

20-6683

No. Appeal No. 19-4104

ORIGINAL

IN THE

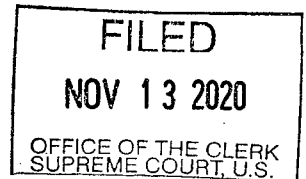
SUPREME COURT OF THE UNITED STATES

originating Case No: 5:19-CV-01316
5:17-CR-00525-1 Appeal No 19-4104

Reynaldo Diaz-Guzman PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

IN the United States Court of Appeals for the Sixth circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

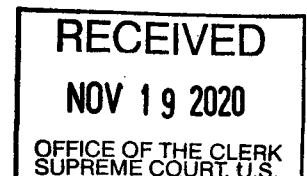
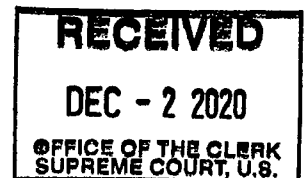
PETITION FOR WRIT OF CERTIORARI

Reynaldo Diaz-Guzman
(Your Name)

F.C.I. Loretto
(Address)

P.O. Box 1000, Cresson PA. 16630
(City, State, Zip Code)

(Phone Number)



QUESTION(S) PRESENTED

Whether The court of Appeals erred and abused its discretion in denying Appellant's arguments that counsel constitutionally ineffective for failing to challenge the indictment and argue for dismissal for lack of subject matter jurisdiction?

Where evidence exist that The Honorable Jay Wells, state court had full jurisdiction over Appellant's case when The Government filed the federal indictment on December, 13, 2017. Appellant wasn't presented before a magistrate judge without unnecessary delay. The federal indictment was not sealed? Moreover, there wasn't any ongoing investigation in Appellant's case? Appellant wasn't convicted in the state case of a related charge? The Government still hauled Appellant into the Federal court without the state judge relinquish jurisdiction first?

Whether The Appeals court erred and abused its discretion in denying Appellant's arguments that The prosecutor violated his Constitutional Duties to Disclosure by withholding favorable evidence from the defense, causing prejudice? Reasonable jurists could find The Appeals court assessment of Appellant's constitutional claims debatable.

Whether The court of Appeal erred and abused its discretion in denying Appellant's arguments without addressing "All" the evidence and arguments on their merits?

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:

United States of America

Reynaldo Diaz-Guzman

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STATUTES AND RULES

- 4 Amendment U.S. Constitution
- 5 Amendment U.S. Constitution
- 6 Amendment U.S. Constitution
- 14 Amendment U.S. Constitution

OTHER

Article III

Lack of Subject Matter Jurisdiction

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 _____ to the petition and is

- ☐ reported at Re Reynaldo Diaz-Guzman v. U.S. case # 1941/04; 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 _____ 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 ~~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 Aug 11, 2020.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4 Amendment U.S. Constitution

5 Amendment U.S. Constitution

6 Amendment U.S. Constitution

14 Amendment U.S. Constitution

Article III

Lack of Subject-Matter Jurisdiction

STATEMENT OF THE CASE

Appellant is a resident of Hartford, CT. Petitioner lost his job and traveled to Ohio, as a "mule", to transport heroin, on or about November, 14, 2017. The Ohio State Highway patrol stopped Appellant's vehicle for a lane change violation. Appellant was arrested on drug offense and resisting arrest. The State Judge did not relinquish jurisdiction. The Government still indicted Appellant on Dec, 13, 2017, for knowingly and intentionally possessing with intent to distribute more than one thousand grams of a substance containing a detectable amount of heroin, in violation of 21 U.S.C. § 841, without the state court relinquishing jurisdiction. Appellant was arrested on the federal charge on May, 31, 2018. On August 27, 2018, Appellant pleaded guilty to the charge set forth. On or about Dec 10, 2018 Appellant was sentenced to 120 months imprisonment, 5 years of supervised release, \$100.00 special assessment. Also see Factual Background pg 12, 13

