No. 21-7710

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

HERNANDEZ DANIELS -PETITIONER

VS

UNITED STATES OF AMERICA -RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO THE ELEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

HERNANDEZ DANIELS REG# 11742-017
F.C.C. P.O. BOX 1033
COLEMAN, FLORIDA 33521

QUESTION PRESENTED

I.

IN COMPLIANCE WITH ANDERS V. CALIFORINA, 386 U.S. 738 (1967), CAN COUNSEL SIMPLY WITHDRAW WITHOUT FINDING THE CASE TO BE "WHOLLY FRIVOLOUS" AS REQUIRED BY ANDERS?

II.

DID THE ELEVENTH CIRCUIT VIOLATE ANDERS V. CALIFORINA, 386 U.S. 738 (1967) BY NOT FINDING THE ISSUE -AFTER FULL EXAMINATION OF THE RECORD- TO BE "WHOLLY FRIVOLOUS" AS REQUIRED BY ANDERS?

III.

WHETHER THE DISTRICT COURT ERRED IN FAILING TO CONDUCT A MEANINGFUL APPELLATE REVIEW BY FAILING TO EXPLAIN ITS REASON FOR DENIAL?

PARTIES OF THE PROCEEDING

Petitioner, Hernandez Daniels, was the Defendant in the District Court for the Northen District of Florida, Tallahassee Division before the Eleventh Circuit Court of Appeals. The United States of America, was the Plaintiff in the District Court for the Northern District of Florida, and the Appellee before the Eleventh Circuit Court of Appeals.

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OPINION BELOW

The Opinion of the Eleventh Circuit Court of Appeals is reported at 858 Fed. Appx. 337 (11th Cir. 2021) and is attached to this Petition as Appendix H. The Opinion of the District Court is not reported, but is attached as to the Petitioner as Appendix E.

JURISDICTION

The Opinion of the Eleventh Circuit Court of Appeals was entered 9/3/21 Daniels subsequently filed a Petition for Panel Rehearing or Rehearing En Banc. The Eleventh Circuit denied the Petition on 2/10/22 and entered a final judgment on this case on 2/18/22. This Court has jurisdiction to review this case under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

6th Amendment- Right to Effective Counsel

STATEMENT OF COURSE AND PROCEEDING

In March of 2003, Hernandez Daniels was charged with conspiracy (between March 1, 1998 and March 4, 2003) to distribute and possess with intent to distribute more than fifty (50) grams of crack cocaine, in violation of 21 U.S.C. §§ 841(b)(1)(A)(iii) and 846. In Count II, Daniels was charged with the July 24, 2002, distribution of crack cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). In Count III, Daniels was charged with August 1 or 2, 2002, attempt to distribute crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) 841(b)(1)(C). The jury found him guilty on Count I, II, and IV. Daniels was found not guilty on Count III.

The Probation office prepared a Presentence Investigation Report. (PSR) The probation officer concluded Daniels had a total offense level of 47 and a criminal history category of VI. (PSR ¶¶42, 73).

Daniels was sentenced to a mandatory minimum term of life in prison on Count I due to his prior felony drug convictions. (PSR ¶4). The district court also imposed enhanced penalties of 30 years in prison on Count II and IV, all terms to be served concurrently. Daniels pursued a direct appeal before the Eleventh Circuit Court of Appeals. The Court remanded the case for

resentencing on Count II and IV due to error under United States V. Booker, 543 U.S. 220 (2005), i.e., enhancing Daniels's guideline calculation based upon his involvement in the murder of a confidential informant, a factual finding made by the judge rather than the jury. See United States V. Daniels, 135 Fed. Appx. 305 (11th Cir. 2005)(unpublished).

On remand, the district court imposed the same sentence on Count II and IV while regarding the guideline calculations as advisory rather than mandatory.

