20-6648

In The
Supreme Court Of The United States

ORIGINAL

United States Of America
v.
Gezo Godong Edwards
(Cr. No. 11-129-(CKK))

On Petition For Writ Of Certiorari To The
United States Court Of Appeals For The
District Of Columbia Circuit

Questions Presented

(1) Whether the Lower courts are unclear on what standard of review should be conducted for the issuing of a COA, in that, some Lower courts still review under Slack v. McDaniel 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000), that quotes, Barefoot v. Estelle 463 U.S. 880, 895 n.4, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983) and concluding under a merit review, which this court found was in error and that the decision as to whether to issue a COA is a threshold question that should be decided without full consideration of the factual or legal basis adduced in support of the claims. Buck v. Davis 137 S.Ct. 759, at 773 (2017) quoting Miller-El v. Cockrell 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003)?

(2) Whether there is a deficiency in the Lower courts Protection of the constitutional Provisions of habeas corpus or unequal Protection, referred to as 28 U.S.C. 2255 Proceedings, Beyond review by the District Courts clear or Potential errors based on the continual Denials of issuing a COA for claims warranting Appellate review?

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Opinions Below

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V

Jurisdiction

The Court Of Appeals for The District Of Columbia denied the COA on August 7, 2020, the Jurisdiction of this court is invoked Pursuant to 18 U.S.C 1254

VI

Statutory and Constitutional Provisions Involved

The statutory and constitutional Provisions Involved consist of the statute invoking appellate Jurisdiction to review final decisions of the United States District Court, 18 U.S.C. 1254, and the constitutional Provisions of 28 U.S.C. 2255, Sixth Amendment, Fourth Amendment and 21 USC 853

Statement of the Case

Petitioner Presented to the United States District Court for the District of Columbia a motion Pursuant to 28 U.S.C 2255 that fell into several categories which the court compounded into six general categories for its review Pertaining to Petitioner's claims of ineffective assistance of counsel During Pre-trial, trial, and Direct Appeal.

On, November 21, 2019, the District Court denied the 2255 and also denied a certificate of Appealability through a merit review, Petitioner filed a timely notice of Appeal, and Proceeded to the United States Court of Appeals for the District OF Columbia to issue a COA.

Petitioner's Petition for the COA contains a threshold Presentation of a substantial showing of the errors BY the District Court Demonstrating that reasonable jurist could debate whether, the Petition should have been resolved in a different manner or that the issues Presented were adequate to deserve encouragement to Proceed further (APPEAL, COA).

The Court Of Appeals ordered the government to respond to Petitioner's claimed Errors made BY the District Court, as its reasons for denying relief, that were obvious BY record evidence and Directly shown were in the record Demonstrating the Errors that supports Petitioner's claims. However, the government did not address Petitioner claimed Errors shown BY record evidence, but instead, chose to Directly and Incorporate the same exact contents set forth in the District Court's merit review, and as their Appendix for support accompany their response with the official. The Government also invoke a contention of a hypothesis in a manner neither Presented BY Petitioner the Fashion evaluated, nor viewed BY the court in the manner as in its merit review.

Petitioner replies to the Government's response, and the Court of Appeals Based

than consideration on the motion for a COA, the opposition's response that was only the merit review issued by the District Court - and not a request challenging Petitioner's claimed errors for review as to whether a COA should issue based on those errors, the reply, and the supplement to the reply.

The Court of Appeals ruled in favor of the government and denied issuing a COA under, Slack v. McDaniel 529 U.S. 473, 483-84 (2000). In otherwords, the Court of Appeals based their denial, in part - but major concerns, on a merit review because that's what the government chose to present as their opposition to the request for the COA instead of an opposition based on Petitioner's claimed errors made by the District Court. (Appx. A; COA, response, reply, and order)

