

ORIGINAL

20-6628
No. _____

FILED
NOV 02 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

RODANE LAMB

— 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 ELEVENTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

RODANE LAMB, Reg. # 24501-017

(Your Name)

FCI — Coleman (Medium)

P.O. Box 1032

(Address)

Coleman, Florida 33521-1032

(City, State, Zip Code)

N/A

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) Was Counsel Ineffective For Not Challenging Petitioner's Stated Cumulative Errors in Argument One?
- 2) Was Counsel Ineffective For Not Challenging DEA Special Agent Doug Griffith's Testimony?
- 3) Petitioner Should Have Been Charged With A Buyer Seller Relationship, Rather Than With A Conspiracy With Co-defendant?
- 4) Was Counsel Ineffective For Not Objecting To A Package That Was Intercepted By The U.S. Postal Service?
- 5) Should Counsel Have Objected To The Testimony Of Jeff Bairstow?
- 6) Was Counsel Ineffective For Not Objecting To The Jury Instructions That Were Erroneous?
- 7) Was Counsel Ineffective For Not Challenging The All While Jury Panel?

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:

TABLE OF AUTHORITIES CITED

| CASES | PAGE NUMBER |
|--|----------------------------|
| Strickland v. Washington, 466 U.S. 668 (1984) | 7, 10, 13, 14, 19 |
| Cronic v. United States, 466 U.S. 648 (1984) | 7, 10, 13, 14, 19 |
| Wood v. Georgia, 450 U.S. 261 (1981) | 7, 10, 13, 14, 19 |
| Slack v. Daniels, 529 U.S. 473, 484 (2000) | 8, 10-11, 13-14, 16-17, 19 |
| Buck v. Davis, 137 S. Ct. 759-779 (2017) | 8, 10-11, 13-14, 16-17, 19 |
| Barefoot v. Estelle, 463 U.S. 880, 895 (1983) | 8, 10-11, 13-14, 16-17, 19 |
| Miller El v. Cockrell, 537 U.S. 322-333 (2003) | 8, 10-11, 13-14, 16-17, 19 |
| Cuyler v. Sullivan, 446 U.S. at 350 (1980) | 7, 10, 13-14, 19 |
| United States v. Hawkins, 268 Fed. Appx. 524 (11th Cir. 2008) | 15 |
| United States v. Charles, 313 F.3d 1278 (11th Cir. 2002) | 15 |
| Baston v. Kentucky, 476 U.S. 79 | 17-19 |
| Foster v. Chatman, 2016 DL, 16-2869, U.S. No. 14-8349 | 17-19 |
| U.S. v. Dickerson, 789 F.3d 1331 (11th Cir. 1999) | 11 |

STATUTES AND RULES

21 U.S.C. § 841(b)(1)(A)

21 U.S.C. § 841(b)(1)(A)

21 U.S.C. § 846

Federal Rules of Evidence 403

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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 B 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 A 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 September 2nd, 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: N/A, 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 N/A (date) on N/A (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 Rights of The U.S. Constitution

Sixth Amendment Rights of The U.S. Constitution

Eighth Amendment Rights of The U.S. Constitution

21 U.S.C. Section 841(b)(1)(A)

21 U.S.C. Section 846

STATEMENT OF THE CASE

Petitioner was charged in a second superceding indictment with conspiracy to distribute five or more kilograms of cocaine (Count One) in violation of 21 U.S.C. Section 841(a)(1), (b)(1)(A), and Section 846. Petitioner proceeded to trial and was convicted, and sentenced to 144 months in a federal prison. Petitioner has exhausted all of his appeal remedies, and now appeals to the United States Supreme Court with this writ of certiorari, in hope that the Honorable U.S. Supreme Court will grant this writ.

