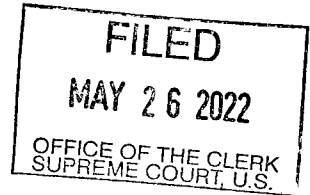


No. 21-8106 ORIGINAL



IN THE

SUPREME COURT OF THE UNITED STATES

Jay Turni — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals - Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jay Turni # 20653-078
(Your Name)

P.O. Box 26030
(Address)

Beaumont, Texas 77720
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Was JURDI's counsel ineffective for failing to object to, and thereby preserve for appeal, the fact that the government intended to use a non-qualifying prior offense to enhance his sentence?
2. Was JURDI's counsel ineffective for his failure to request that the district court question the jurors concerning their apparent premature deliberations? And for counsel's failure to request a more specific and direct admonishment to the jury that it should refrain from deliberations - absolutely - until it was instructed to begin by the Court?
3. Was JURDI's counsel ineffective for his failure to object to the prosecutor's knowing use of false evidence by Anthony Grasso?

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:

RELATED CASES

United States of America v. Jay TurDI
No. 4:12-cr-00180-RAS-DOB-11

Jay TurDI v. United States of America
No. 4:18-CV-00061-RAS (Final Judgment Entered)
on March 30, 2021

United States of America v. Jay TurDI
No. 21-40403 (Final Judgment Entered on
February 28, 2022)

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APPENDIX B	United States District Court No. 4:18-CV-61 (Eastern Dist. of Texas)
APPENDIX C	Jay TURBI v. United States of America No. 4:18-CV-61 (Report and Recommendation of U.S. Magistrate Judge)
APPENDIX D	Jay TURBI v. United States of America No. 4:18-CV-61 (Request for Certificate of Appealability)
APPENDIX E	Jay TURBI v. United States of America No. 4:18-CV-61 (Petitioner's Brief in Support of 2255)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Mathis v. United States, 136 S. Ct. 2243, 2247-48 (2016)	3
United States v. Tanksley, 848 F.3d 347 (5 th Cir. 2017)	3
Engle v. Isaac, 456 U.S. 107 (1982)	3
McCarthy v. Goodwill Inds, 851 F.3d 1076 (11 th Cir. 2017)	3
United States v. Diaz, 597 F.3d 56 (1 st Cir. 2010)	4

STATUTES AND RULES

N/A

OTHER

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 A to the petition and is

☐ reported at No. 21-40403; 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 B 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 2-28-22.

☒ 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

N/A

STATEMENT OF THE CASE

PLEASE See Statement of the Case on
the seven (7) pages following this page.

In The United States
Supreme Court

Jay Jurdi

v.

United States of America

Case No.

21-40403

Application For Certificate Of Appealability

Comes Now, Jay Jurdi, pro se, and respectfully requests that this Honorable Court grant him a Certificate of Appealability on the denial of his motion pursuant to 28 U.S.C. 2255 motion.

Jurdi would first ask that this Court excuse the hand written nature of his petition and the fact that the proper documents have not been utilized. Jurdi is currently housed at the United States Penitentiary at Beaumont, Texas and has been unable to utilize the law library, copy machines and legal forms that would normally be available to him. Along with the ongoing Covid restrictions, which this Court is ⁱⁿ no doubt aware of, Beaumont USP has been under almost constant

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due to security issues. Jurdi has been told that this Court will consider and rule fairly on a petition even if it is written on sheets of toilet paper. Jurdi hopes not to put this Court to a test quite that extreme but none the less hopes this Court will induce him slightly. The documents he has submitted to the Appeals Court are also hand written out of necessity and are included with this petition.

The denials of a certificate of Appealability by the district court and the Appeals Court gave no detail as to those denials so Jurdi will re-submit those same arguments in this petition but with this Court's permission, will point out the major points of his arguments for this certificate at the outset and pray that this Court will take the time to read and consider the documents previously submitted to the lower courts in making its decision.

Issue # 1

Was Jurdi's counsel ineffective for failing to object to, and thereby preserve for appeal, the fact that the Government intended to use a non-qualifying prior offense to enhance his sentence?

Points of argument not considered by Appeals Court

1) Turdi's attorney was well aware of the line cases on this issue. Mathis v. United States, 136 L. 2243, 2247-48 (2016). Mathis was decided in 2016 as result of many cases on this particular issue. Tank 848 F.3d 347 (5th Cir. 2017), the current precedent the Fifth Circuit was decided before Turdi's case was Final. And until a case is Final an attorney is duty bound to stay up to date on any case law that may effect the outcome of his client's case.

As pointed out in his requests for relief in the lower courts and in his request of a C.O.A. in those courts, Turdi did not expect his attorney to be clairvoyant, as alleged by the government, but to be diligent.

There is also the fact that a case handed down by this very Court seems to require that defense attorneys be at least somewhat clairvoyant, Engle v. Isaac, 4 U.S. 107 (1982) ("Engle indicated that petitioner's misadventure have a duty to anticipate changes in the law at the threat of having later claims based on those charges barred by principles of procedural default"). The Engle case was used by the government, to strip away the right to attack sentencing issues via the saving clause of 2255 see McCarthy v. Director of Goodwill Industries, 851 F.