However, this court after Slack v. McDaniel 529 U.S. 473, changed course, in part, on how the lower courts were determining when to issue a COA and found that many courts of Appeal decisions had denied applications for a COA only after concluding that the applicant was not entitled to habeas relief on the merits. This court put an end to that practice, declaring that a COA is a threshold question that should be decided without full consideration of the factual or legal bases adduced in support of the claims. Buck v. Davis 137 S.Ct. 759, at 773 (2017) quoting Miller-El v. Cockrell 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003) (emphasis added); see also id. at 338 (the Petitioner must demonstrate that reasonable jurist would find the District Court's assessment of the constitutional claim debatable or wrong, (emphasis added)); id at 348 (the COA inquiry ask only if the District Court's decision was debatable)

This case arrives from the government allegations that Petitioner and his co-defendants, William Bowman and Robert Richards

along with others operated a cocaine distribution ring in Washington D.C from 2009 extending to 2011, when the defendants were arrested. Allegations are that Petitioner, Bowman, Richards, and Willie Mooren funded the deals, while Bowman and Richards arranged to travel to California to purchase Kilos of cocaine. The Government contend that the cocaine was then transported from California in shipping pods to D.C., moved to stash houses and storage units.

Allegations are that Petitioner processed the cocaine in a trailer in Lanham, MD., and that Bowman and Richards supplied a small circle of their respective customers who in turn distributed their purchases retail. The basis of the government's contentions stem from an investigation through Bowman which authorities conducted with informers, reviewed pen registers of telephone calls, monitored Bowman and his acquaintances, and arranged for controlled buys between a confidential informant and Bowman. Subsequently, in December of 2010, investigators secured judicial authorization to wiretap a cellphone being used by Bowman. Title III wiretap Authorities discontinued the initial wiretap in January of 2011, and sought and secured authorization to wiretap a second target cellphone being used by Bowman.

The second wiretap (T2) was extended three times; February 11th, March 11th, and April 8th. Using information gained from the T2 tap, authorities obtained authorization on March 19th to tap a third cell phone that Bowman was said to be using and based largely on information from that particular wiretap authorities learned the existance of the storage unit.

Based on surveillance of the storage unit and further intercepts of phone conversations authorities obtained authorization to install

A closed-circuit surveillance camera in the storage unit. A video taken inside the storage unit on April 5th captured Petitioner opening a suitcase and allegedly counting kilo sized quantities of a white substance. Though the execution of a search warrant authorities recovered approximately 25.5 kilograms of cocaine, sixty empty kilogram size wrappers, two firearms and a bulletproof vest. Paraphernalia was seized from Petitioner's trailer and cash was seized from Petitioner's and Bowman's homes.

Reasons For Granting The Petition

Because there exist ambiguity in the lower courts as to the approach concerning when a COA should issue, and that there exist factual grounds of deficiencies in the lower courts protection of the constitutional provisions of habeas corpus review, referred to as 28 U.S.C. 2255 Proceedings, beyond review by the District Courts clear on Potential errors based on the continual denials of issuing a COA for claims warranting Appellate review, this Petition should be Granted.

A Defendant after Dispositive results of a criminal trial has a Judicially structured right to Appellate review - through Direct Appeal. Even though through Direct Appeal the Courts of Appeals look to resolve claims of error presented under the color of constitutional dimension, reversible errors that could have affected the outcome of the trial, etc., Direct Appeal is not a constitutional amended resource to resolve claims of errors made during trial.

However, the majority of the lower courts have unified a structured system to resolve claimed errors made through the Sixth Amendment counsel claim during a criminal trial, designating those claims to habeas corpus review - referred to as 28 U.S.C. 2255 Proceedings, and will not address those claims on Direct Appeal.

The lower courts reason for the split review is due in part based on their theory that ineffective assistance of counsel may occur during Direct Appeal and would be better situated if it was claimed jointly with ineffective assistance of counsel claims that occurred during the District Court Proceedings. Further, that the District Court would be more familiar with its own Proceedings. The Courts of Appeal also direct that unless an ineffective assistance of counsel claim is not clear by the record it will be better situated to be addressed by the District Court through its evaluation Process because claims of ineffectiveness

may occur outside of what the record presents. There is not a review based on an ineffective assistance of counsel claim that is clear of record evidence is hardly ever honored.

