No. 21-7922

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JASON MICHAEL EHRET — PETITIONER

vs.

UNITED STATES OF AMERICA — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

I. Does an uncounseled guilty plea -- where defense counsel was suspended and thus "ineligible to practice in federal court" at that time -- constitute a "structural error" which can be raised at any time because the resulting conviction is void?

II. Did the Southern District of Texas show actual or apparent judicial bias when during Petitioner's Rule 11 plea colloquy he explicitly stated he did NOT understand his rights under FRCrimP 11(b)(1)(C,E) -- and the district judge simply ignored his response and entered his now unknowing guilty plea?

LIST OF PARTIES

[✓] 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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TABLE OF AUTHORITIES CITED

STATUTES AND RULES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[✓] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

The opinion of the United States district court appears at Appendix D to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[✓] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

JURISDICTION

[✓] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 23 Feb 2022.

[✓] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

STATEMENT OF THE CASE

On 15 November 2016 the defendant in this case, Jason Ehret, plead guilty to 2252A(a)(5)(B).

I. Ehret's plea was uncounseled.

On 14 November 2016, defense counsel Keith Gould entered a disciplinary agreement with the Texas State Bar which rendered him "ineligible to practice in Federal Court at that time." Dkt 145, pg 10.

After Gould became ineligible to practice law in the Southern District of Texas he appeared in court to counsel Ehret (and at least one other unrelated criminal defendant) to plead guilty to count two of his indictment. SDTX 16-cr-801 (JGJ) at Dkt 69 (transcript). This issue was explicitly and repeatedly raised by AUSA Hugo Ricardo Martinez at the status conference regarding Gould's suspension on 06 January 2017 -- and explicitly acknowledged (but inexplicably ignored) by the District Court. See, e.g., docket entry 145, page 10, lines 06-10:

06 Mr. Martinez: It would appear that Mr. Ehret entered
07 a plea of guilty on November 15th, 2016, and Mr. Cleveland
08 entered a plea of guilty on November the 29th, 2016. As the
09 Court has already mentioned, Defense Counsel was ineligible to
10 practice in Federal Court at that time.

Ehret was thus completely denied counsel throughout a critical stage of trial, and he did enter a guilty plea while he was without counsel.

II. Ehret's plea was unknowing.

During Ehret's plea colloquy, the District Court stated: "This is your plea. You need to understand every word of it." Dkt 69, pg 09.

However, after explaining to Ehret that under the constitutional laws of the United States [FRCrimP 11(b)(1)(C,E)], he is entitled to trial by jury, a speedy trial, to confront, subpoena, and cross-examine witnesses, etc -- did Ehret understand these rights so far? and Ehret stated "No ma'am" -- the District Court simply ignored his response and continued with his now unknowing plea colloquy. Dkt 69, pg 17.

III. Remaining statement of the case.

Ehret was sentenced on 25 January 2017.

Ehret filed a timely 2255 citing several issues including that his counsel did not file an appeal. A hearing took place and Ehret's judgement was reinstated so he could file an appeal. The remainder of the 2255 was **dismissed without prejudice**.

During the appellate process the fact of the uncounseled and unknowing plea was discovered.

On (an out-of-time) direct appeal, Ehret's appellate counsel stated that Ehret's plea was uncounseled and unknowing, but did not properly argue those two issues because he (erroneously) believed that if Ehret was returned to a pre-trial status he could receive a higher sentence. See United States v. Ehret, No. 18-41159 (5th Cir. 2020), Appellant's Brief at pages 15-17.

The exact issue of Ehret receiving a higher sentence for exercising his constitutional rights had already been raised in the District Court during an evidentiary hearing regarding Ehret being entitled to an out-of-time appeal, where trial counsel stated he did not file an appeal because he (erroneously) believed Ehret could receive more time, and the District Court stated it

"could not possibly give [Ehret] a higher sentence." and counsel's professional opinion constituted "incompetent assistance of counsel." See Dkt 135, pgs 45, 51.

