

No.

20-7259

FILED

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SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

IN RE: JUAN GARCIA,
PETITIONER,

V.

UNITED STATES OF AMERICA,
RESPONDENT.


PETITION FOR WRIT OF CERTIORARI
TO THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

' BRIEF OF PETITIONER '

JUAN GARCIA
PRO-SE

ORIGINAL



Juan Garcia # 15130-062
Rivers Correctional Institution
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QUESTIONS PRESENTED

1. Was petitioner denied his Constitutional right to effective assistance of counsel during his trial, that is guaranteed by the Sixth Amendment of the United States Constitution and his right to Compulsory Process?

2. Was the United States District Court for the Northern District of Oklahoma was plainly wrong for denying petitioner's 28 U.S.C. § 2255 petition?

3. Was the United States Court of Appeals for the tenth Circuit plainly wrong for denying petitioner a certificate of appealability (COA) ?

TABLE OF CONTENTS

QUESTIONS PRESENTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

STATEMENT OF CASE

REASONS FOR GRANTING THE PETITION

CONCLUSION

SUPREME COURT OF THE UNITED STATES

No. _____

Juan Garcia,
Petitioner,

-v-

United States of America,
Respondent.

PETITION FOR WRIT OF CERTIORARI

Juan Garcia, herein after Petitioner, petition for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Tenth Circuit denying petitioner a certificate of appealability (COA) on October 21, 2020, in appeal no. 20-5071

OPINIONS BELOW

The opinion from the United States District Court for the Northern District of Oklahoma are (Appendix # A 1) and the opinion from the United States Court of Appeals for the Tenth Circuit are (App.# B 1 - B 7)

JURISDICTION

The Judgment from the Court of Appeals for the Tenth Circuit was entered on Oct. 21, 2020, and is invoked pursuant to the Supreme Court Rule 10 (a)

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Pages</u>
Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) .	(7)
Grant v. Trammell, 727 F.3d 1006, 1017 (10th Cir. 2013).....	(7) (12)
Smith v. Duckworth, 824 F.3d 1233, 1249 (10th Cir. 2016).....	
Snow v. Sirmons, 474 F.3d 693, 731 n.42 (10th Cir. 2007).....	(10)
Henderson v. Sargent, 926 F.2d 706, 711 (8th Cir. 1991), cert. denied, 502 U.S. 1050, 122 S.Ct. 915, 116 L.Ed.2d 815 (1992).....	
<u>United States v. Ashimi</u> , 932 F.2d 643, 650 (7th Cir. 1991).....	(6)
<u>Sanders v. Trickey</u> , 875 F.2d 205, 210-11, (8th Cir.), cert. denied, 493 U.S. 898, 107 L.Ed.2d 201, 110 S.Ct. 252 (1989).....	(6)
<u>United States v. Schaflander</u> , 743 F.2d 714, 721 (9th Cir. 1984), cert. denied, 470 U.S. 1058, 84 L.Ed.2d 832, 105 S.Ct. 1772 (1985).....	(6)
<u>United States v. Gonzalez</u> , 596 F.3d 1228, 1241 (10th Cir. 2010).....	(16)
<u>Slack v. McDaniel</u> , 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000).....	(16)
<u>United States v. Moya</u> , 676 F.3d 1211, 1214 (10th Cir. 2012).....	(16)
<u>McMann v. Richardson</u> , 397 U.S. 759, 771, n.14, 25 L.Ed.2d 763, 90 S.Ct. 1441 (1970).....	(14)
<u>United States v. Ash</u> , 413 U.S. 300, 309, 37 L.Ed.2d 619, 93 S.Ct. 2568 (1973)....	(14)
<u>United States v. Cronic</u> , 466 U.S. 648, 80 L.Ed.2d 657, 104 S.Ct. 2039 (1984) ..	(14)

CONSTITUTIONAL AND STATUTORY PROVISIONS

Federal Rule 28 U.S.C. § 2255 and 28 U.S.C. 2253 (c)(1)(B)(2)