However, the Courts of Appeal continual misapplication of not issuing a COA when issues warrant appellate review circumvents the purpose of appellate review. Moreover, the Courts of Appeal are more inclined to give less judicial availability to review claims errors presented via habeas corpus, referred to as 28 U.S.C. 2255 proceedings - which is a constitutional amended recourse, than they do with the structured system of direct appeal and appears to be a deflation of the constitutional privilege and why it was enacted.

Petitioner's case is a prime example. The following are issues that Petitioner presented for a COA, for the denial of his motion pursuant to 28 U.S.C. 2255 of the District Court concerning the Sixth Amendment counsel clause - ineffective assistance of counsel.

(1) Petitioner presented a claim that his counsel was ineffective during the post-indictment pre-trial criminal forfeiture hearing of property seized subject of payment transferable for attorney fee. The motion filed of Petitioner's counsel was suppose to be presented for Petitioner to regain possession of untainted assets that the government has illegally seized based on their allegations that the assets arrived from conduct alleged in their charging offense. The government's seizure was pursuant to 21 U.S.C. 853.

This court has made clear that there are two probable cause findings required of 21 U.S.C. 853 (f): (1) that the defendant has committed an offense permitting forfeiture; and (2) that the property at issue has the requisite connection to that crime. The courts have uniformly held pre-trial hearings via a threshold showing that probable cause is lacking as to the second requirement. Kaley v. United States 134 S.Ct. 1090 (2013) citing 21 U.S.C. 853 (a) (the lower courts

have generally provided a hearing to any indicted defendant seeking to lift an asset restraint to pay for a lawyer. In that hearing, they have uniformly allowed the defendant to litigate the second issue: whether probable cause exists to believe that the assets in dispute are traceable or otherwise sufficiently related to the crime charged in the indictment); also see: United States v. Jackson 415 F.3d 88, 91, 367 U.S. App. D.C. 320 (D.C. Cir. 2005) (probable cause is an objective standard requiring an analysis of the totality of the circumstances).

(A) Petitioner's counsel's motion to the Court in support of issuing a hearing for the return of Petitioner's assets:

Petitioner's counsel submitted a motion to the court that in its context only presented a declaration that he had Petitioner sign stating that; Beyond the money seized, I do not have any available funds to pay Balarezo's retainer.

(B) Assets originally seized from Petitioner by the government:

(1) Petitioner's resident located at 1219 Elm Grove Circle; (2) $ 360,009.00 in US currency; (3) $ 6,380.00 in US currency; (4) $ 16,538.60 held at TD Bank NA, in the name of The Gurong Edwards Family Trust; (5) One Platinum Ladies Diamond Engagement ring; (6) One Ladies Rolex President, oyster Perpetual Date Just watch; (7) Petitioner's wedding ring; and (8) $ 1000.00 in cash from Petitioner's person.

(C) Petitioner presented in his motion pursuant to 28 U.S.C. 2255 two cases demonstrating a threshold review based on information provided to attorney:

United States v. E-Gold, Ltd. 521 F.3d 411 (D.C. Cir. 2007), held a 853 Pre-trial hearing and submitted information as a threshold review via; (1) status as a Potential Bineficiant of a trust, (2) his lack of other sources of income, (3) his Liquid and non-Liquid assets (including cars), (4) his wife's income, and (5) his Dependents and assets held in the name of the Defendants. Also: United States v. Emon 794 F. Supp 2d 143 (D.C. Cir. 2011), eventhough its focus was in Part based on Prosecutorial misconduct by alleging that the Government deliberately froze assets to prevent obtaining counsel of choice, Emon submitted information for a 853 Pre-trial hearing via, (1) lack of any income on investment, (2) that his spouse was not employed, (3) that he has six Dependants, and (4) that he only has Between $22,000 and $50,000 in cash on hand.

