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No. _____

ORIGINAL

Supreme Court, U.S.
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In The
SUPREME COURT OF THE UNITED STATES

Vorarut Vorasiangsuk,

Petitioner,

V.

United States of America,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Vorarut Vorasiangsuk

Pro Se Prisoner

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QUESTIONS PRESENTED

Whether the Eleventh Circuit Court of Appeals abused its discretion and violated Mr. Vorasiangsuk's due process right when it misconstrued the second ground of his Motion for Rehearing as a Motion to Supplement as well as a Motion to exceed the 15 Pages Limit per FRAP Rule, and then denied it without reviewing the factual contents or allowed Mr. Vorasiangsuk, a Pro Se prisoner, the opportunity to correct the formatting deficiency.

Whether the Appellate Court erred and violated Mr. Vorasiangsuk's due process right when it failed to address and denied his Motion for an Extension of Time, Motion for Reinstatement, and Amended Motion for Rehearing despite the fact that these motions were all timely filed under the Prison Mailbox Rule.

Whether the Appellate Court erred and performed at an unreasonable standard when it affirmed the District Court's decision despite the evidence of clear and obvious errors as pointed out in Mr. Vorasiangsuk's Motion for Rehearing.

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PETITION FOR A WRIT OF CERTIORARI

The petitioner, Vorarut Vorasiangsuk, humbly and respectfully requests that this court grant him a writ of certiorari to review the judgment of the U.S. Eleventh Circuit Court of Appeals.

OPINION BELOW

The opinion of the Appellate Court for the case United States v. Vorarut Vorasiangsuk, 2021 U.S. App. lexis 23640 (11th Cir. Fla, Aug 10, 2021) is reported at APPX A .

The opinion of the District Court for the Motion to Suppress Hearing is reported at APPX B . Its opinion for the Sentencing Hearing is reported at APPX C .

JURISDICTION

Judgment of the Appellate Court was entered on August 10, 2021. The Motion for Rehearing was denied on October 8, 2021. The Motion for Reinstatement and Amended Motion for Rehearing was denied on November 2, 2021. On November 3, 2021, Justice Thomas granted Mr. Vorasiangsuk's Motion for an Extension of Time to have up until February 7, 2022, to file his petition for a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment of the United States Constitution provides that "No person shall be deprived of life, liberty, or property without due process of law." The Prison Mailbox Rule provides that "A Pro Se prisoner's court filing is deemed filed the date it is delivered to prison authorities for mailing."

PARTIES TO THE PROCEEDING

The petitioner in this case is Mr. Vorarut Vorasiangsuk, a Pro Se prisoner. The respondent is the United States of America.

RELATED PROCEEDINGS

In U.S. District Court for the Middle District of Florida:
United States v. Vorarut Vorasiangsuk, No. 6:19-cr-000024-CEM-EJK.

In the U.S. Eleventh Circuit Court of Appeals:
United States v. Vorarut Vorasiangsuk, No. 19-13647

CORPORATE DISCLOSURE STATEMENT

Mr. Vorasiangsuk's case does not involve any corporation or limited liability company. There is no parent company or any subsidiary involvement.

STATEMENT OF THE CASE

On August 10, 2021, the Eleventh Circuit Court of Appeals denied Mr. Vorasiangsuk's appeal.

On August 20, 2021, Mr. Vorasiangsuk was notified via legal mail of the court's decision.

On August 22, 2021, Mr. Vorasiangsuk filed a Motion for an Extension of Time asking the court to grant him until September 15, 2021 to prepare and file his Motion for Rehearing citing the delay in the prison mailing system and the lack of access to the amenities to do legal work due to COVID-19 quarantine lockdown at the prison.

On August 31, 2021, because Mr. Vorasiangsuk is an inmate he does not have the ability to check his docket to see if his Motion for an Extension of Time is granted. With an abundance of cautions he sent in the first part of his Motion for Rehearing - the first ground which addresses the issue of the reasonableness of his sentence. (Appx D) In the letter he sent along with his motion, Mr. Vorasiangsuk explained to the court why he will be sending his motion in two parts and that he is intended to file the second part which addresses his second ground - the denial of his Motion to Suppress.

On September 5, 2021, Mr. Vorasiangsuk received a notice from the court notifying him that his extension was granted.