On 01 June 2020, Ehret filed a second-in-time 2255 motion with the District Court arguing, inter alia, his guilty plea was uncounseled because his defense attorney was "ineligible to practice in federal court" (Dkt 145, pg 10) during his plea colloquy and his guilty plea was unknowing because during his plea colloquy he explicitly stated he did not understand his rights. Dkt 150.

Importantly, a second-in-time 2255 motion was the proper procedural vehicle for Ehret to challenge the ineffective assistance of his appellate counsel regarding his failure to argue Ehret's uncounseled and unknowing guilty plea. See United States v. Orozco-Ramirez, 211 F3d 862, 869 (5th Cir. 2000)(a claim relating to counsel's performance during an out-of-time appeal accrues after the initial habeas motion was adjudicated and could not have been raised in that motion).

On 18 February 2021, the District Court dismissed all of the issues on procedural grounds -- as new claims that could have been raised in Ehret's initial 2255 motion despite the fact they were discovered during the direct appeal. Dkt 161.

On 02 August 2021, The Fifth Circuit Court of Appeals denied Ehret's motion for authorization to file a second-in-time 2255 motion, stating that Ehret's two structural errors "could have been raised in a prior 2255 motion, and he has not made the requisite showing" under 28 USC 2255(h). In re: Ehret, No. 21-40469 (5th Cir. Aug 02, 2021) at pg 02; Dkt 166.

On 07 September 2021, Ehret filed a proper motion for relief from judgment under Federal Rule of Civil Procedure 60(b):

(1) mistake, inadvertence, surprise, or excusable neglect;

...

(3) fraud, misrepresentation, or misconduct by an opposing party;

(4) the judgment is void; and

...

(6) any other reason that justifies relief -- again raising the same three issues, because under controlling authority from the United States Supreme Court both STRUCTURAL ERRORS and ACTUAL INNOCENCE may be noticed or otherwise reviewed at any time, notwithstanding procedural bars. Dkt 167.

The United States did not oppose Ehret's motion for relief under Rule 60(b).

On 15 October 2021, the District Court summarily dismissed Ehret's Rule 60(b) motion as a second or successive 2255 motion (Dkt 169), but failed to address Ehret's arguments regarding structural errors being reviewable at any time.

On 25 October 2021, Ehret filed his notice of appeal (Dkt 170), and on 28 October 2021 the District Court denied Ehret a Certificate of Appealability (COA), again failing to address arguments regarding Ehret's multiple STRUCTURAL ERRORS. Dkt 171.

On 23 February 2022, the Fifth Circuit Court of Appeals denied Ehret's appeal stating that a COA may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right," yet did not address the fact that Ehret's plea was without counsel and he did not understand the plea colloquy, which are constitutional rights.

This petition followed.

REASONS FOR GRANTING THE PETITION

I. An uncounseled guilty plea constitutes a "structural error" which can be raised at any time because the resulting conviction is void.

Structural errors "are the exception and not the rule." Rose v. Clark, 478 US 570, 578 (1986).

"The purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial." Weaver v. Massachusetts, 137 S.Ct. 1899, 1907 (2017).

"Thus, the defining feature of a structural error is that it affects the framework within which the trial proceeds, rather than being simply an error in the trial process itself." Id (internal citation omitted).

"For the same reason, a structural error defies analysis by harmless error standards," Id at 1907-1908 (internal citation omitted), and may be noticed at any time. See, e.g., Williams v. Pennsylvania, 136 S.Ct. 1899 (2016); Nguyen v. United States, 539 US 69 (2003); Fowler v. Butts, 829 F3d 788, 794 (7th Cir. 2016)(structural errors "may be noticed at any time.").

Accordingly, this court has found structural errors only in a very limited class of cases, including total deprivation of the right to counsel and judicial bias.

If a defendant is denied an attorney, the resulting trial is always a fundamentally unfair one. See, e.g., United States v. Gonzalez-Lopez, 548 US 140, 149-150 (2006); Gideon v. Wainwright, 372 US 335, 343-345 (1963).

