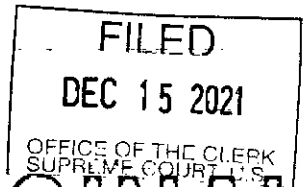


21-7026

IN THE
SUPREME COURT OF THE UNITED STATES



No. _____

ORIGINAL

NEHEMIAS SAMAYOA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

NEHEMIAS SAMAYOA *74888-007
FCI BUTNER MEDIUM II
P.O. Box 1500
Butner, North Carolina, 27509

QUESTIONS PRESENTED

1. When a Federal court enters a judgment without proper jurisdiction, does it reach an extraordinary circumstance that would justify a recall of mandate?

2. Does a voluntary withdrawal of appeal circumvent the requirement of an Anders brief?

LIST OF PARTIES

The Petitioner, Mr. Nehemias Samayoa, an inmate confined at Butner Medium II, Federal Correctional Institution.

The Respondent, the United States of America.

LIST OF PROCEEDINGS

1) United States Court of Appeals For the District of Columbia Circuit: No. 17-3076, United States of America, Appellee v. Nehemias Samayoa, Appellant. Decided October 15, 2021, (Rehearing en Banc) denied on June 28, 2021.

2) United States Court of Appeals For the District of Columbia Circuit: No 17-3076, Motion of voluntary withdrawal granted on

3) UNITED STATES DISTRICT COURT For the District of Columbia: No. 1:16-cr-00115-EGS-1

JURISDICTION

The Supreme Court of the United States has supervisory power to review the order denying the motion to recall the mandate issued on June 28, 2021 by the United States Court of Appeals for the District of Columbia Circuit. The statutory provision relied upon for this jurisdiction is 28 U.S.C. § 1254. All parties have been served

with this petition in compliance with Rule 29.4(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment V and VI of the United States Constitution which provide in part:

- 1) Amendment V: "No person shall be held... nor be deprived of life, liberty, or property, without due process of law...."
- 2) Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to... the Assistance of Counsel for his defence."

STATEMENT OF THE CASE

The Petitioner was adjudicated guilty of a state charge by a Federal judge that obviously had no jurisdiction to do so. The plea agreement was equally flawed. On direct appeal, counsel was assigned and advised petitioner there were no grounds to appeal and proceeded to have the appeal voluntarily dismissed. Petitioner filed a pro-se motion to recall the mandate that ordered the dismissal of his appeal based on the extraordinary circumstance of a Federal judge, judgment, and plea, all showing petitioner guilty of a Maryland State charge of Rape Second Degree. The motion to recall the mandate was denied based on an improper application of Supreme Court precedent and allowing Federal courts to adjudicate state cases is not something that can be ignored or swept under the rug because it impacts the entire judiciary. In addition, indigent defendants in the hundreds if not thousands are impacted by voluntary appeal withdrawals when there are potentially valid grounds for appeal which was readily apparent in Petitioner's case. Constitutional demands of due process are implicated in the responsibilities of the Courts of Appeals and owed to defendants to ensure there is no manifest injustice, regardless of the type of charge. Therefore, to correct the manifest injustice in Petitioner's case, his judgment and plea should be stricken due to the Federal government of the United States acting without jurisdiction.

REASONS FOR GRANTING THE WRIT

A. Conflicts with Other Court Decisions

Many Appellate Courts have recalled a mandate for less than extraordinary circumstances when something occurred that prevented them from formally hearing the case. This case presents a fundamental issue of whether a voluntary withdrawal of an appeal should be handled by a similar standard set by other Circuits that will recall a mandate if an appeal is dismissed due to a missed deadline which was later justified, as an example. A voluntary withdrawal is normally a preliminary matter on appeal and therefore considerable judicial resources have not been used which would support a lower standard to recall the mandate granting the voluntary appeal withdrawal.

B. Importance of the Questions Presented

Petitioner is an indigent defendant and a foreign national of Guatemala. He is presently incarcerated under a facially invalid judgment as a Federal judge adjudicated a charge for the State of Maryland. The plea was also facially invalid as it allowed for Petitioner to agree to plea to a State charge in a Federal court. Petitioner was represented by appellate counsel and these glaring deficiencies were not brought forward to the Court of Appeals. Instead, Petitioner was advised he had no grounds for appeal and was essentially coerced into voluntarily withdrawing his appeal. A mandate was issued for the withdrawal. Despite the extraordinary circumstances of the Federal government acting without jurisdiction, the recall was denied. The major question for this Court, which has implications of great public importance, is if it is truly extraordinary for a Federal court to act without jurisdiction.

Thousands if not millions of defendants face charges under both federal and state sovereigns which is accepted under the dual-sovereignty doctrine which fails when you have a Federal court acting as a state court. The allowance of Petitioner's mandate that dismissed his appeal to stand turns the dual-sovereignty to a single sovereign. That would seem to reach a level beyond extraordinary as this Court would recognize. A Federal court is one of limited jurisdiction and Petitioner would hope a common sense

understanding of the collateral consequences of expanding that jurisdiction to include State charges will move this Court to action.

As a final question, that also impacts thousands of defendants, is allowing a voluntary withdrawal of an appeal simply a machination to circumvent the established Supreme Court precedent of Anders?

If it is, it would be beneficial to clarify if this is the type of mandate that deserves the same considerations of Calderon. Many defendants are similar to Petitioner in that they have absolutely no legal knowledge or education and are entirely dependent on counsel to provide adequate advice that have lifelong implications. An Anders brief makes sense as it is a two-fold protection to ensure Counsel properly reviews the case, and also gives the Court an opportunity to review the case for any obvious issues. The Court should clarify that these protections are in place for all, including those appealing in the Court of Appeals in the District of Columbia circuit.

All of the reasoning of the lower court failed to recognize the importance of the Constitutional due process rights of Petitioner which would have supported recalling the mandate and reopening the appeal with effective counsel. An Anders brief would have cured the issue as even if the appellate Counsel stated there were no issues, a Court of Appeals would have immediately seen the extreme problems with Petitioner's judgment and plea. How many other defendants have been left in the docks with poor advice of counsel to withdraw their appeal seemingly voluntarily?

CONCLUSION

For the foregoing reasons, and with the understanding that Petitioner prepared this with no access to a law library computer except for two nights per week, from 6pm-7:30pm, certiorari should be granted.

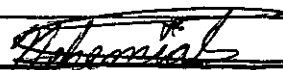
Footnotes

1. Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L. Ed. 2d 493 (1967).

2. Calderon v. Thompson, 523 U.S. 538, 549-50, 118 S.Ct. 1489, 140 L. Ed. 2d 728 (1998).

in this case along with assignment of counsel to fully and properly articulate these arguments to this honorable Court.

Respectfully Submitted this 12 day of December, 2021


(Signature)

Nehemias Samaya #174888-007
Butner Medium II F.C.I.
P.O. Box 1500
Butner, NC 27509

CERTIFICATE OF SERVICE

I, Nehemias Samaya, declare under penalty of perjury a copy of this "Petition For a writ of Certiorari to the United States Court of Appeals For the DC Circuit" was mailed postage prepaid to:

Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

as required by the Rules of the Supreme Court.


(Signature)

12/12/21
(Date)