FACTUAL BACKGROUND

Petitioner is a resident of Hartford, CT. Petitioner lost his job and traveled to Ohio, as a "mule" to transport heroin. On or about 14 November, 2017 the Ohio State Highway Patrol stopped Petitioner's vehicle for a lane change violation. When the Petitioner was asked to exit the vehicle, Petitioner fled from the officers east bound on the Ohio Turnpike; state case #2017-11-4156; also see Sentencing Transcript marked as Exhibit F. Petitioner was arrested. It is worth noting that Petitioner is not challenging the Highway Patrol Officer's stop of his vehicle for a lane change violation.

On or about 13 December, 2017 while the state charge was still pending and had absolute jurisdiction over Petitioner's case; see the Honorable Jay Wells' rulings and orders that reveals the state had full jurisdiction; see Exhibits A, B. They still a federal indictment for the same charge that the state never relinquished jurisdiction; see Indictment Exhibit C. It is important for this court to note that it wasn't any ongoing investigation in Petitioner's case. It is also important to note that after the Government's officials filed the indictment, they didn't file an arrest warrant until several months later; see Docket Sheet entries #14 marked as Exhibit D.

On or about 13 December 2017 when the federal indictment was obtained; see Docket Sheet marked as Exhibit D, Petitioner wasn't presented before a magistrate judge without unnecessary delay, which is required by Fed. R. Crim. P. 5. Petitioner wasn't presented before a federal magistrate judge until 5 months and 8 days later; see Docket Sheet marked as Exhibit D.

These federal officials were well aware that the state judge Jay Wells never relinquished jurisdiction at that time; see Exhibits A, B, to the federal officials and the Government still proceeded to hale Petitioner into federal court on the same charge that they never had jurisdiction to begin with.

As the federal proceeding continued without jurisdiction and probable cause, and misleading the courts filing document on the federal Docket Sheet, and mistaking evidence; see Docket Sheet marked as Exhibit D

On or about 19 June 2018 Judge Jay Wells finally dismissed the state charge; see Judge Wells' orders marked as Exhibit A,B. The Petitioner was being prosecuted in Federal court simultaneously, see Docket Sheet D. Even more compelling, after Judge Wells dismissed the state charge the federal agents file on the Federal Docket Sheet entries #14 Arrest Warrant returned executed on 5/31/2018. Also see Arrest Warrant "without a fidavit" marked as Exhibnit-F. It is worth noting that the arrest warrant was obtained on 13 Decemeber 2017 and returned on 25 June 2018; see Exhibit D

On or about 27 August 2018 Petitioner appeared before the Honorable Solomon Oliver Jr. and plead guilty to the indictment which was obtained without Judge Wells relinquishing jurisdiction first. See Judge Wells' order marked as Exhibit A,B. Also see Docket Sheet marked as Exhibit

On or about 10 Decelber 2018 Petitioner appeared before the Honorable Solomon Oliver Jr. for sentencing. Petitioner was sentenced on Count One of the indictment to 120 months imprisonment, 5 years of supervised release, \$100.00 special assessment with Judge Wells never relinquishing jurisdiction at the time the indictment was obtained, see Exhibits D,E,G. It is important for this court to note that these government officials knowing and intentional unethical actions were clearly motivated by something other than to seek or do justice.