On September 15, 2021, Mr. Vorasiangsuk completed and sent in his "Continuance Motion for Rehearing" for the court to consider. (Appx E) In his letter which he sent along with the motion, Mr. Vorasiangsuk explained to the court that this filing is the second

part of his Motion for Rehearing. He asked the clerk to please put the two parts together, because they are parts of the same Motion for Rehearing which seeks to address the errors of the District Court that were overlooked in the previous appellate reviewing process. Neither one of them is a supplement of another; nor each one is an extension of each other.

On October 12, 2021, Mr. Vorasiangsuk received a notice from the Appellate Court notifying him that his "Continuance Motion for Rehearing" that he filed on September 15, 2021, was being construed by the court as a Motion to Supplement as well as a Motion to Exceed the 15 Pages Limit per FRAP Rule, and then denied it under those interpretation. The denial took place on October 7, 2021. (Appx F) Once Mr. Vorasiangsuk became aware of the development he immediately filed a Motion for an Extension of Time asking the court to stay the case and grant him two weeks extension so that he could make the necessary correction on the formatting deficiency. In his motion Mr. Vorasiangsuk explained to the court again about the hardship of working on his motion under the COVID-19 quarantine lockdown condition at the prison. He also reiterated to the court that those two filings are parts of the same Motion for Rehearing. Mr. Vorasiangsuk told the court that because he did not have an access to a typewriter, he had to hand-wrote the motion, and that is the main reason why his filings are 30 pages long altogether.

On October 18, 2021, Mr. Vorasiangsuk received a notice from the Appellate Court notifying him that his Motion for Rehearing was denied on October 8, 2021. (Appx G) On the same day Mr. Vorasiangsuk filed his Motion for Reinstatement and Amended Motion for Rehearing. He was able to find someone who have the access to a

typewriter to type for him. His Amended Motion for Rehearing which was previously 30 pages long ended up being 14 pages long when typed.

On October 23, 2021, Mr. Vorasiangsuk filed a Motion for an Extension of Time with the U.S. Supreme Court.

On November 2, 2021, the Appellate Court sent Mr. Vorasiangsuk a letter notifying him that "NO ACTION WILL BE TAKEN" in regard to his motions filed on October 18, 2021, because the court had already issued its mandate on October 19, 2021. (Appx H)

On November 3, 2021, Mr. Vorasiangsuk received a notice from the U.S. Supreme Court notifying him that his Motion for an Extension of Time was granted and that he have until February 7, 2022, to file his petition for a writ of certiorari.

REASONS TO GRANT THE PETITION

A). The Appellate Court abused its discretion and violated Mr. Vorasiangsuk's constitutional right when it misconstrued the second ground of his Motion for Rehearing as a Motion to Supplement as well as a Motion to Exceed the 15 Pages Limit per FRAP Rule, and then denied it without considering the factual contents or giving Mr. Vorasiangsuk an opportunity to amend the correctable formatting error.

"The fundamental requirement of the due process is the opportunity to be heard upon such notice and proceedings as are adequate to safeguard rights for which constitutional protection is invoked." Anderson Nat'l Bank v. Lockett, 321 U.S. 233, 64 S.Ct. 599, 88 L.Ed. 692 (1994). In this case Mr. Vorasiangsuk, a Pro Se prisoner, was trying to address the Appellate Court for the first time from his own perspective to point out the errors which occurred during the District Court proceedings. Instead of allowing Mr. Vorasiangsuk to raise those facts, the Appellate Court misconstrued his motion despite the clear explanation of his motion's intention and the factual contents. And if the heart of the issue is truly the formatting error, it would be in the best interest of justice for the Appellate Court to notify Mr. Vorasiangsuk of his filing deficiency and allow him to make the necessary correction so that the court can make its decision based on the factual merits. "Clerical error should not prevent litigants from presenting meritorious defense." Gidden v Lawson, 2016 U.S. App. Lexis 164675 (11th Cir. Ga., Nov 30, 2016). By denying Mr. Vorasiangsuk's motion based on the formatting error without giving

