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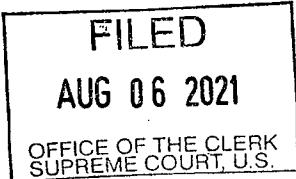
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Bruce A. Rutherford - Petitioner

v.



United States district court Eastern district of Texas - Respondent(s)

ON PETITION FOR WRIT OF CERTIORARI TO

United States district court

Eastern district of Texas

PETITION FOR WRIT OF CERTIORARI

Bruce A. Rutherford - 27006-078

FCI Texarkana

P.O. Box 7000

Texarkana, TX 75505

QUESTIONS PRESENTED

Court states that, Movant claimes counsel failed to inform him of plea offers and allowed them to expire was not in §2255. (see Appendix A)

This statement clearly contradicts the court record. (see Appendix B).

The court knowingly and willfully created a "**Structural Error**" to avoid a "**Plain Error**", Movant has on his on his original §2255.

If the Supreme Court does not use its judicial authority to correct the lower courts, when they willfully ruled in contrast to there own court record, how can the court maintain the confidence of the the American people in the fairness and integrity of the courts?

LIST OF PARTIES

The caption above contains the names of all parties

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Appendix B. Memorandum of Points Ground Five of original §2255 filed on 05/10/19.

Appendix C. magistrate's report acknowledgment of coerced guilty plea and failure to rule on it.

Appendix D. Memorandum of Points ground 16, counsel's failure to withdraw guilty plea, filed 01/10/19.

Appendix E. Transcripts of sentencing hearing increasing the number of images from 300 to 600 to add enhancement for 600 images.

Appendix F. Appellate court ruling.

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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

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

The opinion of the United States court of appeals appears at Appendix F. to the petition and is unpublished.

The opinion of the United States district court appears at Appendix A. to the petition and is unpublished.

JURISDICTION

[] For cases from **federal court**:

The date on which the United States Court of Appeals decided my case was July 9, 2021.

[] No petition for rehearing was filed.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution, Article 1, Sec 9, cl. 2:

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of Rebellion or invasion of public safety may require it.

Constitution, Article VI, Clause 2:

The Constitution and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land, and the judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding.

Constitution - Article VI, Clause 3:

The Senators and Representatives before mentioned, and the members of the several State Legislatures and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution, but no religious test shall ever be required as a Qualification to any Office or public Trust under the United States.

Constitution - Amendment 1:

Congress shall make no Law...the right of the people to petition the Government for redress of Grievance.

Constitution - Amendment V,

No person shall... be deprived of life, liberty, or property, without due process of law...

Constitution - Amendment VI:

...to have the ('Competent') assistance of counsel for his defense.

Constitution - XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

A finding of frivolous and without merit and with no explanation or definition are not a ruling but, the lack of a ruling.

I am not challenging the courts power to do this, but I have to challenge their constitutional right to do this.

The words frivolous and without merit are used repeatedly by the courts without ever being held to what is frivolous or why something is without merit as shown in the magistrates Report to my §2255.

The objections that I brought up in the magistrate's Report and Recommendations were based upon the deprivation of my Constitutionally protected rights under the First, Fifth, Sixth, and Fourteenth Amendments and Article 1, § 9, Cl. 2 of the Constitution of the United States of America, and my counsel's complete lack of information being conveyed to me. I am unable to find anything in the Constitution that states these protected rights are frivolous.

The district court states that "Furthermore, Movant claims for the first time that counsel failed to convey plea offers to him, which entitles him to relief. However, issues raised for the first time in objections are not properly before the court and need not be addressed". (Appendix A)

The district court's statement that I failed to bring up that counsel failed to inform me of any plea offers for the first time is clearly in error.

It is a matter of the court's record that this claim was brought up in my §2255 that I filed on May 5, 2019, in the Memorandum of points in support of Petitioner's §2255, Page3, Ground Five(5) it Clearly states that "Defense counsel Edgett was ineffective for failing to inform Petitioner of plea offers from the government was Ineffective Assistance of Counsel". (Appendix B).