ARGUMENT A

REASONABLE JURISTS COULD DIFFER IN REVIEWING THE Appeal COURT'S ASSESSMENT OF APPELLANT'S CONSTITUTIONAL CLAIMS DEBATABLE. THUS DIFFER AS TO WHETHER COUNSEL CONSTITUTIONALLY INEFFECTIVE FOR FAILING TO CHALLENGE THE INDICTMENT AND ARGUE FOR DISMISSAL FOR LACK OF SUBJECT-MATTER JURISDICTION

Counsel knew or should have known to dismiss the indictment on the grounds of lack of subject-matter jurisdiction, because it involves a court's power to hear a case, which "can never be forfeited or waived," United States v. Cotton, 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002). Courts have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party, Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583, 119 S. Ct. 1563, 143 L. Ed. 2d 760 (1999). Lack of Article III jurisdiction cannot be waived and cannot be conferred upon a federal district court by consent, by action, or by stipulation, California v. LaRue, 400 U.S. 109, 112, 34 L. Ed. 342, 93 S. Ct. 390 (1972). The validity of an order on sentencing of a federal district court depends upon that court having jurisdiction over both the subject matter and the defendant, Stell v. Gottlieb, 305 U.S. 171-172, 83 L. Ed. 104, 59 S. Ct. 134 (1938).

In the case at hand, while the state still had absolute jurisdiction over Petitioner's case from December 13, 2017 to June 19, 2018, see the Honorable Jay Wells' rulings and orders that reveal the state had full jurisdiction marked as Exhibits A,B, the government's actions in this regard are particularly egregious, filing a federal indictment on December 13, 2017, see docket sheet marked as Exhibit D, for the same charge that Judge

Wells had jurisdiction over. When the federal indictment was filed on December 13, 2017, Petitioner was not presented before a magistrate judge without unnecessary delay, which is required by Fed. R. Crim. P. 5, see docket sheet marked as Exhibit D . It is important for this court to note that the federal indictment was not sealed. Even more compelling, these federal officials failed to present Petitioner before a magistrate judge until 5 months, 8 days later, see docket sheet marked as Exhibit D . These federal officials were well aware that the state judge, Jay Wells, never relinquished jurisdiction, see Exhibit A, B, to the federal government, and the government still hauled Petitioner into federal court on the same charge that they never had jurisdiction over to begin with, in complete and callous disregard for Petitioner's due process and constitutional rights, thus these officials further kept the federal proceedings going without jurisdiction, see federal docket sheet marked as Exhibit D . On May 31, 2018, these officials presented Petitioner before Magistrate Judge Kathleen B. Burke, where counsel was appointed and advised the court that Petitioner waived the reading of the indictment and entered a plea of not guilty as to count 1 of the indictment. As the federal proceedings continued without jurisdiction and probable cause, these government officials continued to scramble for jurisdiction and/or probable cause, see docket sheet, case #5:17-CR-0525-SO-1, by misleading the magistrate judges and this court as to the jurisdiction and probable cause, also as to the guilt of petitioner, and misstating evidence without jurisdiction or probable cause.

Interestingly, in state court, on or about June 19, 2018, the state prosecution misled Judge Jay Wells to believe that the federal government just adopted the charge, when in fact it is the same case that Judge Wells had jurisdiction over since December 13, 2017, see Exhibits A,B . On or about June 19, 2018, Judge Wells finally dismissed the state charge, see Judge Wells' orders and rulings marked as Exhibit A,B, that Petitioner was being prosecuted for in federal court simultaneously, see docket sheet. Interestingly, after Judge Wells dismissed the state charge, the federal officials filed on the docket sheet Entry 14, Arrest Warrant, Returned, Executed on 5/31/18, also see arrest warrant marked as Exhibit F . It is worth noting that Petitioner was in federal custody when these events occurred. Clearly these government officials' unethical actions were only meant to cover up their gross intentional misconduct.

It is important for this court to note that the arrest warrant did not have an affidavit attached. This is more evidence of deception. In addition, Petitioner's plea agreement could not have been knowing and voluntary if the court never had jurisdiction over Petitioner. Petitioner's Sixth Amendment rights to investigate the facts and laws related to the court's jurisdiction were violated, and since jurisdiction is a threshold matter, the failure of counsel to investigate the facts and laws and to know the court's jurisdiction, thus failing to argue jurisdiction, renders him ineffective as a matter of law. Moreover, these jurisdictional arguments, with this court's promotion, allowed Petitioner to raise them and intertwine them

as or with constitutional violations due to the court's lack of jurisdiction ab initio. Since the court never had jurisdiction over Petitioner, Petitioner is imprisoned for committing no crime, and thus Petitioner's indictment and conviction are null and void ab initio. The government further came to these proceedings through fraud and unfair dealing and in bad faith, rendering the indictment and conviction null and void ab initio.