him a chance to respond and make the necessary correction despite him telling the court that he is a Pro Se prisoner with no prior knowledge of the laws, speaks english as a second language, did not have access to the amentities to efficiently do the legal work due the COVID-19 quarantine lockdown, the Appellate Court abused its discretion and violated Mr. Vorasiangsuk's due process right. "Due process requires fairness, integrity, and honor in operation of the criminal justice system, and in its treatment of citizen's cardinal constitutional protection." Moran v. Burbine, 475 U.S. 412, 467 L.Ed. 2d. 410, 106 S.Ct. 1135 (1986). "Rule that due process does not require opportunity to be heard before judgment if defenses may be presented upon appeal assumes that appellate review affords opportunity to present all available defenses, including lack of proper notice to justify or order complained of." Consolidated Edison Co. v. NLRB, 305 U.S. 197, 59 S.Ct. 206, 83 L.Ed. 126, 3 L.R.R.M. (BNA) 645, 1 Lab. Cas, (CCH) ¶17038 (1938). "In order to show excusable neglect, appelllant must demonstrate unique or extraordinary circumstances." Gochis v. Allstates ins. Co., 16 F. 3d. 12, 28 Fed. R. Serv. 3d (Callaghan) 297 (1st Cir. 1994). Mr. Vorasiangsuk did explain in details to the court the reasons why there are two parts to his motion, why it is over 30 pages long, and why it should be reinstated. Under his circumstances the Appellate Court should not construe his motion for the sake of denying it for incorrect formatting. Under this circumstance the Appellate Court should have notified him of the formatting error and allowed him to make the correction so that the merit of the contents should be the deciding factor and not its formatting.

B). Mr. Vorasiangsuk's Motion for an Extension of Time, Motion for Reinstatement, and Amended Motion for Rehearing should have been considered by the Appellate Court under the Prison Mailbox Rule.

As soon as Mr. Vorasiangsuk became aware that the Appellate Court denied the second ground of his Motion for Rehearing, he filed a Motion for an Extension of Time asking the court to stay the case and grant him two more weeks so that he can correct the formatting deficiency. The motion was filed on October 12, 2021. (APPX I) On October 18, 2021, when Mr. Vorasiangsuk learned that the Appellate Court denied his Motion for Rehearing (the 1st ground) he filed a Motion for Reinstatement and Amended Motion for Rehearing on the same day he received the notice. (APPX J,J2) On November 2, 2021, the Appellate Court notified him that "NO ACTION WILL BE TAKEN" in regard to all recent filings, because the court had already made its decision and issued its mandate on October 19, 2021. However, Mr. Vorasiangsuk's Motion for an Extension of Time was filed on October 12, 2021, and his Motion for Reinstatement and Amended Motion for Rehearing was filed on October 18, 2021. Per Prison Mailbox Rule all three filing should have been considered by the court as they are timely filed. "A Pro Se prisoner's court filing is deemed filed on the date it is delivered to prison authority for mailing." United States v. Glover, 686 F.3d 1203, 1205 (11th Cir. 2012). And even if the Appellate Court had already issued its judgment, the court still has the jurisdiction to grant the reinstatement. "Due process requires that there be opportunity to present every available defense, but it need not be before entry

of judgment." George Moore Ice Cream Co. v. Rose, 289 U.S. 373, 53 S.Ct. 620, 77 L.Ed. 1265, 12 A.F.T.R. (P-H) 54 (1933). By overlooking the Prison Mailbox Rule, the Appellate Court failed to address Mr. Vorasiangsuk's timely motions, incorrectly affirmed his case, and violated the constitutional due process right.

C). When the Appellate Court affirmed the District Court's decision, it is supposed to conduct its own review of the evidence and fact findings of the District Court for clear errors. "When admission of evidence is challenged on appeal, duty of the appellate court is to assess its relevancy and probative value." United States v. Little, 562 F.2d. 578 (8th Cir. 1977). "Although an appellate court can review only final decision, not passing comments of the court, it is the appellate court's duty to correct statement by a trial court that were erroneous on a matter of law." Freeman v. Hammond Co., 758 F.2d 665 (Fed Cir. 1984). "When a court abuses its discretion, it is the appellate court's duty to correct the error." United States v. Friend, U.S. App Lexis 19158 (4th Cir. 2021). Here when the Appellate Court denied Mr. Vorasiangsuk's Motion for Rehearing it shows that the Appellate Court agreed with the District Court's ruling even though the decision goes against the evidence and facts on the record. The Appellate Court failed to perform at a reasonable standard when it failed to notice the clear and obvious errors that Mr. Vorasiangsuk pointed out in his motion. By affirming the District Court's decision the Appellate Court erred and violated Mr. Vorasiangsuk's due process right.

Had the Appellate Court reviewed the errors that Mr.