REASONS FOR GRANTING THE PETITION

Petitioner understands that his Honorable Court has discretion as to whether it wants to accept a writ of certiorari or not. Petitioner asks that this Honorable Court accept this writ because of the prejudice against the Petitioner by the Jury, plus an all white Jury, and a very unfair trial by allowing things to happen at trial that should never have transpired at any trial. Therefore, Petitioner requests and asks that this Honorable U.S. Supreme Court accept his writ of certiorari because what happened to the Petitioner should not be allowed to transpire with anyone else in this country. Therefore, Petitioner requests that this Honorable Supreme Court Accept his writ based on national reasons stated in this writ as follow:

ARGUMENT ONE

Counsel was ineffective for not challenging the cumulative fundamental errors in this case, such as, the introduction of a package addressed to Petitioner in California, when in fact, he was not in California, nor responsible for a package in California. Counsel was ineffective for not objecting and challenging the introduction of testimony regarding intercepted packages, and the testimony of a co-conspirator regarding these packages, for which did not involve Petitioner. Counsel, was also

ineffective for not challenging the introduction of physical evidence of cocaine in access of what the Petitioner was supposedly accused of by a co-conspirator. Counsel had clear basis to object to this unconstitutional Fifth Amendment introduction of evidence into Petitioner's trial, for which he was not responsible for.

There was no evidence in this case, that Petitioner participated in this conspiracy, because there was no conspiracy, other than if anything a buyer seller relationship, and nothing else. There was no evidence beyond a reasonable doubt that Petitioner participated in the excess of five kilograms or more. There was no beyond a reasonable doubt to a jury that a conspiracy transpired with the Petitioner and others. No evidence was established that Petitioner was involved in a conspiracy. Because he did not conspire with anyone at all to distribute five or more kilograms of cocaine. Petitioner had no knowledge of a conspiracy, nor did he ever voluntary willingly to become a part of any conspiracy.

Counsel was ineffective for not objecting to Petitioner not being a part of any conspiracy. Because he did not conspire with anyone at all, especially not any co-defendants.

Counsel should have challenged the introduction of this fabricated testimony by a co-defendant who testified against the Petitioner, in order to receive a lesser sentence, and therefore,

testified to anything the Government told the Petitioner's co-defendant what to say, in order to receive a lesser sentence. Petitioner was prejudiced by this inaccurate testimony, which caused the Petitioner 144 months in a federal prison. These cumulative fundamental errors are definitely responsible for counsel's ineffectiveness in this case, in not challenging them for which could have prevented Petitioner's conviction.

These cumulative errors, fundamentally, caused the Petitioner prejudice, and ineffective assistance of counsel in violation of Petitioner's Fifth Amendment Rights to Due Process of the Law, and Petitioner's Sixth Amendment Rights to effective assistance of counsel. **Strickland v. Washington**, 466 U.S. 668-687 (1984); **Cronic v. United States**, 466 U.S. 648 (1984); **Cuyler v. Sullivan**, 446 U.S. at 350 (1980); and **Wood v. Georgia**, 450 U.S. 261 (1981). But for counsel's ineffectiveness, and below the standards of representation, the proceedings would have been so much different. Counsel's ineffectiveness undermined the reliability of guilt in this case by allowing the jury to convict an innocent defendant of conspiracy and for five kilograms of cocaine when there was no conspiracy at all, and when Petitioner's co-defendant never provided him with five kilograms of cocaine at all. **Cronic**, 466 U.S. 648, 659, fn. 26 (1984). Petitioner's Argument One does warrant habeas relief, based on all of these cumulative errors stated above. Counsel committed a Sixth Amendment violation, to ineffective assistance of counsel, by

all of the above stated reasons, and cumulative fundamental errors. Jurist of reason would have stipulated that this argument deserved further development and should proceed further. **Slack v. Daniels**, 529 U.S. 473, 484 (2000); **Buck v. Davis**, 137 S. Ct. 759-779 (2017); **Barefoot v. Estelle**, 463 U.S. 880, 895 (1983); **Miller El v. Cockrell**, 537 U.S. 322-333 (2003).

A certificate of appealability should have issued, based on this argument to the lower court. Petitioner now hopes that the Honorable United States Supreme Court will grant this writ of certiorari based on all of the above stated reasons in this argument, and counsel's below the standard of representation of the Petitioner based on all of the above stated cumulative fundamental errors in this argument.

