APPENDIX C	Opinion of the United State District Court
APPENDIX D	Opinion of the United States District Court May 2, 2019
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES

EXHIBIT # 2

<u>Citations:</u>	<u>Page #</u>
Berger v. United States, 295 U.S. 78 (1935)	28
Bigelow v. Williams, 367 F.3d 562 (6 th Cir. 2000)	13, 23
Burris v. United States, 430 F.2d 399 (7 th Cir. 1970)	16
Clinkscale v. Carter, 375 F.3d 430 (6 th Cir. 2004)	14, 36
Chegwidden v. Capture, 92 F. App'x 309 (11 th Cir. 2002)	15
Dean v. United States, 278 F. 3d 1218 (11 th Cir. 2002)	11
English v Romanowski, 602 F.3d 714 (6 th Cir. 2000)	13, 36
Espiroza-Seanz, 235 F.3d 501 (10 th Cir. 2000)	11
Franklin v. Rose, 765 F.2d 82 (6 th Cir. 1985)	16
Haines v. Kerner, 404 U.S. 519 (1972)	11, 16
Hutchinson v. Bell, 303 F.3d. 720 (6 th Cir. 2002)	15
Jackson v. Barden, 622 F. App'x 457jjj (6 th Cir. 2015)	23
Luis v. United States, 136 S. Ct. 1083 (2016)	2
Matthews v. Abramcjtys, 319 F.3d 780 (6 th Cir. 2003)	15
Miller-El v. Cockrell, 537 U.S. 322 (2013)	3
Peugh v. United States, 569 U.S. 530 (2013)	4
Slack v. McDaniel, 529 U.S. 473 (2000)	3, 37
Strickland v. Washington, 466 U.S. 668 (1984)	15, 36
Sumatar v. Clarridge, 225 F. App'x 366 (6 th Cir. D2007)	15
Towns v. Smith, 395 F. 3d 251 (6 th Cir. 2005)	19, 36
United States v. Atisha, 804 F.2d 920, (6 th Cir. 1986)	27
United States v. Army MD, 831 F.3d 725 (6 th Cir.2016)	23
United States v. Chube, 538 F.3d 693 (7 th Cir. 2009)	29
United States v. Duffus, 174 F.3d 333 (3 rd Cir. 1999)	11

United States v. Ellerbee, 73 F.3d 105 (6 th Cir. 1996)	29
United States v. Jeross, 521 F.3d 562 (6 th Cir. 2008)	29, 32
United States v. Khalife, 106 F. 3d 1300 (6 th Cir. 2008)	34
United States v. Leah, 75 F.3d 219 96 th Cir. 1996)	29
United States v. Nixon, 694 F.3d 623 (6 th Cir. 2012)	27
United States v. Real Prop., 66 Fed App'x 617 (6 th Cir. 2003)	34
United States v. Reese, 71 F.3d 582 (6 th Cir. 1995)	8
United States v. Sawaf, 2013 U.S. Dist. LEXIS 43296	29
United States v. Valueland Autosale Inc., 687 Fed. App'x 503 (6 th Cir. 2017)	34
United States v. Wright, 2012 U.S. Dist. LEXIS 124014 (EDKY)	23
United States v. Wright, 2012 U.S. Dist. LEXIS 79688 (EDKY)	30
Washington v., Smith, 219 F.3d 620 (7 th Cir. 2000)	13
White v., Wyrick, 530 F.2d 818 (8 th Cir. 1976)	16

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 2020 U.S. App. Lexis 22166 July 20, 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 C to the petition and is

☒ reported at 2018 U.S. Dist. Lexis 53936 March 30, 2018
☐ 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 20, 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: August 7th, 2018, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

Ex Post Facto Clause Violation

Violation of 5th Amendment Rights

Violation of 6th Amendment Rights

STATEMENT OF THE CASE

The Petitioner, Tamra Guzman was the owner of Manyville Pain Management (MPM) and Detox Clinic beginning October 2008 till December 14th 2010. After successfully employing a team of licensed Medical professionals. Ms. Guzman contacted the DEA via phone to ensure that "MPM" and Detox Clinic was in full compliance of State Regulations, and that practices met all Federal Standards. Upon Ms. Guzman's request, Agent David Graham visited MPM and Detox Clinic shortly after. After his observation he assured Ms. Guzman that everything was in compliance.