Vorasiangsuk pointed out, it would find that:

i. The District Court sentenced Mr. Vorasiangsuk -based on false and unreliable information provided by the prosecutor. The objection to the statement was made by the defendant and noticed by the court, but the court never went back and tried to verify the context of the contested statement. Instead, the District Court adopted and used the prosecutor's statement in its reason for the sentence. The following statement was made by the District Court to explain its rationale for the sentence:

"So you have a big problem with childpornography and as Ms. Chang (the prosecutor) indicated, you even told law enforcement officers that you couldn't guarantee that you wouldn't go back to it given the opportunity, and if you stack on top of that fact you were working as a therapist with children, that's horrifying. Children that can't speak in some case, that can't describe what could have been done to them." - Sentencing transcript page 40 line 20-25

After the court finished the statement and announced its sentence, Mr. Vorasiangsuk's counsel immediately objected to the statement made by the prosecutor in which the court relied its decision upon. The following statements were made by the prosecutor when she rebuked the objection:

"I will noted on page 23 of the transcript of the defendant's interview, which was put before the court in previous hearing, so it is in evidence."

Question: "Have you tried to stop over these 15 years?"

Defendant: "Yes, several times."

Question: "And what happened when you tried to stop?"

Defendant: "It's hard. I can't do it."

Question: "What do you think the longest you have been able to stop is?"

Defendant: "Religiously there was three months that I stopped."

Question: "Okay."

Defendant: "And that is the only time longest."

"So I cannot find the passage...so I would note that in response."

- Sentencing transcript page 52 line 2-15

There is a big different between "It's hard. I can't do it" and " You even told law enforcement officers that you couldn't guarantee that you wouldn't go back to it given the opportunity." The two statements clearly have different meaning. One stated an inability while the other stated a refusal. There is no other statement on the interview transcript that came close to what the prosecutor and the court stated. Mr. Vorasiangsuk did not understand many of the questions as he was being affected by the weather. He was forced to stand in 40s degree cold weather for at least an hour with barely any clothes on except for a t-shirt, boxer gym shorts, and a pair of sandals. (APPX K) There were several moments where his answer showed signs of confusion. The agent did not pay any attention to his condition, because they were too focused on getting him to give them the answers that they wanted. Mr. Vorasiangsuk was made to stand in the 40s degree weather while being questioned, and the agents told the court that it was voluntary - just like in their claim where a simple "can't" became a twisted "won't".

ii. When the court stated, "the fact that Mr. Vorasiangsuk was working with children was horrifying...children who can't speak in some case, that can't describe what could have been done to them." - its conclusion was completely and factually baseless. Mr. Vorasiangsuk was a respiratory therapist working in a children's hospital at the time of his arrest, except he did not work with children. Although through his training he is capable of working with patients of all ages, Mr. Vorasiangsuk never work with children. For as long as he has been working as a respiratory therapist, Mr. Vorasiangsuk only worked in Labor and Delivery and Newborn ICU. His job title was NICU clinical specialist. Mr. Vorasiangsuk's job was to assist doctors in high-risk deliveries and stabilize the premature babies who most of the time were small enough to fit in the palms of his hands. Also as stated by Mr. Gerry DeDios, his former Lead, who came to testify in support of Mr. Vorasiangsuk's character -Mr. Vorasiangsuk never had any complaint filed against him officially or unofficially by anyone. On the contrary he was well-liked and respected according to the testimony. The fact that the court stated that he worked with children and even suggested that he could have abused them is completely baseless, prejudicial, and against the facts of the case. The District Court's own statement showed its own prejudice and a grand misconception which resulted in violation of Mr. Vorasiangsuk's constitutional right.

Based on the opinion issued by the Appellate Court, these two errors were not yet reviewed. "It is the district court's duty to ensure that the government carries its burden by presenting

reliable and specific evidence." United States v. Lawrence, 47 F.3d 1559 (11th Cir. 1995). "The evidence must have sufficient indicia of reliability, and the defendant must have an opportunity to rebut the evidence." United States v. Ghertler, 605 F.3d 1256, 1269 (11th Cir. 2010). "Nevertheless while sentencing proceedings are not required to be as exacting as those as trial for due process, the defendant's primary due process interest is the right not to be sentenced on basis on invalid premises or inaccurate information." United States v. Plasencia, 886 F.3d 11336, 1343 (11th Cir. 2018), Cert denied, 139 S.Ct. 837, 202 L.Ed. 2d 608 (2019). Here in this case the Appellate Court failed to perform its duty and allowed the District Court to sentence Mr. Vorasiangsuk based on false and unreliable facts when it affirmed the District Court's decision. Mr. Vorasiangsuk's sentence was prejudicial and his right was violated.

