

No. _____

In the
Supreme Court of the United States
OCTOBER TERM, 2021

IRVING ERNESTO ARIAS,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

DID THE FIFTH CIRCUIT ERR BY FINDING THAT THE DISTRICT COURT'S DECISION TO DENY MR. ARIAS'S MOTION TO WITHDRAW HIS GUILTY PLEA DID NOT CONSTITUTE AN ABUSE OF DISCRETION?

DID THE DISTRICT COURT ERR BY DENYING MR. ARIAS'S MOTION TO WITHDRAW HIS PLEA OF GUILTY?

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REPORTS OF OPINIONS

The decision of the Court of Appeals for the Fifth Circuit is reported as *United States v. Arias*, No. 21-40097 (5th Cir. December 29, 2021)(not published). It is attached to this Petition in the Appendix.

JURISDICTION

The decision by the United States Court of Appeals for the Fifth Circuit affirmed the District Court's judgment of conviction and sentence in the Eastern District of Texas.

Consequently, Mr. Arias files the instant Application for a Writ of Certiorari under the authority of 28 U.S.C., § 1254(1).

BASIS OF FEDERAL JURISDICTION

IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in the United States District Court for the Eastern District of Texas because Mr. Arias was indicted for violations of Federal law by the United States Grand Jury for the Eastern District of Texas.

CONSTITUTIONAL PROVISIONS

U.S. CONST. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in this favor; and to have Assistance of Counsel for his defense.

STATEMENT OF THE CASE

1. Procedural History.

On January 9, 2019, a Federal Grand Jury for the Eastern District of Texas, Beaumont, Division, returned a six-count Indictment against Irving Ernesto Arias (Arias), and nine codefendants. ROA. 1-9.¹ Mr. Arias was only named in Count 1, which charged him with Conspiracy to Possess with Intent to Distribute and Distribute 50 Grams or More of Methamphetamine (Actual), in violation of 21 U.S.C. § 846. This offense occurred from on or about November 1, 2017 until on or about January 9, 2019. On June 3, 2020, Mr. Arias appeared before U.S. District Judge Marcia A. Crone and pled guilty to the Count 1 of the six-count Indictment. Judge Marcia A. Crone accepted Mr. Arias's plea, and deferred acceptance of the written, sealed, non-binding Plea Agreement. He was remanded to the custody of the U.S. Marshals Service, pending sentencing.

Mr. Arias was subsequently sentenced to a term of imprisonment of 262 months. ROA.499. This sentence is to be followed by a term of supervised release of 5 years. ROA.500. No fine was imposed, but Mr. Arias was ordered to pay a \$100

¹In the references to the Record on Appeal, references are made according to the pagination assigned by the Clerk of the Court.

special assessment. ROA.500. Thereafter, Mr. Arias timely filed a Notice of Appeal. ROA.382.

Mr. Arias then timely filed a notice of appeal. On December 29, 2021, a panel of the Fifth Circuit affirmed the Petitioner's conviction in an unpublished decision.

2. Statement of Facts.

Mr. Arias is 32 years old. Born in Houston, Texas, he was raised there by his parents along with his two sisters. He is a high school graduate, graduating from Westbury High School in 2006. He completed some college credits. Mr. Arias worked as a manager for AutoZone for approximately twelve years.

It is alleged that Mr. Arias conspired to Possess with the Intent to Distribute Methamphetamine 500 Grams or More of a Mixture or Substance Containing a Detectable Amount of Methamphetamine or 50 Grams or More of Methamphetamine (actual). That is the conduct that comprised the charge to which he entered a plea of guilty. ROA.522.

The District Court allowed Mr. Arias to proceed *pro se* after his first attorney withdrew from the case. Mr. Arias then filed a motion to withdraw his guilty plea. After a hearing, the District Court denied the motion to withdraw the plea. ROA.356-357. The District Court assigned a stand-by counsel for the sentencing hearing.

