

No. _____

20-7767

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

No. 20-6765, 3:19-cv-00441-FDW

ZONTA ELLISON — PETITIONER

(Your Name)

vs.

FILED

MAR 19 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ZONTA ELLISON #27066-058

(Your Name)

PO BOX 900

(Address)

RAY BROOK, NY 12977

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

This case presents important nationwide issues concerning what constitutes a fundamentally "just" incarceration under 28 U.S.C. § 2255. The question, of what constitutes "fundamental fairness" has gone unanswered since the enactment of § 2255. This petition represents an opportunity for the Supreme Court to provide a bright line that defines the meaning of a "fair trial" and proceeding under the law.

- ① Did Congress seek to deprive a person of their right to "DUE PROCESS OF LAW" to prove "ACTUAL INNOCENCE" pursuant to 28 U.S.C. § 2253(c)(2), in light of this court's ruling in MCQUIGGIN V. PERKINS, 133 S.Ct. 1924 (2013)?
- ② Did Congress intend for the lower courts to violate a petitioner's Fifth Amendment "DUE PROCESS" rights by overlooking the fact that petitioner asserted a colorable claim cognizable for relief under section § 2255(a)?
- ③ Did Congress impermissibly delegate its law making authority, to the U.S. District Courts, to determine for themselves what "ENTRAPMENT" means under the law in light of this court's ruling in ROVIAZO V. UNITED STATES, 353 U.S. 53 (1956)?
- ④ Did Congress grant the lower courts with the jurisdiction to "OVERRULE" and determine for themselves, which Alford plea convictions qualified for enhancement purposes pursuant to U.S.C. § 851 and this court's ruling in SHEPARD V. UNITED STATES, 544 U.S. 13 (2005)?
- ⑤ Did Congress intend for a citizen [REDACTED] accused of a violation of 21 U.S.C. § 841, to be denied the "EFFECTIVE ASSISTANCE OF COUNSEL" at a critical stage of the trial proceeding, forcing the accused to represent [REDACTED] themselves in light of this court's ruling in STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984) and UNITED STATES V. CRONIC, 466 U.S. 648 (1984)?

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:

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

PURSUANT TO SUPREME COURT RULE 29.6, ZONTA ELLISON, MAKES THE FOLLOWING DISCLOSURE:

- 1) MR. ELLISON IS NOT A SUBSIDIARY OR AFFILIATE OF A PUBLICLY OWNED CORPORATION.
- 2) THERE IS NO PUBLICLY OWNED CORPORATION, NOT A PARTY TO THE APPEAL, THAT HAS A FINANCIAL INTEREST IN THE OUTCOME OF THIS CASE.

By: ZONTA ELLISON, PRO SE
Reg. No. 37066-058

RELATED CASES

- 1) UNITED STATES COURT OF APPEALS 4TH CIRCUIT, NO. 20-6765 (3:19-CV-00441-FDW), ZONTA TAVARUS ELLISON V. UNITED STATES OF AMERICA, decided DEC. 21, 2020. MOTION FOR REHEARING
- 2) USCA4, NO. 20-6765 (3:19-CV-00441-FDW), ZONTA TAVARUS ELLISON V. UNITED STATES OF AMERICA, decided October 23, 2020. MOTION FOR C.O.A. FOR HABEAS CORPUS RELIEF.
- 3) UNITED STATES DISTRICT COURT WESTERN DISTRICT NC 4TH CIRCUIT, 3:19-CV-00441-FDW, ELLISON V. USA, decided MARCH 23, 2020. PETITION FOR 2241 RELIEF.
- 4) SUPREME COURT, 18-7881, ZONTA TAVARUS ELLISON V. USA, decided MARCH 25, 2019. W.O. C. PETITION.
- 5) USCA4, NO. 18-6342, 60B MOTION DENIAL, decided July 24, 2018.
- 6) US DISTRICT COURT WDNC4, 16-6666, DENIAL OF C.O.A. FOR 2255, decided October 20, 2016.
- 7) US DISTRICT COURT WDNC4, 3:16-CV-00040-FDW, 2255 PETITION, decided April 27, 2016.
- 8) SUPREME COURT OF THE US, 14-9832, W.O.C. PETITION, decided JUNE 22, 2015.
- 9) USCA4, 14-4197, MOTION TO COMPEL DISCOVERY, FILED OCTOBER 24, 2014, NO RULING.
- 10) [REDACTED] USCA4, 14-4197, TWO ISSUES APPEAL/LAWYER RAISED, decided DECEMBER 19, 2014.
- 11) US DISTRICT COURT WDNC4, 14-6204, MOTION FOR JUDGMENT OF ACQUITTAL, decided April 29, 2014.
- 12) US DISTRICT COURT WDNC4, 3:13-CV-336-FDW, MOTION FOR RELIEF, [REDACTED] decided JUNE 13, 2013.
- 13) US DISTRICT COURT WDNC4, 3:11-CR-404-FDW-DSC-1, [REDACTED] TRIAL PROCEEDING, decided JANUARY 10, 2013.