(D) Petitioner Provided his counsel with information as a threshold review to actual untainted assets, and Provided that information in his motion Pursuant to 28 U.S.C. 2255 to the District Court:

(1) Petitioner's original counsel of choice was, attorney Harry Tun who acquired $40,000 attainment in event of a Plea deal and $100,000 if the case went to trial. However, Tun took on Petitioner's case and was Paid the $40,000 but did not tell Petitioner that he was investigated for fraud, admitted responsibility, and stipulated to a sanction whereas he could not Practice Law. For reasons unknown to Petitioner at the time, Tun Previously introduced Petitioner to Balanzo. After receiving the $40,000, Tun returned with Balanzo again, and told him of the sanction and based on their (Tun and Balanzo) Prearranged Agreement, unknown to Petitioner, gave Balanzo $20,000 of the $40,000.

(2) Petitioner's wife was employed, who Paid for the attainer for Tun via

taking out her 401K and credit cards. Petitioner and his wife were only married for 5 months and had no joint income or assets.

(3) Petitioner has two children, one whom he Pays child support in the amount of $ 290,00 Per month, and the other Joint custody.

(4) The Government froze Petitioner's house located at 1219 Elm Grove Circle, that was Purchased in the Year 2005, which Purchase is several Years Prior to the alleged conduct charged in the indictment. The Government did not set forth a claim that the Elm Grove resident was subject of forfeiture based on the charges Profited from the indictment's alleged conduct, they simply froze it. The Elm Grove residence has a mortage of $ 1800.00 Per month.

(5) Petitioner owned 2867 Mayfield Ave. in Baltimore, and 5200 Oakest in Capital Heights, Prior to his arrest. Sometime afterwards, Petitioner no longer owned those Properties but was still saddled with mortgage Payments of $ 500.00 and $ 1500.00 Per month, respectively.

(6) Petitioner had a trust fund set-up where his children were the beneficiaries of $ 6,000.00 in the account; and Lunar Funding Group, LLC account where Petitioner was the sole Beneficiary of $ 16,000.00 which were both frozen.

(7) The Government seized at the time of arrest, Petitioner's wedding ring appraised at $ 6,000.00 and $ 1000.00 in cash, $ 6,380.00 in cash, and Petitioner's wife's Diamond engagement ring appraised at $ 29,400.00.

(8) Petitioner's Lack of other sources of income.

(E) The District Court's conclusion Pre-trial of the hearing Pursuant to 21 U.S.C. 853:

Petitioner's counsel did not Provide the court with any of the above stated information that he was Provided by Petitioner, instead,

counsel only provided the court with a declaration that he had Petitioner sign stating that, Beyond the money seized, I do not have any available funds to pay attorney Balanzo's retainer.
The court found that based on that Representation Petitioner failed to make the threshold showing that he lacks sufficient assets to pay his counsel.

(F) The District Court's conclusion denying this claim contained in Petitioner's motion pursuant to 28 U.S.C. 2255:

The District Court acknowledged that its order denying the hearing during the Pre-trial 21 U.S.C. 853 inquiry was based on its contentions that Petitioner did not provide any additional information regarding his assets, liabilities, source of income, or other information relevant to his ability to retain legal counsel other than merely stating that he did not have any available funds to pay Balanzo's retainer.
The District Court's denial of this claim in the 2255 goes on and contend that Petitioner does not specify, with any degree of particularity, the exact circumstances of Balanzo's failure to include the now-identified financial information. And that, the Court is left to speculate because Petitioner does not indicate whether, Balanzo-counsel asked Petitioner for the financial information, whether that information was readily available at the time, or whether Petitioner told Balanzo himself, amongst other relevant factors.
The court went on and stated that without this information, the Court will not engage in speculative arguments, and supported its conclusion by case law in, United States v. Morrison 98 F.3d 619, 625-26 (D.C. Cir. 1996), highlighting that summary denial is appropriate when an ineffective assistance claim is speculative.

However, the District Court's reason for the denial of the claim is totally contrary to the facts contained in Petitioner's 2255 because, in fact, Petitioner states that counsel was aware of the information, as statements are shown on PAGES 8 & 9 of the 2255, and directly states that he told his counsel about the information, as is shown on PAGES 11 & 14 of the 2255.