D). On the second ground of his Motion for Rehearing which was misconstrued and denied due to the formatting error, Mr. Vorasiangsuk pointed out proofs to the Appellate Court that the FBI violated his due process right when they questioned him without giving a proper warning or notifying him of his Miranda right. The FBI admitted that the Miranda right was not given, because they claimed that Mr. Vorasiangsuk was not under their custody prior to questioning. However, had the court reviewed the facts on the second ground of Mr. Vorasiangsuk's motion it would find that:

i. One of the FBI agent admitted in court that Mr. Vorasiangsuk was infact under their custody prior to the

questioning. At the Motion to Suppress hearing the agent testified:

Question: "And when you say they were escorted, why do you need someone to escort them down the stairs?"

Agent: "Well, just for CUSTODY, to make sure everybody is fine, doesn't fall. YOU ARE ESSENTIALLY IN OUR CUSTODY...you know, WE HAVE CONTROL OF THE SCENE. We don't want anybody to fall and us be responsible. So we pass them onto the agent downstairs."

- Suppression Hearing transcript page 59 line 8-19

ii. The District Court's failure in its fact findings resulted in an error in its decision to deny Mr. Vorasiangsuk's Motion to Suppress. When the District Court denied the motion it stated: "In his testimony, defendant claimed that within minutes of contact with the officers he asked to go inside to avoid the cold 15-20 times, and that he asked for an attorney twice. However, despite this insistence and his purportedly chattering teeth, the defendant never made any of those requests during the approximately 40 minutes recorded interview." - Suppression Hearing transcript page 110 line 6-12

However on the actual audio recording, one of the very first things Mr. Vorasiangsuk stated was asking to leave to go to warmer place. On the transcript his statement was transcribed as "unintelligible", but if anyone were to play the audio recording he or she would be able to hear it clearly that Mr. Vorasiangsuk did indeed asked to leave but was denied the permission. There were over 40+ "unintelligible" on the interview transcript. (APPX L.)

iii. The FBI agent committed perjury when describing the

circumstances of Mr. Vorasiangsuk's interrogation to the court. As stated in the second ground of his Motion for Rehearing, when the agent told the court that Mr. Vorasiangsuk was free to leave at anytime and that the door was kept opened for the entire duration of the questioning, the agent lied to the court.

Question: "Was the door opened or closed during your interview?"

Agent: "It was opened the entire time"

- Suppression Hearing transcript page 13 line 9-13

On the audio recording the sound of the door being opened and closed can be heard clearly through out the questioning. The exact interval of those sounds are located at the following minutes: 4:47, 7:20, 25:03, 28:19, 32:59, 37:00 and 39:53. The door was infact closed the entire time and Mr. Vorasiangsuk was never free to leave as the agent claimed. To reaffirm this fact, this is what the agent stated in his own words: (APPX M)

"So for the lion's share of the interview, there were three of us in the garage. We stood in kind of a three man circle." And Mr. Vorasiangsuk was the person in the middle of that circle. He could not have walked out freely like the agent claimed. - Suppression Hearing transcript page 13 line 18-20.

iv. The FBI breached its own protocol when a taskforce agent recorded the interview on his personal cellphone despite having the FBI recording device available and without notifying the FBI lead agent prior to starting to record. The following is the FBI Lead Agent Joanna Bailey's testimony:

Agent Bailey: "So I walked over to the other residence, and outside the residence I met taskforce agent McElyea who

already started a little bit to record on his cellphone the conversation."

Trial transcript day page 224 line 2-5

And later,

Question: "They are supposed to be recorded on certain devices, right? You had one of those devices. You were there. You were present before the recording started, right?"

Agent Bailey: "Yes...Before the recording started, no. THE RECORDING ALREADY STARTED WHEN I WALKED INTO THE ROOM."

Question: "Well, when you walked into the room, with your training, don't you stop and think, well, we need to make sure that we are doing this the right way?"

Agent Bailey: "I don't know Mr. McElyea...what his...he works for Seminole County...so his policy is completely different than ours I AM SURE. I DON'T KNOW WHAT HIS POLICY IS AND HE WAS THE ONE THAT GAVE ME HIS PHONE. And it was a noncustodial interview, so I wasn't really worried about the device at the times."

Question: "And of course you told him that, this is a noncustodial interview right?"

Agent Bailey: "We told him that...I wasn't there for the beginning of the interview."

Question: "So as you sit here today, you can't tell this jury whether or not he was told, 'You don't have to talk to us'?"

Agent Bailey: "I do not know. I was not in the room during that period of time."

Question: "Will you please tell the jury where in this (interview) transcript it shows that he was told, 'This is a noncustodial interview'?"