ARGUMENT TWO

Whether Counsel Was Ineffective For Not Challenging DEA Special Agent's Doug Griffith's Testimony

Counsel was ineffective for not challenging special agent, DEA, Doug Griffith's testimony, as not being an expert witness, nor expert testimony. Because he was not an expert, therefore, he should never have been allowed to testify as an expert witness , nor as an expert, extracting data from cellphones. Even

the Government agreed that Agent Griffith testified to matters that were arguably within the province of expert testimony. And that is the extraction of data from electronic sources. Even the Government agreed that Petitioner was correct when Petitioner stated that Agent Griffith was not an expert witness, and should not have been allowed to testify as such. Agent Griffith's unconstitutional testimony prejudiced the Petitioner and caused Petitioner an unconstitutional 144 month sentence in a federal U.S. prison. And for the jury to accept him as an expert when he was in fact no such expert as he testified to being under oath. Counsel prejudiced the Petitioner by not challenging Doug Griffith's non expert testimony, and caused the Petitioner to be prejudiced by counsel's ineffectiveness and below the standards of representation, which caused Petitioner many years of his life unconstitutionally in violation of his Fifth Amendment Right to Due Process, and his Sixth Amendment Right to effective assistance of counsel. Jurist of reason would have stipulated that this case deserved further encouragement, and that Petitioner's Fifth and Sixth Amendment Rights had in fact been violated. And that Petitioner was prejudiced by counsel's not challenging the Government on this claim, by counsel not stating that Mr. Griffith, not be allowed to testify as an expert witness. This prejudiced the Petitioner to the jury, and caused Petitioner to be prejudiced by the jury into believing that this Agent was in fact an expert witness, when in fact, he was not

and should not have been allowed to testify as if he was an expert witness. But for counsel's ineffectiveness and below the standards of representation, the proceedings would have been so much different. **Strickland v. Washington**; **Cronic v. United States**; **Cuyler v. Sullivan**; and **Wood v. Georgia**, 450 U.S. 261 (1981).

Jurist of reason would have stipulated that this argument deserved further encouragement. **Slack v. Daniels**; **Miller El v. Cockrell**; **Buck v. Davis**; and **Barefoot v. Estelle**, *supra*.

Petitioner hopes and prays that this writ of certiorari will be granted by this Honorable United States Supreme Court. See Petitioner's trial transcripts pages: 3-12; 3-22; 10-18; 3-26; 3-27; 3-28.

The jury in this case had further questions during deliberations that they wanted answered, but the Judge refused to answer any of the two questions from the jury, for which could have created a different outcome for the trial and verdict in this case.

Jurist of reason would have stipulated that this argument deserved further developments, based on violations of the Petitioner's Fifth and Sixth Amendment Rights stated above in this writ of certiorari.

ARGUMENT THREE

Whether Petitioner Should Have Been Charged With A Buyer Seller Relationship Rather Than Conspiracy

Petitioner never conspired with anyone to sell any drugs at all. And therefore, should never have been charged with a conspiracy period. Nor was there ever any evidence of a conspiracy in this case with the Petitioner conspiring with anyone to sell drugs. There is no evidence in this case that Petitioner was conspiring with others to sell drugs, if anything, there was only a buyer seller relationship with co-defendant Brown, but no conspiracy, nor any conspiracy with anyone else.

Jurist of reason would stipulate that this argument deserves further encouragement, and that only a buyer seller relationship existed, and not a conspiracy, with co-defendant Brown. See **U.S. v. Dickerson**, 789 F.3d 1331 (11th Cir. 1999). Jurist of reason under **Barefoot v. Estelle**; **Buck v. Davis**; **Slack v. Daniels**; and **Miller El v. Cockrell**, *supra*, would stipulate that Petitioner's Fifth and Sixth Amendment Rights to Due Process of Law, were violated and that he was prejudiced by counsel's ineffectiveness in not pushing for a buyer seller relationship, which in this case, counsel prejudiced the Petitioner and caused him 144 months in a federal prison. Petitioner hopes and prays that this writ of certiorari will be granted, based on a certificate of

appealability reasons, and violations of the Petitioner's Fifth and Sixth Amendment Rights.

ARGUMENT FOUR

Whether Counsel Was Ineffective For Not Objecting To A Package That Was Intercepted By The U.S. Postal Office