Between October 8th till October 19th, of 2009, Ms. Guzman was forced to close during that time frame due to not having sufficient medical staff available to authorize care of the patients. Nurse Practitioner Wright was absent a number of times due to health issues and family death. Her last day of employment was October 8, 2009. Then Dr. Kapoor initially requested for an advance with his paycheck and permission to take his vacation. It wasn't until October 8, 2009 that Guzman physically retrieved a letter of resignation from Dr. Kapoor dated October 2, 2009 without a justifiable reason as to why via fax. Ms. Guzman attempted on numerous occasions to reach out to Dr. Kapoor in regards to an order of medications that was placed September 18, 2009 from "Dispensing Solutions" in which only a Licensed MD can order Schedule II medications. Guzman wrote a check for \$24,072.40 which actually cleared October 2, 2009. After Guzman attempted to reach Dr. Kapoor without any success, Guzman contacted Jodd Gibson at "Dispensing Solutions" and inquired on protocol to return the abandoned medications. Mr. Gibson advised Ms. Guzman to have the new doctor once hired to re-register the medication under their credentials with the DEA form 222. It wasn't precise as to the probable cause of initiating an investigation on MPM.

Around November 13, 2009, "Dea" Agent David Graham and Betty Huser from the Tennessee Health Dept came by "MPM" and interviewed me, inquiring about allegations of prescriptions being forged. Agent Graham took inventory of the upopened medication and confiscated them all. "MPM" remained legally in business for one year thereafter up until Ms. Guzman was informed she had been indicted. Defendant was later sentenced to 240 months.

REASONS FOR GRANTING THE PETITION

Due to the petitioner having exhausted all branches of the Court. The petitioner has no other forms of being granted relief, when there are exceptional circumstances justifying such intervention by this Court.

There were erroneous errors in the lower courts. In all due respect the lower court did not adequately review the evidence I provided and I had inadequate representation which led to a wrongful conviction.

Attached is an in depth description of how and where the lower courts incorrectly decided the facts.

GUZMAN TAMRAL (43512074)
Case No. 19-5545

Reasons to Grant Petition
and
STATEMENTS OF THE CASE

Nature of the Case and Statement of Incarceration:

The United States District Court for the Eastern District of Tennessee in Knoxville denied petitioner's 2255 on March 30, 2018. The court also denied petitioner any appeal from this action, stating it "would not be taken in good faith and would be totally frivolous." On May 2, 2019 motions pertaining to defendant's 2255 motion, which the court denied March 30, 2018. Denied petitioner's reduction of sentence, compassionate release, to forma pauperis on appeal and certificate of appealability, Taceability hearing for untainted property. Petitioner is serving a 258 month sentence and has been incarcerated since October 31, 2012.

I, Tamral Guzman, opened Maryville Pain Management (MPM) and Detox Clinic from October 2008 until December 14, 2010 except for closing my doors from October 8, 2009 - October 19, 2009. I hired medical staff to oversee the medical part of the business. I contacted the DEA shortly after opening the clinic in attempts to make sure all business practices met Federal Standards. Dr. Jethnandani was the supervising physician over Ms. Wright, the Nurse Practitioner, at MPM. There were a few times during August and September that Ms. Wright had to be absent from the clinic for health reasons and a death in her family. During those times Dr. Kapoor, or another employed physician, was present in the clinic. Dr. Kapoor testified that when Ms. Wright was absent, he saw her patients at a much higher frequency (Transcript R.267p.ID#2486).

Ms. Wright directed me to transfer what was already being prescribed by the physician on the patients' charts to the pre-signed prescription pads.