1076 (11th Cir. 2017). In its denial of Jurdi's 2255 and request for a C.O.A. the lower courts ~~want~~ want to have their cake and eat it too.

Jurdi humbly requests that this Honorable Court grant him the opportunity to appeal the denial of this issue by granting a Certificate of Appealability

C.O.A. Supplement Issue # 1

Was Jurdi's attorney ineffective for his failure request that the district court question the jurors concerning their apparent premature deliberations. As for counsel's failure to request a more specific and direct admonishment to the jury that it should refrain from deliberations - absolutely - until it was instructed to begin them by the Court.

Points of argument that the Appeals Court did not consider

1) The Appeals Court used the United States v. Diaz 597 F.3d 56 (1st Cir. 2010) case in coming to its decision and failed to consider the many distinctions between the Diaz case and Jurdi's case. Those distinctions are fully brought to light in Jurdi's request for his Certificate of Appealability and Jurdi believes that those distinctions

and the facts of his case make clear that the district court's determination is debatable amongst jurists of reason.

C.O.A. Supplement Issue # 2

Was Jurdi's Counsel ineffective for his failure object to the prosecutor's knowing use of false evidence by Anthony Grasso?

This issue was given a short shrift by the district court. The issue of Anthony Grasso's probation revocation hearing having been dismissed on November 2013, "well before he testified against Jurdi", was not considered or even mentioned by the court. (Please see Attachment # 2) This event was addressed in Jurdi 2255 and ignored by both the district court and the Appeals Court. Both courts, as explained in Jurdi's C.O.A. request, failed to properly consider this Ineffective Assistance of Counsel issue.

Jurdi contends that this issue is debatable amongst jurists of reason and hopes this Honorable Court will afford him the opportunity to put it before the Appeal Court.

Conclusion

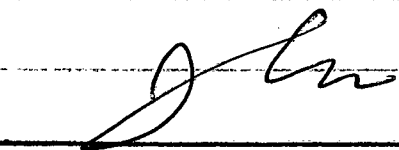
The Appeals Court's denial states that Jurdi fails to demonstrate "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and the jurists of reason would find it debatable whether the district court was correct in its procedural ruling."

Jurdi asserts that "effective assistance of Counsel is a constitutional right under the Sixth Amendment and that his attorney's failure to object to and therefore preserve obvious and meritorious issues is a violation of that Sixth Amendment right.

Jurdi prays that this Court will grant him a Certificate of Appealability on any or all of the foregoing issues and allow him to appeal the denial of his motion under 28 U.S.C. 2255.

Respectfully submitted on the 7th day of April 2022.

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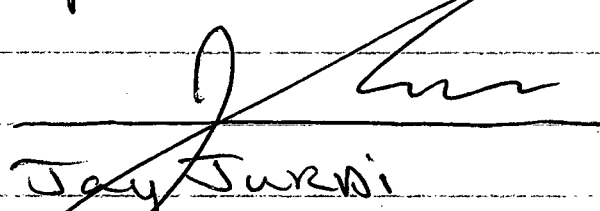
Jay Jurdi, pro se

SWORN DECLARATION

I, Jay Turdi, do hereby swear under penalty of perjury that the foregoing Application for Certificate of Appealability is true and correct to the best of my knowledge.

Sworn to on this 7th day of April 2022 pursuant to 18 USC 1246.

copy: file


Jay Turdi
Reg. No. 20653
USP Beaumont
P.O. Box 26030
Beaumont, Tx. 77720

Jay Jurdi

Reg. # 20653-078

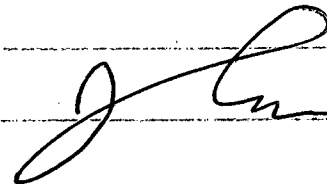
USP Beaumont

P.O. Box 26030

Beaumont, TX 77720

Certificate of Mailing

I, Jay Jurdi, do hereby certify that a true & correct copy of the foregoing: Application For Certificate of Appealability, was mailed on this 7th of April 2022 to: Office of the Clerk, U.S. Supreme Court, 1 First Street, N.E., Washington, DC 20543 placing the same in the U.S. Mail at the United State Penitentiary at Beaumont, Texas, postage prepaid



Jay Jurdi prose

REASONS FOR GRANTING THE PETITION

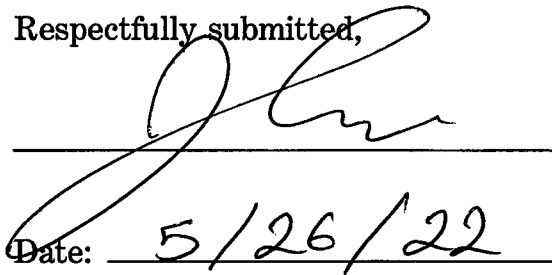
Jurati believes that Certiorari should be granted in his case in order to demonstrate that the granting of certificates of appealability are being held to a much higher threshold than is warranted by statute. The District Courts and Courts of Appeal are withholding these certificates based purely on the decisions made on the merits of the petitioner's arguments. Not on whether or not those decisions on the merits are debatable amongst jurists of reason.

Jurati's arguments are clearly debatable amongst jurists of reason and this Honorable Court should grant his petition in order to send a message to the lower courts to cease to take the path of least resistance by automatically denying these requests.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "John", is written over a horizontal line.

Date: 5/26/22