

No. 21-7644

IN THE
SUPREME COURT OF THE UNITED STATES

MARIO REYNOSO

Pro se - PETITIONER

vs.

UNITED STATES OF AMERICA, - RESPONDENTS

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

PETITION FOR A WRIT OF CERTIORARI

FILED
APR 13 2022
OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES

ORIGINAL

MARIO REYNOSO Pro se

P.O. BOX 3000-Medium

FORREST CITY, AR 72336

QUESTION(S) PRESENTED

- (1). WHAT REMEDY IS AVAILABLE FOR PETITIONER WHEN HIS COURT-APPOINTED (CJA) ATTORNEY FAILED TO INFORM, ADVISE OR FILE A TIMELY PETITION FOR A WRIT OF CERTIORARI IN DEFIANCE OF PETITIONER'S WRITTEN REQUEST THAT A FEDERAL CIRCUIT COURT'S ADVERSE JUDGMENT BE CHALLENGED?

- (2). DOES A CJA COURT-APPOINTED ATTORNEY'S CONDUCT OF FAILING TO INFORM, ADVISE OR FILE A PETITION FOR A WRIT OF CERTIORARI AFTER AN ADVERSE DECISION BY A FEDERAL COURT OF APPEALS ON A CRIMINAL DIRECT APPEAL MATTER CONSTITUTE AN EXTRAORDINARY CIRCUMSTANCE TO RECALL A MANDATE AND VACATE THE JUDGMENT ONLY TO REINSTATE THE JUDGMENT SO THAT A TIMELY PETITION FOR A WRIT OF CERTIORARI CAN BE FILED ON THE ADVERSE JUDGMENT? AND IF SO, DID THE TENTH CIRCUIT COURT OF APPEALS ERR WHEN IT DECLINED PETITIONER'S MOTION TO APPOINT CJA COUNSEL AND VACATE ITS JUNE 29, 2021, ADVERSE JUDGMENT, OF HIS CRIMINAL DIRECT APPEALS REVIEW AND ISSUE A NEW ORDER SO THAT NEWLY APPOINTED CJA COUNSEL CAN ASSIST PETITIONER WITH THE FILING OF A TIMELY PETITION FOR WRIT OF CERTIORARI?

(i)

LIST OF PARTIES

[X] 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:

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EXHIBIT A: ORDER AND JUDGMENT OF TENTH CIRCUIT COURT OF APPEALS

EXHIBIT B: COPY OF THE MOTION AS FILED IN THE TENTH CIRCUIT COURT
OF APPEALS BY PETITIONER

EXHIBIT C: LETTER OF CJA APPOINTED COUNSEL OF THE RECORD ON PETITIONER'S
CRIMINAL DIRECT REVIEW MR. RUSSELL DEAN CLARK

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari issue to review the judgment below:

OPINIONS BELOW

For cases from a Federal Court:

The opinion of the United States Court of Appeals for the Tenth Circuit Court appears at EXHIBIT A to this petition and reported at;

JURISDICTION

For cases from a Federal Court:

The date on which the United States Court of Appeals decided my case was June 29, 2021

No petition for rehearing was timely filed in my case.

The [j]urisdiction of this United States Supreme Court's is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

On May 8, 2018, Petitioner was charged in a superseding indictment with distributing five or more grams of methamphetamine. On 02/01/2019, Magistrate Judge Gregory B. Wormuth, in the U.S. District Court-District of New Mexico (Las Cruces) issued an Order appointing federal public defender [Peter Edwards] to represent Petitioner on his criminal matter. After Petitioner was Arraigned on 02/06/2019, CJA counsel Peter Edwards filed a Motion to Withdraw as CJA counsel and the district court on 03/12/2019 appointed CJA counsel Cori Ann Harbour-Valdez to represent Petitioner.

On 04/25/2019, CJA counsel Cori Ann Harbour-Valdez filed a Motion to Withdraw as counsel and District Judge Robert C. Brack appointed CJA counsel Russell Dean Clark to represent Petitioner. Soon after CJA appointed counsel Russell Dean Clark's appointment a jury trial was had in the U.S. District Court at which Petitioner was found guilty on the charges presented to the jury and he was sentenced on 09/01/2020, to 280 months prison term to be followed by 10 years Supervised Release with Special Conditions; 500 Hour Drug Program; SPA \$100.00.