Agent Bailey: "It is not in the transcript, but based on working

with the agents that I work with everyday, that's the way that they conduct interview.

At the beginning of their interview they tell the individual that they're speaking to that they are free to leave and that they can...yeah, that they are free to leave. That's how they start the interview every time.

Question: "So in other words, you always follow procedure?"

Agent Bailey: "Yes."

Question: "Even though you didn't follow procedure with regard to the recording of the interview on a personal phone?"

Agent Bailey: "That was...that was Seminole County Sheriff's officer. They have a different procedure than we do. I THINK."

-Trail transcript page 258-259, line 11-25, 1-21

What is intriguing is the fact that Agent McElyea, the Seminole County Sheriff's officer who started the recording on his personal cellphone, had been working closely with the FBI for the past 10 years and he supposedly always follow the procedure and practice according to Agnet Rodney Hyre's testimony:

"Agent McElyea and I have been working together for about 10 years doing these interview...we do these all the time and it's just a part of the...it's part of the practice."

- Suppression Hearing transcript page 30 line 2-8

Except this time Agent McElyea clearly did not follow the procedure and jeopardized the operation. The statement was obtained through a breach of procedure; it should have been excluded from the beginning. As stated on the warrant, the court granted the FBI the authority to execute the search warrant and not the Seminole County

Sheriff. However, Agent McElyea should have known this through 10 years of working closely with the FBI. He knew the procedure, but chose not to follow it and thus causing the breach. And the Seminole County Sheriff also have no policy that allows a personal cellphone to be used by its officers in recording official statement either.

As mentioned in the trial transcript, there is nowhere on the record of the interview that showed that any agents gave Mr. Vorasiangsuk any warning as a part of the procedure. The assumption that this interview was noncustodial was based on the lead agent's personal belief of how things should be and not what actually happened. In this case what happened was that the agents did not follow the procedure and violated Mr. Vorasiangsuk's due process.

When the audio recording of the statement started to play it begins with Agent Rodney Hyre introducing and updating Agent Joanna Bailey. The recording did not start with any personal introduction or any warning being given. What happened to the audio recording of the part that started prior to the arrival of the FBI Lead Agent Joanna Bailey? She stated that Agent McElyea started the recording prior to her arrival, but that part of the record is no where to be found. Had the recording been done through an FBI recording device, everything on the record would be complete and secure from being altered. But because the statement was recorded via a personal cellphone, no one can explained why the beginning part where Mr. Vorasiangsuk asked for a lawyer or the part that he adamantly denied any involvement with the crime that took place in 2018 did not show up on the record. The only explanation that was offered

and conceded is that the FBI simply did not record the conversation from the beginning. Neither the District Court nor the Appellate Court have reviewed this information as reflected in their opinion. Mr. Vorasiangsuk's due process was clearly violated and his sentence and conviction was based on false information.

v. The FBI agent misled the court about the circumstances of Mr. Vorasiangsuk's interrogation. As stated in the second ground of his Motion for Rehearing, Mr. Vorasiangsuk was isolated from the rest of his family and placed inside a separate car garage forcing him to be exposed to 40s degree cold weather with just a t-shirt, boxer gym shorts, and a pair of sandals on. (Appx N) The District Court based many of its decisions on the false information provided by the agent, and the Appellate Court failed to review them. "When a claim is raised in criminal case that the behavior of law enforcement officials during the noncustodial interrogation of accused was such as to overbear his will to resist and bring about the confession not freely self-determined, it is the duty of the appellate court, including the U.S. Supreme Court, to examine entire record and make independent determination of ultimate issue of voluntariness; proof that some kind of warning as to accused's constitutional rights was given or that none was given is relevant evidence only on issue whether questioning was in fact coercive." Beckwith v. United States, 425 U.S. 341, 96 S.Ct. 1612, 46 L.Ed. 2d 1, 37 A.F.T.R. 2d (RIA) 1232 (1976). Had the Appellate Court not denied the second ground of his Motion for Rehearing, it would be able to review the contested facts and see the case under a much different light.