STATEMENT OF THE FACTS

In June of 2019, Daniels filed a motion for appointment of counsel to pursue a claim for sentencing relief under the First Step Act. The district court appointed the Federal Public Defender and directed the parties to file memoranda addressing whether Daniels was eligible for a reduced sentence under the First Step Act. The Public Defender, responding to the court's order, argued Daniels was ineligible for relief.

Month later, the district court ordered the parties to file supplemental briefing addressing the intervening decisions of the Court in United States V. Jones, 962 F.3d 1290 (11th Cir. 2020), and United States V. Brown, 809 Fed. Appx. 739 (11th 2020), as they pertain to the issue of eligibility under the

the First Step Act. At that point, both parties agreed that Daniels was eligible for a reduced sentence under the Act.

The district court then issued an Order granting relief, in part, finding Daniels eligible for relief under the First Step Act. By the same order, the Court directed the parties to file memoranda addressing whether the court "should exercise its discretion to reduce Defendant's sentence and, if so, the proposed modified sentence."

Daniels argued that he has served 17 years in prison with no disciplinary reports. He acknowledged that the trial court found him responsible, under the conspiracy crime, for 4.73 kilograms of crack cocaine. The two distribution crimes involved small amounts of crack -3.5 and .9 grams. He also acknowledged that the trial court found him responsible for the murder of an informant. And after his federal prosecution, Daniels was prosecution, Daniels was convicted of the first-degree murder of the informant in a Florida court and sentenced to a consecutive term of life in prison.

Counsel noted, nonetheless, that Daniels has been a model prisoner for 17 years, and argued that post-sentencing rehabilitation is a highly relevant factor under 18 U.S.C. § 3553(a) and as applied in First Step Act proceedings. Daniels's

argument was supported by letters of support. His supervisor at FCC Coleman attested that through his work at the Commissary, Daniels has demonstrated a positive attitude and personal characteristics that show he will be a productive member of society if given a chance. Counsel provided seven letters to show Daniels has a strong base of community support which would help him in the event of his release, and expressing belief in his prospects for a successful integration to society. These include expressions from his mother, two pastors and other community members.

The government argued against a discretionary reduction of sentence. The government argued that testimony was presented at trial to show that "Daniels relayed the details of the death of the confidential source." Daniels reportedly told a cellmate: "That's why I had to kill that bitch. She tried to play me but ended up missing." The Government also stated that the confidential source was murdered after law enforcement conducting surveillance were diverted to a false burglary call placed by Daniel's brother. Daniels also had a history of violent crime and qualified for a mandatory term of life in prison due to his prior felony drug convictions. In arguing against discretionary relief. that government stated that Daniels was "directly linked to the source's heinous murder."

The district court declined to reduce Daniel's sentence. The court noted the parties' agreement that Daniels was eligible for a reduced sentence. The only remaining issue was whether the court should exercise its discretion to reduce his sentence. The district court noted that after his federal conviction Daniels was found guilty of murder in state court and sentenced to a consecutive sentence of life in prison.

On the other hand, Daniels has "conducted himself with dignity and grace while incarcerated these past 17 years." He has earned the praise and confidence of individuals in the community and the correctional institution. The district court also viewed the evidence of post-sentencing rehabilitation as highly relevant.

The district court did not view a sentence reduction as futile in light of the sentence imposed by the Florida court. The court considered the present issue "entirely independent of Defendant's state sentence." The court considered the "many mitigators and aggravators at play." In the end, the large quantity of drugs involved in the conspiracy and the murder conviction outweighed the evidence of post-sentencing rehabilitation, and the court declined to reduce Daniel's sentence.

REASON FOR GRANTING PETITION

I.

IN COMPLIANCE WITH ANDERS V. CALIFORNIA, 386 U.S. 738 (1967), CAN COUNSEL SIMPLY WITHDRAW WITHOUT FINDING THE CASE TO BE "WHOLLY FRIVOLOUS" AS REQUIRED BY ANDERS?