As to the clear untainted assets, Petitioner's residence at Elm Grove Circle was purchased six years prior to the indictment and four years prior to any act alleged in the indictment. Petitioner's wedding ring, $1000.00 found on his person, $6,380.00 found in his residence, and his wife's diamond engagement ring were all assets arrived via legal means at which Petitioner could show and provided his counsel with information of the legal resources to demonstrate that they were untainted assets.

Despite the reason why the District Court reason denying this claim being totally erroneous, and the record evidence demonstrating the erroneous conclusion the COA was still denied. See: APP'X. FULL argument for the COA threshold presentation.

(2) Petitioner presented a claim in his 2255 that he was the victim of fraud originally perpetrated by his original counsel, Hanal Tun, who then brought Balanzo into his scheme which the two shared the $40,000 that was originally defrauded from Petitioner by Tun. Tun represented that he would be able to represent Petitioner conflict free in his criminal litigations for $40,000 in the event of a plea and $100,000 in the event that the case went to trial. Petitioner paid the initial $40,000 and was to pay Tun the remaining $60,000 through the course of the proceedings. However, Tun was unable to represent Petitioner because he had admitted his role in defrauding two or more clients on 162 occasions, to the Board of Professional

Responsibility for seeking payment for the same periods of time. Part of the fraud resulted in a sanction whereas Tun would be suspended from practicing law. After Tun received the $40,000 that he defrauded from Petitioner, on one occasion he brought Balanzo to the holding center where Petitioner was being held awaiting trial, on an attorney visit. However, Petitioner did not know at that time, who Balanzo was or why he was there. Tun came on subsequent visit alone and then returned with Balanzo again and told Petitioner about the sanction, but not what it was pertaining to.

Tun and Balanzo had made arrangements about the $40,000, unknown at the time of Petitioner, whereas, Balanzo had received $20,000 of it, which Tun later alleged that he would give Balanzo the other $20,000. Tun had told Petitioner during the second time that he brought Balanzo with him, that Balanzo would be handling the up-coming proceedings. The two attorney's are not from the same office.

Tun did not give Balanzo the second $20,000 and began evading all of Petitioner's attempts of communication. In turn, Balanzo would not tell Petitioner what Tun was sanctioned for and would not seek from Tun the other $20,000. Petitioner notified Balanzo that he wanted to pursue actions against Tun which Balanzo told Petitioner that he would not pursue any actions against Tun. Petitioner then told Balanzo that he read some cases that applied that a hearing could be held to regain his untainted assets and that he wanted Balanzo to file the motion to return his untainted assets so that he could use them to pay for another attorney who would pursue actions against Tun and handle his trial proceedings. Petitioner then provided Balanzo with all of the financial information listed above under (No. 1), however, Balanzo ended up omitting the financial information provided by Petitioner that warranted a

review during a hearing pursuant to 21 U.S.C. 853. Instead, Balanzo only presented a motion with a one line statement as a declaration that stated; Beyond the money seized, I do not have any available funds to pay attorney Balanzo's retainer. Balanzo filed the motion for the hearing in a fashion that he knew would not succeed because Petitioner told him that he was going to use the assets to hire another attorney who would pursue actions against Tun defrauding him out of the $40,000, which Balanzo shared in the scheme when it was devised, and to handle the trial proceedings. Also, to derail Petitioner's immediate attempt to present another case of fraud against Tun, who was under sanction for fraud, and knew he was restricted from practicing law. Petitioner presented this claim under; Conflict Of Interest.

The District Court allege that it was not Balanzo's responsibility to attempt to obtain the remaining $20,000 from Tun instead of obtaining payment directly from his client. However, Balanzo at that time when he and Tun initially conspired about the $40,000 and representation, he (Balanzo) was not Petitioner's counsel of choice -- he was Tun's counsel of choice.

The District Court also stated, relying on the government's contentions, that it does not make any sense for Balanzo to purposefully sabotage his own client's pleading when payment of his retainer was allegedly conditioned on the success of that pleading.

However, Petitioner had already paid the $40,000, which the scheme's payment had been completed. Balanzo was suppose to file the motion so that Petitioner could retrieve his untainted assets so that he could find another attorney who would pursue actions against Tun and handle the trial.

