

NO. ____

IN THE
SUPREME COURT OF THE UNITED STATES

RAMEL GENERAL A/K/A Ra,

Petitioner

, v.

UNITED STATES OF AMERICA,

Respondent.

In Petition for Writ of Certiorari to the United
States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Petitioner demonstrated that the waiver of his appellate rights is unenforceable under *United States v. Gomez-Perez*, 215 F.3d 315, 319 (2d Cir. 2000).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ramel General respectfully requests the issuance of a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

DECISION BELOW

The decision of the United States Court of Appeals for the Second Circuit is unpublished and is reproduced at App. 1 of 1.

JURISDICTION

The Second Circuit entered judgment on January 5, 2022. *See*, App. 1 of 1. This Court's jurisdiction is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

The government prepared a written version of offense conduct, which was used by the U.S. Probation Officer in the preparation of Mr. General's presentence report. According to the government, the underlying investigation in the instant case stemmed from a joint investigation by the Hartford DEA, Connecticut Statewide Narcotics Taskforce, the New London, Waterford, Groton City, Stonington Police Departments, and the Connecticut Department of Corrections into unlawful activity, including acts of violence, firearms offenses, drug distribution, and money laundering by members of the Elm Street Niggas otherwise known as ESN, in New London, Connecticut.

The investigation involved numerous controlled purchases of heroin, cocaine, and cocaine base by different confidential informants, walled-off stops including one that resulted in the seizure of a kilogram of cocaine, and the use of court-authorized wiretaps on a total of 4 phones held by Anthony Whyte and Royshawn Allgood, both conspirators, from November 2018 until February 21, 2019. The intercepted communications revealed that the conspirators worked together to distribute cocaine base, cocaine, fentanyl, and heroin in the New London/Norwich area.

Mr. Allgood and Mr. Whyte each worked closely with a partner. Mr. Allgood worked with Victor Encarnacion, a conspirator. Mr. Whyte worked with Ramel

General, the defendant-appellant. Mr. General worked with Anthony Whyte in the distribution of cocaine. When Mr. Whyte travelled to Florida, Mr. General maintained possession of at least one of Mr. Whyte's phones during each trip and distributed narcotics to customers on Mr. Whyte's behalf. Mr. General also had access to Mr. Whyte's stash location as well as Mr. Whyte's safe.

During its investigation, the government intercepted a number of Mr. General's communications. As a result of these court-ordered wiretaps and other law enforcement techniques, Mr. General was arrested on February 26, 2019. He was released to pretrial supervision by Magistrate Judge Sarah A. L. Merriam on a \$50,000 surety bond on March 1, 2019, with standard conditions of pretrial supervision, as well as drug testing and treatment and home incarceration to include location monitoring. He was directed to live with his mother and third-party custodian,

On May 27, 2019, Mr. General was taken into state custody when he was arrested by the New London Police Department and charged with Interfering and Resisting Arrest, Breach of Peace, Assault 3rd Degree, Strangulation 2nd Degree and Unlawful Restraint. Mr. General pled not guilty to all the above-noted charges and denied committing the criminal conduct. After the state arrest, a bond hearing was held on June 4, 2019, before the Honorable Vanessa L. Bryant, U.S. District Court Judge, based on a motion to revoke the defendant's bond which was filed by the

Government. Following a bond hearing, the Court revoked the defendant's bond on consent of the parties without prejudice to the defendant's ability to seek bond in the future.

On March 6, 2020, Mr. General entered a guilty plea to Count One of a Second Superseding Indictment in Criminal Number 3:19CR00064(VLB), which charges Conspiracy to Distribute and to Possess with Intent to Distribute Cocaine; 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B). The government and Mr. General entered into a written plea agreement dated March 6, 2020. The parties agreed to a guideline sentence with a total offense level of 27 and a Criminal History Category of V. The resulting guideline range amounted to 120 to 150 months of imprisonment, of which 60 months was mandatory due to the applicable mandatory minimum term of imprisonment, and a fine range of \$25,000 to \$5,000,000 pursuant to U.S.S.G. § 5El.2(c)(3). Mr. General was also subjected to a supervised release term of 4 years to a lifetime according to U.S.S.G. § 5D1.2. After further review, the probation officer found that Mr. General was in Criminal History Category VI. Based upon a total offense level of 27 and a criminal history category of VI, the guideline imprisonment range was 130 months to 162 months.