On September 18, 2009, Dr. Kapoor ordered medication from Dispensing Solutions. Only a licensed doctor can order Schedule II medications. I wrote a check for the ordered medication for \$24,072.40 on the same day (September 18, 2009). On October 1, 2009 Dr. Kapoor asked for his paycheck in advance because he was leaving on his scheduled vacation during the first week of October 2009. Ms. Wright was in the office during the first week of October. On October 8, 2009 an employee at MPM found a fax from Dr. Kapoor giving MPM his resignation. When I found out, I immediately closed the doors of MPM and told Ms. Wright about the fax. October 8, 2009 was Ms. Wright's last day employed with MPM. The fax from Dr. Kapoor was dated October 2nd during which time the nurse practitioner was still employed. I then tried to get in contact with Dr. Kapoor to see if he would pick up the medication that had been delivered by Dispensing Solutions. I received no response and assumed he was still on vacation. I then tried to get in contact with Todd Gibson at Dispensing Solutions to find out what to do with the abandoned medication. Gibson said I should have my new doctor re-register the medication with the DEA form 222 in his own name.

When DEA Agent David Graham and Betty Houser from the Health Department of Tennessee came into MPM on November 13, 2009, they asked me questions based on allegations I had forged prescriptions. Ms. Wright, later in the case, admitted to pre-signing the prescriptions for me to fill out according to what was prescribed by the physicians on the patients' charts. During their initial interview on November 13, 2009, I told DEA Agent Graham that there were abandoned medications left in the safe. None of the medications had been opened or dispensed; they were all sealed and unopened in their original containers. Agent Graham took an inventory and took the medications with him. Later in the case the District Court said that proper and mandatory record keeping of the medication

see Exhibit #6

had not been kept, but there was no need as the medication had never been opened or dispensed. However, the original Form 222 with the doctor's signature and Dispensing Solutions invoice/purchase order had been kept with the medication.

MPM continued to operate legally for another year after November 13, 2009. It was only after reporting the medication to the DEA that I was indicted a year later.

I never had any intent to illegally possess or distribute the medication Dr. Kapoor abandoned in the safe at MPM. All facts show that I was only trying to do the right thing and turn in the medications. Even DEA Agent Graham stated he would have not known the medications were there if I had not told him.

THE DISTRICT COURT INCORRECTLY DECIDED THE FACTS

1. Dates co-defendant Ms. Wright, nurse practitioner, was employed with Maryville Pain Management and Detox Center (MPM). District court alleged MPM employed no medical practitioner from September 28, 2009 to October 19, 2009 and Ms. Wright, nurse practitioner, was not employed after September 28, 2009.
2. That from September 28, 2009 - October 19, 2009 when no medical practitioner was employed by MPM, Guzman wrote prescriptions for patients using presigned blank prescriptions that Ms. Wright had left (PIR#21).
3. Guzman would increase the dosage or prescribe different drugs that Ms. Wright recommended on the charts (PIR#20).
4. Guzman unlawfully maintained "a significant stash of prescription narcotics at MPM which Guzman plainly procured at MPM with intent of distributing" (Doc. 340 p.16 Id #3763).

5. Accused Guzman for using Ms. Wright and Dr. Kapoor's DEA number to order bulk-controlled substances. Accused Guzman of ordering the medication and writing a check for the medication after Dr. Kapoor had resigned from MPM; keeping the medication for the intent to distribute in anticipation of a dispensing pharmacy at MPM; accused that the defendant, Guzman, used Wright-Kapoor's DEA number to order scheduled narcotics when Kapoor left MPM, however, the defendant, Guzman, did so intending to dispense substances. The record also shows that the defendant (Guzman) did so intending to dispense them to MPM customers. Nothing more was necessary to establish her guilt (Case 13-6051 Doc. 41 p.47). *See Exhibit #2 page 27, 28*

6. Money Laundering: Wrote check to Dispensing Solution in the amount of \$24,072.40. District Court was wrong by using the date the checks "cleared" the bank, which was October 6, 2009, to make it sound like Guzman wrote the check illegally after Doctor Kapoor resigned. Count 4-8. Money Deposits. The money deposits were when no *see Exhibit #2 page 27, 28* medical practitioner was employed. Count 4-8. Money Laundering: District Court erred in the dates when Nurse Practitioner Wright was employed at MPM. Stated she was not employed after September 28, 2009. Therefore, the deposits Guzman made from October 2, 2009 to October 8, 2009 were considered money laundering.