As this is part of the court's record, for the judge to not have known this, is problematic, because the judge apparently denied my §2255 without knowing what is in it.

This is an extremely important issue and effects not only my life, but the life of my whole family and deserves serious, just and fair consideration.

This is a clear violation of my Article 1, §9, cl 2, right to habeas corpus, First Amendment right to redress of grievances, Fifth Amendment Due Process, Fourteenth Amendment Section 1 and the fundamental fairness of the entire judicial process.

The court cannot make a person guilty just because they wish them to be.

A judge is bound by their Oath of Office to the Constitution as the "Supreme Law of the Land" and to protect the defendant's constitutional rights, Article VI., §3 "...and all executive and judicial Officers, both of the United States, and of the several States, shall be bound by Oath or Affirmation, to support this Constitution..."

"Counsel is required to inform client of any plea offers and to provide competent advice about the consequences of accepting or rejecting a plea offer." (Laffer v. Cooper, 566 U.S. 156 (2012)).

For defense counsel to not inform me of said plea offers and allow offers to expire, "Defense counsel is allowing plea offers to expire without advising accused of offer is to constitute denial of effective assistance of counsel required under the Sixth Amendment. (Missouri v. Frye, 566 U.S. 134, 132, S.Ct. 1399 (2012)).

Not informing client of plea agreements is a huge "Plain Error".

[Plain Error is established when there is (1) a legal error that has not been abandoned. (2) that is a clear or obvious rather than subject to reasonable dispute (3) which effected the appellant's substantial rights ie. the error effected the outcome of the proceedings, and (4) seriously effected the fairness, integrity, or public reputation of judicial proceedings] (United States v. Halverson, 897 F .3d 645 (5th Cir. 2018)).

My substantial rights and fundamental fairness of the proceedings are clearly and unarguably denied by the counsel's lack of informing me of said plea offers.

The above actions alone constitutes "Plain Error" and a extreme loss of a fundamental fairness in the process.

This court will grant federal habeas corpus relief only when the error is so extreme that it constitutes a denial of fundamental fairness under the Due Process clause" (Dhillern v. Estelle, 720 F.2d 839, 852 (5th Cir. 1983)).

Another major issue with counsel was on September 5, 2017. Being the morning that jury selection was scheduled to begin.

Counsel came to me at the courthouse holding cell and told me that if I went through with the trial, I was going to lose and would be sentenced to 20 years inprison, however, if I changed my plea to guilty,I would get a 5 year sentence, and I had about 3 minutes to think about it as he had to get back into the court room.

Me being utterly and completely uninformed, and even though I was not guilty, I felt like I had no choice but to do as my counsel told me to do.

I had to plead guilty and take the 5 years in prison rather than go through with the trial and get 20 years. Had I known that he was not telling me the truth, I would have gone to trial.

I grudgingly agreedtochange my plea to guilty and respond to the courts questions as my counsel instructed.

If I did not answer the judge's questions as instructed by my counsel, I would get a 20 year prison sentence.

My change of plea to guilty was not voluntary, but coerced.

This claim was noted in the magistrate's Report and Recommendation but not ruled on. (Appendix C).

The coerced guilty plea was not even mentioned in the district judge's ruling. "Granting relief based on erroneous advice of counsel". (United States v. Rummy, 697 F.2d 764, 766 (5th Cir. 1893))

This is but another violation of my Sixth Amendment rights and Due Process.

The court must consider the fairness of the proceeding when counsel provides no information that is relevant to defense of his case and his only information is coercive in order to obtain an involuntary guilty plea showing prejudice and incompetence on counsel's part. "habeas petition may attack the voluntary and intelligent character of the guilty plea 'based on pre-plea ineffective assistance of counsel by showing the advice he received from counsel was not within the range of competence demanded of Attorneys in a criminal case" applies not only to "ineffective assistance rendered when providing incompetent advice concerning the guilty plea itself" but also to pre-plea ineffective assistance of counsel..." Counsel not only provided me false information, he never informed me of the consequences of pleading guilty, thereby preventing me from making an informed choice.