The lack of evidence linking Petitioner to an intercepted package, with no finger prints, for which were never on this intercepted package. The Postal inspector testified that a package could be mailed to any address with any fake or improper name. Counsel should have objected to the introduction of the five additional packing slips that were alleged to be similar to the intercepted package, without any proof of where the contents of those packages came from, because they were not for the Petitioner. All the Government did was mislead the jury deliberately with the impression that the Petitioner should be held responsible for five packing slips, that has absolutely nothing to do with the Petitioner. Irrelevant evidence such as in this case is not admissible under Federal Rules of Evidence 402, and relevant evidence may be excluded "if its probative value is substantially outweighed by a danger of...unfair prejudice, confusing the issues, misleading the jury, undue

delay, wasting time, or needlessly presenting cumulative evidence." Fed.R.Evid. 403, such as in Petitioner's case in point. Because never received any packages period from anyone. Counsel was ineffective for not pursuing this claim, jurist of reasons would have stipulated that this argument deserved further encouragement, that Petitioner's Fifth and Sixth amendment Rights to Due Process and Sixth Amendment Rights to effective assistance of counsel were violated under **Strickland v. Washington**; **Cronic v. United States**; **Wood v. Georgia**; and **Cuyler v. Sullivan**, *supra*. **Barefoot v. Estelle**; **Slack v. Daniels**; **Buck v. Davis**; and **Miller El v. Cockrell**, *supra*.

Petitioner hopes and prays that this writ of certiorari will be granted.

ARGUMENT FIVE

Whether Counsel Should Have Objected To Testimony Of Officer Jeff Bairstow Because Said Officer's Testimony Never Connected To Petitioner, But Rather Involved A "Resident" - Not The Petitioner, Who Was In Gainsville, Florida

Petitioner lived in Gainsville, Florida, not in Ocala, Florida. The Government never connected this interdiction with the Petitioner, whom throughout trial, when it was testified to, that Petitioner was simply in Gainsville, Florida, not Ocala. Officer Bairstow's testimony simply did nothing but confuse the jury and conflict issues unrelated to Petitioner.

Counsel should have objected to such unrelated testimony. Counsel should have argued in limine to exclude such wholly irrelevant and extrinsic testimony before the jury could be mislead. Counsel's failure to do so, prejudiced the Petitioner, and caused him 14 months in a federal prison. But for counsel's ineffectiveness and below the standards of representation, the proceedings would have been so much different. Jurist of reason would have stipulated that this claim deserved so much more encouragement, than it received. **Strickland v. Washington; Cronic v. United States; Wood v. Georgia; and Cuyler v. Sullivan; Barefoot v. Estelle; Slack v. Daniels; Miller El v. Cockrell; and Buck v. Davis, supra.**

Petitioner hopes and prays that this writ of certiorari will be granted.

ARGUMENT SIX

Whether Counsel Was Ineffective For Not Challenging The Jury Instructions

Counsel was ineffective for not challenging the jury instructions in this case, that were erroneous. Because they did not comport with pattern jury instructions. They contained jury instructions regarding the conspiracy count in Petitioner's case, which "contained elements different from both pattern instructions." See Jury Instructions pages: 19-3, and 19-3s 3 (pattern

instructions on conspiracy). Petitioner's jury instructions did not reflect the law and facts. Petitioner's charge as a whole did not accurately reflect the law and the facts in this case.

Petitioner's jury instructions were substantially different to the pattern jury instructions for controlled substances conspiracies. The Government jury instructions did not contain the necessary elements that were required to accurately reflect the law and the facts. See jury instructions listed by Petitioner, 19-3, 19-3s, 19-35. See **United States v. Hawkins**, 268 Fed. Appx. 524 (11th Cir. 2008); **United States v. Charles**, 313 F.3d 1278 (11th Cir. 2002). Such differences in actual elements in the conspiracy elements cannot contain elements different from both pattern instructions of 19-3 and 19-35 (pattern instructions on conspiracy). Such differences lead to a actual confusion of the actual elements, which lead the jury to be confused and an improper determination of guilt. Any reasonable attorney would have protected his client's best interest and strenuously objected to such inaccurate instructions. By failing to do so, counsel prejudiced Petitioner and caused him many years of his life in a federal prison. This was "structural error," which in Petitioner's case should have been an automatic reversal. Failure of counsel of the five jury pattern instructions, 19-5, coupled with counsel's failure to ensure its inclusion, did not permit the jury, the opportunity to consider whether Petitioner's actions occurred outside of the

charged conspiracy in relation to some other alleged arrangement. The Government's misuse of the jury instructions, based on structural error to the jury of the wrong jury instructions, prejudiced the Petitioner and caused Petitioner to be unconstitutionally convicted in violation of his Fifth and Sixth Amendment Rights under the U.S. Constitution.

