

21-7351

No. 19-4194 (i)

ORIGINAL

(3:18-cr-00041-GMG-RWT-1

IN THE

SUPREME COURT OF THE UNITED STATES

WASHINGTON, D.C. 20543

FILED

NOV 15 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Miguel Angel Cruz Polanco — PETITIONER
(Your Name)

vs.

UNITED STATES — 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

Miguel Angel Cruz - Polanco
(Your Name)

F.C.I Beckley, P.O. Box 350
(Address)

Beaver, W.Va. 25813
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I- whether the Federal sentencing Guidelines Manual require a Plea of Guilty and guarantee a three Point Reduction for acceptance of Responsibility?

II- Did the District Court commit Plain Error when the court declined to grant a three level Reduction after a Plea of Guilty agreed to a three Point Reduction.

III- Should the U.S. Supreme Court Review a Plea Agreement that includes a Federal sentencing Guideline Acceptance of Responsibility Reduction under Plain Error.

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

TABLE OF AUTHORITIES CITED

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BOUNDS V. Smith	7
Holland V. Florida	7
Massero V. US	5
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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 19-4285; 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☐ is unpublished.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☒ is unpublished.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☐ is unpublished.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 12-18-2019.

☐ 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

THE FIFTH AMENDMENT to Due
Process of a USSG §3E1.1
Reduction when asserted by
Plea Agreement but denied at
sentencing for conduct unrelated
to a Plea Hearing USSG §3E1.1
a Reduction of 2 points for a timely
plea of guilty and 1-point Reduction
Acceptance of Responsibility.

STATEMENT OF THE CASE

IN 2019, Miguel Angel Cruz-Polanco (Cruz), represented by the Public Defenders Service, Plea guilty pursuant to a written Plea agreement to aiding and abetting the distribution of cocaine, IN violation of 18 USC § 2 (2018) and 21 USC § 841 (a)(1), (b)(1)(C) (2018), and re-entry by an alien removed after conviction for a felony IN violation of 38 USC 1326 (a), (b) (2018). The district Court imposed a sentence concurrent terms of 137 imprisonment. Attorney Charles T. Berry, represented Appellate on his Appeal before the Fourth Circuit Court of Appeals. U.S. v Cruz-Polanco, Appeal No. # 19-4285. IN a consolidated Appeals, Counsel submitted an ANDERSType BRIEF, stating that there are no meritorious issues for Appeal, but raising as issues for review whether his Plea Counsel ineffective assistance IN advising Appellant to Plea guilty to a written Plea agreement and failing to Procure a plea agreement that guaranteed a reduction sentence pursuant

To the plea agreement, and failing to procure and plea agreement that guarantee him a reduction to his offense level under the Sentencing Guidelines for acceptance of responsibility. ¹ see U.S. Sentencing Guidelines manual § 3E1.1 (2018). In this case, the district court procedurally error in declining to Reduce Cruz's offense level under the U.S. Sentencing Guidelines, § 3E1.1 Acceptance of Responsibility, and it is included, that the District Court Abused its discretion by Not considering A Rule 11 agreement as a Contract and reviewing the agreement before denying a Three level reduction under § 3E1.1.

FN 1

Appellate raised an assortment of errors related to Ineffective assistance of Counsel. However, Ineffective assistance of Counsel is preferable on a § 2255. Mosses v. United States, — U.S. —, — (2003)

REASONS FOR GRANTING THE PETITION

1 The Circuits ARE Divided ON Questions Presented

1) The Federal circuits grow more fractured by the day. A current reading of the relevant decision reveals a Rule 11 Written Plea Agreement is renewed under the Plain ERROR ANALYSIS;

a) GUILTY Plea

Formal admission in court as to guilt of having committed criminal act charged which a defendant may make if he or she does so intelligently and voluntarily; i.e., accused can only make such plea after he or she has been fully advised of rights and court has determined that accused understands such rights and is making plea voluntarily.