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TABLE OF AUTHORITIES CITED

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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

[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 _____; 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 C 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 October 23, 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: December 21, 2020, and a copy of the order denying rehearing appears at Appendix A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including 589 U.S. (date) on March 19, 2020 (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

28 U.S.C. § 2253(c)(2) - A certificate of appealability may issue under paragraph (1) only if the applicant has a substantial showing of the denial of a constitutional [redacted]

28 U.S.C. § 2241(c)(3) - He is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2255(e) - An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255(a) - A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

The Fifth Amendment - No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Thirteenth Amendment - [redacted] slavery nor involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to [redacted] jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment - In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

The Fair Sentencing Act Pub. L. No. 111-220, 124 Stat. 2372 (2010) § 2 - Section 2 of the Fair Sentencing Act increased the quantity of crack cocaine that triggered mandatory minimum penalties. The quantity threshold required to trigger a mandatory minimum 5 year sentence was increased from 5 grams to 28 grams.

21 U.S.C. § 841(a)(1) - Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally, to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance.

21 U.S.C. § 851(b) - Title 21 United States Code section 851(b)

21 U.S.C. § 851(c)(1) - Title 21 United States Code section 851(c)(1)

STATEMENT OF THE CASE

On December 13, 2011, the United States indicted Mr. Ellison pursuant to 21 U.S.C. § 841(a)(1), charging that on June 15, 2011, Ellison sold an undercover officer 3.5 grams of crack cocaine for \$180. On June 28, 2011 Ellison sold the undercover 7 grams of crack cocaine for \$350 and on June 30, 2011 Ellison sold the undercover 14 grams of crack cocaine for \$700. (Dorsey v. United States, 567 U.S. 260 (2012)).

On January 11, 2012 Ellison turned himself into the Mecklenburg County Sheriff's Office at the Meeklenburg County Jail in Charlotte NC. On January 12, 2012 Mr. Ellison was arraigned in USDC WDNc 4 at Charlotte, where he entered a plea of not guilty and was appointed counsel Emily Marroquin. Mr. Ellison released appointed defense counsel and hired Marcos Roberts to represent him.

On February 2, 2012 the government filed an information pursuant to 21 U.S.C. § 851 seeking enhanced penalties based on Ellison's prior 2010 North Carolina State Alford plea conviction for sell cocaine and possession of cocaine. ("North Carolina v. Alford, 400 U.S. 25 (1970)"). On August 23, 2012 at a status of counsel hearing, Ellison informed the court that defense counsel Marcos Roberts, was refusing to present evidence of his "actual innocence" or advocate his lawful objectives. (Strickland v. Washington, 466 U.S. 668 (1984)). On September 10, 2012 another status of counsel hearing was conducted and Mr. Roberts oral motion to withdraw was granted. Subsequently defense counsel Steven T. Meier was appointed.

On November 28, 2012 at a status of counsel hearing the court was informed that defense counsel Steven Meier was refusing to advocate Mr. Ellison's lawful objectives and contest the government's case. Mr. Meier's motion to withdraw was denied by the court. On January 9, 2013 Mr. Ellison was set to have trial by jury. Before the selection of the jury, Ellison made it known to the court that he had not viewed the discovery, to inform counsel as to what defenses he wanted to present.

STATEMENT OF THE CASE

Counsel was then allowed to withdraw and appointed as standby counsel. (*Strickland v. Washington*, 466 U.S. 668 (1984)). Trial commenced and Ellison presented his case as best he could, claiming that he was entrapped into committing the alleged three (3) transactions. When the trial court asked Ellison what evidence of entrapment did he have, Ellison attempted through oral motion to subpoena the government's confidential informant (Felecia Starr), as a witness to testify to the inducement pursuant to defendant's exhibit one. The trial court barred this evidence from being presented to the jury and on January 10, 2013, Ellison was subsequently convicted on all counts. (*Roviaro v. United States*, 353 U.S. 53 (1956)).