The District Court further claimed that the two attorneys were not

affiliated with a single law firm. However, at that time, nobody but the District Court had made that claim, and, therefore, it appears that the court had inserted itself in the investigative process outside of what was presented for its evaluation. There has been absolutely no facts presented by the government on the path taken by Tun to bring Balarezo into his scheme. The only facts presented are within Petitioner's claim in the 2255 and his reply to the government's response.

In fact, the government motioned the District Court for an extension of time specifically to procure an affidavit from Balarezo, which the court granted, but, the government did not provide the affidavit nor explain for the bases of the extension why it did not provide an affidavit.

The District Court also noted that it is not clear from their record if Tun was Petitioner's original counsel because he and Balarezo filed notices of appearance at the same time.

However, the Court's observation would indicate that Balarezo was involved at the beginning stage of the fraud, and, moreover, that the District Court has concluded in a serious litigation process without any opposing factual bases. The government thought that it could procure an affidavit from Balarezo to support an opposition but could not. Balarezo could not disclaim that Petitioner did not hire him originally, that it was Tun that brought him in because Tun was sanctioned and restricted from practicing law and that they conspired about the $40,000 which at the time Petitioner knew nothing about. Balarezo also could not disclaim that he had the financial information provided by Petitioner to present during the 853 hearing because the government had already disclosed the information in its discovery concerning their seizure inquiries.

Despite the record evidence demonstrating that the District Court's resolution of this claim was totally erroneous the COA was still denied. See Appx. Full argument for the COA threshold review.

(3) Petitioner Presented a claim on the factual Bases that his counsel was ineffective for failure to call an expert witness and conduct independant drug testing on the cocaine seized. Petitioner's counsel attempted to pursue a strategic and tactical advance to challenge the government's case on the weight and origin of the cocaine seized, and that particular cocaine gathered could have been purchased from sources other than Petitioner's co-defendant - Bowman.

Petitioner's counsel had evidence from discovery that some of the cocaine alleged in this case wasn't cocaine at all and was being synthetically manufactured here in the United States by Petitioner. The government also presented an informer (Brooks) who testified that powder cocaine that he purchased from Bowman was not usable, and that after notifying Bowman that he was aware that the alleged cocaine was not usable - Bowman was still selling it.

Petitioner's counsel also had evidence that on an occasion, agents had a CI conduct a controlled drug purchase using the CI's own vehicle, which was against their normal procedure of assuming that C.I.'s do not switch or tamper with the drugs that agents seek to purchase. However, Petitioner's counsel failed to do his own independent testing or to call his own expert witness, but, instead, attempted to use the government's expert witness as his source of facts to present his strategic and tactical advance to challenge the government case.

Also, to alleviate the government from going through the procedures of proving their witness's credentials as being an expert, Petitioner's counsel stipulated before-hand to the witness being an expert based on what was provided in discovery.

The Government immediately saw what Petitioner's counsel was attempting to do during trial on cross-examination and objected

to his attempt of failing to use their expert witness as his own. The District Court in turn sustained the government's objection and told Petitioner's counsel that he cannot use the government's witness as his own and if he wanted to present his own expert witness he has the opportunity.

The District Court precluded Petitioner's counsel from advancing his strategic and tactical defense in this aspect which was a substantial position in the case.

The District Court denying this claim, in short, acknowledge the above facts, but claim that the record indicate that Petitioner's counsel did not commit himself to the defense that Petitioner is claiming. The District Court states that its assessment is based on Petitioner's counsel's closing arguments whereas he repeatedly cast doubt on the character of the government's witnesses who testified as to the controlled drug buys, and cast doubt on the government's evidence proving that Petitioner and his co-defendants / co-conspirators agreed to enter into a conspiracy.

However, the District Court explicitly prohibited Petitioner's counsel from pursuing his planned strategic and tactical defense unless he presents his own expert witness - which he did not, therefore, the closing argument changed direction to what counsel was only allowed to present.

Despite the record evidence demonstrating that the District Court's resolution of this claim was totally erroneous the COA was still denied. See: APPX. Full Argument for the COA threshold denial.