Certificate of Appealability (COA)

The Sixth Amendment is an amendment to the Constitution that guarantees a criminal defendant the - right to subpoena witnesses and the right to counsel

The Compulsory Process is a formal command compelling the attendance of a witness in court

A Fair and Impartial trial is a trial conducted in accordance with the requirements of the due process of law

Parties

Stephen Layman, trial attorney

Neal Hong, prosecuting attorney

Gregory K. Frizzell, United States District Judge

STATEMENT OF CASE

On January 26 2017 Tulsa police officers stopped two vehicles traveling from Oklahoma City for traffic violations. The first vehicle a Chevrolet Cruze was driven by Gustavo Flores and Joel Ulloa, a passanger; contained approximately three (3) pounds of methamphetamine. The second vehicle - a Chverolet Silverado truck driven by Roberto Dominguez, an undocument alien, and petitioner was the passanger.

Base on interviews with Mr.Flores and Antonio Martinez; petitioner was identified as the supplier of the methamphetamine. Petitioner disputed that account and contests he was traveling to Tulsa to purchase a Dodge Viper vehicle.

On March 7,2017, petitioner, Dominguez,Ulloa and Martinez were indicted for conspiracy to posses methamphetamine with intent to distribtue.

On March 20,2017 the government dismiss the indictment against Mr.Dominguez; who was thereafter deported on April 13,2017.

Martinez and Ulloa entered into a plea agreement and Flores entered into a pretrial diversion agreement. The government obtained a superseding indictment against petitioner for possess with the intent to distribute 500 grams or more of methamphetamine.

On July 18,2017 during a motion hearing petitioner's Attorney Stephen Laymen moved to dismiss the indictment against petitioner, based on the government's deportation of Mr.Roberto Dominguez.

STATEMENT OF CASE

On August 8, 2017 the District court denied the motion, concluding that there was no evidence suggesting that the government had acted in bad faith in deporting Mr. Dominguez or that his deportation prejudice the defense.

Petitioner appeal the District court's decision denying his motion to dismiss the indictment in the Tenth Circuit Court of Appeals. On January 23, 2019 the Court of Appeals affirmed the district court's decision.

Petitioner appeal the Tenth Circuit Court of Appeals decision, to the Supreme Court by petition for Writ of Certiorari. On May 28, 2019 the Supreme Court denied petitioner's petition for a writ of certiorari in no. 18-8998.

On February 3, 2020 petitioner filed a 28 U.S.C. § 2255 petition in the District Court for the Northern District of Oklahoma. The District Court denied petitioner's § 2255 petition on June 29, 2020.

On July 13, 2020 petitioner filed a notice of appeal to the Tenth Circuit Court of Appeals seeking a certificate of appealability (COA). The Court of Appeals denied petitioner's request for a (COA) and dismiss this matter on October 21, 2020; in No. 20-5071

REASONS FOR GRANTING THE PETITION

1. WAS PETITIONER DENIED HIS CONSTITUTION RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL DURING HIS TRIAL; THAT IS GUARANTEED UNDER THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND HIS RIGHT TO COMPULSORY PROCESS?

REASONS FOR GRANTING THE PETITION

Petitioner assert that his Attorney Stephen Layman deprive him of effective assistance of counsel and compulsory process that is guaranteed under the Sixth Amendment. Attorney Layman fail to interview petitioner's codefendant Mr. Roberto Dominguez or Mr. Bryan Smith, the individual that was selling petitioner a car, prior to trial and Attorney Layman fail to issue a subpoena for Mr. Dominguez and Mr. Smith to testify on petitioner's behalf at his trial.

