

IN THE UNITED STATES SUPREME COURT

No. _____

MARTIN LAWRENCE,

Petitioner-Appellant,

vs.

UNITED STATES OF AMERICA,

Respondents-Appellees.

ON PETITION FOR WRIT OF *CERTIORARI* TO THE UNITED STATES
COURT OF APPEALS FOR THE 8TH CIRCUIT

PETITION FOR *CERTIORARI*

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QUESTION PRESENTED FOR REVIEW

1. Whether, in light of trial counsel's express admission that he underestimated Petitioner's sentencing exposure if he went to trial, this Court should grant, vacate, and remand for further consideration under *Lafler v. Cooper*?

LIST OF PARTIES

1. All parties appear in the caption.

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8th Circuit - Section 2255 Proceedings

1. Order Denying Petition for Rehearing - *Lawrence v. United States of America*, No. 20-1367 (8th Cir. Feb. 8, 2021)
2. Order Denying Application for Certificate of Appealability - *Lawrence v. United States of America*, No. 20-1367 (8th Cir. Dec. 10, 2020)
3. Order Granting Appointment of Counsel - *Lawrence v. United States of America*, No. 20-1367 (8th Cir. May 12, 2020)

Northern District of Iowa

4. Order Denying Evidentiary Hearing and Section 2255 Motion and Judgment - *Lawrence v. United States*, No. C18-38-LTS (N.D. Iowa Feb. 5, 2020)
5. Order Granting Appointment of Counsel, *Lawrence v. United States*, No. C18-38-LTS (N.D. Iowa Feb. 8, 2019)

8th Circuit Direct Appeal

6. Opinion - *United States of America v. Lawrence*, No. 16-2056 (8th Cir. Apr. 14, 2017)

JURISDICTION

Mr. Lawrence is a federal prisoner serving a 195 month year sentence in Rochester, Minnesota for distribution of methamphetamine. Pursuant to 28 U.S.C. Section 2255, Mr. Lawrence filed for relief in the Northern District of Iowa, Cedar

Rapids Division. Federal question jurisdiction exists under 28 U.S.C. § 1331. The 8th Circuit Court of Appeals issued final judgment denying the certificate of appealability on February 8, 2021, and on Dec. 10, 2020, denied rehearing. Appx. B and C. The jurisdiction of this Court is invoked under § 28 U.S.C. §1254(1).

TIMELINESS

The 8th Circuit denied Mr. Lawrence Application for a Certificate of Appealability on December 10, 2020, and Petition for Rehearing on Feb. 8, 2021. Appx. A and B. This Petition is filed within 150 days of that date. See US Supreme Court Rule 13 (1) (“A petition for a writ of certiorari seeking review of a judgment of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk within 90 days after entry of the order denying discretionary review.”). That deadline falls on July 8, 2021. A document is considered timely filed if it is sent to the Clerk through the United States Postal Service by first-class mail (including express or priority mail), postage prepaid, and bears a postmark, other than a commercial postage meter label, showing that the document was mailed on or before the last day for filing, or if it is delivered on or before the last day for filing to a third-party commercial carrier for delivery to the Clerk within 3 calendar days.” Supreme Court Rule 29.2. This document was mailed via UPS Ground on July 8, 2021. Thus, it is timely filed.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(Set forth *verbatim* in Appendix G)

1. 6th Amendment of US Constitution
2. 28 U.S.C. Section 2253
3. Rule of Section 2255 Procedure 8 (a).

STATEMENT OF THE CASE

Nature of the Case:

This is an appeal from a federal prisoner's Motion for Section 2255 relief from a federal conviction for distribution for methamphetamine in Northern District of Iowa. Neither the 8th Circuit nor the District Court granted a certificate of appealability. Mr. Lawrence seeks vacation, remand and an order granting full merits briefing on one claim, whether his trial counsel rendered ineffective counsel for failure to adequately advise about the risks of trial versus pleading guilty.

Relevant Procedural and Factual History

A. Criminal Proceedings

On July 28, 2015, the Grand Jury returned an Indictment charging Lawrence with two counts: (1) conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841 (b)(1)(A) and 846, and (2) distribution of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). Crim. Doc. No. 3. The Indictment also charged Lawrence's brother, Troy Alan Lawrence

(Troy), with two counts: (1) conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A) and 846, and (2) possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B). Id.

