

NO: 21-6407

IN THE
SUPREME COURT OF THE UNITED STATES

ROY THOMAS PHILLIPS
Petitioner,

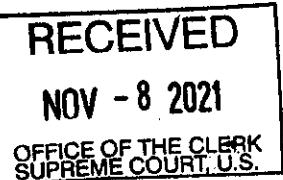
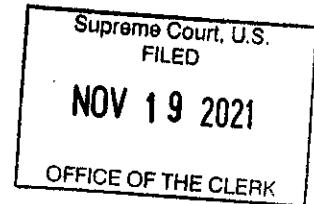
v.

UNITED STATES OF AMERICA
Respondent,

On Petition For Writ Of Certiorari To The
United States Court Of Appeals
For The Eleventh Circuit

Petition For Writ Of Certiorari

Roy Phillips
Pro-Se Petitioner



QUESTIONS PRESENTED FOR REVIEW

1. The factual determination for denying the certificate of appealability was wrong and reversal is warranted.
2. Pro-se petitioners are to be given a liberal reading of motions and filings.
3. Certificate of appealability must be granted prior to a ruling on the merits or facts.
4. Antecedent constitutional claims can be argued to show the totality of failure of defense counsel, resulting in constructive denial of counsel at the plea stage of the proceedings, resulting in petitioner entering the plea unknowingly and unintelligently.

LIST OF PARTIES AND CORPORATE STATEMENT

Roy Thomas Phillips is the petitioner and The United States of America is the respondent. There are no corporations involved in these proceedings.

LIST OF PROCEEDINGS

District Court Case 6:19-cv-1782-JA-GJK Middle District Of Florida
Circuit Court Case- 21-11493-C Eleventh Circuit

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Statutes

28 U.S.C. 2255
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United States Constitution	Sixth Amendment
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IN THE
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ROY THOMAS PHILLIPS
Petitioner,

V.

UNITED STATES OF AMERICA
Respondent.

PETITION FOR WRIT OF CERTIORARI

Roy Thomas Phillips, pro-se petitioner, petitions for a writ of certiorari to review the judgements and opinions of the United States Court of Appeals for the Eleventh Circuit in his case.

OPINIONS AND JURISDICTION

The decision of the court of appeals for the eleventh circuit is included in the attached appendix as well as the filings from the district court that are needed to establish the factual basis for Mr. Phillips' argument. This Court has already ruled on cases involving similar facts and Mr. Phillips is asking this court to resolve the conflict between Supreme Court Decisions and subsequent decisions from the eleventh circuit court of appeals. In this instant case, the district court from the middle district of Florida had jurisdiction over petitioner's motion pursuant to 28 U.S.C. 2255(b) and the Eleventh Circuit had jurisdiction pursuant to 28 U.S.C. 2253(a) and 28 U.S.C. 1291.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution
Provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and ~~the~~ district where in 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 witness against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

Roy Phillips is a federal prisoner serving a 720 month sentence for aiding and abetting the production of child pornography. On 11/18/2019 an amended motion to amend motion to vacate, set aside or correct a sentence under 28 U.S.C. 2255 was entered into the district court. On April 9, 2021, the District court denied petitioners motion. on April 30, 2021 a notice of appeal and a request for a certificate of appealability was entered into the district court and circuit court for the eleventh circuit. On August 17, 2021 the circuit court for the eleventh circuit denied Mr. Phillips request for COA. On August 26, 2021 a motion for reconsideration of order was sent to the eleventh circuit. This motion was returned by the post office September 16, 2021. Immediately Mr. Phillips sent the same motion again to the Circuit court along with the original envelope from the first filing. Mr. Phillips does not know if the Circuit court accepted the delayed filing or not, so in order to be timely filed with the Supreme Court, Mr. Phillips is submitting this writ.

REASON FOR GRANTING THE WRIT

This Court should grant this writ of certiorari. This Court has already ruled on several other cases involving similar facts. Mr. Phillips is seeking this writ in order to resolve the conflict between those already established Supreme Court decisions and that of the Eleventh Circuit in this case.

A. THE FACTUAL DETERMINATION FOR DENYING THE CERTIFICATE OF APPEALABILITY WAS WRONG AND REVERSAL IS WARRANTED.

The factual determination in grounds two through six were made through a strict and literal reading of Mr. Phillips' initial 28 U.S.C. 2255 form. It appears that any and all additional filings including the addendum to the initial filing (appendix exhibit 1), were either not read, or were read and automatically dismissed. As a note, there was no mention by the district court on the 2255 form that additional pages would be ignored. Additionally in grounds one, the circuit court used information found in the addendum when it suited thier decision, ignoring the parts that did not support thier decision. In both the district court order and that of the Eleventh Circuit, the courts have said, "he did not provide any explanation in his 2255 motion as to how his guilty plea was involuntary or unknowing." (page 3 of the circuit court order) This finding is false and jurists of reason would debate whether Mr. Phillips said or did not say how the failures of defense counsel to file the Fourth Amendment motions to suppress and the failure of counsel to advise Mr. Phillips of the viability