The Government inappropriately and unconstitutionally in violation the Petitioner's Fifth, Sixth and Eighth Amendment Rights deliberately and intentionally forced the jury into an unconstitutional structural error of jury instructions, attributing Petitioner's conduct solely to a conspiracy and ultimately misleading the jury to convict an innocent defendant, deliberately and unconstitutionally intentionally. Jurist of reason would have stated that this argument deserved further encouragement based on violations of the Petitioner's inaccurate jury instructions to the jury. A Fifth and Sixth Amendment violation to Due Process and a violation of the proper elements to the jury, for which they did not receive, based on improper and misleading jury instructions of the element to the jury. Petitioner's Eighth Amendment Rights to cruel and unusual punishment was also violated, because it was cruel and unusual punishment to mislead the jury intentionally and deliberately. Jurist of reason would have stipulated that Petitioner's Fifth, Sixth and Eighth Amendment Rights had in fact been violated, and that this claim should proceed further. **Barefoot v. Estelle; Buck**

v. Davis; Miller El v. Cockrell; and Slack v. Daniels, supra.

Petitioner hopes and prays that this writ will be accepted and granted by this Honorable Court, based upon the above stated reasons. But for counsel's ineffectiveness, the proceedings would have been so much different. The prejudice to the jury and Petitioner in giving the wrong jury instructions intentionally and deliberately caused Petitioner 144 months in a federal prison and an unconstitutional and improper jury instruction. And a denial of a certificate of appealability. **Barefoot v. Estelle; Slack v. Daniels; Miller El v. Cockrell; and Buck v. Davis, supra.** Petitioner hopes and prays again that this Honorable Court will grant this writ of certiorari.

ARGUMENT SEVEN

Whether Counsel Was Ineffective For Not Challenging Petitioner's All White Jury-Panel

According to **Baston v. Kentucky**, 476 U.S. 79; and **Foster v. Chatman**, 2016 DL, 16-2869, U.S. No. 14-8349. It was a concerted effort by the Government to keep African Americans off of the Petitioner's jury. Petitioner's jury panel was all white, with no African Americans on the panel and the Government deliberately and intentionally keeping African Americans off of the

Petitioner's jury, intentionally and deliberately. And counsel did not object to this unfair and unconstitutional Fifth, Sixth, and Eighth Amendment unconstitutional treatment. That violated the Petitioner's Due Process to a fair and impartial jury, his Sixth Amendment Right to effective assistance of counsel, and Petitioner's Eighth Amendment Right to cruel and unusual punishment for deliberately and intentionally keeping African American off of the Petitioner's jury, just to get the advantage in order to convict the Petitioner in violation of **Baston v. Kentucky**, and **Foster v. Chatman**, supra. Out of 34 Jurors, none were allowed on Petitioner's jury, that were African American. When Petitioner asked counsel to challenge why there were no African Americans being allowed on his jury panel and in his jury, counsel simply refused to do so, and did absolutely nothing about it. Thereby, violating Petitioner's Fifth and Sixth Amendment Rights to effective assistance of counsel, prejudicing the Petitioner and causing his conviction and a sentence of over a decade in a federal prison.

The Government deliberately struck all African American from the Petitioner's jury, even those that were qualified to serve. And this is no conclusory allegation, but a fact. This was inconsistent with Federal Law, and the Fifth, Sixth and Eighth Amendments of the United States Constitution. See **Baston v. Kentucky**; and **Foster v. Chatman**, supra. But for counsel's ineffectiveness, and below the standards of representation, the

proceedings would have been so much different. Counsel prejudiced the Petitioner fundamentally and substantially by not objecting to this all white jury that Petitioner asked counsel to challenge, but refused to do so, upon Petitioner's request. But for counsel's ineffectiveness, and below the standards of representation, the proceedings would have been so much different. **Strickland v. Washington; Cronic v. United States; Wood v. Georgia; Cuyler v. Sullivan; Baston v. Kentucky; Foster v. Chatman;** jurist of reason would have stipulated that this argument deserved further development. **Barefoot v. Estelle; Miller El v. Cockrell; Buck v. Davis; and Slack v. Daniels,** supra.

Petitioner hopes and prays that this writ of certiorari will be granted, based upon all of the above stated reasons.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Nov. 2, 2020

Mail Box Rule
Lock--Hudson
487 U.S. 266 (1988)
Court 19-wires