E). The government failed to disclose evidence regarding the character of Agent Rodney Hyre to Mr. Vorasiangsuk prior to the Suppression Hearing. Had Mr. Vorasiangsuk known that Agent Rodney Hyre was disciplined for violating the FBI procedure and lied about it in the past, he would have requested the court to have the agent be excluded from testifying against him in the first place. But Mr. Vorasiangsuk was not able to do that, because the government did not disclose that information to him. "The government has a duty to disclose evidence in its possession that is favorable to the accused and material to guilt or punishment." Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 215 (1963). "Evidence is favorable to the accused if it is either exculpatory or impeaching in nature and material if there is a reasonable probability that, had it been disclosed, the result of the proceeding would have been different." 373 U.S. at 87. But because the government failed to disclose such information, Agent Rodney Hyre was not excluded and went on to give false testimony and misled the court. (APPX O)

F). Mr. Vorasiangsuk's conviction and sentence was a result of a gross miscarriage of justice. The government and FBI violated his constitutional right when they provided misleading evidence to the jury and the court.

Although his appellate lawyer did not raise this issue on the appeal, the issue is still very relevant to the U.S. Supreme Court, because the government and the FBI's actions deprived Mr. Vorasiangsuk of his constitutional right. "In case in which there is a claim of denial of rights under the Federal Constitution,

the Supreme Court of the United States is not bound by the conclusions of the lower courts, but will reexamine the evidentiary basis on which those conclusions are founded." Napue v. Illinois, 360 U.S. 264, 272, 79 S.Ct. 1173, 3 L.Ed. 2d 1217 (1959).

When the government presented its testimony and evidence to the jury and the court, almost all of their evidence and testimony derived from an investigation of a crime that took place in 2018. The download log, a key evidence, that the government presented came from a crime that took place in 2018. (APPX P). The IP address of the location of the crime that was presented to the jury came from 2018. (APPX Q). And almost all of the testimony from various FBI agents were about a crime that took place in 2018. Mr. Vorasiangsuk was not charged with any crime that took place in 2018, so why did the government bring up those evidence? On his indictment Mr. Vorasiangsuk was primary charged with crimes that took place in 2015. The government took advantage of everyone's lack of knowledge in computer science and presented misleading evidence uncontested. They were able to convince the jury through bad science and misleading facts to convict Mr. Vorasiangsuk of a crime he did not commit. In fact the bad science was so long and convoluted that a juror fell asleep and had to be awoken by the court. This event took place in the open court where the judge addressed the sleeping juror outloud in front of many witnesses. However this portion of the trial did not show up on the trial transcript, and Mr. Vorasiangsuk would like to notify this court on the matter. Mr. Vorasiangsuk is confident that the government could not produce any evidence of the downloading against him because he

simply did not do it.

G). Mr. Vorasiangsuk did not live at the residence where the crime supposedly took place. In fact he did not live in the USA at all in 2015. The newly discovered evidence will show this court that Mr. Vorasiangsuk was actually innocent of his crime.

It was not until after the trial that Mr. Vorasiangsuk became aware of the date of his charges. And it was not until after he was sent to the federal prison that his family was able to gather enough evidence to support his alibi. It was Mr. Vorasiangsuk's father who alerted him that he could not have committed the crime, because Mr. Vorasiangsuk did not live in the USA in 2015. Mr. Vorasiangsuk left USA in 2014 to get marry and work in Thailand. He did not come back to live in the USA until 2016. Specifically, from July through November of 2015, Mr. Vorasiangsuk spent majority of that time traveling to Germany, Poland, Austria, Switzerland, and Japan with his wife. And when he was not visiting other countries, he spent free time with his wife volunteering in the rural regions of Thailand. Although he is still waiting on the USCIS to respond to his FOIA requests for his official traveling documents, Mr. Vorasiangsuk has included evidence of his whereabouts such as the plane tickets, itinerary and other various evidence with this filing. (APPX R) This alibi will serve as a solid foundation for all of his claims raised in this petition as well as prove his innocence. Under the light of this newly discovered evidence, no reasonable jury would have found him guilty of the crimes. The subversion of the FBI agents was so

subtle that it undermined everyone from being able to see the case clearly and objectively, and as the result Mr. Vorasiangsuk's constitutional right was violated. "It is the duty of the United States Supreme Court to make its own independent examination of the record when federal constitutional deprivation are alleged, the duty resting on the court's responsibility for maintaining the Constitution inviolate." Napue v. Illinois at 217.

CONCLUSION

Mr. Vorasiangsuk has demonstrated in good faith to this court that his constitutional right was violated. The agents who were supposed to follow the law chose not to follow the law. Instead of adhering to their duty, the agents breached the procedure, lied under oath, and defiled the sanctity of the law. On the other hand, the government who is supposed to be the hands of the law failed to disclose the evidence, introduced prejudicial variance, and misled the jury and the court. This is not how the American Justice System is supposed to be. This is not how any justice system is supposed to be. For all the reasons stated on this petition, Mr. Vorasiangsuk humbly and respectfully requests the wise and good Supreme Court of the United States of America to please grant him a writ of certiorari to help him find his justice.