This is another major violation of the Sixth Amendment and Due Process.

Throughout the whole process my counsel withheld vital and important information and did not perform any of the tasks I asked of him required by counsel to provide assistance of counsel guaranteed under the Sixth Amendment. What has become clear is the system is showing prejudice to the accused when it comes to charges of a sex offense, "a familiar and reoccurring evil that if left unaddressed, would risk systematic injury to the administration of justice. (Pene-Rodriguez v. Colorado, 137 S.Ct. 855 (2017)).

Though a law be fair on its face and impartial in appearance, yet if it is administered by public authority with an evil eye and unequal hand, so as to make illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

I am not even sure how this can possibly be considered to be a sex offense, there is no sex and no one to offend. (no victim), its just simply looking at a picture. Worst case it could be considered voyeurism. Hardly a crime that warrants 12 1/2 years in prison with no criminal history.

There has to be a whole lot of money being made by someone in trafficking in people in prisons.

Another Six Amendment violation was when counsel refused to withdraw my guilty plea after I realized what he had done. I made three separate requests to do so. (Appendix D).

(Hill v. Lockhart, 474 U.S. 1985); (Wells v. United States, 318 U.S. 257 (1943)).

Lets look at the Carr test to determine if this was a just cause ["fair and just reason"] for the court to consider a withdraw of a plea of guilty: (1) the defendant asserted his innocents; (2) withdrawal would cause the government to suffer prejudice; (3) the defendant is delayed in filing the motion; (4) withdrawal would substantially inconvenience the court; (5) close assistance of counsel was variable; (6) the original was knowing and voluntary; (7) withdrawal would waste the judicial resources. (United States v Carr, 740 F.2d 339, 543-44 (5th Cir. 1984)).

(1) Movant asserted his innocents by pleading "Not Guilty" in March 21, 2017 and not changing it till he did under coercion on September 5, 2017 from counsel claiming I would lose and receive 20 years in prison. (Appendix G). Also my counsel was never close in as far as providing needed information to make an educated choice. A violation of Due Process and the Sixth Amendment.

Another blatant violation of the Sixth Amendment is when counsel failed me by not objecting to the enhancement or points for over 600 images.

This is essentially a Fifth Amendment violation of Due Process by adding years of prison time with no Due Process or even a universal sense of justice "fundamental fairness" (United States v. Russell, 411 U.S. 423, 432 (1973)(quoting Kinsella v. United States, exrel. Singleton, 361 U.S. 234, 246 (1960), as well as is Sixth Amendment violation.

The government claims 4 partial video clips as evidence, then the government states each video equals 75 images, see change of plea hearing transcripts page 15, lines 21-23. (Appendix E).

This equals 300 images to ordinary people, not 600 images to give extra years in prison, "Congress has to write statutes that give ordinary people fair warning about what the law demands of them" (United States v Davis, 139 S.Ct. 2319, 204, L Ed.2d 757 (2019)).

Counsel's ineffectiveness was painfully present through the whole process caused by either prejudice or by incompetence to the degree as to remove the required fundamental fairness of the process and to cause a "Plain Error" by not informing me of plea offers and coercing me into changing my plea to guilty.

When defense counsel's representation is so blatantly incompetent as to render entire proceedings fundamentally unfair, Due Process clause itself is violated. (United States v. Wainwright, 525 F .2d 1269 (5th Cir. 1976)).

REASONS FOR GRANTING THE PETITION

In the courts dismissal of my 28 U.S.C. §2255 motion, the district judge stated that, I raised for the first time that counsel failed to convey plea offers to me was raised for the first time in the objections, are not properly before the court, and need not be addressed (Appendix A).

The courts ruling is in direct conflict with the court records (Appendix B). This ruling creates a "**Structural Error**" by trying to avoid ruling on a clear "**Plain Error**" in my §2255 that the court was trying to avoid.

This conflict in the court records must be corrected. To do otherwise would diminish the confidence of the American people in the fairness and integrity of the courts.

CONCLUSION

The petition for a writ of certiorari should be granted.

Submitted on: August 6, 2021

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