In Roe V. Flores-Ortega, 528 U.S. 470 (2000), this Court held, "[C]ounsel [has the duty] to discuss frankly and objectively with the defendant the matters to be considered in deciding whether to appeal. ... To make the defendant's ultimate choice a meaningful one, counsel's evaluation of the case must be communicated in a comprehensible manner."

At the outset of this appeal, counsel failed to comply with it's duty as expressed in Flores-Ortega. Counsel never consulted with Daniels prior to filing the Anders Brief, and failed to discuss any argument that could have been raised. Dainels avers, he did not know an Anders brief was submitted, until the Eleventh Circuit requested a response.

Now, in reading the reasoning counsel provided the Eleventh Circuit for withdrawing, this Court would agree that it failed to comply with Anders. Counsel stated, "[1]. Counsel has examined the record on appeal and cannot in good faith make any argument

on appeal. ... Wherefore, ... Richard M. Summa, Assistant Federal Public Defender, request permission to withdraw from this appeal because appointed counsel have not found any meritorious issues. **Appendix F.**

In Anders, Daniles avers, there is no "good-faith" exemption to withdraw[1] and counsel could not create his own reasoning under Anders. For, Anders clearly explained:

> "The Constitutional requirement of substantial equality and fair process can only be attained where counsel acts in the role of an active advocate in behalf of his client, as opposed to that of amicus curiae. The no-merit letter and the procedure it triggers do not reach that dignity. Counsel should, and can with honor and without conflict, be of more assistance to his client and to the court. is role as advocate requires that support his client's appeal to the best of his ability. Of course, if counsel finds his case to be **wholly frivolous,** after a conscientious examination of it, he should so advise the court and request permission to withdraw." id at 744

In reviewing case law throughout the United States, several circuit unified themselves with the plain language of Anders. Thus, requiring counsel to place on the record "that the appeal is wholly frivolous in order to withdraw." See Freels V. Hills, 843 F.2d 958 (6th Cir. 1988)(Reversal for the Court found that the mandates of Anders had not been followed); United States

1. Indeed, in the federal courts, the advise of counsel has long been required whenever a defendant challenges a certification that an appeal is not taken in good faith, Johnson V. United States, 352 U.S. 565 [] (1957)(refering IFP statute)

V. Burnett, 989 F.2d 100 (2d Cir. 1993)(The Court denied counsel's motion because the Anders brief was inadequate as it did not explain why the insufficiency of the evidence claim was a frivolous ground for appeal); United States V. Edwards, 777 F.2d 364 (7th Cir. 1985)(An appointed "no merit" letter because the counsel did not advise the Court of what point he might have raised and why he thought they would have been frivolous.").

But see High V. Rhay, 519 F.2d 109 (9th Cir. 1975)(The District Court erred when it stated that the requirements of Anders were lower because there was no substantial constitutional question in the appeal. The prisoner should not have been deprived of his right to have an advocate present his appeal because his appointed counsel failed to perform his duty.)

In this case, it is unclear whether counsel was being lazy, or did not want to be bother with this case. But, whatever the reason was, it did not trump Counsel's obligation and duty under the 6th Amendment. Counsel chose to "withdraw" not because the abandoned his client, for a reason not warranted withdraw.

Therefore, because counsel failed to complied with Anders,

Counsel's Motion to Withdraw should have been denied. This Court should exercise it's discretion under Rule 10(a), for the Eleventh Circuit has created an unwarranted circuit-split on an established precedent.

II.

DID THE ELEVENTH CIRCUIT VIOLATE ANDERS V. CALIFORNIA, 386 U.S. 738 (1967) BY NOT FINING THE ISSUE -AFTER FULL EXAMINATION OF THE RECORD- TO BE "WHOLLY FRIVOLOUS" AS REQUIRED BY ANDERS?