of such options, caused Mr. Phillips to enter into a plea agreement unknowingly and unintellegintly. Mr. Phillips believes that the misunderstanding on this point stems from his initial 2255 filing. A closer look at the addendum filed with the 2255 form does make this argument. Mr. Phillips will be the first to admit that it is not the most clear in making this connection, however the connection is non the less made. A more liberal reading would show this connection. Additionally, Mr. Phillips' reply to the governments response makes this same argument in very clear terms. (please see addendum, exhibits 1 and exhibits 2) This court has said that a denial of a COA shall be reversed if "shown by clear and convincing evidence that the factual determination was wrong." Tharpe V. Sellers, 138 S.Ct. 545, 546 - 547. (2018) Throughout the initial 2255 filing, the reply to the governments' response, the request for COA and the motion for reconsideration, Mr. Phillips has either directly said that Mr. Phillips' decision to enter a plea was unknowing due to counsel's failures, or indirectly referenced this concept. On Mr. Phillips' reply to the Government's response, this argument is made on pages 1,2,3,4,5,6,8 and 14. On Mr. Phillips' initial 2255 filing it is made on addendum pages 5,6,12,13 and 16. Mr. Phillips' 2255 filing also says directly why the 4rth amendment claims are being argued. It says on page 5, "In order to determine the likelihood of the argument being meritoreous, each motion will need to be examined." Mr. Phillips went on to say, "Any defense attorney should have explored the Fourth Amendment claims mentioned below

fully before recommending Mr. Phillips sign a plea agreement." These direct quotes from the initial 2255 filing (addendum) show that Mr. Phillips did in fact state that the failure to pursue the Fourth Amendment claims caused Mr. Phillips to enter into the plea unknowingly.

B. PRO-SE PETITIONERS ARE TO BE GIVEN A
LIBERAL READING OF MOTIONS

Mr. Phillips is a pro-se indigent petitioner with no formal legal training. When Mr. Phillips filed his 28U.S.C.2255 motion, he wrote to the best of his limited ability what the issue was. Mr. Phillips will readily admit that his filing was not a stellar example of clarity regarding his argument. If Mr. Phillips was allowed to submit this motion again, it would be very clear as to his argument, however this is not an option and we are left with what was submitted. Mr. Phillips tried to show how the failures of his attorney prior to pleading guilty led him to pleading guilty, and had defense counsel acted in accordance with the Sixth Amendment, Mr. Phillips would have insisted on a trial. The District Court and now the Circuit Court are overlooking this argument, that was clarified in Mr. Phillips' Reply to the Government's response. The District Court as well as the Circuit Court seem only to be looking at the initial 2255 filing (form only). In the addendum to that form, it says, "Had counsel filed these motions and the evidence was suppressed, Mr. Phillips would not have signed a plea." "Had motions been filed and proven to be meritorious, Phillips' evidence would have been suppressed and no plea would have been

signed." Page 12 states "Mr. Phillips would not have signed a plea agreement." Page 13 states " no plea would have been signed." Page 15 says "Mr. Phillips would not have signed a plea agreement." Page 16 says "and no plea would have been signed." Additionally, in the reply to the Governments response make this argument in a very direct way. This argument was made on pages 1,2,3,4,5,6,8 and 14. Mr. Phillips tried to show how the failures of counsel to subject the evidence to any yet alone meaningful advisarial testing, led to his decision to plead guilty. He was also of the opinion that he must argue the Fourth Amendment claims. This understanding was based on Eleventh Circuit opinions. This Court has ruled in Haines V. Kerner, 404 U.S. 519, that a pro-se indigent prisoner is to be granted a liberal reading of his motions, because he is not a trained attorney. Mr. Phillips knows that his initial filing is not the clearest on this connection, but he has consistently tried to show this connection throughout these proceedings, with what seems like his words falling on deaf ears. Although it may take a liberal reading of the motions to connect the dots of this argument, it is only a small step to connect them. The unrelenting failure of defense counsel at every stage from the start to the plea, at which time she left the practice of law, all had an affect on the decision to enter a plea. Had counsel done what was required by the sixth amendment, Mr. Phillips would not have entered a plea.

C. COA MUST BE GRANTED PRIOR TO
RULING ON THE MERITS OR FACTS.

This court has said, "The COA inquiry is not coextensive with a merits analysis. At the COA stage the only question is whether the applicant has shown that jurists of reason could disagree with the District Courts resolution of his constitutional claims, or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. This threshold question should be decided without full consideration of the factual or legal basis adduced in support of the claim. When a court of appeals sidesteps the COA process by first deciding the merits of an appeal and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." Buck V. Davis, 137 S. Ct. 759, 773-775 (2017). In this instant case the appeals court decided incorrectly that Mr. Phillips had not stated why his plea was entered into unknowingly or unintelligently. This is a mixed question of fact and law, which is supposed to be resolved *de novo*. As stated in this writ, Mr. Phillips did argue this fact, and jurist of reason could debate whether or not Mr. Phillips did in fact make this argument..