On October 14, 2015, the Grand Jury returned a Superseding Indictment that included the above charges and added a charge against Lawrence and Troy for obstruction of justice in violation of 18 U.S.C. §§ 2, 1512(b)(1), 1512(b)(2)(A) and 1512(b)(2)(C). Crim. Doc. No. 56. United States District Judge Mark W. Bennett presided over the consolidated jury trial. See Crim. Doc. No. 83. On October 28, 2015, the jury found both Lawrence and Troy guilty on all counts. See Crim. Doc. No. 86. Lawrence's sentencing hearing was held on January 14, 2016. See Crim. Doc. No. 127. On April 14, 2016, Judge Bennett calculated a sentencing guideline range of 262 to 327 months, based on a total offense level of 361 and a criminal history category IV. Crim. Doc. No. 161 at 15. Judge Bennett then denied Lawrence's motion for a downward variance. Id. Judge Bennett sentenced Lawrence to 300 months' imprisonment. Id. at 16. Lawrence appealed, arguing that Judge Bennett improperly calculated the drug quantity attributable to him. See Crim. Doc. No. 154. The Eighth Circuit affirmed. Crim. Doc. No. 167.

B. Section 2255 Proceedings - Lawrence v. United States, 1:18-cv-00038-L TS-MAR.

On April 9, 2018, Mr. Lawrence filed a Section 2255 raising several claims for relief. Section 2255 Docket 1. On February 5, 2020, the Honorable Judge Leonard Strand denied Mr. Lawrence's Section 2255 Motion on the merits. Docket 17. He found that an evidentiary hearing was not necessary to resolve his claims, and further did not proceed to full merits briefing. Mr. Lawrence filed a timely notice of appeal on February 24, 2020. Docket 19.

Judge Strand denied a certificate of appealability on February 5, 2020. Order; Appx. D. On December 10, 2020, the 8th Circuit also denied a certificate, and on February 8, 2021, it denied rehearing. Appx. A and B.

REASONS FOR GRANTING THE WRIT

Classic grounds for granting the writ of certiorari are not necessarily present because the 8th Circuit has not yet granted a full merits briefing through the certificate of appealability under 28 U.S.C. Section 2253 (c). Mr. Lawrence believes the certiorari should be granted under US Supreme Court Rule 10 (c), which authorizes grant on important questions of federal law that should, but not have yet been resolved. In this case, this Court has not addressed in great detail the standards under which an evidentiary hearing should be granted on claims that trial counsel misadvised a federal defendant about his sentencing exposure at trial.

In two important cases, this Court addressed these the scope of ineffective assistance in the context of advice to plead guilty. In one case, this Court found

that trial counsel rendered ineffective counsel in failing to communicate a plea offer to Defendant. *Missouri v. Frye*, 566 U.S. 134, 138, 132 S. Ct. 1399, 1404, 182 L. Ed. 2d 379 (2012). In another case, this Court found that trial counsel rendered ineffective counsel by failing to properly advise about benefits of plea bargain. *Lafler v. Cooper*, 566 U.S. 156, 162 – 175, 132 S.Ct. 1376, 182 L.Ed.2d 398 (2012).

But what about federal pleas? Under what circumstances should evidentiary hearing be granted? This case provides perfect vehicle to explore that precise question, but first this Court should grant the certificate to allow full merits briefing before the 8th Circuit.

- Ineffectiveness Relating to Rejection of Plea

One of his central claims was that trial counsel misadvised him about the risks of sentencing exposure if he went to trial, which was partially confirmed by trial counsel. Trial counsel expressly admitted in his affidavit that In his response, Mr. Johnson candidly admitted that he "underestimated the sentencing guideline range" his letter confirming his advice. Johnson Affidavit at p. 2, Docket 9. He also added some additional qualifiers to that advice. While not a complete admission, that does not little to contradict or substantially undermine Martin Lawrence's contention that trial counsel affirmatively misadvised about sentencing exposure if he went to trial.

According to Mr. Lawrence, Mr. Johnson informed him that his guideline range would be between 135-168 months. Lawrence Pro Se Motion at pp. 19-20. He also alleged that counsel did not competently advise about his sentencing exposure worked, relevant conduct, and that he did not intend to call a single witness. Pro Se Motion at pp. 20. The District Court rejected his ineffectiveness claim and the evidentiary hearing because the Court that Mr. Lawrence was claiming his innocence still in the postconviction motion and he was only interested in pleading to Count 2 as opposed to 1. District Court Ruling at pp. 7-8. However, the District Court made these findings solely on the basis of Lawrence's affidavits. Mr. Lawrence did not have opportunity to respond to questions at an evidentiary hearing.