A. Equitable tolling

1- PETITIONER advances that his INSTITUTIONAL Lockdown ON or ABOUT JANUARY 2020 thru July 2020 due to corona virus Protection it is NECESSARY to toll the 90 day mandat. to FILE a Write of Habeas Corpus before this Court see Holland V. Florida 560 US 631, 645, 130 S. Ct. 2549, 177 L Ed 2d 130 (2010)

As the Supreme Court stated "Equitable" tolling due to extraordinary circumstance due to Prison Lock and NO ACCESS to the court. Id see also 2016 US Dist. Lexis 184011: STONE V. Vest: September 23 2016 (see SUPR. CT R. 13)

B. Plain Error

2. Federal Rules of Criminal Procedure

52(b) established in United States

V. OLANO, 507 U.S. 725 (1993) set 1770

123 Fed. 2d 508 (1997) the error was not

"intentionally relinquished or abandoned"

(2) the error is plain, and (3) the error

"affected the defendant substantial right"

See Molina-Martinez v. United States

US __ 136 S. Ct. 1338, 1343, 194 L. Ed. 2d 444

I should this court not find a Prison

Lockdown cause for equitable tolling

and "extraordinary circumstances" it is clear

this court mailed the forms of a

writ of certiorari

In this breath Petitioner plead guilty pursuant to a plea agreement to aiding and abetting the distribution of cocaine, in violation of 18 USC § 2 (2018) and 21 USC § 841 (a)(1) and (b)(1)(C), and reentry by an alien removed after conviction for a Felony, in violation of 18 USC § 1326 (a), (b) (2018), the district court sentenced Petitioner to concurrent terms of 137 months imprisonment.

Counsel for Petitioner filed an Anders v. California, 386 U.S. 738 (1967), stating that there are no meritorious issues for appeal, but raising as issue for review whether trial counsel render ineffective assistance in advising Petitioner to plead guilty pursuant to the plea agreement and in failing to procure a plea agreement that guaranteed him a reduction to his offense level under the

Sentencing Guidelines For Acceptance of responsibility. See U.S. Sentencing Guideline Manual §3E1.1 For acceptance of responsibility and whether the district court procedurally erred in declining to reduce Petitioner's offense level under §3E1.1 For acceptance of responsibility; and whether the Government committed prosecutorial misconduct by failing to recommend that Petitioner receive a three-level reduction to his offense under USSG §3E1.1 For acceptance of responsibility. The Appellate elected not to file a brief and does not seek to enforce the appeal waiver in Petitioner's plea agreement. The Fourth Circuit, per curiam, AFFAIRM.

ARGUMENT(S)

C-Plea agreement are contracts:

In the instant case, the Supreme court must interpret a Rule 11 within the Frame work of Contractual Agreements. See *United States v. Havey*, 791 F.2d. 294, 300 (4th CIR 1986). It is undisputed that a plea contract via a plea agreement not ignore the essentiality of the contract. See *United States v. McQueen*, 108 F.3d 64, 66 (4th CIR 1996); See also *United States v. Wood*, 375 F.3d. 342, 348 (4th CIR 2004) (internal quotation marks omitted). From this angle, *United States v. Dominguez-Benitez* 542 U.S. 74, 124 S.Ct. 2333, 159 L.Ed 2d. 157 (2004), is found to state, if that a Rule 11 error may be of Rule 52(a) type or it may be of Rule 52(b) Kind, depending on when the error

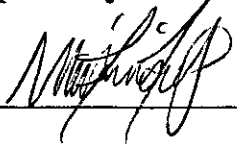
was raised. In *United States v. Vonn*, 535 U.S. 55, 122 S. Ct 1043, 152 L. Ed. 2d 90, and *United States v. Dominguez-Benitez*, 542 U.S. at —, the Supreme Court determined that a "Judge who conducted the plea hearing failed to inform the defendant, as required by Rule 11 that he would have the right to assistance of counsel or counsel 'if he proceeded to trial.'" Here the court waited after the plea hearing to account conduct that occurred in why the court refused to grant acceptance of responsibility." See 633 F3d 262:: *United States v. Lewis*, :: February 2, 2011. Dispositive to Lewis, the court did not mention the escape because it did not occur during the plea hearing. See *Pucke v. United States*, 556 U.S. at 137. Clearly any conduct that is not mentioned during a plea hearing can not deprive acceptance of responsibility. Therefore, denial by the district court of 3 points for conduct occurring after the plea of guilty violates due process or

acceptance of Responsibility and the United States Sentencing Guidelines. Also that this Court validate equitable tolling up and until September 2020 to oh shame - wde the date this Court mailed such application the institution was locked down...

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2-9-2022