7. Quantity of Drugs (PIR #26). Charged me with every prescription that the medical practitioners prescribed.

8. Count 2. Possession with Intent to Distribute Controlled Substances: The government said that I DID NOT contact Todd Gibson from Dispensing Solutions to see if I, Guzman, could return the medication (Doc. 340 p.13 Id#3760). The government said I provided statement or affidavit from Gibson and my claim is purely speculative.

9. Structuring

10. EX POST FACTO CLAUSE - District Court wrong for making statements that Guzman ran an illegal business because she had no medical training or license, and she received cash payments.
11. Leadership Role. District Court proved why her attorney was ineffective for not arguing the leadership role as he said, Guzman was "procedurally defaulted" for failing to raise this claim on direct appeal, and the district court erred when concluding "none less" applying an enhancement based upon Guzman leadership role was appropriate citing evidence presented at trial (doc.340 p.21 ID# 3768).
12. Not keeping proper records on scheduled narcotics.
13. Prescribed different medications that Ms. Wright recommended on the charts.
14. Scripts
15. Call witnesses.
16. Files

CORRECT FACTS

1. Ms. Wright was employed until October 8, 2009 with MPM. My employee found the fax that Dr. Kapoor resigned. As soon as I found out, I immediately closed the doors to MPM October 8, 2009 - October 19, 2009 when MPM reopened with a new medical practitioner.

LEXIS US vs. Maimoune Wright no. 3:10-CR-161 Nov. 10, 2011 - David Graham (DEA) said, in his interview with Ms. Wright, he thought she was confused on the date she left MPM.

2. I never prescribed anything for patients. When practitioner Ms. Wright was employed, I wrote down what she directed me to on the prescriptions that she had already signed.

Testimony - Wright presigned prescriptions and directed Ms. Guzman to fill in the prescription with same medication that was written on the patient's chart. (Transcript R.267 p.ID#2307).

3. I never changed or transferred anything different than what I was told to by the practitioners or what Ms. Wright recommended on the charts.
4. I tried to contact Dr. Kapoor to see if he were coming back after his vacation to get the medication. I also called Dispensing Solutions about the medication. I informed investigator Graham (DEA) of the scheduled narcotics Dr. Kapoor left abandoned in the safe at MPM. - see Exhibit #1 AFFIDAVIT

(Transcript R.272 pg. ID#2562) Testimony shows I had no intent to illegally possess or distribute schedule II or IV controlled substances.

5. Dr. Kapoor ordered the schedule II narcotics, NOT Ms. Wright or Guzman. A nurse practitioner can't order schedule II narcotics; only a doctor can order those. The DEA form 222 will show Dr. Kapoor ordered and signed for the narcotics on September 18, 2009.

PIR #22) Ms. Wright and Dr. Kapoor knew they were signing for the narcotics.

6. Money Laundering Count 3 - Guzman wrote the check to Dispensing Solutions in the amount of \$24,072.40 on September 18, 2009 with Dr. Kapoor's signature for the medication that he ordered from Dispensing Solutions on September 18, 2009.

Money Laundering Count 4-8 - Nurse Practitioner Ms. Wright was employed with MPM until October 8, 2009 when the deposits were made (October 2 - October 8, 2009). An Evidentiary hearing would have proven that Ms. Wright was employed until October 8,

2009. Her paycheck would have also proven that she worked and received payment for the first week of October.

7. I was charged with every script written by ALL the doctors and ALL the nurse practitioners employed at MPM. None of the doctors were charged. All Doctors and nurse practitioners, except for Ms. Wright, testified and the evidence shows in the files that they all were in compliance with the law and did not prescribe "outside the usual course of professional practice without legitimate medical purpose."

Dr. Kapoor testified that "most" of the patients at the clinic were in chronic pain, which was "90-95% mostly" and if they weren't then he would discharge them. (Transcript R.267 p.ID#2490)

8. The District Court distorted the facts claiming I did not contact Todd Gibson from Dispensing Solutions to see if I could return the medication (Doc.340 p.13 ID#3760).

I stated that I DID contact Todd Gibson (Doc.303-1 pg.40 ID#3457). ^{see Exhibit #2 Ex.G}
_{see Exhibit #1}

9. Structuring - The proof to find Guzman did a crime in the way she deposited money (9-57). There was no crime. (Doc.272 p.205 ID#2738) Government's own bank witness testified she didn't see anything wrong with the deposits. Typical structuring charges involve "structuring to avoid defrauding the IRS by not paying taxes." Guzman paid all taxes on the income the clinic brought in. There would have been no reason for Guzman to have structured any deposits to avoid the IRS from knowing how much the clinic paid each year.

