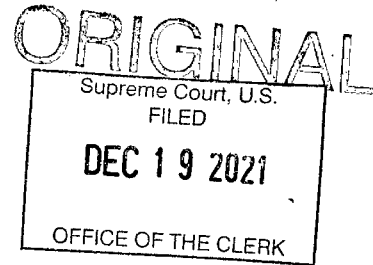


IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021

No. ~~21-6849~~

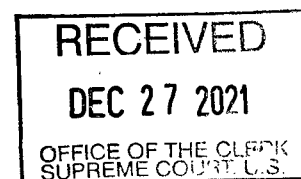
UNITED STATES OF AMERICA
Plaintiff
V.



EDWIN VAQUIZ
Defendant, Petitioner

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Edwin Vaquiz, Petitioner, Defendant
Federal Correctional Institution
HAZELTON
Inmate No. 75494-067
PO BOX 5000
Bruceton Mills, West Virginia 26525



QUESTION PRESENTED

Whether a Trial Attorney can prohibit or forbid, by coercion, (threat to withdraw representation from Defendant's criminal case), the Defendant to testify in his own defense during Trial, despite Trial Counsel's own opinion or agenda or strategy as to the consequence of Defendant testifying.

PARTIES

The Petitioner is Edwin Vazquez, a prisoner at Federal Correctional Institution Hazelton in West Virginia.

The Respondents are the United States of America represented by United States Attorney,

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DECISIONS BELOW

The decision of the United States Court of Appeals for the Third Circuit is (unreported). It is cited in the table at 2021 US Dist. LEXIS 11528, and a copy is attached as Appendix A to this Petition.

The Order of the United States District Court for the Middle District of Pennsylvania is (unreported). A copy is attached as Appendix B to this Petition.

JURISDICTION

The judgement of the United States Court of Appeals for the Third Circuit was entered on September 13, 2021. An Order denying a petition for rehearing was entered on November 9, 2021, and a copy of that Order is attached as Appendix C to this Petition. Jurisdiction is conferred by 28 U.S.C. Section 1254(i).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments V, VI, and XIV to the United States Constitution which provides:

Amendment 5:

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 offence 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 the due process of law; nor shall private property be taken for public use, without just compensation.

Amendment 6:

In all criminal prosecutions, the accused shall enjoy the right to a speedy 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 witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.

Amendment 14:

Section 1: [Citizens of the United States] 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 the Citizens of the United States: Nor shall any State deprive any person of life, liberty or property, without the due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

These Amendments are enforced by Title 18, Section 2255, United States Code.

STATEMENT OF THE CASE

On January 29, 2016, Edwin Vazquez, Petitioner was arrested during a traffic stop. The United States took over prosecution of the case. On October 25, 2016, Petitioner was indicted for two drug trafficking counts in violation of 21 U.S.C. § 841(a)(1).

Petitioner pled not guilty. Prior to trial, petitioner requested new Trial Counsel. Petitioner was awarded new Trial Counsel with a warning that Petitioner may not request new Trial Counsel again or may be left with no representation. At a minimum the Trial Counsel appointed to Petitioner will be his last and only representation, as far as Petitioner was understood.

Somewhere before Trial Petitioner asserted his desire to testify in his own defense to refute statements that Confidential Informant made, and to discredit Confidential Informant's credibility and expose a romantic involvement Confidential Informant had with the investigating officer.

Trial Counsel forbade Petitioner from testifying in his own defense threatening to withdraw as counselor.

During Trial, Trial Counsel asserted Petitioner's desire that his client (Petitioner) wishes to testify.

During Trial, Trial Counsel stated to the Court more than once that Petitioner will be forbidden to testify on his own behalf.

During Trial, Trial Counsel explicitly stated to the jury that if Petitioner testifies in his own defense, Trial Counsel will quit his representation of Petitioner.

During Trial, Court ordered a conference with Trial Counsel and Assistant United States Attorney to confirm that Petitioner wishes to testify. The Court specifically stated that Petitioner has a right to testify.

During Trial, Trial Counsel stated that Petitioner has to fire him first.

During Trial, Trial Counsel asserted to the Court that he will tell Petitioner what he will do, with respect to taking the stand.

During Trial, AUSA Van Fleet asserted that "we won't get to hear from Vazquez, so we won't know, your Honor" (Day 2 Colloquy Page 258; Lines 10-25 X Trial Transcripts).