To support petitioner's ineffective assistance of counsel claim, petitioner have obtain an affidavit from Mr. Dominguez. Mr. Dominguez's affidavit is 'newly discovered evidence'. See United States v. Ashimi, 932 F.2d 643, 650 (7th Cir. 1991)(' to show ineffective assistance, evidence about testimony of putative witness must generally be presented by witness testimony or affidavit'); see Sanders v. Trickey, 875 F.2d 205, 210-11 (8th Cir.)('failure to provide affidavit from witness regarding potential testimony precludes finding of prejudice'), cert. denied, 493 U.S. 898, 107 L.Ed.2d 201, 110 S.Ct. 252 (1989); United States v. Schaflander, 743 F.2d 714, 721 (9th Cir. 1984)('to warrant evidentiary hearing, movant must submit affidavit or sworn statement from witness or counsel'), cert. denied, 470 U.S. 1058, 84 L.Ed.2d 832, 105 S.Ct. 1772 (1985)

LEGAL ARGUMENT

The applicable standard: to prevail on a Sixth Amendment claim of ineffective assistance of counsel, a defendant must show both that (1) counsel "committed serious errors in the light of prevailing professional norms such that his legal representation fell below an objective standard of reasonableness," and (2) there is 'a reasonable probability that, but for counsel's unprofessional

REASONS FOR GRANTING THE PETITION

errors, the result of the proceeding would have been different.' See Grant v. Trammell, 727 F.3d 1006, 1017 (10th Cir. 2013) (citing Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984))

Base upon the transcripts, the affidavit from Mr. Dominguez, and other supportive findings petitioner's allegation that Attorney Layman fail to investigate the circumstances surrounding his defense that he was traveling to Tulsa to purchase a Dodge viper car. Attorney Layman fail to interview two material witnesses, Mr. Dominguez and Mr. Smith, and also Attorney Layman fail to subpoena both of those witnesses to testify at petitioner's trial in his defense, deprive petitioner of his Sixth Amendment right to effective assistance of counsel and compulsory process, and the right to present a complete defense.

On August 21, 2017; the initial day of petitioner's jury trial, the prosecuting Attorney Mr. Neal Hong presented his case to the jury by mentioning "Mr. Gustavo Flores and his friend, Joel Ulloa, got into a car; a green Chevrolet Cruze and then petitioner told them to meet him at a Phillips 66 gas station in Oklahoma City. Mr. Flores drove to the gas station and met petitioner. Petitioner told him that he would be in a blue Chevy truck. When Flores got there he got into the back of the Chevy truck and was the passenger of the truck was petitioner-- I'm sorry-- the front passenger seat-- petitioner sat in there, and in the driver's seat he saw an individual that he did not know and that was later identified as Mr. Dominguez. Petitioner then pointed to the box, Flores then took it to his car, and drove off." See Doc. # at pg. 11.

Attorney Layman fail to investigate the circumstances surrounding petitioner's

REASONS FOR GRANTING THE PETITION

case intirely, a thorough investigation would have allow Attorney Layman to dismantle the Prosecutor Mr Hong's case.

The fact that Mr.Hong's whole case was relied on Martinez and Flores testimony against petitioner, Attorney Layman should have dismantle Mr.Hong's case by attacking the credibility of Mr.Martinez's and Mr.Flores's testimony.

Attorney Layman should have brought to the jury attention that Martinez and Flores are cousins; who scheme and plotted against petitioner to get out of their mess that started out with the 'Martinez Organization' that Martinez and Flores is part of, Martinez was the DEA's main target; not petitioner.

A few months later Martinez entered a cooperation plea agreement of eleven (11) months imprisonment to testify against petitioner, and Flores also entered a cooperation plea agreement only getting probation to testify against petitioner.

Petitioner was confronted with witnesses called by Mr.Hong, Martinez and Flores, but was denied his Sixth Amendment right to have compulsory process for obtaining Mr.Dominguez and Mr.Smith in his favor who would have contradict Mr.Hong's witnesses account.

Attorney Layman had a constitutional duty to assist petitioner in preparing and presenting a complete defense before the court or jury according to Strickland, 466 U.S. at 668" the Sixth and Fourteenth Amendments guarantee a person accuse of a crime the right to the aid of a lawyer in presenting his defense. It has long been settled that' the right to counsel is the right to the effective assi-

REASONS FOR GRANTING THE PETITION

stance of counsel.'" Id at 707.