10. In January, 2012, a new law was passed in the State of Tennessee stating that "only doctors can own a pain management clinic" and it's illegal to accept cash payments. I started the MPM clinic in 2009 under the law at that time; however, I was convicted for violating the new 2012 law. This VIOLATES THE EX POST FACTO CLAUSE OF THE

CONSTITUTION. In 2009, I was NOT in violation of the law for starting and running a pain management clinic. *See Exhibit #2 page 4-11*

11. Leadership Role - No evidence proven - It was proven that each and every witness testified they were "captain of their own ship" and testified "Ms. Wright told Guzman what to do". *See Exhibit #2 page 35*

12. There was no need for inventory records because nothing was dispensed. But there was the DEA form 222 that the doctor signed for the medications and the invoice order form for the medications that were ordered by the medical physician, Dr. Kapoor. All the medication was still sealed in their original boxes and locked in the safe.

13. I never prescribed the medications. I never changed the prescription or prescribed different drugs. I only noted on the prescription what I was told to, as directed by Ms. Wright or what was prescribed in the chart by the doctor. *(See Files)*

14. Total amount of drugs charged against Guzman included every prescription written by every medical practitioner during the period the government selected.

15. The government said I did not contact Todd Gibson, the representative from Dispensing Solutions. However, I DID contact him regarding what I should do with the abandoned medications from Dr. Kapoor that was still in the safe. *see Exhibit #1*

16. The government seized 60 specific patient files from MPM. Special Agent Lauden testified "she reviewed the 60 files from MPM, created a spreadsheet where she captured the customer name, address, DOB, their chief complaint, and then we scheduled out each prescription that we found in the files.

The 60 files used by the government in trial were inconclusive: Had counsel used the information from all 2,000 files the charts would have proven:

1. The prescriptions were issued due to a legitimate medical purpose and in the usual course of practice.
2. Proper medical records
3. Tennessee ID
4. Drug Tests
5. That the doctor did complete examinations before prescribing medication.
6. Pill counts (random call ins)
7. PMP's
8. That the drug task force had been called over 20 times to report falsified MRI's or medical documents. *See Exhibit #1 AFFIDAVIT*
9. Dr. Kapoor testified that 90-96% of the active files had patients that were being prescribed medication with a legit medical purpose (Transcript, R.267 p.ID#2490-2).
Dr. Kapoor testified that he was ultimately responsible for the care of his patients (Transcript R.267 p.ID#2483). Kapoor testified that he prescribed medication only to legitimate patients and if he felt like a patient did not have legitimate pain, he "definitely discharged them" (Transcript, R. 267 p.ID#2497).
10. That I didn't add, change or prescribe any prescriptions/medications. I only copied from the charts what had already been prescribed by the physician/practitioner.

Only 60 files out of nearly 2,000 total files were selected by the government showing no proof of wrongdoing. If the other files were used it would have shown that out of the 2,000 that over 1,000 were discharged before Mr. Viney and then another 600 were discharged when Mr. Viney was there; which left about 300 active patients. MPM office manager called the drug task force to report any patients that were found bringing in false records or violated any laws. These calls were documented by staff on patient files. Every

effort was made by Guzman and all other office employees and medical staff to ensure that MPM was following all inter office procedures which were above and beyond what was required by law.

The testimony of the medical practitioners all stated that they were all in compliance with the law.