The Court did not pause, at any time, to let Petitioner know that his right to testify shall not be infringed, and that his decision to testify, if he chooses, would not infringe or forfeit Petitioner's Right to Counsel.

Instead, the Court continued the proceedings, knowing that the Petitioner was under duress, believing that if he does testify, he will forfeit his right to counsel.

Petitioner was forced, then, by coercion, by threat of losing counsel, and by Trial Counsel asserting his will upon the Court to prevent Petitioner from testifying.

Petitioner stated he would not testify. (under this condition)
See Trial Transcripts (Day 1, Page 50, lines 13-17) (Day 2, Page 258, lines 10-25) (Day 3, Page(s) 162-163, lines 25, lines 1-2) (Day 3, Page 98, lines 6-25) (Day 3, Page 99, lines 1-6)

Petitioner was convicted. Petitioner filed his timely motion to Vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §2255

The district court erred, concluding that "regardless of whether counsel actually coerced Vaguirz into waiving his right to testify, Vaguirz suffered no resulting prejudice and, accordingly, his claim of ineffective assistance of counsel fails." See District Court's Decision, dated June 15, 2021 (Page 6).

The motion was denied.

Petitioner's Appeal to the Third Circuit Court of Appeals was denied.

Petition for hearing en banc was denied.

REASONS FOR GRANTING THE WRIT

It was clear, on record, which no court can deny that Trial Counsel implicitly stated that:

- 1) Petitioner wished to testify in his own defense
- 2) Trial Counsel forbade Petitioner to testify in his own defense
- 3) If the Petitioner testified then Trial Counsel will quit Petitioner's case.

It was also clear that the Court:

- 1) Understood that Petitioner wished to testify in his own defense¹
- 2) The Petitioner was being coerced, by threat of abandonment of representation not to testify.²
- 3) Paused proceedings to confirm Petitioner had the right to testify
- 4) In defiance of the United States Constitution, Trial Counsel was permitted to state he was forbidding Petitioner from testifying to the court and to the jury.

Petitioner, under duress, had no choice, not to testify. Petitioner answered Court's questions on his so-called choice to not testify.

Petitioner at this point, was under the impression he would forfeit his right to trial counsel. The prior warning from the Court that Petitioner could lose representation clearly prejudiced Petitioner's ability to assert his Constitutional Right to testify and face his accuser.

By the Court reminding Trial Counsel that Petitioner had the right to testify, the Court was placing the Constitution of the United States in irreparable harm, by allowing the proceeding to continue. The Court should have impeached Trial Counsel for impeding Petitioner's Constitutional Right to testify, and noticed Petitioner that the Court's prior threat to leave Petitioner without counsel was Unconstitutional and, if Petitioner wished to testify he could. The Petitioner would then, been able to testify without fear of losing his right to Trial Counsel.

¹ That right is guaranteed by the United States Constitution.

² The right to defense counsel is guaranteed by the United States Constitution

A. Conflicts with Cases from Other Courts

Whatever the "Strategic Plan" Trial Counsel had for forbidding Petitioner his right to testify, the Trial Counsel erred in placing Petitioner in a position where Petitioner was made to forfeit his Constitutional Right to testify or have Trial Counsel, or was made to believe he was losing his right. Even if Trial Counsel felt that Petitioner's own testimony would have damaged the case, he should not have interfered on Petitioner's right.

(The Criminal defendant has constitutional right to testify in his own behalf, which could not be conditioned on threat from trial judge to permit withdrawal of counsel and to force accused to represent himself if he chose to take stand to testify.) United States ex rel. Wilcox v. Johnson, 555 F.2d 115 (3d Cir. 1977).

(Defendants' due process rights were violated when court advised defendant that he could be precluded from testifying or could proceed pro se, although there was no confirmation that defendant intended to commit perjury since court impermissibly forced defendant to choose between his constitutional right to counsel and his constitutional right to testify). United States v. Scott, 909 F.2d 488 (11th Cir. 1990).

(Defendant has constitutional right to testify truthfully that may not be waived by trial counsel as matter of strategy; but defense attorney's refusal to allow defendant to perjure himself does not violate defendant's constitutional rights). United States v. Curtis, 742 F.2d 1070 (7th Cir. 1984), cert. denied, 475 U.S. 1064, 106 S.Ct. 1374, 89 L. Ed.2d 600 (1986).