On 09/11/2020, CJA counsel Russell Dean Clark, filed a Notice of Appeal on Petitioner's behalf with the U.S. District Court. On 09/14/2020, the clerk's office for the Tenth Circuit Court of Appeals docketed Petitioner's appeal under case number 20-2130. (Document: 010110406480).

On June 29, 2021, the Tenth Circuit Court of Appeals issued its Judgment [affirming] the district court's sentence.

Following the Tenth Circuit Court of Appeals adverse judgment on Petitioner's direct criminal review [affirming] the district

court's judgment of conviction, CJA counsel of the record, Mr. Russell Dean Clark, wrote Petitioner a one page letter explaining that Covid 19 had things slowed down including the fact that Mr. Clark's Law Office was closed for days and even weeks. CJA counsel of the record Mr. Clark than went on to explained to Petitioner that the Tenth Circuit Court of Appeals agreed with the government, affirmed Judge Brack's trial rulings, affirmed Petitioner's conviction and the sentence. CJA counsel goes on to speak about Petitioner's decision to reject all plea offers and whether or not Petitioner should have listened to the advice of other people when making the decision not to plea bargin with the government. CJA counsel goes on to explained to Petitioner that "as your case has now been affirmed; my appointment terminates and I no longer represent you. Good luck and I wish you well.". See Appendixes C.

In February, 2022, Petitioner filed a Motion for Appointment of Counsel in the Tenth Circuit Court of Appeals, requesting for the Circuit Court to appoint counsel pursuant to the Criminal Justice Act (18 U.S.C.S. § 3006A) to assist Petitioner with filing a Petition for a Writ of Certorari with this United States Supreme Court to challenge the Tenth Circuit Court of Appeals June 29, 2021, adverse judgment of his Criminal Direct Appeal review. See Appendix B.

In my Motion for Appointment of Counsel I explained to the Tenth Circuit Court of Appeals that my CJA counsel of the record Mr. Russell Dean Clark never advised, explained to me nor gave me notice that I now had the [right] on the date Mr. Clark wrote me the letter, to petition this United States Supreme Court via a Writ of Certorari request seeking review of the Tenth Circuit

Court of Appeals June 29, 2021, affirmation judgment, of my criminal conviction and sentence. I likewise attached a copy of the letter that CJA counsel Mr. Clark wrote me with my Motion for Appointment of Counsel, and furthermore explained to the Circuit Court that FCI Forrest City Correctional Complex of which I am currently being housed at is under a sensitive and modified Covid 19 protocol measure whereas inmates are currently being confined in our [cells] with only one hour out of the cell on Mondays, Wednesdays, and Fridays, just to shower and make one ten minute phone call, with no access to the prison law library nor other parts of the Institution where "social distancing" cannot be properly maintained."

I also explained that CJA counsel Russell Dean Clark's failure and [duty] to inform and advise me of my "right" under the Criminal Justice Act (18 U.S.C.S. § 3006A) to petition this United States Supreme Court via Writ of Certiorari request within 90 days of the Tenth Circuit Court of Appeals adverse June 29, 2021, affirmation judgment of my criminal direct review matter has [deprived] me of my "right" to seek review of the circuit court's determination in a timely manner in accordance with this United States Supreme Court's rule with filing a timely Certiorari request. See Appendixes B.

On February 16, 2022, the office of the clerk in the Tenth Circuit Court of Appeals, wrote me a letter back explaining that the Circuit Court "will not file or take any action on my Motion for Appointment of Counsel.". See Appendixes A.

I am now seeking Certiorari in this United States Supreme Court based on the Tenth Circuit Court of Appeals February 16, 2022,

letter, refusing to act on my Motion for Appointment of Counsel pursuant to the Criminal Justice Act (18 U.S.C.S. §3006A) and also in light of this honorable court's clearly established precedents Herbert C. Wilkins, Sr., vs. United States, 441 US 468, 60 L. Ed 2d 365, 99 SCT 1829 (1979); also Edwin James Doherty vs. United States, 404 US 28, 30 L Ed 2d 149, 92 SCT 175 (1971).