THE ARGUMENTS -

SEE Exhibit
#2 pages 4-37

Docket Number 3:10-CR-161-001

Count 1 - Conspiracy to distribute and possess with intent to distribute oxycodone, hydrocodone, alprazolam, diazepam, and zolpidem 21 U.S.C. 846, 841(A)(1), 841(b)(1)(c) and 841 (b)(2)

Count 2 - Possession with Intent to distribute oxycodone, hydrocodone, alprazolam, diazepam, and zolpidem 21 U.S.C. 841 (a)(1) 841 (b)(1)(c) and 841(b)(2)

Count 3 - Money Laundering 18 U.S.C. 1956(a)(1)(A)(i)

Count 4-8 - Money Laundering 18 U.S.C. 1956(a)(1)(B)(ii)

Count 9-57 - Structuring 31 U.S.C. 5324(a)(3) and 31 U.S.C. 5324(d)(2)

Docket Number 3:12-CR-153-001

Count 1 Failure to Appear 18 U.S.C. 3146(a)(1)

FACTUAL ERRORS:

Rule 403. Excluding relevant evidence for prejudice, confusion, waste of time or other reasons.

UNFAIR PREJUDICE:

Rule 1006. Summaries to prove content. The government only used the drugs that were prescribed in the charts for a spreadsheet, there was no proof that there was anything wrong with the charts. Governments "summary charts" were not properly admitted under Fed.R. Evid 1006. They were not relevant for the issue at trial.

District court abused its discretion only showing what was prescribed in the charts and not the other evidence to prove that all scripts were issued for legit medical purposes.

Guzman suffered unfair prejudice because the district court did not accurately give a summarized review of all the files.

Unfairly prejudice because if the full files were used completely it would have proven my innocence and did not provide the jury with the full picture of the file.

Insufficient evidence to support:

CONSPIRACY AND POSSESSION - There wasn't any agreement to violate any laws for unlawful purpose to distribute or possess with an intent to distribute.

Rule 403 - Exclusion for risk of unfair prejudice, confusion of issues, misleading the jury.

There was no:

1. motive
2. Intent
3. Knowledge

SEE EXHIBIT #2 PAGES 4-37

SUMMARY OF THE ARGUMENT

*DEA Graham indicated that Viney brought the files to him but didn't see anything wrong with the files. Doc320 p.ID#3616. The 60 files were used to determine the drugs prescribed.

*Statement 26 in the indictment - estimated number of drugs involved using the accounting system from Aug 11, 2009 - Dec 14, 2010 and sign in sheets. (Ms. Wright left Oct 8, 2009 and then I was charged with all the scripts that other doctors wrote until Dec 2010)

*The district court was wrong in the estimated number of drugs involved in the "so called" conspiracy because the charts would have proved that they were all written with the legit purpose. (PIR 26)

*No other medical practitioners at MPM were charged with prescribing controlled substances without a legitimate medical purpose outside of the usual course of medical practice, but I was charged with every prescription that all the medical practitioners legally prescribed. The drug quantities involved should not have been charged against me.

*The district court also said there was no medical provider employed when Guzman was still operating. That is an incorrect statement. When Guzman had her doors open, there was always a provider employed with MPM; October 8th she shut the doors and didn't open back up until October 19 with new providers. *see Exhibit # 1*

*During the interview Wright admitted during August and September that she had presigned prescriptions for emergency use for the times she was away from the office for health reasons and a death in her family. Dr. Kapoor was there when Ms. Wright was away. Ms. Wright directed Guzman what to copy onto the prescriptions. David Graham (DEA)

stated that I was only copying onto the script what the doctor prescribed in the charts. The first week of October, Ms. Wright directed me to copy what was prescribed on the patient charts to help her out while Dr. Kapoor was on vacation. See Exhibit #1

Further investigation of Maimoune Wright's case would've concluded that the government incorrectly stated the facts on the following:

1. Ms. Wright said she resigned on September 28, 2009, when in fact during the interview with DEA Agent David Graham she seemed confused about the date she left (Doc. 107 p. 17). See Exhibit #3
2. She claimed the prescriptions were forged (Doc. 107 p. 19).
3. She claimed to have no knowledge of the medication ordered and said I placed them without her knowledge. see Exhibit #3

Based on the facts in (Maimoune Wright Dist. LEXIS 150075 NO. 3:10-CR-161, November 10, 2010)

1. David Graham believed that Ms. Wright was confused about the date she left MPM and there was no testimony in the trial that the 28 was the date of her resignation. Had counsel further investigated it would have proven that she was employed during the first week of October until October 8th. See Exhibit #1
See Exhibit #3
2. She later admitted that she herself had signed the prescriptions and they were not forged. See Exhibit #3
3. MY PIR proves that she had knowledge and willingly signed the forms for narcotics. (Ref #22 in PIR). Dr. Kapoor only ordered the schedule II narcotics, but Ms. Wright ordered other medications.