REQUEST FOR REASSIGNMENT

With all the prejudice Mr. Vorasiangsuk suffered through his court proceedings, it would be in the the best interest of justice to reassign his case to a different judge. In his previous proceedings, not only did the judge make a factually baseless statement against him implying that he may have even abused some children in the past, the judge also stated the following:

"And I probably shouldn't even say this, but I will. In going on 20 years of practice law as a criminal defense attorney, a prosecutor, a state court judge, and a federal judge, I have never had a motion to suppress in any case that I have been involved in reversed by an appellate court." - Sentence transcript page 41 line 12-16

Add this to the fact that the judge also wrongly accused Mr. Vorasiangsuk of lying about asking to leave during the interview when in fact he did ask to leave as shown on the audio recording. It would be a conflict of interest to have the same judge preside over this case again after considering those factors. "A judge must recuse if she (or he) has a personal bias or prejudice either against the moving party or in favor of any adverse party." 28 U.S.C. §144, or if "an objective, fully informed lay observer would entertain significant doubt about the judge's impartiality." Christo v. Padgett, 223 F.3d 1324, 1333 (11th Cir. 2000)(citing 28 U.S.C. §455).

According to Transaction Records Access Clearinghouse "TRAC", a nonprofit organization operate by Newhouse School of Public Communication and Whitman School of Management at Syracuse

University, when it comes to "Other" crimes which account for nearly 50% being crimes against children, Judge Carlos Mendoza's average prison sentence for this category of crime is 152.2 months. This number is 26% higher than the average sentence of the judges in his district and is 77.9% higher than the average sentence of the federal judges in the United States. The average of the overall of his prison sentence is 81.4 months which is 19.8% higher than the overall average sentence of the judges in his district, but it is 80.4% higher than the overall average sentence of the federal judges in the United States. (APPX S) It's also important to note that the Middle District of Florida, specifically Orlando and Tampa, has the highest sentence disparity with the average of 60 months higher when compare to the rest of the nation.

The judge sentenced Mr. Vorasiangsuk to 168 months of imprisonment citing reasons that have no basis for a crime that he did not do. Mr. Vorasiangsuk in good faith and with the best interest of justice in mind requests the Supreme Court of the United States to please consider reassigning his case to a different judge should this good court remand his case.

CONSIDERATION UNDER EXTRAORDINARY AND COMPELLING CIRCUMSTANCES

Since Mr. Vorasiangsuk has been incarcerated he lost his father and a grandmother to the COVID-19 pandemic. His father's funeral was held at a funeral home that is within 45 minutes drive from the prison, but the warden refused to let him attend the funeral because of his public safety factor as a sex offender per his crime. Now his other grandmother who he used to live with just got diagnosed with a liver cancer on January 5, 2022. His mother who is 70 years old is the main caretaker of the grandmother who is 93 years old. Mr. Vorasiangsuk's sister always try to make herself available to help, but because of her works she may not always be available to help them. Should this court remand this case, Mr. Vorasiangsuk would like to ask this court for a guidance to the lower court in granting him a bond so that he can be home and help his family through this difficult time while waiting for his actual case to be decided. As an experienced respiratory therapist who have decent knowledge when it comes to medical matter, he would surely be very helpful to his family during this difficult time. Though many people may have looked down on his status as a prisoner, his family never stop loving him. And because of this love he would like to do all that he can to return the love they have given him. With all that he is, Mr. Vorasiangsuk humbly and respectfully ask this good court to consider this special request under this extraordinary and compelling circumstance.

Respectfully submitted on January 17th, 2022 by Vorarut Vorasiangsuk
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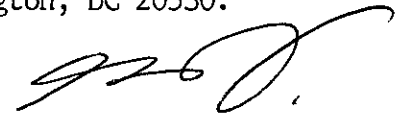


CERTIFICATE OF SERVICE

This court filing was delivered to the prison mailing authority via a pre-paid, fully addressed mailing envelope on the same day as signed.

The first copy is sent the U.S. Supreme Court, Office of Clerk at 1 First Street NE, Washington, DC 20543.

The second copy is sent to the U.S. Solicitor General at Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, DC 20530.



VERIFICATION

Under the penalty of perjury as authorized in 28 U.S.C. § 1746, I declare the factual allegations and statements contained within this document are true and correct to the best of my knowledge.