"The presumption that counsel's assistance is essential requires us to conclude that a trial is unfair if the accused is denied counsel at a critical stage of his trial." United States v. Cronic, 466 US 648, 659 (1984).

In White v. Maryland, 373 US 59, 60 (1963), this court held that a hearing where a defendant pleads guilty is a critical stage of trial, and where a plea is taken without counsel, the resulting conviction will be held void without the necessity of showing prejudice.

"[A] void judgment is one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final." United States Aid Funds, Inc. v. Espinosa, 559 US 260, 270 (2010).

This court also noted in Brady v. United States, 397 US 742, 748 n.7 (1970), that it is "clear that a guilty plea to a felony charge entered without counsel ... is invalid."

Thus, an uncounseled guilty plea is a structural error that can be raised at any time. See, e.g., Arizona v. Fulminante, 499 US 279, 310 (1991); McMann v. Richardson, 397 US 759, 767 (1970)(recognizing that the "guilty plea is properly open to challenge" where defendant was "uncounseled").

Ehret was completely denied counsel throughout a critical stage of trial, and he did enter a guilty plea while he was without counsel.

The remedy provided for a fundamental structural error caused by the denial of a criminal defendant's right to counsel is the automatic reversal of his conviction. See Holloway v. Arkansas, 435 US 475, 489 (1978). See also Brecht v. Abrahamson, 507 US 619, 629-630 (1993) (structural errors such as "deprivation of the right to counsel" require automatic reversal of the conviction).

And since Ehret's "claim regarding the district court's failure to consider his structural-error contention ... asserted a defect in the integrity of the federal habeas proceeding," it "was properly considered as a request for reconsideration" under Rule 60(b). Pennebaker v. Rewerts, 2021 US App Lexis 27431 (6th Cir. 2021).

Therefore, since defense counsel Gould was ineligible to practice in Federal Court on 15 November 2016, Ehret's guilty plea was uncounseled, his resulting conviction and sentence are void, and he is entitled to automatic reversal of his conviction at any time.

II. The District Court showed actual or apparent judicial bias when the judge ignored Ehret's explicit lack of understanding and entered his unknowing guilty plea.

Due process requires that a defendant have a fair trial before an impartial judge. See, e.g., Republican Party of Minnesota v. White, 536 US 765, 775-776 (2002); Bracy v. Gramley, 520 US 899, 905 (1997).

At issue is whether Petitioner's particular circumstance is one "which would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear, and true." Aetna Life Insurance Co. v. Lavoie, 475 US 813, 822 (1986).

Aside from actual judicial bias, even the appearance of judicial bias is a structural error. Bigby v. Dretke, 402 F3d 551, 559 (5th Cir. 2005).

A claim of actual or perceived judicial bias may be established if a petitioner can demonstrate that the district judge was "acting clearly outside the bounds of law or reason in a manner that would signal any bias toward the defendant." Id at 560.

The District Court telling Ehret he needs to understand every word of his plea, and then ignoring his explicit lack of understanding regarding his rights under Rules 11(b)(1)(C,E),

demonstrates that it was "acting clearly outside the bounds of law or reason in a manner that would signal any bias toward" Ehret, and implicates -- at a minimum -- the appearance of judicial bias, if not actual judicial bias.

Therefore, since the District Court completely ignored his explicit lack of understanding, Ehret's guilty plea was unknowing because of actual or perceived judicial bias.

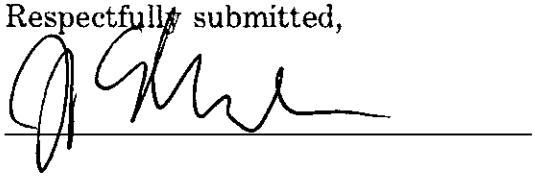
* * *

In conclusion, Ehret hereby moves this Court to reverse the Southern District of Texas and Fifth Circuit Court of Appeals' orders dismissing his motion for relief from judgment under Federal Rule of Civil Procedure 60(b)(1,3,4,6) regarding two structural errors.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10 May 2022