Pursuant to that plea agreement, Mr. General agreed not to appeal or collaterally attack the sentence in any proceeding if that sentence did not exceed 120 months of imprisonment, a 5-year term of supervised release, a \$100 special

assessment, forfeiture of any items identified herein, and a \$5,000,000 fine even if the Court imposed such a sentence based on an analysis different from that specified above. In addition, Mr. General agreed that the waiver applied regardless of whether the term of imprisonment was imposed to run consecutively to or concurrently with, in whole or in part, the undischarged portion of any other sentence that had been imposed on the defendant at the time of sentencing in this case.

On March 9, 2020, the Honorable Vanessa L. Bryant, United States District Judge, signed an Order Affirming, Adopting, and Ratifying the findings and recommendations of Magistrate Judge Robert A. Richardson, who recommended the defendant's plea of guilty be accepted.

Sentencing occurred on August 25, 2020. The district court sentenced Mr. General on Count One of a Second Superseding Indictment, which charged Conspiracy to Distribute and to Possess with Intent to Distribute Cocaine; 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B) to a term of imprisonment totaling 120 months; supervised release for a total term of 4 years; and a special assessment of \$100 with the court granting a variance from the Guideline Range calculated by the USPO. Count One of the original indictment and Count One of the superseding indictment were dismissed on oral motion by the government.

At the time of sentencing, Mr. General remained in the custody of the State of Connecticut because of his May 27, 2019, arrest by the New London Police

Department. The government lodged a federal detainer against Mr. General. At sentencing, Mr. General requested the district court to grant him credit from May 27, 2019, to August 25, 2020, against his federal sentence for the time spent in unsentenced state custody for the above-noted state charges.¹ However, the district court rejected Mr. General’s request on the ground that the pending state case involved conduct, which was different from the conduct involved in the instant federal case.

During the sentencing, the government relied upon the pending state charges to argue that the Court should consider deterrence as a significant factor in sentencing Mr. General. In addition, the district court relied upon the pending state charges to support a sentence that would deter Mr. General “from engaging in criminal conduct, to promote respect for the law that exists for the betterment of all of us, and to protect the public from persistent, harmful criminal conduct.”

A Notice of Appeal of the sentence was filed on September 15, 2020. The Government moved to dismiss the appeal as barred by the waiver of appellate rights contained in Appellant’s plea agreement. On January 5, 2022, the USCA for the Second Circuit ordered that the motion be granted and dismissed the appeal. The Court held that the Appellant did not demonstrate that the waiver of his appellate

¹ At the time of the federal sentencing, Mr. General’s state case remained pending without a conviction or a sentencing.

rights was unenforceable under *United States v. Gomez-Perez*, 215 F.3d 315, 319 (2d Cir. 2000), and that waiver foreclosed all the arguments raised in his appellate brief.

REASONS FOR GRANTING THE WRIT

The Court Should Grant Certiorari to as when the waiver was not made knowingly, voluntarily, and competently.

The waiver contained in Mr. General's plea agreement did not, under the circumstances presented, operate as a waiver of Mr. General's right to appeal the district court's refusal to make an adjustment for time spent in unsentenced state custody subject to a federal detainer prior to the imposition of the federal sentence.

A. Standard of Review for Waiver of the Right to Appeal

In the Second Circuit, the Court scrutinizes waivers of the right to appeal closely and applies them narrowly. See, *United States v. Ready*, 82 F.3d 551 (2d Cir. 1996). To that end, the Court uses two mechanisms. First, the Court assures that the waiver of the right to appeal is knowing and voluntary. See *Ready* 82 F.3d at 556 [citing *United States v. Robinson*, 8 F.3d 418, 421 (7th Cir. 1993)]; see also *United States v. Yemitan*, 70 F.3d 746, 747 (2d Cir. 1995) (defendant conceded waiver was knowing and voluntary). Second, the terms of a plea agreement are narrowly construed, using applicable principles of contract law. See *Yemitan*, 70 F.3d at 747.