SEE EXHIBIT #3

ISSUES THE DISTRICT COURT ERRED

ISSUE I: The District Court in denying Petitioner's ineffective assistance claim for his failure to argue an Ex Post Facto violation without further review or an evidentiary hearing deprived her of 5th and 6th Amendment rights (Exhibit #2 p. 4-11).

ISSUE II: The District Court erred in denying Petitioner's ineffective assistance claim for failing to call witnesses without further review or an evidentiary hearing deprived her of 5th and 6th Amendment rights (Exhibit #2 p. 12-19).

ISSUE III: The District Court erred in denying Petitioner's ineffective assistance claim regarding his failure to investigate the law regarding the role/duty of Petitioner deprived her of 5th and 6th Amendment rights (Exhibit #2 p. 12-19).

ISSUE IV: The District Court erred in denying Petitioner's ineffective assistance claim regarding multiple variances between the indictment and evidence produced at trial that her attorney either failed to properly challenge or timely challenge deprived her 5th and 6th Amendment rights (Exhibit #2 p. 26-28).

ISSUE V: The District Court erred in denying Petitioner's claim that her attorney was ineffective for failing to challenge the number of files reviewed, drug quantities, and spreadsheets used for sentencing violated her 5th and 6th Amendment rights (Exhibit #2 p. 29-32).

ISSUE VI: The District Court erred in denying Petitioner's ineffective assistance claim for failing to subpoena the deposit records or prepare exhibits to prove why the money laundering and structuring counts fail, deprived her of 5th and 6th Amendment rights (Exhibit #2 p. 32-34).

ISSUE VII: The District Court erred in denying Petitioner's ineffective assistance claim for failing to properly argue why the leadership enhancement should not apply, deprive her of 5th and 6th Amendment rights (Exhibit #2 p. 34-35).

SEE EXHIBIT #2 – pages 4-37

ARGUMENTS

Argument on Retrospective Hearing on Traceability of Seized Property:

The restraint of legit untainted assets needs to retain counsel of choice violates the Sixth Amendment. *Luis v. United States* 136 S. ct. 1083 (2016). Appellant, Guzman, home where her children and grandchildren lived—3536 Garner Cir., Maryville, TN—was untainted asset along with the vehicles and other untainted assets. Guzman had the home and vehicle before MPM was even opened. The home was where her children and mother lived.

Appellant is alleging the denial of fundamental constitutional right to counsel of choice; a Structural hearing is warranted at trial. Sentencing did not establish a "Sufficient Nexus" of the crime. *United States v. Coffman* 364 Fed. Appx. 192, 193-94 (6th cir. 2019).

District court error saying "Petitioner has not alleged that she had any untainted pretrial assets to be retained and in fact swore in her financial affidavit at the outset of her case that she did not have sufficient assets to afford counsel of choice.

The government froze all my untainted assets and bank account. The government had placed a lien on all my assets, and I was told I was not allowed to obtain a loan or sell the properties or anything inside to obtain counsel of my choice. *United States v. Byrd* 153 F. supp. 3d 851 (D. Maryland 2015) Stated a need for the property to retain counsel. I did

say I didn't have any assets to afford counsel because the government already ceased all assets.

The District Court engaged in misconduct by presenting false and misleading evidence and perjury testimony (514 I.3d 539 In re McDonald November 29, 2007).

In order to establish a claim of prosecutorial misconduct or denial of Due Process the defendant must show that statement in question was false, the prosecution knew it was false, and that it was material" and it may also have constituted the denial of right to present witness in his own defense. There were many false statements and inconsistent statements that government witnesses gave. One example, Michael Melfi (Government's witness) Doc. 267 p. 115 Id# 2415, testified that I told him to get a false MRI. The Governments Argument, "Fake MRI's she knew the patients weren't in pain. Tammy is telling them how to dummy up an MRI, bring in dummy PMP." The truth is on 4-21-09 after Melfi second visit I found his MRI was fake and he was discharged. His file, that the District Court has, would have proven that. The District Court knew it was a false statement because they have the file. There is so many false statements like that one. I was so overwhelmed by hearing all the false statements in my trial and didn't feel like I had effective counsel. After the sixth day of trial, when I found out my lawyer sent home witnesses and didn't call Todd Gibson to testify on my behalf, his testimony would have proven my innocence of the possession charge, I didn't show up the next day for trial.