In Anders, the Supreme Court explained to the lower courts:

> "... the court -not counsel- then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous. If it so finds it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires. On the other hand, if it finds any of the legal points arguable on their merits (and therefore not frivolous) it must, prior to decision, afford the indigent the assistance of counsel to argue the appeal." if at 386 U.S. 744

After Anders, the Supreme Court affirmed the same message. In McCoy V. Court of Appeals, 486 U.S. 429 (1988)(Thus, the Anders brief assist the Court in making the critical determination whether the appeal is indeed so frivolous that counsel should be permitted to withdraw).

In this case, the Eleventh Circuit did not adhere to this simply requirement. The Eleventh Circuit, provided a one sentence

analysis: "[B]ecause independent examination of the the entire record reveals no arguable issue of merit. This one sentence analysis violated the very rubric of Anders and several sister circuit's decision; and thus, creating an unnecessary circuit split.

See Anders, at 386 U.S. at 743 "[The Court of Appeal] failed however, to say whether it was frivolous or not, but, after consideration, simply found the petition to be "without merit." ... We cannot say that there was a finding of frivolity by either California Courts or that counsel acted in any greater capacity then merely as amicus curiae which was condemned in Ellis, Supra.

See also United States V. Lewandowski, 372 F.3d 470 (1st Cir. 2004)(Court of appeals may allow counsel to withdraw **if** the appeal is "wholly frivolous."); United States V. Acquaye, 452 F.3d 380 (5th Cir. 2006); United States V. Keith, 322 Fed. Appx. 28 (2d Cir. 2009); Demarris V. United States, 444 F.2d 162, 164-65 (8th Cir. 1971); Henderson V. Lockhart, 864 F.2d 1447 n.3 (8th Cir. 1988); Horsely V. Simpson, 400 F.2d 708 (5th Cir. 1986); Penson V. Ohio, 488 U.S. 75 (1988)(Criminal defendant has right to appellate counsel even if his claims are ultimately unavailing so long as they are not frivolous); Neitzke V. Williams 490 U.S. 319 (1989)(A finding that a complain fails to state a claim upon which relief can be granted does not invariably

mean that the claim is without arguable merit; not all unsuccessful claims are frivolous).

In this case, the Eleventh Circuit failed to afford Daniels assistant of counsel to argue the appeal prior to it's opinion. See Anders at 744. The Eleventh Circuit simply held a "no merit" motion is warranted to allow Counsel to abdicate his duty as an attorney under the 6th Amendment. Therefore, this Court should exercise it's discretion under Rule 10(a), for the Eleventh Circuit has created an unnecessary circuit-split on established precedent.

III.

WHETHER THE DISTRICT COURT ERRED IN FAILING TO CONDUCT A MEANINGFUL APPELLATE REVIEW BY FAILING TO EXPLAIN ITS REASON FOR DENIAL?

In Chavez-Meza V. United States, 138 S. Ct. 1959 (2018), this Court held ...

> "the amount of explanation required of a sentencing judge in a sentence modification proceeding "depends ... upon the circumstances of the particular case ... So long as the sentencing judge "set[s] forth enough to satisfy the appellate court he has considered the parties' arguments and has a reasoned basis for exercising his own legal decision [-] making authority, the judge's explanation is sufficient."

In reading the District Court's decision, it failed to

conduct a meaningful appellate review by failing to explain it's reasoning for denial. The District Court simply held:

> "[T]his is a difficult case. There are many mitigators and aggravators at play, including the large quantity of drugs involved in the underlying conspiracy, Defendant's murder conviction, and evidence of his post-sentencing rehabilitation. Ultimately, this court must consider the entire record, the parties' responses, and the appropriate § 3553(a) factors, in deciding whether to exercise its discretion to grant relief. Having done so here, this Court chooses not to exercise its discretion to reduce Defendant's sentence."