(4) Petitioner presented a claim that his counsel was ineffective for his failure to effectively suppress evidence to suppress information gained through Title III Wiretap violations. In Petitioner's case, during

Pre-trial, Petitioner continuously stressed to his counsel that the government and investigating agents were in violation of multiple, if not all, of the Title III requirements. Petitioner explained to his counsel that the investigating agents knew who he was years prior to directly initiating an investigation against Bowman -- Petitioner's co-defendant. Agents in this case had been attempting to connect Petitioner to the supply side of other investigations prior to using Bowman to pursue him, the same agents had directly accost Petitioner with their accusations, picked up conversations through other Title III wiretaps that mentioned Petitioner, and two unsuccessful Title III wiretaps had directly been initiated against Petitioner, all of which the government deliberately omitted in their Title III application, as well as relevant pin registers. The agents also had an informant who had known Petitioner and Bowman for many years and informed on their investigative nexus.

However, Petitioner's counsel narrowed his suppression attempts against the Title III wiretap violations down to the necessity requirements. Petitioner notified his counsel again that he was still approaching the Title III violation argument wrong and omitting the information of how the violation effected each particular Title III requirement just as the agents and government had done.

Petitioner's counsel again addressed the Title III violation but narrowed the subsequent argument down to, 2518 (1)(b)(iv), which would not require the government to disclose the prior Title III applications against Petitioner, pursuant to 2518 (1)(e). Petitioner's counsel continued ineffectiveness prevented the District Court from assessing the full scope of the deliberate violations perpetrated by the investigative agents omissions in their affidavits to procure the authority to wire-tap.

Here, in order for the agents to obtain extensions for their wiretap,

they
~~the~~ falsified their applications by claiming that they had not yet discovered the subtle side to Bowman's distribution and was still searching, when in fact they did know. Moreover, they were using Bowman's movements to trap Petitioner as well as having all the above stated information through their investigation.

Petitioner continued to pursue the issue Pro Se. During Direct Appeal Petitioner Presented the issue Pro Se by being allowed to amend his counsel's Brief. After being allowed to amend, the Circuit Judges choices course and directed that they would only resolve the appeal based on the briefs presented by the attorneys.

However, finally - during Direct appeal in oral arguments, the issue was reviewed based on Petitioner's Pro Se information. All three Judges during oral arguments found that the government could have and should have included the omitted information in the wiretap Affidavit because it would be keeping with the strict adherence of the responsibilities imposed by Congress. Judge Pillard noted that, when you're in an ongoing investigation, the government wouldn't know what the authorizing Judge would want to know. Judge Wilkins noted the government's approach in this case seems to read the words full and complete basically out of the statute's language provided by Congress. The Panel Judges also noted that they anticipate such information will be provided to the authorizing courts in the future. However, the Court of Appeals resolving the appeal under a different theory, but again stated in their opinion that the government could have and should have included the omitted information.

The District Court alleges that Petitioner's reliance on the Court of Appeals decision as evidence that Balanezo was ineffective is misguided because the omissions were not material to Title III's necessity requirement.

However, the District Court missed the point, the court and

Government's omission was deliberate, and to continue to get their extensions for the Title III wiretap that falsified their application and alleged that they had not discovered the supply side of Bowman's Drug Distribution which they knew and had evidence was Petitioner. Petitioner's counsel had the evidence of the deliberate falsehoods and omissions but did not present it to the District Court during the suppression inquiry. The Court of Appeals' inquiry was not based on anything that concerned ineffective assistance of counsel, but instead directed what should have been done for the Title III authorization and why.

The Court of Appeals also noted during oral argument that when applying for a Title III wiretap Congress did not intend for the government to only give a statement of necessity to obtain the wiretap.

Despite the record evidence demonstrating that the District Court's resolution of this claim was totally erroneous the COA was still denied. See: APPX. Full argument for the COA threshold review.

Conclusion

Because there clearly exist ambiguity in the Court of Appeals of what and how to evaluate whether to issue a COA, this Writ of Certiorari should issue.

Date: 11/10/2020

Respectfully submitted

By: [signature]