(Defense counsel was constitutionally ineffective where, inter alia, he incorrectly advised defendant that all 3 of his prior convictions would have been admissible for purposes of impeachment if he were to testify, and where, had counsel correctly stated well established law regarding suppression of evidence of prior convictions, defendant would have had meaningful opportunity to decide whether to testify). Blackburn v. Foltz, 828 F.2d 1177 (6th Cir. 1987), cert. denied, 485 U.S. 970, 108 S.Ct. 1247, 99 L. Ed. 2d 445 (1988).

The Court, at Trial, failed to value Respondent's right to testify and face his accuser, regardless of the impact his own testimony would have made. The Court, in Respondent's Motion

to vacate, Set Aside, or Correct his sentence, pursuant to 28 U.S.C. §2255 decided that Respondent's own testimony would not have made an impact on the jury, or on the outcome of the proceedings without regard for Respondent's right to testify.

(Trial Court's improper refusal to permit defendant to testify in his own defense is structural error that is not amenable to harmless-error analysis and requires reversal without particularized prejudice inquiry.) State v. Riveta, 402 S.C. 225, 741 S.E. 2d 694 (S.C. 2013), reh'g denied, 2013 S.C. LEXIS 74 (S.C. Apr. 3, 2013).

(Evid. 401 and 403 on grounds of irrelevance and prejudice, as his testimony about killing would clearly have been relevant, and its potential prejudice to his case was not grounds to deny him his right under U.S. Constitution Amendment V and VI to testify in his defense. State v. Rivera, 402 S.C. 225, 741 S.E. 2d 694 (S.C. 2013), reh'g denied, 2013 S.C. LEXIS 74 (S.C. Apr. 3, 2013).

(Criminal defendants have constitutional right to testify, which is implicit in Fifth and Fourteenth Amendment's due process guarantee of fair adversarial process and in Sixth Amendment's guarantee of right to meet and confront accusations, to be present, and to present evidence and witnesses on one's behalf). Whiteside v. Scorr, 744 F.2d 1323 (8th Cir. 1984), reh'g denied, 750 F.2d 713 (8th Cir. 1984) rev'd, 475 U.S. 157, 106 S.Ct. 988, 89 L. Ed. 2d 123 (1986).

(Although United States Constitution does not specifically guaranty criminal defendant right to testify in his own defense, it is clear that this right is constitutional in dimension; right to testify in one's own defense is personal right which counsel does not have ultimate authority to waive; right to testify is such basic and personal right that its infraction should not be treated as harmless error.) State v. Rosillo, 281 N.W. 2d 877 (Minn. 1979).

B. Importance of the Question Presented

No Court, Jury, or Trial Counsel has any right to deny the accused his right to testify by means of coercion, threat of abandonment. No Court should permit the proceedings to continue when the Court becomes aware that Trial Counsel is coercing a Defendant not to testify, by means of threat to abandon representation.

No Court should leave a Defendant to believe he will be left without any counsel if he does not submit to Trial Counsel's demand to not testify.

Just because the Court is able to obtain Defendant's statement, on record, that Defendant is not going to testify, knowing the Defendant is under duress, knowing the matter has not been settled with the Defendant, without fear of losing his representation, his right to Trial Counsel, the Court is impeding the Defendant's right of due process under the Fifth Amendment, his right to face his accusers under the Sixth Amendment, and the right of the Defendant under the fourteenth Amendment, the Court not to "abridge" or "deny" Defendant [Petitioner] Constitutional privilege or due process of law.

To permit a Court to allow Trial Counsel to knowingly coerce Defendant not to testify on his own behalf, knowing that the Court itself already put the Defendant [Petitioner] in a position that Petitioner would lose his right to Counsel gravely jeopardizes the fundamental value of a fair judicial process under the fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

This the 14 day of 12, 2021

Respectfully submitted,

Edwin Vaguir

No. 75494-067

Federal Correctional Institution Hazelton

PO Box 5000

Bruceston Mills WV 26525

CERTIFICATE OF SERVICE

Edwin Vaguir hereby declares under penalty of perjury Pursuant to 28 U.S.C. Section 17416 that a true and correct copy of the foregoing Petition for Writ of Certiorari was placed in the prison inmate mail system postage prepaid U.S.P.S. First Class to the following on This the 14 day of 12, 2021:

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

and to

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave., N.W.
Washington D.C. 20530

Edwin Vaguir

No. 75494-067