Petitioner's counsel's failure to file a motion to dismiss the indictment for lack of subject matter jurisdiction caused overwhelming prejudice to Petitioner. But for counsel's errors and omissions, there's a reasonable probability that the results would have been different.

A federal court is further obliged to note lack of subject matter jurisdiction sua sponte, Mansfield, C&LMRY v. Swan, 111 U.S. 379, 4 S. Ct. 510, 28 L. Ed. 482 (1884); Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149; Summer v. Mata, 449 U.S. at 548, n. 2.

Reasonable jurists could find the Appial court's assessment of Appellant's procedural and constitutional due process claims debatable. Thus, reasonable jurists could conclude the issues and evidence that are corroborated by the court records and questions, are adequate to deserve encouragement to proceed further.

ARGUMENT B

REASONABLE JURISTS COULD DIFFER IN VIEWING THE Appeal COURT'S ASSESSMENT OF APPELLANT'S CONSTITUTIONAL CLAIMS AS DEBATABLE, THUS DIFFER AS TO WHETHER THE PROSECUTOR VIOLATED HIS CONSTITUTIONAL DUTIES TO DISCLOSURE BY WITHHOLDING FAVORABLE EVIDENCE FROM THE DEFENSE.

Under Brady v. Maryland, 373 U.S. 83, S. Ct. 1194, 10 L. Ed. 2d 215 (1963), "suppression by the prosecution of evidence favorable to an accused...violates due process where the evidence is material, either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution," Brady, 373 U.S. at 87. The Supreme Court has held that "[t]here are three components of a true Brady violation: [t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the state, either willfully or inadvertently, and prejudice must have ensued," Strickler v. Greene, 527 U.S. 263, 281-82, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999). Prejudice (and materiality) is established by showing that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different," *id.* at 281 (quoting United States v. Bagley, 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)), see also Cone v. Bell, 556 U.S. 449, 469-70, 129 S. Ct. 1769, 173 L. Ed. 2d 701 (2009). A reasonable probability is a probability sufficient to undermine confidence in the outcome, Bagley, 473 U.S. at 682, see United States v. Tavera, 719 F. 3d 705 (6th Cir. May 1, 2013).

In the present case, the suppressed federal indictment

that was filed against Petitioner on December 17, 2017 wasn't sealed, see docket sheet marked as Exhibit . This indictment was exculpatory, material, and impeaching evidence. The government withholding the indictment caused Petitioner overwhelming prejudice.

Brady's obligation to disclose also applies to exculpatory evidence that is known only to the police, but withheld from the prosecution, see Kyles v. Whitley, 514 U.S. 419, 438, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995), see also Harris v. Lafler, 553 F. 3d 1028, 1033 (6th Cir. 2009) ("Brady...applies to relevant evidence in the hands of the police, whether the prosecutors knew about it or not, whether they suppressed it intentionally or not...and whether the accused asked for it or not."). "[B]ecause the police are just as much an arm of the state as the prosecution, the police inflict the same constitutional injury when they hide, conceal, destroy, withhold, or even fail to disclose material exculpatory information," Moldowan v. City of Warren, 578 F. 3d 351, 379 (6th Cir. 2009).

In the case at bar, the government suppressed exculpatory, material, and impeaching evidence, withholding the attached affidavit to the arrest warrant, see docket sheet marked as Exhibit D , and see arrest warrant marked as Exhibit E . The Supreme Court has since held that Brady imposes a duty to disclose exculpatory evidence even if there has been no request by the accused, Strickler v. Greene, 527 U.S. 263, 280, 119 S. Ct. 1936, 144 L. Ed. 2d 286 (1999) (citing United States v. Agurs, 427 U.S. 97, 107, 96 S. Ct. 2392, 49 L. Ed. 2d 342

(1976)).

