

CASE No. _____

In The Supreme Court of the United States

MICHAEL SARTIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether misinformation about the timeframe for seeking *certiorari* in violation of a lower court's CJA plan entitles a defendant to a GVR consistent with *Wilkins v. United States*, 441 U.S. 468 (1979).

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions this Court for a writ of certiorari to review the United States Court of Appeals for the Eighth Circuit's order denying Petitioner's motion to recall the mandate.

OPINIONS BELOW

The Eighth Circuit's order denying Sartin's motion to recall the mandate was entered December 7, 2021. ("App.") A.

JURISDICTION

The Eighth Circuit's order denying Sartin's motion to recall the mandate was entered on December 7, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1), and Part III of the Rules of the Supreme Court of the United States. This petition is timely pursuant to Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. 3006A(a):

(a) **Choice of Plan.**—Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation.

STATEMENT OF THE CASE

1. On July 2, 2020, the Eighth Circuit entered its judgment affirming the judgment of the district court. That same day, via the Court's opinion, the Court permitted Sartin's CJA counsel to withdraw from the case.
2. Consistent with Section V of the Eighth Circuit's CJA plan, the Clerk on July 2, 2020, mailed Sartin a letter notifying him of the procedures and timeframes to, *inter alia*, seek *certiorari*.
3. Page two of the Clerk's letter to Sartin states:

You may seek a writ of certiorari from the Supreme Court of the United States without filing for rehearing in the court of appeals. You may also seek rehearing in the court of appeals and then seek certiorari if the court of appeals denies your petition for rehearing. Under Supreme Court Rule 13, *a petition for a writ of certiorari in a criminal case is timely if it is filed with the Clerk of the Supreme Court within 90 days after the entry of the court of appeals' judgment*. The rule also provides that if a timely petition for rehearing is filed with the court of appeals, the 90-day period begins to run from the date the court of appeals denies the petition for rehearing.

4. On July 15, 2020, Sartin sought an extension of time to petition for rehearing, which was granted. Sartin was allowed until August 17,

2020, to file his rehearing petition. No petition was filed by August 17, 2020.

5. The Eighth Circuit's mandate issued on August 26, 2020.

6. Sartin file a second motion for extension of time to seek rehearing on September 1, 2020, which was denied on September 3, 2020.

7. Sartin noted in each of his motions for extension of time to seek rehearing that he had problems accessing the law library at his prison.

8. The Clerk's July 2, 2020, letter advising Sartin that he only had 90 days to petition for a writ of *certiorari* was incorrect.

9. On March 19, 2020, this Court entered an order extending the time to seek *certiorari* from 90 days to 180 days.

https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf

10. This Court's March 19, 2020, order was not rescinded until July 19, 2021.

https://www.supremecourt.gov/orders/courtorders/071921zr_4g15.pdf

11. The July 19, 2021, order states, "in any case in which the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued prior to July 19,

2021, the deadline to file a petition for a writ of certiorari remains extended to 150 days from the date of that judgment or order.”

12. Sartin moved to recall the Eighth Circuit’s judgment asking the appeals court to reenter its judgment so he could timely petition for a writ of *certiorari*.

13. The Eighth Circuit denied Sartin’s motion on December 7, 2021.

REASONS FOR GRANTING THE WRIT

I. Misinformation About The Timing of a Certiorari Petition Violated the Criminal Justice Act

14. The Clerk of the Eighth Circuit misadvised Sartin about the timeframe to seek *certiorari*. The Clerk told Sartin that he had 90 days to seek *certiorari* when he actually had 150 days.

15. In *Wilkins* the Court granted an out of time *certiorari* petition and vacated and remanded for further proceedings by the Third Circuit to remedy a CJA attorney’s failure to timely seek certiorari. *Wilkins v. United States*, 441 U.S. 468 (1979). Wilkins had asked his appellate attorney to seek review with the Supreme Court after his appeal was decided by the Third Circuit. *Id.* at 468. Wilkins’ lawyer told him that he had submitted a petition for writ of certiorari. *Id.* However, when Wilkins

contacted the Clerk of the Supreme Court he was told that no such petition had been filed. *Id.*

16. The Solicitor General in *Wilkins* argued that the CJA conferred upon defendants a right “to a lawyer's help in seeking certiorari.” *Id.* at 469. In fact, the CJA plan for the Third Circuit specifically contemplated that appointed counsel would seek certiorari if requested to do so by the defendant. *Id.* Noting that “[t]he Court of Appeals, the Solicitor General, and this Court all have a strong interest in ensuring that lawyers appointed to aid indigents discharge their responsibilities fairly,” the Court granted *Wilkins*' petition for writ of certiorari and “vacate[d] the judgment, and remand[ed] th[e] case to the Court of Appeals so that a timely petition for certiorari to review the appellate judgment c[ould] be filed.” *Id.* at 469-70 (alterations and emphasis added).

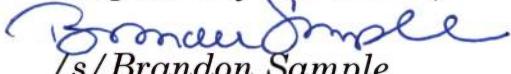
17. As in *Wilkins*, this Court and the Eighth Circuit both “have a strong interest in ensuring” that litigants receiving assistance under the CJA are treated fairly. That unfortunately did not happen in Sartin's case because the Clerk of the Eighth Circuit misadvised Sartin about the timeframe for seeking *certiorari*. The judgment of the Eighth Circuit should be vacated, and the case remanded so the Eighth Circuit may

reenter its judgment thereby giving Sartin the ability to timely seek *certiorari* based on correct information.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


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