"Having do so here" was not clear! In the First Step Act setting, a district court is required to conduct a "complete review of the resentencing motion on the merits," and "consider the guidelines and policy statements, along with the other [§] 3553(a) factors." United States V. Boulding, 960 F.3d 774, 783 (6th Cir. 2020)(quoting United States V. Allen, 956 F.3d 355, 358 (6th Cir. 2020)). "However, '[t]he appropriateness of brevity or length, conciseness or detail [in the Court's explanation] ... depends upon the circumstances, 'and '[t]he law leaves much, in this much respect, to the judge's own professional judgment."' Id at 500 quoting Chavez-Meza V. United States, 138 S. Ct. 1959, 1964 (2018)).

See also United States V. Dunn, 2021 U.S. App. LEXIS 18196 (6th Cir. 2021)(same); United States V. Redden, 850 Fed. Appx. 121 (2d Cir. 2021)(same); United States V. Collington, 995 F.3d

347 n.6 (4th Cir. 2021)(same). But see United States V. Chavis, U.S. App. LEXIS 885 (4th Cir. 2021)("We held that the District Court was required to provide an individualized explanation for denying the sentence reduction motion under the FSA 2018 when the defendant's **presented significant evidence of their post-sentencing rehabilitation.")

Prior to the Eleventh Circuit's ruling in this case. The Eleventh Circuit handed down. United States V. Russell, 994 F.3d 1230 (11th Cir. 2021). In Russell, the Eleventh Circuit explained:

> "A court must explain its sentencing decisions adequately enough to allow for meaningful appellate review. Else, it abuses it[s] discretion." Id "This principle applies not only when a court imposes a sentence, but also when it determines whether or not to reduce a defendant's sentence' pursuant to provisions like § 3582(c). ... When a district court determines whether or not to reduce a defendant's sentence, it must provide enough explanation to permit our meaningful review. United States V. Johnson, 877 F.3d 993 (11th Cir. 2017). Although detailed findings or are not required, a district court "set forth enough to satisfy [an] appellate court" that the district court "considered the parties' argument and ha[d] a reasoned basis" for denying the reduction Chavez-Meza V. United States, 138 S. Ct. 1959 (2018). See Johnson, 877 F.3d at 997 (explaining "there must be enough, in the record or the Court's order, to allow for meaningful appellate review of its decision" declining to exercise its decision" declining to exercise its discretion)."

The Eleventh Circuit concluded with:

> "There is not enough here to permit meaningful appellate review of the district court's initial order, the Court simply said "[e]ven assuming Defendant is eligible for resentencing under the First Step Act of 2018, after considering the statutory factors set forth in 18 U.S.C. § 3553(a), the Court would exercise its discretion to deny Defendant a reduction in this sentence." Doc 64 at 1-2. And we cannot discren from the record, the basis for the district court's decision not to exercise its discretion."

Daniels avers, this is the circumstance where an explanation was needed. In the Order, the District Court acknowledge 'The parties agree that Defendant is eligible for relief." DE-199 at 2 The District Court went on and further acknowledged." Now, the good. Despite facing a future of serving consecutive life sentences, Defendant has conducted himself with demonstrable dignity and grace while incarcerated these past 17 years. As his lawyer well notes, Defendant "has proven to be hard working and the correctional institution where he lives and works. Evidence of post-sentencing rehabilitation is highly relevant here -and Defendant has certainly demonstrated his capabilities." DE-199 at 3

Based on this, the public is left to wonder, "what was the true reason the District Court denied a defendant

was not only eligible, but pose no danger to the community at hand; and the reason why Congress pass the First Step Act.[2] See Rita V. United States, 551 U.S. 338 (2007)("The sentencing judge should forth enough to satisfy the appellate court that he [or she] has considered the parties' arguments and has a reasoned basis for exercising his [or her] own legal decision making authority.")

Nevertheless, this Court should exercise its discretion and Grant Wit of Certiorari on this issue.

CONCLUSION

WHEREFORE, Daniels prays that this Honorable Court to grant it's discretion and grant Writ of Certiorari.

Hernandez Daniels

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2. Chavez-Meza at 372