The question for the court was whether Lawrence's claims were "facially incredible." If neither statement is facially incredible and both contain "similar specificity" regarding when the alleged appeal-request conversations "took place (or did not take place)," id. at 764-65, counsel's contrary statement simply "is insufficient to support a finding that [the petitioner's] allegations cannot be accepted as true." *United States v. Sellner*, 773 F.3d 927, 930 (8th Cir.2014). There some open questions about resolving various claims made by defense counsel and Mr. Lawrence. "When a district court receives conflicting statements-one from a § 2255 petitioner and one from her former counsel-the court cannot "mak[e] a

factual determination based on the relative credibility of [these individuals] without the benefit of an evidentiary hearing." Id. *Witthar v. United States*, 793 F.3d 920, 923 (8th Cir. 2015).

Here, Mr. Lawrence's detailed description of counsel's failures, coupled with trial counsel's partial admission that he underestimated the sentencing range, demonstrate that bona fide issues remained for an evidentiary hearing. Defendants have a right to competent advice about whether to plead guilty or elect to go trial. *See Lafler v. Cooper*, 566 U.S. 156, 174, 132 S. Ct. 1376, 1391, 182 L. Ed. 2d 398 (2012) (finding possible ineffectiveness relating to plea and ordering original plea offer to be reextended following trial.). To establish such a claim, the Defendant must establish that "but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." *Lafler v. Cooper*, 566 U.S. 156, 163- 64, 132 S. Ct. 1376, 1385, 182 L. Ed. 2d 398 (2012).

Mr. Lawrence has crossed the preliminary threshold for a certificate of

appealability. The Court in some respects placed too much weight on Mr. Lawrence's claims about desiring to go to trial. That was not fatal to his claim and misconstrued his claim. He alleged that trial counsel did not explain the risks of sentencing exposure by electing to go to trial. He ultimately received 300 months. He understood sentence if he pleaded guilty would be Level 30 with the sentencing guideline range of 135 - 168 months. Pro Se Motion at p. 20. He explained why he rejected the government's plea officers because he was under "the false assumption that Trial Counsel was reasonably and prudently preparing for trial, including, but not limited to, the interviewing of knowingly material defense case witnesses, all of whom were prepared to provide significantly powerful exculpatory testimonial evidence." Id. Had Trial Counsel competently counsel Lawrence as to the "sentencing realities which would necessarily include, relevant conduct drug quantity findings), a loss of three points for acceptance of responsibility and that, most critically, he had no intention of calling a single case defense witness, Lawrence would have opted to accept the Government's plea offer(s)." That's not so conclusory that the Court could make detailed findings without holding an evidentiary hearing as to whether he would have accepted offer or not.

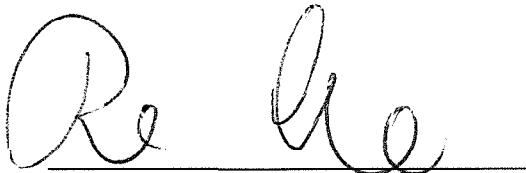
This Court has not really addressed a case similar to this. It is time to provide clarity about the fully scope of *Lafler* and *Frye*. This Court should grant, vacate, and remand for further consideration under *Lafler* and *Frye*. A certificate

should be granted relating to Mr. Lawrence's claim that he got bad advice about the risks versus benefits of trial.

CONCLUSION AND REQUESTED RELIEF

Under these circumstances, the most prudent course is to grant the Writ, vacate, and remand with an order to grant a certificate of appealability.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I, Rockne Cole, counsel for Petitioner, hereby certify that, on July 8, 2021, I mailed an original and 10 copies to the Supreme Court via UPS Ground to:

United States Supreme Court
Clerk's Office
1 First Street, N.E.,
Washington, D.C. 20543

and one copy to:

Lisa Williams
Assistant United States Attorney

111 7th Ave, SE Box #1
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Rockne Cole

CERTIFICATE OF WORD COUNT

I, Rockne Cole, certify that the above Petition includes 2209 words and was prepared in 14 Point New Times Roman and therefore, complies with US Supreme Court Rule 33.1.

Rockne Cole

Rockne Cole