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No. _____

21-6652

IN THE

SUPREME COURT OF THE UNITED STATES

SALATHEO H. FLUID — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SALATHEO H. FLUID
(Your Name)

Reg. No. 33814-058
FCI - Gilmer

(Address)

P.O. Box 6000
Glenville, WV 26351

(City, State, Zip Code)

N/A

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

WHETHER THE LOWER COURTS ABUSED THEIR RESPECTIVE DISCRETION BY DISMISSING PETITIONER'S MOTION FOR A NEW TRIAL (Fed.R.Crim.P. 33(b)), BASED ON A MOTION TO DISMISS THE SAME FILED BY AN ATTORNEY WHO WAS NOT REPRESENTING THE PETITIONER/DEFENDANT BEFORE THE DISTRICT COURT ON THE MOTION FOR A NEW TRIAL?

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:

RELATED CASES

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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 "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☒ is unpublished.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 _____ 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 August 31, 2021

☐ 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: _____, 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. § 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

Rule 33(b), of the Federal Rules of Criminal Procedure

The Due Process Clause of the Fifth Amendment

STATEMENT OF THE CASE

Within three years of an entry of a judgment of conviction and sentence, the petitioner - Salatheo H. Fluid, filed a "pro se" Rule 33(b) motion for a new trial, under the Federal Rules of Criminal Procedure. The motion was premised on his discovery that the officers and agents falsely testified about having entered a private residence with a valid search warrant. The petitioner was asleep in one of the bedrooms when officers forced their way into the residence and entered the bedroom where the petitioner was asleep. When the petitioner requested an explanation for the officers unannounced entry, he was told that they were executing a search warrant. The officers refused to display the alleged search warrant to the petitioner when he demanded to see it. It was the officers explanation that since the petitioner was not a permanent resident of the house, that he was not entitled to examine, or read, the search warrant. Subsequently, the officers proceeded to force the petitioner from his bed, search his clothing and a closet in the bedroom, finding a small quantity of suspected cocaine, and a firearm. Consequently, the petitioner was arrested and charged with a controlled substance offense and a firearm offense. Eventually, federal officials entered into the matter and obtained a federal indictment against the petitioner.

Following return of the federal indictment, Salatheo H. Fluid was arrested, arraigned, and counsel appointed for him.

Defense Counsel refused to file a motion to suppress because he said that the search warrant was valid, and that any suppression motion would be frivolous. Consequently, counsel advised the petitioner to enter a guilty plea, which occurred.

Following entry of the guilty plea, and sentencing, the petitioner discovered that the officers/agents falsely represented to the court, and defense counsel, that they entered the petitioner's residence with a valid search warrant. There was, in fact, no search warrant. Thus, this petitioner was falsely arrested, and indicted, based on the false testimony of officers/agents about having seized the contraband pursuant to execution of a valid search warrant. Furthermore, defense counsel falsely represented to the petitioner that there was a valid search warrant, thereby causing Salatheo H. Fluid to enter a guilty plea. Except for the perjurious statements and testimony by the officers/agents, all of the seized evidence would have been suppressed as fruits of an illegal search and seizure, thereby requiring dismissal of the indictment against the petitioner. Thus, no guilty plea would have been entered.

Upon discovering the non-existence of a search warrant, Salatheo H. Fluid filed a "pro se" motion for a new trial,

pursuant to Rule 33(b), of the Federal Rules of Criminal Procedure. However, the district court summarily dismissed the motion when appointed counsel, who was not representing Salatheo H. Fluid before the district court, filed a motion to strike from the record petitioner's "pro se" motion for a new trial. No notice was given to Salatheo H. Fluid about having filed the latter motion for dismissal. Thus, he was unable to oppose the motion. The district court granted the motion to strike. An appeal was taken from the dismissal once the petitioner discovered it had occurred. Regardless, the Fourth Circuit Court of Appeals affirmed the district court's order. There existed no basis for counsel to have filed the motion to strike petitioner's Rule 33(b) motion, except a conflict of interest. Obviously, counsel did not wish to have his incompetence exposed in falsely informing Salatheo H. Fluid that a search warrant had been issued that was valid. Counsel never took the time, or exerted any effort, to determine whether a search warrant existed. He simply assumed its existence, and falsely advised the petitioner that a search warrant existed.

REASONS FOR GRANTING THE PETITION

The writ should issue because the "fact that a defendant enters a plea of guilty and states at the time of the plea that the plea is being given freely and voluntarily does not necessarily preclude that defendant from subsequently challenging the voluntariness of the plea." Martin v. Kemp, 760 F.2d 1244, 1247 (11th Cir.1985). Thus, the petitioner's guilty plea to the counts was the direct result of the fraud perpetrated by the law enforcement officers who forced their way into his bedroom on the date in question without prior judicial approval. The unauthorized attempt by petitioner's appellate counsel to interfere with a challenge to that warrantless invasion constituted a manifest miscarriage of justice since, absent the unauthorized home invasion, a guilty plea would never have been entered.

Pursuant to Rule 33(b), a court may, upon the defendant's motion, "vacate any judgment and grant a new trial if the interest of justice so requires." Fed.R.Crim.P.33. "The ultimate test on a Rule 33 motion is whether letting guilty verdict stand would be a manifest injustice. The trial court must be satisfied that competent, satisfactory and sufficient evidence in the record supports the jury verdict." United States v. Ferguson, 246 F.3d 129, 134 (2nd Cir.2001). Instantly, petitioner's appellate counsel did not represent

him in the Rule 33 motion filed by the petitioner, on a "pro se" basis, in the district court. Consequently, it was a manifest miscarriage of justice for the district court to grant the appellate counsel's motion to strike petitioner's Rule 33 motion. Obviously, appellate counsel was seeking to protect himself from being found incompetent by not raising the law enforcement officers unauthorized entry through a motion to suppress, and in the appellate brief. That was his motive and reason for acting on a matter for which he lacked any permission or authorization. Consequently, the Court is requested to vacate the district court's order striking petitioner's Rule 33 motion, and remand this matter with directions for further proceedings in the district court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nathaniel H. Shind

Date: 11-1-21