The Court will enforce an appeal waiver "if the record 'clearly demonstrates'

that the waiver was both knowing (in the sense that the defendant fully understood the potential consequences of his waiver) and voluntary." *United States v. Coston*, 737 F.3d 235, 237 (2d Cir. 2013) (quoting *United States v. Ready*, 82 F.3d 551, 557 (2d Cir. 1996)). Even when an appeal waiver is entered into knowingly and voluntarily, however, the Court looks to the text of the plea agreement to determine whether the waiver encompasses the issue on appeal, and in doing so "construe[s] waiver of a right to appeal in a plea agreement narrowly." *United States v. Stearns*, 479 F.3d 175, 178 (2d Cir. 2007).

B. The Waiver of The Right to Appeal Did Not Encompass the Issue on Appeal

On March 6, 2020, United States Magistrate Judge Robert A. Richardson made Findings & Recommendations on a Plea of Guilty that Mr. General's waiver of rights and plea of guilty were knowing and voluntarily made and not coerced.

In the instant case, the plea agreement, which was signed by Mr. General, read in pertinent part:

"The defendant acknowledges that under certain circumstances, he is entitled to challenge his sentence. In consideration for the benefits offered under this agreement, the defendant agrees not to appeal or collaterally attack the sentence in any proceeding, including but not limited to a motion under 28 U.S.C. § 2255 and/or § 2241 if that sentence does not exceed 120 months of imprisonment, a 5-year term of supervised release, a \$100 special assessment, forfeiture of any items identified herein, and a \$5,000,000 fine even if the Court imposes such a sentence based on an analysis different from that

specified above. Similarly, the Government will not appeal a sentence imposed within or above the stipulated sentencing range. The Government and the defendant agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with, in whole or in part, the undischarged portion of any other sentence that has been imposed on the defendant at the time of sentencing in this case. Furthermore, the parties agree that any challenge to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) this waiver. This waiver does not preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum."

In *United States v. Ready*, 82 F.3d 551, 559 (2d Cir. 1996), this Court stated that "[s]everal rules of interpretation, consistent with general contract law principles, are suited to the delicate private and public interests that are implicated in plea agreements. First, courts construe plea agreements strictly against the Government. This is done for a variety of reasons, including the fact that the Government is usually the party that drafts the agreement, and the fact that the Government ordinarily has certain awesome advantages in bargaining power. Second, we construe the agreement against a general background understanding of legality. That is, we presume that both parties to the plea agreements contemplated that all promises made were legal, and that the non-contracting "party" who implements the agreement (the district judge) will act legally in executing the agreement. Finally, as we pointed out in *Yemitan*, courts may apply general

fairness principles to invalidate terms of a plea agreement. 70 F.3d at 748.”

Here, when these contract interpretation principles are applied to Mr. General's plea agreement, one can infer that Mr. General's plea agreement did not encompass the issue he now presses on appeal. The appeal waiver that Mr. General signed only waived his right to appeal his sentence if that sentence did not “exceed 120 months of imprisonment” and regardless of whether the term of imprisonment was “imposed to run consecutively to or concurrently with, in whole or in part, the undischarged portion of any other sentence that has been imposed on the defendant at the time of sentencing in this case”. [Emphasis added.]

In his appeal, Mr. General contested the district court's refusal to make an adjustment for time spent in unsentenced state custody subject to a federal detainer prior to the imposition of the federal sentence. Therefore, Mr. General's appeal waiver did not bar appeal on the question here and, accordingly, this Court should grant certiorari to address its merits.

CONCLUSION

Mr. General respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,
RAMEL GENERAL
Petitioner,

By: /s/ David J. Wenc

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of April 2022, I served the within PETITION upon the Office of the Solicitor General of the United States, 950 Pennsylvania Ave., NW, Washington, D.C. 20530-0001, and the Office of the United States Attorney, AUSA Natasha Freismuth, 157 Church Street, Floor 25 New Haven, CT 06510. In addition, a copy was mailed to the petitioner: Ramel General #276012, Hartford Correctional Center, 177 Weston Street, Hartford, CT 06120

/s/ David J. Wenc
David J. Wenc, Esq.

CERTIFICATE OF COMPLIANCE

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements and Type Style Requirements

1. This petition complies with the type-volume limitation because this petition contains 2,688 words, excluding the parts of the petition exempted.
2. This petition complies with the typeface requirements and the type-style requirements because the petition has been prepared in proportional typeface, 14-point Times New Roman font using Microsoft Word.

/s/ David J. Wenc

David J. Wenc, Esq.