Mr.Dominguez's testimony was relevant to petitioner's defense that' he was not the supplier of the methamphetamine, and that he was going to Tulsa Oklahoma only to purchase a Dodge Viper vehicle, because Mr.Dominguez was the owner of the Chevy Silverado truck petitioner was riding in, he knew who the methamphetamine belongs to, and he was the only person in the Silverado truck with petitioner on January 26,2017; when petitioner was arrested.

On July 11,2017; during a pretrial conference,see Appendix # . . ; the Court, Judge Frizzell, inquire the Prosecutor Mr.Hong and Attorney Layman about issues as to whether petitioner was the owner of the Silverado truck.Id at 5.

On August 21,2017; during petitioner's jury trial; Mr.Hong tried to attribute to the jury that cell phones that was found inside the center console of the Silverado truck,was used to communicate with Martinez and Flores belongs to petitioner.

Attorney Layman should have interviewed Mr.Dominguez the moment Mr.Hong dismiss charges against him because Dominguez's testimony would have exonerate petitioner of being Martinez and Flores drug supplier. Attorney Layman's failure to interview Dominguez or subpoena him to testify at petitioner's trial was a unreasonable decision.

Also, Dominguez's testimony would have bolster petitioner's defense that he

REASONS FOR GRANTING THE PETITION

was traveling to Tulsa to purchase a Dodge Viper vehicle. Dominguez's declaration in his affidavit demonstrate his willingness to testify on petitioner's behalf.

See Mr.Dominguez's affidavit

Attorney Layman should have interviewed Mr.Bryan Smith, the owner of the vehicle petitioner was going to purchase and subpoena him to testify at petitioner's trial to allow the jury to make a reasonable doubt decision why petitioner was going to Tulsa.

In Snow v.Sirmons,474 F.3d 693,731 n.42 (10th Cir.2007) held that" In the specific context of an uncalled witness, appellant must show' that the testimony of an uncalled witness would have been favorable' and that the witness would have testified at trial.'"

Petitioner demonstrate explicitly above that Mr.Dominguez's and Mr.Smith's testimony was favorable to his defense, and was not merely cumulative.

Mr.Dominguez and Mr.Smith would have testified at petitioner's trial, had Attorney Layman subpoena them to come to court on petitioner's behalf.

Mr.Dominguez's affidavit is proof that he would ahve testified on petitioner's behalf at his trial, had Attroney Layman subpoena him.

it is evidence that Mr.Smith would have testified at petitioner's trial, but for Attorney Layman's unprofessional errors...as follow,see August 23,2017 trial transcript.

REASONS FOR GRANTING THE PETITION

On August 23, 2017; during petitioner's jury trial, Attorney Layman announce that" I wanted to alert the court and counsel to developments with the final witness that the defense might be expected to call, Mr. Bryan Smith. Last night after I got out of the jail about 8:00p.m., I was contacted by Mr. Smith personally. He is in Kansas City today on business. He related to me that having received the subpoena in the morning it didn't--- he faulted my investigator for not making clear the seriousness of the federal subpoena." Id at 344

Mr. Hong stated" I don't understand why this subpoena, you know, went out so late in the first place." Id at 346

The court" But I don't want the delay in seeking the ---and I'll say 'undue delay'--- in seeking the subpoena and subpoenaing Mr. Smith on the second day of trial when it appears that he was scheduled to go to Kansas City on business, and then counsel for the defendant wants to continue the trial unnecessarily until Thursday when it would otherwise be completed on Wednesday afternoon. So the problem is, I see a big fat \$ 2255 coming to be laid in my lap if I don't try to rectify Mr. Layman's belatedness." Id at 389

A competent attorney would have assist petitioner in obtaining favorable witnesses in his defense and subpoena them to testify before the court and jury according to Strickland, 466 U.S. at 694, without Mr. Dominguez's and Mr. Smith's testimony heard before the district court of the jury that convicted petitioner; they had no reason to question the inference the Prosecutor, Mr. Hong, drew from its circumstantial case.

