

IN THE
Supreme Court of the United States

ANA DUARTE-PINEDA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

If an indigent criminal defendant's pro se response to a brief filed under *Anders v. California*, 386 U.S. 738 (1967), alleges ineffective assistance of trial counsel and that trial counsel is affiliated with the appellate counsel who filed the *Anders* brief, creating a probable conflict of interest, does the appellate court have a duty to sua sponte replace the defendant's appellate counsel with unconflicted counsel?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Ana Duarte Pineda respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's unpublished Opinion affirming Ms. Duarte-Pineda's conviction and sentence in part and dismissing her appeal in part is attached at Pet. App. 1a and is reported at 2022 WL 42487 and 2022 U.S. App. LEXIS 311.

LIST OF PRIOR PROCEEDINGS

1. *United States v. Ana Duarte-Pineda*, No. 5:19-cr-308-D-2, United States District Court for the Eastern District of North Carolina.

Final judgment entered on December 28, 2020.

2. *United States v. Ana Duarte-Pineda*, No. 20-4628, United States Court of Appeals for the Fourth Circuit.

Opinion issued on January 5, 2022.

JURISDICTION

The Fourth Circuit issued its opinion on January 5, 2022. Pet. App. 1a. This Court's jurisdiction over this timely petition rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const., Amend. VI:

In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense.

STATEMENT OF THE CASE

In 2020, Petitioner, Ms. Ana Duarte-Pineda, pleaded guilty with a written plea agreement to one count of distribution of 50 grams or more of methamphetamine in violation of 21 U.S.C. § 841(a)(1). As part of the plea, she agreed

To waive knowingly and expressly all rights, conferred by 18 U.S.C. § 3742, to appeal the conviction and whatever sentence is imposed on any ground, including any issues that relate to the establishment of the advisory Guideline range, reserving only the right to appeal from a sentence in excess of the applicable advisory Guideline range that is established at sentencing,

Pet. App. 6a. The district court sentenced her to 262 months of imprisonment, a sentence within the advisory Guidelines range established at sentencing. She appealed.

Constrained by the appeal waiver in Ms. Duarte-Pineda's plea agreement, her appellate attorney filed a brief under *Anders v. California*, 386 U.S. 738 (1967), stating that he could find no non-frivolous grounds for appeal. This brief allowed Ms. Duarte-Pineda to file a pro-se brief on her behalf and obligated the Fourth

Circuit to conduct an independent review of the record for any non-frivolous issues that Ms. Duarte-Pineda's attorney had overlooked.

Ms. Duarte-Pineda filed a pro-se brief in which she alleged, among other things, that her district court attorney was ineffective because her attorney did not adequately fight for her or adequately communicate with her. Pet. App. 15a-17a. Ms. Duarte-Pineda's district court attorney and appellate attorney worked for the same office. The Fourth Circuit did not remove Ms. Duarte-Pineda's appellate attorney from her appeal.

The government filed a motion to dismiss the appeal, citing Ms. Duarte-Pineda's appellate waiver. The Fourth Circuit conducted its *Anders* review. Then it granted the government's motion. It dismissed the appeal in part and affirmed the conviction and sentence in part for any issues outside of the appellate waiver. Pet. App. 1a-3a.

This petition follows.

REASON FOR GRANTING THE PETITION

This Court should grant review because the Fourth Circuit has decided an important federal question that has not been, but should be, settled by this Court. Sup. Ct. R 10(c). Specifically, what is an appellate court's obligation when conducting an independent *Anders* review when a defendant's pro-se brief alleges ineffective assistance of district court counsel and that counsel is affiliated with appellate counsel?

“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for [her] defense.” U.S. Const. Amend. VI. Thus, “in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived.” *Gideon v. Wainwright*, 372 U.S. 335, 340 (1963). “The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the ample opportunity to meet the case of the prosecution to which they are entitled.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984) (internal quotation omitted).

Because the right to counsel depends on that “skill and knowledge,” the right to counsel is the right to the *effective* assistance of counsel.” *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970) (emphasis added). “Counsel . . . can . . . deprive a defendant of the right to effective assistance, simply by failing to render adequate legal assistance.” *Strickland*, 466 U.S. at 686 (internal quotation omitted).

A particular wrinkle occurs when appointed counsel, like in this case, believes that an indigent defendant's appeal has no merit. In that situation, counsel must still “support his client's appeal to the best of his ability.” *Anders*, 386 U.S. at 744. He does this by noting his position to the appellate court while also providing “a brief referring to anything in the record that might arguably support the appeal.” *Id.* The client then has the right to file a pro-se brief on her behalf. *Id.* Finally, “the court—not counsel—then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” *Id.*

Here, counsel filed an *Anders* brief due to the appeal waiver included in Ms. Duarte-Pineda's plea agreement. In her pro-se response, Ms. Duarte-Pineda alleged that her district court counsel did not adequately fight for her and did not adequately communicate with her. This allegation created a conflict of interest between Ms. Duarte and her district court attorney. N.C. Rules of Prof'l Conduct r.1.9. This conflict was then imputed to her appellate attorney who filed the *Anders* brief. *Id.* at r. 1.10.

The Fourth Circuit then had an obligation to independently conduct "a full examination of all the proceedings," knowing that both district court and appellate counsel had formal conflicts of interest in representing Ms. Duarte-Pineda. That knowledge should have caused the Fourth Circuit to appoint new appellate counsel to conduct its own review of the record and ensure that Ms. Duarte-Pineda was getting the effective representation guaranteed to her under the Sixth Amendment.

Ms. Duarte-Pineda acknowledges that the situation presented by this petition will not occur often. But from the perspective of an indigent criminal defendant who needs counsel to play a "crucial role" in her defense, it is critically important and goes to the core of the rights to which she is entitled. By granting review in this case, this Court can ensure that Ms. Duarte-Pineda and others like her do not fall through the cracks.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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