The PSR assigned Mr. Arias a base offense level of 38 for Count One, based on the amount of methamphetamine for which he was responsible.² The PSR did not assign a three-level adjustment for acceptance of responsibility. Based upon a total offense level of 38 and a criminal history category of II, the advisory guideline imprisonment range is 262 months to 327 months. The statutory minimum sentence is ten years.

The District Court subsequently sentenced Mr. Arias to a 262- month term of imprisonment. ROA.499. The notice of appeal was then timely filed. On November 2, 2021, the Fifth Circuit affirmed Mr. Arias's conviction and sentence in an unpublished, per curiam decision. *See United States v. Arias*, No. 20-40629 (5th Cir. 2021).

²"PSR" refers to the Presentence Investigation Report filed by the United States Probation Department (under seal).

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. THE DISTRICT COURT ERRED IN FAILING TO ALLOW MR. ARIAS TO WITHDRAW HIS PLEA OF GUILTY.

A defendant has no absolute right to withdraw a guilty plea; the district court may, however, permit a defendant to withdraw a guilty plea before sentencing upon showing a fair and just reason. *United States v. Still*, 102 F.3d 118, 123-24 (5th Cir. 1996), *cert. denied* 522 U.S. 806 (1997); FED. R. CRIM. P. 32 (e). FED. R. CRIM. P. 11(d)(2)(B). “The burden of establishing a fair and just reason for withdrawing a guilty plea remains at all times on the defendant.” *Id.*, at 124.

In reviewing the denial of a motion to withdraw a guilty plea, this Court considers several factors: whether (1) the defendant asserted his innocence, (2) withdrawal would prejudice the government, (3) the defendant delayed in filing the withdrawal motion, (4) withdrawal would inconvenience the court, (5) close assistance of counsel was available to the defendant, (6) the plea was knowing and voluntary, and (7) withdrawal would waste judicial resources. *United States v. Carr*, 740 F.2d 339, 343-44 (5th Cir. 1984). Because the Court must consider the totality of the circumstances in applying these factors, *id.* at 344, “[n]o single factor or combination of factors mandates a particular result.” *United States v. Badger*, 925 F.2d 101, 104 (5th Cir. 1991). The court need not make a finding as to each of the

Carr factors as it makes its determination is based on the totality of the circumstances. *United States v. Powell*, 354 F.3d 362, 370-71 (5 Cir. 2003). A defendant's assertion of conclusory allegations does not warrant withdrawal of a guilty plea at least where such allegations are clearly refuted by the record. *United States v. Bounds*, 943 F.2d 541, 543 (5th Cir. 1991).

An examination of the *Carr* factors in this case supports Mr. Arias's claim that district court abused its discretion in failing to allow the withdrawal of the guilty plea. In reviewing the denial of a motion to withdraw a guilty plea, the court considers whether (1) The Defendant asserted his innocence; (2) withdrawal would prejudice the government; (3) the Defendant delayed in filing the withdrawal motion (4) withdrawal would inconvenience the court (5) close assistance of counsel was available to Defendant, (6) the plea was knowing and voluntary, and (7) withdrawal would waste judicial resources. *See Carr* 740 F.2d at 343-344 (5th Cir. 1984). The court must consider the totality of the circumstances in applying these factors. *Id* at 344.

Assertion of Innocence

Mr. Arias maintained his innocence. ROA.405. The district court abused its discretion by finding that Mr. Arias had not asserted his actual innocence. ROA.305. Mr. Arias stated unequivocally in his objections to the report and recommendation

that his involvement in the conspiracy was limited. Mr. Arias explained that his conduct did not rise to the offense of conspiracy. Mr. Arias asserted his innocence at his first opportunity to do so. Mr. Arias asserted his innocence regarding the amounts of drugs charged and the amounts for which he was found responsible. Mr. Arias expressed reservations about his plea. The district court should have found that the first factor weighed in favor of permitting withdrawal of the plea.