REASONS FOR GRANTING THE PETITION

The evidence Mr. Hong presented before the district court and the jury that convicted petitioner was questionable, but when petitioner defended himself, without the effective assistance of Attorney Layman's skills and knowledge; can not be characterized as harmless error.

The benchmark for judging any claim of ineffective assistance of counsel must be whether counsel's conduct so undermines the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result... according to their meanings of Strickland, 466 U.S. at 686.

Mr. Dominguez's and Mr. Smith's testimony together would have made a point essential to petitioner's defense that the drugs was not his and he was only going to Tulsa to purchase a vehicle, and had Attorney Layman subpoena and called both of those witnesses to testify on petitioner's behalf, there is a reasonable probability that, the jury would have had reasonable doubt about the prosecutor's theory of petitioner's guilt as a methamphetamine supplier.

There is a reasonable probability that, had Attorney Layman investigate petitioner's account that 'he was traveling to Tulsa to purchase a car;' Attorney Layman would have interviewed Dominguez and obtain his testimony before he was deported, Attorney Layman would have interviewed Mr. Smith and obtain his testimony before trial, Attorney Layman would have subpoena both witnesses Dominguez and Smith to testify at petitioner's trial, petitioner would not have been deprived effective assistance of counsel and compulsory process and also would have had a fair trial by calling available witnesses on his behalf. Grant v. Trammell, 727 F.3d 1006.

REASONS FOR GRANTING THE PETITION

2. WAS THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA
WAS PLAINLY WRONG FOR DENYING PETITIONER'S 28 U.S.C. § 2255 PETITION?

The district court Judge, Gregory K. Frizzell, was plainly wrong for denying petitioner's 28 U.S.C. § 2255 petition on June 29, 2020; without conducting an evidentiary hearing and claiming petitioner fail to show prejudice pursuant to Strickland, 466 U.S. 668; second prong standard.

Petitioner had demonstrate sufficient prejudice, cause by his Attorney Layman's fail to call two favorable witnesses, Mr. Dominguez and Mr. Smith; to testify at his trial on his behalf, was prejudice to him because he was denied effective assistance of counsel, compulsory process under the Sixth Amendment of the Constitution, and also, a fair and impartial trial.

Petitioner had demonstrate prejudice because an accused's right to be represented by counsel is a fundamental component of the criminal justice system. Lawyers in criminal cases' are necessities, not luxuries.' Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be 'of little avail,' as the Supreme Court has recognized repeatedly.

Of all the rights that an accused person as, the right to be represented by counsel is by far the most pervasive for it affects petitioner's ability to assert any other rights he may have.

The special value of the right to the assistance of counsel explains why it

REASONS FOR GRANTING THE PETITION

has long been recognized that the right to counsel is the right to effective assistance of counsel. McMann v. Richardson, 397 U.S. 759, 771, n.14, 25 L.Ed.2d 763, 90 S.Ct. 1441 (1970) The text of the Sixth Amendment itself suggests as much. The Amendment requires not merely the provision of counsel to the accused, but 'Assistance', which is to be 'for his defense.' Thus, the core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor. United States v. Ash, 413 U.S. 300, 309, 37 L.Ed.2d 619, 93 S.Ct. 2568 (1973) If no actual 'Assistance for the accused's defense is provided', then the constitutional guarantee has been violated.

Petitioner's trial Attorney Layman fail to subpoena Dominguez and Smith to testify on petitioner's behalf at his trial plays a crucial role in the adversarial process embodied in the Sixth Amendment because Attorney Layman's skill and knowledge was necessary to afford petitioner the 'ample opportunity to meet the case of the prosecution' to which petitioner is entitled. Strickland, 466 U.S. at 685.