False Statements made "Knowingly and Intentionally or with Reckless Disregard for the Truth:

District Court Argument – James Hatcher, (government witness), had normal records and is getting scripts. He gets canned because he didn't want to share his extra script with defendant, Tammy (Doc. 270 p.73 ID #1982). The file on James Hatcher will

prove: 1) Has MRI reports that re-veiled abnormal findings (Exhibit 78). The District Court only showed in trial the X-ray report that was normal; 2) Was discharged for doctor shopping (8/18/09); 3) Was referred to orthopedist; 4) You will find his PMP printout.

James Hatcher started to go to Maryville Pain Management, but after he was discharged for doctor shopping, he started going to Chillowee and Breakthrough; (I told my attorney, while Mr. Hatcher was testifying, that it was not my clinic (MPM) he was talking about. He was talking about the other clinic from 2009 to July 2010).

District Court Argument – Jeffery Flower, didn't like the script he got, he went to Tammy and she tore it up and give him higher amounts, again no exam. Jeffrey Flower (Doc. 272 P. 216 ID 2749) saw Ms. Wright. Told her I couldn't take perocets, ending up with 2 roxy 15 mg a day. He complained. I told him to come back when the doctor was there so he can fix it; (I just meant he had to come back and see the doctor—not to fix it and get a higher amount; again, the files would prove that the doctor prescribed the medication and he had exams by the Doctor).

District Court Argument that I would change up the scripts, "just hand out scripts." Christy Teffeteller, government witness (Doc. 268 p. ID 1645) said that I got her a script; but, as she was walking out the door, she noticed it was wrong. She said the doctor changed her script. I looked in her chart and found that the Practitioner wrote to increase by one a day. I only wrote down what the Medical Practitioner prescribed.

CLOSING

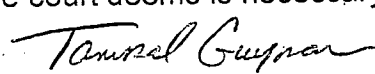
The evidence was not enough to sustain Guzman's conviction for Conspiracy and possession with intent to distribute a controlled substance, Money laundering or structuring. Guzman suffers by Actual Prejudice by the district court not presenting full and fair presentation of her case (rule 60) Evidence. If proven and viewed considering the evidence, would be sufficient to establish by clear and converging evidence that no reasonable fact finder would find the movant guilty of the offense. Sixth appeals court 605 f. 3d 333 Johnson v. Bell " prosecution knowingly presented false testimony and withheld evidence that exculpated the prisoner."

There were many false statements presented by the prosecution and their witnesses. Further investigation ultimately would have changed the outcome of Guzman's case. Guzman suffers miscarriage of justice and is innocent of her convictions. District Court commit plain error.

Guzman also suffered greatly because FBOP has not provided appropriate, timely medical care for her disease of Invasive cancer of the breast and cervical cancer. Her health issues in determining at her sentencing under U.S.C. 3553 was not foreseen.

see Exhibit #4
see Exhibit #5

Appellant-Guzman contends that the errors in her case was clearly erroneous and produce a grave of miscarriage of justice. Guzman is entitled to reversal of her conviction. Guzman respectfully requests that her case be dismissed, or the appeals court grant relief in reduction of sentence, or the remaining of her sentence she can serve on probation, or home confinement. Any relief the court deems is necessary.

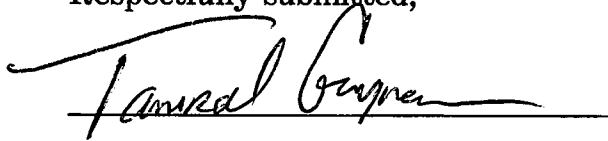

Respectfully submitted, Tamral Guzman # 43512-074

Due to the defendant having exhausted all branches of the court,
The defendant has no other forms of being granted relief when there
are exceptional circumstances justifying such intervention by this court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Tameka Guyre

Date: October 6th 2020