Ellison filed objections to the PSR report (21 U.S.C. § 851(b)), claiming that he was "actual innocent of violating 21 U.S.C. § 841(a)(1) and 851 as charged because he was entrapped into committing the instant offenses and that he was not a career offender because the sell cocaine and possession of cocaine 2010 "Alford plea conviction" was invalid. (*Shepard v. United States*, 544 U.S. 13 (2005)). On January 14, 2014 pursuant to the Sentencing Reform Act of 1984, *United States v. Booker*, 125 S.Ct. 738 (2005) and 18 U.S.C. § 3553(a), Ellison was sentenced to 262 months in prison with a 262 month alternative sentence to run concurrently. (FSA Pub. L. No. 111-220, 124 Stat. 2372 § 2)). Supreme Court rule 10(e).

Notice of appeal was subsequently filed. On October 24, 2014 Ellison filed a motion for discovery disclosure to expose the entrapment, referencing defendant's exhibit one of the March 16, 2011 marijuana sell with the government's confidential informant (Felecia Starr). Appellate counsel Leslie Rawls cited two issues also refusing to advocate Ellison's lawful objectives, contesting the government's case. MR. Ellison filed a motion to supplement the record which was granted but the Fourth Circuit affirmed on December 19, 2014. Writ of certiorari was denied as well. (*United States v. Cronic*, 466 U.S. 648 (1984)).

STATEMENT OF THE CASE

On January 21, 2016, Ellison filed a timely petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255(a). Mr. Ellison raised five claims claiming: ① prosecutorial misconduct; ② denial of his right to present an entrapment defense; ③ ineffective assistance of counsel; ④ use of an invalid prior conviction to enhance his sentence; and ⑤ violation of double jeopardy. On February 18, 2016 Ellison received a copy of the trial court's 60 day order for the government to respond. The court took notice of the fact that "Petitioner has asserted a colorable claim for relief cognizable under § 2255(a)." On April 27, 2016 the trial court denied habeas relief. (see Appendix F)).

A motion for a certificate of appealability was filed to the Fourth Circuit and subsequently denied. (see Appendix E)). A subsequent writ of certiorari petition was denied on March 25, 2019. (see Appendix D)). On September 9, 2019 Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 2255(e) saving's clause in the USDC WDNc 4 claiming "actual innocence". On March 23, 2020 the trial court denied the petition for habeas relief because the petitioner had not obtained permission from the Fourth Circuit court. (see Appendix C)). (Hahn v. Moseley, 931 F.3d 295, 301-04 (4th Cir. 2019)).

On June 19, 2020 Petitioner filed an informal brief for a certificate of appealability claiming actual innocence with the Fourth Circuit Court. (Schlup v. Delo, 513 U.S. 298 (1995)). On October 23, 2020 the Fourth Circuit denied the petitioner's motion. "See Appendix B." Notice of Appeal was placed in the mail on November 9, 2020 and received by the court on November 13, 2020.

It was construed as a petition for writ of certiorari and returned to petitioner. On December 18, 2020 Ellison filed a motion for rehearing for a certificate of appealability and on December 21, 2020 the Fourth Circuit held that the motion was denied as untimely. "See Appendix A."

REASONS FOR GRANTING THE PETITION

① (Question One) Did Congress seek to deprive a person of their right to "Due Process of law" to prove "actual innocence" pursuant to 28 U.S.C. § 2253(c)(2) in light of this court's ruling in *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013)?

A. The Fourth Circuit panel improperly sidestepped the C.O.A. process by denying relief based on its view of the merits.

In reviewing the facts and circumstances of Mr. Ellison's case, the Fourth Circuit panel "paid lip service to the principles guiding issuance of a C.O.A. *McQuiggin v. Perkins*, 133 S.Ct. 1924 (2013), but in actuality the panel held Mr. Ellison to a far more stringent standard. (*Haines v. Kerner*, 404 U.S. 519, 521 (1972)).

Specifically, the Fourth Circuit panel "sidestepped the threshold C.O.A. process by first deciding the merits of (Mr. Ellison) appeal, and then justifying its denial of a C.O.A. based on its adjudication of the actual merits, thereby 'in essence deciding an appeal without jurisdiction.'" *Miller-EL v. Coakrell*, 537 U.S. 322 at 336-37 (2003).

As the Supreme Court held in *Miller-EL*, the threshold nature of the C.O.A. inquiry "would mean very little if appellate review were denied because the prisoner did not convince a judge, or for that matter, three judges, that he or she would prevail." *Miller-EL*, 537 U.S. 322 at 337. IN Mr. Ellison's case however, that is exactly what the panel did.