The adversarial process protected by the Sixth Amendment requires that the accused have counsel acting in the role of an advocate. United States v. Cronin, 466 U.S. 648, 80 L.Ed.2d 657, 104 S.Ct. 2039 (1984) The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. When a true adversarial criminal trial has been conducted- even if defense counsel may by the Sixth Amendment has occurred. But if the process loses its character as a confrontation between adversarial, the constitutional guarantee is violated.

REASONS FOR GRANTING THE PETITION

The district court did not make a reasonable decision that Mr. Dominguez and Mr. Smith testimony would have change the outcome of petitioner's trial; without providing petitioner an effective assistance of counsel that would have subpoena those witnesses to come before the court to testify under oath, to make a reasonable determination whether those witnesses testimony would have made a reasonable juror raise a reasonable doubt about petitioner's guilt....was not considered according to the law.

The Sixth Amendment of the United States Constitution guaranteed petitioner the right to effective 'assistance' of counsel and the right to call witnesses in his defense under compulsory process, petitioner was denied both of those Constitution rights.

The district court fail to acknowledge that Attorney Layman fail to 'assist' petitioner in obtaining two favorable witnesses to appear before the district the district court to testify, at his trial; in petitioner's defense....was the prejudice result.

3. WAS THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT PLAINLY WRONG FOR DENYING PETITIONER A CERTIFICATE OF APPEALABILITY (COA)?

The Court of Appeals for the Tenth Circuit was plainly wrong for denying petitioner a (COA) and dismissing his 28 U.S.C. § 2255 petition on October 21, 2020.

Petitioner may not appeal the district court's denial of his § 2255 application

REASONS FOR GRANTING THE PETITION

without a (COA) 28 U.S.C. § 2253 (c)(1)(B); see United States v. Gonzalez, 596 F.3d 1228, 1241 (10th Cir.2010). To obtain a (COA), petitioner must make 'a substantial showing of the denial of a constitutional right,' 28 U.S.C. § 2253 (c)(2), and 'that reasonable jurists 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.' Slack v. McDaniel, 529 U.S.473,484,120 S.Ct.1595,146 L.Ed.2d 542 (2000).

Petitioner has demonstrate explicitly in question presented # 1 that he was denied effective assistance of counsel and compulsory process, are two constitutional rights that was guaranteed under the Sixth Amendment.

The Court of Appeals should have remanded petitioner's case matter back to the district court for an evidentiary hearing so that reasonable jurists could debate whether Attorney Layman denied petitioner compulsory process and effective assistance of counsel for failing to subpoena Mr. Dominguez and Mr. Smith two favorable witnesses that would have testified at petitioner's trial in his defense, had Attorney Layman subpoena them. United States v. Moya, 676 F.3d 1211,1214 (10th Cir.2012).

Those same reasonable jurists would have found that the distirct court's conclusion that petitioner fail to establish Attorney Layman's performance was prejudice; plainly wrong and that the issues petitioner presented was adequate to deserve encouragement to proceed further because petitioner's Sixth Amendment Constitutional rights to effective assistance of counsel and compulsory process was violated.

REASONS FOR GRANTING THE PETITION

Had Attorney Layman put a halt on Mr. Dominguez's deportation and subpoena him and Mr. Smith at an appropriate time, petitioner would not have been denied compulsory process or effective assistance of counsel, petitioner would have had a fair trial by calling two favorable witnesses in his defense.

CONCLUSION

The district court fail to acknowledge petitioner was denied effective 'assistance' of counsel during his trial and the right to have favorable witnesses called to testified on his behalf; was a violation of his Sixth Amendment Constitutional rights and was sufficient prejudice for petitioner to obtain relief.

Also, the Court of Appeals fail to acknowledge that petitioner was denied his Sixth Amendment rights and that the issues he presented was adequate to deserve encouragement to proceed further because petitioner's Sixth Amendment Constitutional rights to effective assistance of counsel and compulsory process was violated, yet petitioner should have been granted a (COA).

THEREFORE, petitioner pray that this Court grant this writ of certiorari.



Juan Garcia # 15130-062