In Petitioner's case, the prosecution suppressed exculpatory, material, and impeaching evidence, such as withholding the fact that they did not have jurisdiction or probable cause, see Judge Wells' ruling where he did not relinquish jurisdiction. Withholding the attached affidavit to the arrest warrant and withholding the indictment caused prejudice. There lies a reasonable probability that disclosure of this evidence to Petitioner could have enabled Petitioner to mount a defense and would have undermined confidence in the outcome. It is important for this court to note that there wasn't any ongoing investigation by the government.

Reasonable jurists could find the Appeal court's assessment of Appellant's procedural and constitutional claims debatable, thus reasonable jurists could conclude the issues and evidence that are corroborated by the court records and questions are adequate to deserve encouragement to proceed further.

REASONS FOR GRANTING THE PETITION

On about November 14, 2017 Appellant was stopped on her vehicle by the Ohio state Highway Patrol, for a lane change violation which, drugs were found in the vehicle. On Dec. 13, 2017 while the State Charge was still pending and the State Judge had absolute jurisdiction over Appellants case; see The Honorable Jay Wells rulings and orders that reveals the state had full jurisdiction; see Exhibits A, B, The Government still filed a federal indictment for the same charge that the state never relinquished jurisdiction; see Indictment Exhibit C. It is important for this Court to note that it wasn't an ongoing investigation in Appellants case. It is also important to note that after the Governments officials filed the indictment, they didn't file an arrest warrant until several months later, see Docket sheet entries #14 marked as Exhibit D, Also see Arrest warrant marked as Exhibit E. On Dec. 13, 2017 when the federal indictment was obtained; see Docket sheet marked as Exhibit D Appellant wasn't presented before a magistrate judge without unnecessary delay, which is required by Fed. R. Crim. P. 5. Appellant wasn't presented before a federal magistrate judge until 5 months and 8 days later; see Docket sheet marked as Exhibit D. Moreover, the Federal Indictment "was not sealed" see Docket sheet - D. These Federal officials were well aware that the state judge Jay Wells never relinquished jurisdiction at that time; see Exhibits to the Federal officials and the Government still proceeded to haul Appellant into federal court on the same charge that they never had jurisdiction to begin with.

As the Federal proceeding continued without jurisdiction and probable cause, and misleading the court filing document on the Federal

Docket Sheet, and misstating evidence; see Docket Sheet Marked as Exhibit-D, ON June 19, 2018 Judge Jay Wells finally dismissed the state charge; see Judge Wells' orders marked as Exhibit-A, B. The Appellant was being prosecuted in State court and Federal court simultaneously; see Docket Sheet-D. Even more compelling, after Judge Wells dismissed the state charge the Federal agents file on the Federal Docket Sheet entries #14 Arrest Warrant returned executed on 5/31/2018. Also see Arrest Warrant "without affidavit" marked as Exhibit-E. It is worth noting that the arrest warrant was obtained on Dec, 13, 2017 and returned on June, 25, 2018 see Exhibit-D see Argument A, pg 14, 15, 16, 17. In addition, the prosecutor violated his constitutional duties to DIS closure by withholding favorable evidence from the defense see Argument B, pg 18, 19, 20. Reasonable jurists could find the Appeal court assessment of Appellant's constitutional and jurisdiction claims debatable see sixth circuit court of Appeals order marked as Exhibit-H.

CONCLUSION

Appellant prays That This Honorable court Grant a C.O. A and Appoint counsel, thus vacate, ~~Remand~~ To the Appeals court for dismissal of the indictment or overturn the conviction.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Reginaldo Diaz-Guzman

Date: Nov, 9, 2020