

No. **21-6966**

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ORIGINAL

IN THE
SUPREME COURT OF THE
UNITED STATES

JUAN SAMPEL,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ of Certiorari to
United States Court of Appeals
for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

Mr. Juan Sampel
Pro se Petitioner
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QUESTION PRESENTED

Does an appellate court violate principles of Due Process when it disregards substantial evidence which questions a district court's drug quantity finding based on accurate and reliable evidence withheld by the government.

LIST OF PARTIES

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:

United States v. Jose Gonzalez, 2021 U.S. Lexis 19946 (2nd Cir. July 6, 2021).

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IN THE
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UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

The opinion of the United States court of appeals for the Second Circuit appears at Appendix A to this petition.

JURISDICTION

The date on which the United States court of appeals for the Second Circuit decided my case was July 6, 2021.

A timely petition for a rehearing was denied by the United States court of appeals on October 14, 2021, and a copy of the order denying rehearing appears at Appendix B.

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

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

United States Constitution, Amendment V - Due Process Clause

STATEMENT OF THE CASE

Petitioner was indicted for taking part in a drug conspiracy in the Rochester/Buffalo area of the State of New York in violation of Title 21 U.S.C. §846; §841(a) & §841(b)(1)(A).

Following a jury trial, petitioner along with a co-defendant was found guilty of one count of conspiracy to distribute and possess with intent to distribute five or more kilograms of cocaine. Petitioner's conviction resulted in him receiving a sentence of 360 months imprisonment.

On appeal, to the Second Circuit court of appeals, petitioner challenged in a separate pro se supplemental brief that the district court's drug quantity finding miscalculated his base offense level thereby sentencing exposure.

Petitioner presented evidence which was withheld by the prosecution and sought the appellate court to take judicial notice of this withheld evidence. However, the panel of judges failed to address petitioner's supplemental appellate claim in his initial brief and reply, as well as in his petition for rehearing en banc.

This petition for a writ of certiorari follows seeking that this Court perform discretionary review.

REASONS FOR GRANTING THE PETITION

This Court has long recognized that sentencing proceedings are required to satisfy the dictates of the Due Process Clause of the Fifth Amendment. See Gardner v. Florida, 439 U.S. 347, 358 (1979). Furthermore, given that the fundamental requirements of due process includes the opportunity to be heard; Mathews v. Eldridge, 424 U.S. 319, 333 (1976), it was an abuse of discretion for the appellate court to fail to review the entire record. Gaird v. Cordero, 534 F.3d. 117, 132 (2nd Cir. 2008) (as court abuses its discretion when it bases its decision on a clearly erroneous assessment of the evidence).

Generally, an appellate court reviews a district court's drug quantity finding in determining a defendant's sentencing range under the Guidelines for clear error. See United States v. Bastiste, 684 F.3d. 333 (2nd Cir. 2012). Therefore, in making its determination, the district court is required to base its finding on "specific evidence" directly contained in the record or identified through circumstantial evidence. United States v. Archer, 671 F.3d. 149 (2nd Cir. 2011).

In reviewing the challenged sentencing range based on the drug quantity finding, the appellate court in this case failed to review the entire record to which supported that petitioner was responsible for a lesser drug quantity attributed to his conduct and involvement in the charged conspiracy. See United States v. Snow, 462 F.3d. 55, 72 (2nd Cir. 2006).

Consequently, a review of the entire record does not totally reveal the complete evidentiary materials available. This is be-

cause the government failed to reveal information which it knew or reasonably should have known supported that the drug quantity finding attributed to petitioner was not correct. See e.g., Brady v. Maryland, 373 U.S. 83 (1963) (holding that the government has an affirmative duty to disclose exculpatory evidence which is material to guilt or punishment, indicating that the Brady rule applies at sentencing). This is especially applicable to the instant case because disclosure of the withheld evidence concerning drug quantity affected the sentence petitioner was exposed to based on drug quantity.

Specifically, subsequent to petitioner's sentencing but during his direct appeal, he learned to the fact that the government's key witness (Angel Ocasio) was being investigated for his involvement with an unrelated, separate drug conspiracy. Based on this information, petitioner sought the appellate panel take judicial notice of the relative evidence of the government's key witness (who supported the district court's drug quantity estimation alone), be considered—especially since it supported his pro supplemental appellate issues. See United States v. Davis, 726 F.3d. 357, 371 (2nd Cir. 2013) (finding an appellate court may take judicial notice on appeal under FRE 201).

The panel of the appellate court reviewing petitioner's case abused its discretion in failing to adhere to the clear legal principles inherent in due process. This is because petitioner placed before the appellate court substantial evidence both within the record, and through the legal process of judicial notice. Clearly, the entire record of the district court's proceedings, and the exculpatory evidence withheld by the government, demonstrates that

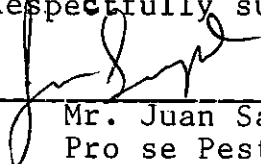
the district court created a clear error in attributing 150 kilograms of cocaine to petitioner.

Thus, the appellate court abused its discretion when it failed to properly address petitioner's sentencing challenge by reviewing the entire record.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,



Mr. Juan Sampil
Pro se Petitioner