Prejudice to the Government

Regarding the second factor, no prejudice to the government was demonstrated. The government did not demonstrate that any witnesses or evidence would be unavailable. *Compare McKnight*, 570 F.3d at 649 (although the government claimed a witness would be “difficult to locate”, this Court found no prejudice to the government).

The district court erroneously found that this factor weighed against Mr. Arias. ROA.306.

There was an insufficient basis for this finding, and the prejudice factor should have weighed in favor of withdrawal. The court abused its discretion in finding prejudice to the government. There is insufficient evidence that allowing Mr. Arias to withdraw his guilty plea would prejudice the government. Further, a court should

not base any of its decisions on questions of inconvenience or the amount of time it takes to decide constitutional issues and matters that relate to one's guilt or innocence.

Delay in Filing the Motion

Third, Mr. Arias showed he did not delay in filing the withdrawal motion. On June 3, 2020, Mr. Arias appeared before United States District Judge Marcia Crone and entered a plea of guilty to Count One of the Indictment pursuant to a plea agreement. On June 26, 2020, Mr. Arias filed his motion to withdraw guilty plea. Mr. Arias signed the motion on June 26 but it is postmarked June 29, 2020. The Clerk's office received and docketed the motion on July 1, 2020. This amounts to a delay of less than a month.

Although the District Court found that the delay of less than a month weighed against Mr. Arias, this finding is not supported and constitutes an abuse of discretion.

Inconvenience to the Court

Fourth, Mr. Arias showed that withdrawal would not inconvenience the Court. Although the Beaumont Division is busy, it could accommodate Mr. Arias's desire for trial.

Close Assistance of Counsel

The next factor for the Court to consider is whether close assistance of counsel was available at the time Mr. Arias entered his plea. Mr. Arias raised numerous issues

with Mr. Skinner's representation. First, Mr. Arias stated that his attorney failed to review discovery with him, did not explain the factual basis of his guilty plea, did not advise him what the government had to prove or the elements of the offense, and did not explain all of the rights he was waiving by pleading guilty. Mr. Arias also argued about a lack of communication with Mr. Skinner, specifically the fact that Mr. Skinner did not personally visit with him from arraignment in February until May 22, 2020—approximately two weeks before entering his guilty plea. ROA. 307-308.

Mr. Arias, throughout the pendency of the case, has made it apparent that he was not satisfied with the representation provided by his counsel. Therefore, the District Court's finding regarding close assistance of counsel is not sufficiently supported by the record.

Mr. Arias's Plea was not Knowing or Voluntary

Mr. Arias's plea was not knowing and voluntary. In addition to asserting actual innocence, Mr. Arias pled to the court that he did not knowingly and voluntarily plead guilty. The district court found that the plea was knowing and voluntary. ROA. 311. That is another erroneous finding. A guilty plea is valid only if it is knowing and intelligent. *Bousley v. United States*, 523 U.S. 614, 618 (1998). The fact that Mr. Arias entered a guilty plea and said it was voluntary at the plea hearing does not bar his later assertion of innocence and that the plea was

involuntary. *United States v. Diaz*, 733 F.2d 371, 373 (5th Cir. 1984). Additionally, Mr. Arias should have been given the full opportunity to explain that his plea was involuntary. This opportunity was not sufficiently afforded to Mr. Arias.

Judicial Resources

Finally, Mr. Arias showed that the withdrawal would not waste judicial resources. There is no indication that, had the case gone to trial, it would have been lengthy.

Other Considerations

While not a listed *Carr* factor, a defendant must also establish a fair and just reason for withdrawing his guilty plea. In addition to the *Carr* factors that weigh in Mr. Arias's favor, Mr. Arias had questions about not being able to visit with his attorney due to COVID restrictions. Mr. Arias was sentenced to 262 months in prison. Therefore, not only has Mr. Arias met the burdens under *Carr* but he also showed a fair and just reason for withdrawing his guilty plea, simple equity and fairness.

