

20-6766

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

DEC 15 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

STEVEN VILLALONA — PETITIONER
(Your Name)

vs.

U.S.A. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Steven Villalona, Reg. No.: 55457-018
(Your Name)

FCI-1, Oakdale, Unit, V-1., PoBox 5000
(Address)

Oakdale, LA 71463
(City, State, Zip Code)

None.
(Phone Number)

QUESTION(S) PRESENTED

(1) What rights under the Due Process clause do prisoners' have during the course of 28 U.S.C. § 2255 proceedings?

(A) For example, if the record, motion and files fail to conclusively show that a prisoner is entitled to no relief, does a district court's failure to hold an evidentiary hearing "promptly" as required by 28 U.S.C. § 2255(b) amount to a violation of Due Process, and if so what is the proper remedy?

(B) Whether a courts' failure to consider a pro-se pleadings liberally as required by Haines v. Kerner, 404 U.S. 519, 520-21 (1972), amounts to a denial of Due Process?

(C) Whether a judge's failure to recuse him or herself as required by 28 U.S.C. § 455(a) during the course of a 28 U.S.C. § 2255 proceedings amounts to a denial of Due Process?

(D) Whether a district court's failure to articulate which standard of proof it used for determining an ineffective assistance of counsel claim amounts to a denial of Due Process? Alternatively, whether requiring petitioners to prove ineffective assistance of counsel claims by a higher standard than by a preponderance of the evidence is a denial of Due Process?

(E) Whether a district court may correct a Plain Error during the course of a 28 U.S.C. § 2255 proceeding? Also, whether the failure to correct a Plain Error amounts to a defect in the integrity of the 28 U.S.C. § 2255 proceedings?

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:

RELATED CASES

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Burke v. Smith</u> , 252 F.3d 1260, 1263 (11th Cir. 2001)	4
<u>Haines v. Kerner</u> , 404 U.S. 519, 520-21 (1972)	-i-

STATUTES AND RULES

28 U.S.C. § 455(a)	-i-
28 U.S.C. § 2255(a) & (b)	-i-, 3, 4, and 5
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OTHER

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

[X] 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 24385; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 08/03/2020.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 09/17/2020, and a copy of the order denying rehearing appears at Appendix C.

[] 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

Fifth Amendment to U.S. Constitution, Due Process Clause.

28 U.S.C. § 2255(a) and (b)

STATEMENT OF THE CASE

The basis for this petition stems from a pro-se Request for Relief of a final judgment under the Federal Rules of Civil Procedure 60(b)(4) & (6), filed in the U.S. district court, middle district of florida, denying the petitioner's 28 U.S.C. § 2255 motion to vacate after an evidentiary hearing. Along with the Request for Relief, the petitioner also moved to recuse Judge Byron from presiding over the 60(b) Motion. Appendix B. The Request for Relief was made because the manner in which the district court conducted the hearing rendered any subsequent ruling void as it denied the petitioner Due Process. Specifically, the petitioner complained that the remarks made by the trial judge constituted a denial of Due Process. However, the district court was "unable to find any basis to support a recusal" and that the petitioner "failed to provide support for the relief requested, and he has not shown any extraordinary circumstances that would warrant reconsideration of the order of dismissal or otherwise warrant relief." Id. at 3 & 4. Also, the district court denied a COA. Id. at 5.

On appeal to the 11th Circuit Court of Appeals, the appeals court held that "Villalona has not alleged that the district court 'acted in a manner inconsistent with due process of law,' and he admitted that the court allowed him to testify and give arguments during the evidentiary hearing. Appendix A, at 1-2 (quoting Burke v. Smith, 252 F.3d 1260, 1263 (11th Cir. 2001)). Also, that the district court applied the appropriate ineffective-assistance-of-counsel standard [...], as counsel's performance was not deficient because [counsel] was never instructed to file a motion to withdraw the guilty plea." Id. at 3. The petitioner sought a reconsideration; however, was denied. Appendix C. Consequently this appeal ensues.

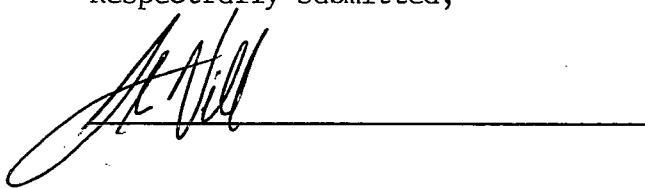
REASONS FOR GRANTING THE PETITION

This Court should grant this petition because society's interest in the finality of judgments should be counterbalanced with its interest in ensuring prisoners are duly convicted and sentenced. Therefore, what Due Process requires during the course of a 28 U.S.C. § 2255 proceeding, where prisoners have no right to counsel and is the primary avenue for litigating ineffective assistance of counsel claims, which deals with an integral part in the administration of criminal justice, should be clearly articulated.

CONCLUSION

The petition for a writ of certiorari should be granted and counsel appointed.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "A. Hill", is written over a horizontal line.

Date: 12/14/2020