Mr. Ellison filed a motion in the Fourth Circuit seeking a certificate of appealability, so that he may appeal the district court's denial of his § 2255 petition. The Fourth Circuit panel however, determined that Mr. Ellison's many appointed lawyers had, indeed, provided effective assistance because they were bar members in good standing. Thus, the panel concluded that Mr. Ellison should be denied a certificate of appealability because the appeal was obviously meritless.

REASONS FOR GRANTING THE PETITION

The panel impermissibly sidestepped the C.O.A. inquiry in this matter by denying relief because the subsequent appeal would be meritless. The Fourth Circuit panel's assessment of the merits is patently wrong. (*Slack v. McDaniel*, 529 U.S. 473 (2000). The panel could not possibly resolve the merits of the appeal based solely on a motion seeking a certificate of appealability. Moreover, without the issuance of a C.O.A. and the district court's record before the panel, the panel was without jurisdiction to determine the merits of the appeal. 28 U.S.C. § 2253(c)(2). (see *Buck v. Davis*, 580 U.S. — 137 S.Ct. — 197 L.Ed.2d 1 (2017)).

② (Question Two) Did Congress intend for the lower courts to violate a petitioner's Fifth Amendment "Due Process" rights by overlooking the fact that petitioner asserted a colorable claim cognizable for relief under section § 2255(a)?

A. The District Court knowingly and willingly deprives Mr. Ellison review in his habeas case, by refusing to comply with the statutory mandates of 28 U.S.C. § 2255(a), and acknowledge the constitutional violations.

Rules governing 28 U.S.C. § 2255 proceedings in the United States District Courts Rule 8(c) holds in pertinent part that the judge must conduct the hearing as soon as practicable after giving the attorneys adequate time to investigate and prepare. These mandates, particularized by rule and law, were enacted to protect the public's interest in the speedy resolution in criminal cases and the prompt termination of unlawful incarceration.

These federal court rules and statutes, particularized do not specify and/or provide for tolerance of the District Court's deviation and/or violation of these mandates constitutes a violation of Mr. Ellison Constitutional right "to petition government for redress of grievances." As § 2255(a) refers to an erroneous and unlawful sentence imposed in violation of the Constitution, the District Court denied Ellison of his constitutionally protected right that is particularized by the Fifth Amendment to the United States Constitution, TO WIT: "No person shall be... deprived of life, liberty or property without due process of law."

REASONS FOR GRANTING THE PETITION

③ (Question Three) Did Congress impermissibly delegate its law making authority, to the U.S. District Courts, to determine for themselves what "Entrapment" means under the law in light of this court's ruling in *Roviaro v. United States*, 353 U.S. 53 (1956)?

A. The District Court Arbitrarily did.

The government's confidential informant "Felecia Starr" was material to Ellison's "actual innocence" claim citing that she was used in the scheme to "Entrap" Ellison for Federal prosecution. (*Brady v. Maryland*, 373 U.S. 83 (1963)). Through oral motion Ellison attempted pursuant to the Sixth Amendment of the United States Constitution to subpoena Ms. Starr as a witness to testify and the District Court denied the motion and removed this element from the jury. (*Roviaro v. United States*, 353 U.S. 53 (1956)).

④ (Question Four) Did Congress grant the lower courts with the jurisdiction to "overrule" and determine for themselves, which Alford plea convictions qualify for enhancement purposes pursuant to 21 U.S.C. § 851 and this court's ruling in *Shepard v. United States*, 544 U.S. 13 (2005)?

A. The lower courts overrules supreme court precedence to enhance petitioner's sentence. 21 U.S.C. § 851(c)(1).

Overruling the Supreme Court's holding in *Shepard*, violated petitioner's Sixth Amendment constitutional right and Fifth Amendment right to due process of law as guaranteed by the Constitution rendering the proceeding (sentence) unfair. (see *North Carolina v. Alford*, 400 U.S. 25 (1970)).

REASONS FOR GRANTING THE PETITION

⑤ (Question Five) Did Congress intend for a citizen accused of a violation of 21 U.S.C. § 841, to be denied the "effective assistance of counsel" at a critical stage of the trial proceeding, forcing the accused to represent themselves in light of this court's ruling in *Strickland v. Washington*, 466 U.S. 668 (1984) and *United States v. Cronic*, 466 U.S. 648 (1984)?

A. The record reflects, Ellison was denied the effective assistance of counsel as guaranteed by the Sixth Amendment of the U.S. Constitution, in all proceedings, rendering his trial and sentence unfair and prejudiced is presumed.

CONCLUSION

Mr. Ellison respectfully pleads that this court grant ~~his~~ this petition for a writ of certiorari for a C.O.A., with the facts shown, liberally construe and permit briefing. The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Ellison

Date: March 18, 2021