Mr. Arias has shown that he is entitled to relief under the totality of the *Carr* factors. In evaluating a motion to withdraw, no single *Carr* factor is determinative; instead, the court makes its decision based on the totality of the circumstances. *See United States v. Badger*, 925 F.2d 101, 104 (5th Cir.1991). "The rationale for

allowing a defendant to withdraw a guilty plea is to permit him to undo a plea that was unknowingly made at the time it was entered.” *Carr*, 740 F.2d at 345.

The weight of evidence supports Mr. Arias’s claim that his plea was made unknowingly. The Fifth Circuit erred by upholding the decision of the District Court to deny Mr. Arias the opportunity with withdraw his guilty plea. Mr. Arias requests that this Court grant certiorari, vacate the Fifth Circuit’s decision, and remand for proceedings consistent with this Court’s opinion.

CONCLUSION

This Petition for Writ of Certiorari should be granted and the decision of the Fifth Circuit should be vacated, and the case should be remanded for proceedings consistent with this Court's opinion.

Respectfully submitted,

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RELIEF REQUESTED

FOR THESE REASONS, the Petitioner moves this Court to grant a Writ of Certiorari in order to review the Judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 28th day of March, 2022, I served one (1) copy of the foregoing Petition for Writ of Certiorari on the following individuals by mail (certified mail return receipt requested) by depositing same, enclosed in post paid, properly addressed wrapper, in a Post Office or official depository, under the care and custody of the United States Postal Service, or by other recognized means pursuant to the Rules of the Supreme Court of The United States of America, Rule 29:

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/s/ Amy R. Blalock
AMY R. BLALOCK

No. _____

In the

Supreme Court of the United States

OCTOBER TERM, 2021

IRVING ERNESTO ARIAS,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

APPENDIX

OPINION OF THE UNITED STATES COURT

OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
for the Fifth Circuit

No. 21-40097
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

December 29, 2021

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

IRVING ERNESTO ARIAS,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 1:19-CR-14-7

Before OWEN, *Chief Judge*, and SOUTHWICK and WILSON, *Circuit Judges*.

PER CURIAM:*

Irving Ernesto Arias pleaded guilty to one count of conspiring to possess fifty grams or more of methamphetamine and was sentenced to 262

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-40097

months' imprisonment and a five-year term of supervised release. He challenges the district court's denial of his motion to withdraw his plea.

District courts are given "broad discretion" with respect to their rulings on motions to withdraw pleas. *United States v. Carr*, 740 F.2d 339, 344 (5th Cir. 1984) (quoting *United States v. Morrow*, 537 F.2d 120, 146 (5th Cir. 1976)). We review the denial of a motion to withdraw a guilty plea for abuse of this discretion. *United States v. Lord*, 915 F.3d 1009, 1013 (5th Cir. 2019). "[A] district court abuses its discretion if it bases its decision on an error of law or a clearly erroneous assessment of the evidence." *Id.* at 1013-14 (quoting *United States v. Powell*, 354 F.3d 362, 370 (5th Cir. 2003)).

When considering Arias's motion, the district court conducted an exhaustive analysis of the *Carr* factors. Our review of the record and the district court's opinion in light of these factors shows no abuse of discretion, and Arias's arguments to the contrary are not persuasive.

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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December 29, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 21-40097 USA v. Arias
USDC No. 1:19-CR-14-7

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and 5th Cir. R. 35, 39, and 41 govern costs, rehearings, and mandates. **5th Cir. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and 5th Cir. R. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. 5th Cir. R. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

Charles Whitney

By: Charles B. Whitney, Deputy Clerk

Enclosure(s)

Ms. Amy R. Blalock
Ms. Michelle Suzanne Englade
Ms. Traci Lynne Kenner
Mr. Bradley Elliot Visosky