D. ANTECEDENT CONSTITUTIONAL CLAIMS CAN BE
ARGUED TO SHOW THE TOTALITY OF
FAILURE OF DEFENSE COUNSEL, RESULTING
IN CONSTRUCTIVE DENIAL OF COUNSEL AT THE
PLEA STAGE OF THE PROCEEDINGS,
RESULTING IN PETITIONER ENTERING THE PLEA
UNKNOWNING AND UNINTELLIGENTLY.

All that the defense counsel does or does not do, contribute

to the decision that Mr. Phillips made to enter a plea agreement. By defense counsel doing nothing, by failing to subject the prosecutions case to any, yet alone meaningful adversarial testing, Mr. Phillips was constructively denied counsel at a critical stage of the proceedings. The lack of motions to suppress, and the totality of the lack of defense, caused Mr. Phillips to enter into a plea unknowingly and unintelligently. According to U.S. V. Cronic, there is a presumption of prejudice when this happens. United States V. Cronic, 466 U.S. 648, 658-59. In cases like this instant case, where a defendant "Faults his lawyer for failing to pursue a motion to suppress prior to entering a plea, both the deficient performance and prejudice prongs of Strickland turn on the viability of the motion to suppress. This is because a lawyer's performance only falls outside the range of competence demanded of counsel if he did not pursue a motion to suppress that would have affected the outcome of the case had the defendant rejected the plea and proceeded to trial." Arvelo V. Sec'y Fla Dep't of Cor. 788 F.3d 1345, 1348 (11th Cir. 2015) Citing Premo V. Moore, 562 U.S. 115, 124 (2011). This 11th circuit opinion is the reason for arguing the Fourth Amendment claims, and is founded in case law of the eleventh circuit as well as this court. This language was used in Mr. Phillips' reply to the governments response page 4. Page 3 through 6 of the reply outline the ineffective assistance of counsel argument as presented to the district court in the reply to the Government. This argument was totally ignored by both the district court and the circuit court. More emphasis was

placed on showing the Fourth Amendment claims in order to show the totality of the failure of counsel. However, the primary argument itself is, that due to counsels numerous errors, the totallity of the information known to mr. Phillips, the facts and the law was not fully understood at the time of the plea. Had counsel acted as constitutionally mandated, and filed the motions to suppress, and discussed the viability of these motions with Mr. Phillips, Mr. Phillips would have insisted on a trial and never signed a plea. This is the underlying argument. The Antecedent constitutional claims can be argued as they relate to the knowing and intelligent nature of the decision to enter a plea. Mr. Phillips was not informed at all of any of these viable options due to defense counsels' legal abandonment. The act of arguing these antecedent constitutional claims go to show the totality of the failure of defense counsel as it relates to the advice and decision to enter a plea. Because, "The plea cannot be truly voluntary unless the defendant possesses an understanding of the law in relationship to the facts." United States V. Broce, 488 U.S. 563 (1989). Mr. Phillips argued the antecedent constitutional claims to clearly show the constructive denial of counsel prior to entering a plea, which cummulatively led to a lack of information to all possible options. This led Mr. Phillips to enter into a plea unknowingly and unintelligently.

SUMMARY

This court has said "illegitimate and unconstitutional practices can get their footing in that way, namely, by silent

approaches and slight deviations from legal modes of procedure. This can only be obviated by adhearing to the rule that constitutional provision for the security of persons and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen and against any stealthy encroachments there on" Boyd V. United States, 116 U.S. 616

The sixth Amendment guarantees representation to criminal defendants. When a defendant like Mr. Phillips is constructively denied counsel due to a total lack of adversarial testing of the prosecutions case, the defense counsel ceases to be an allie and becomes an adversary. In this instant case, Mr. Phillips is arguing that this legal abandonment by defense counsel caused him to enter a plea agreement unknowingly and unintelligently. The district court and the circuit court have completely disregarded this argument. By disregarding this argument the courts seem to be acquiescent to the denial of this constitutional right that should be afforded to Mr. Phillips. Mr. Phillips respectfully requests this court to resolve the descrepancy between what the Supreme court has already decided and the judgement and order of the eleventh circuit in this case by granting this writ, vacating the order and remanding the case back for further proceedings.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this court grant their petition for a writ of certiorari, vacate the denial of the COA and remand back to the circuit court for further proceedings.

Respectfully Submitted,



Roy Phillips
Pro-se Petitioner

DATED : Nov. 1, 2021