In both Wilkins, Sr., and Doherty, this United States Supreme Court held that "when CJA counsel fails to file, inform, or advise a criminal defendant of his "right" under the Criminal Justice Act (18 U.S.C.S. § 3006A) to file a timely Writ of Certiorari petition with the United States Supreme Court to seek review of the Circuit Court of Appeals adverse decision against him, CJA counsel deprives the criminal defendant of an important "right" and that defendant may then make his request to the Circuit Court of Appeals for the Circuit Court to [vacate] only to reinstate its affirmation judgment and to appoint counsel so that the defendant may then file a timely Certiorari request with the assistance of newly appointed CJA counsel's help seeking review of the circuit court's adverse judgment."

The Supreme Court in both Wilkins, Sr., and Doherty, made it clear that the defendant should first make the request to the circuit court of appeals, providing the circuit court with all evidence of his CJA counsel's failure to advice or inform the defendant of the "right" to file a Writ of Certiorari after the circuit court's adverse judgment. The Court than went on to explain that once the circuit court was convinced that the defendant has provided it with sufficient evidence of CJA counsel's failure to file, advice, or inform the defendant of the "right" to petition the Supreme Court via Writ of Certiorari request to challenge the circuit court's adverse

judgment, the circuit court should then [vacate] than reinstate its judgment so as to allow the defendant an opportunity to file a timely Writ of Certiorari petition in accordance with the rule of the United States Supreme Court's Certiorari timeline, and also appoint the defendant newly CJA counsel to help assist the defendant with the filing of a petition for Certiorari. See Wilkins, Sr., 441 US 468, 99 SCT (1979); also see Doherty, *supra*, 404 US 28, 92 SCT (1971).

Petitioner now argues in this Certiorari request, that the Tenth Circuit Court of Appeals decision to not act upon his February 2022, Motion for Appointment of Counsel, in light of the Criminal Justice Act (18 U.S.C.S. § 3006A) is in conflict and contrary with controlling Supreme Court precedents Wilkins, Sr., and Doherty, *supra*, precedents that have resolved the facts of Petitioner's matter at issue in both the Wilkins, Sr., and Doherty cases.

Petitioner's CJA appointed counsel of the record Russell Dean Clark, actions of failing to advise or inform Petitioner of the "right" pursuant to the Criminal Justice Act (18 U.S.C.S § 3006A(a)) to petition this United States Supreme Court via Writ of Certiorari request to challenge the Tenth Circuit Court of Appeals June 29, 2021, adverse judgment on his criminal direct review, has [deprived] Petitioner of the opportunity to have his conviction and sentence reviewed in this court of last instance.

REASON FOR GRANTING PETITION

This petition comes to this Supreme Court, not as a conventional petition for certiorari, but instead because there has been a break down in the "[i]ntegrity of Petitioner's CRIMINAL judicial process and a violation of the Criminal Justice Act of 1964 (18 USCS § 3006A). In Wilkins v. United States, 441 US 468, 60 L Ed 2d 365, 99 S. Ct 1829 (1979), this Supreme Court stated that "[t]he Court of Appeals, the Solicitor General, and this Supreme Court all have a [strong] interest in ensuring that lawyers appointed to aid indigents discharge their responsibilities fairly.". "This Court also found that matters such as the one Petitioner, Wilkins, Sr., and Doherty brings to this court, are all too familiar".

Petitioner has first tried to seek relief from the Tenth Circuit Court of Appeals by way of a motion with sufficient [evidence] to support his claim and request, as this Supreme Court would first have him to do. The Tenth Circuit Court has simply DENIED his motion without a merits determination, leaving him to seek this Supreme Court's review.

In light of this Supreme Court's precedents Wilkins v. United States, 441 US 486, 60 L Ed 2d 365, 99 S. Ct 1829 (1979); and also Doherty v. United States, 404 US 28, 30 L Ed 2d 149, 92 S. Ct 175 (1971) this petition should be granted. The Tenth Circuit Court of Appeals February 16, 2022 Denial judgment, is contrary and in conflict with these cited precedents.