22-5044

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Richard A. Siler — PETITIONER
(Your Name)

vs.

11th Circuit Court of Appeals — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Circuit Court of Appeals-Case No. 19-12701
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Richard A. Siler
(Your Name)

2680 Hwy 301 South, Jesup FPC
(Address)

Jesup, GA 31599
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

1. Is it legal for a legitimate leads company to sell personal identities under any circumstance?

2. Are juries entitled to **factual answers** once asking questions during deliberations concerning the core issue of the instant case?

3. Are issuances of a **Certificate of Appealability (COA)** to be considered proof that a particular issue is **not** frivolous?

4. Can a petitioner's claims be considered all **frivolous** after error has been determined by the courts during Direct Appeal?

5. Is the court legally bound under Clisby to answer all claims from a petitioner, even if one of the claims may have been covered while answering another claim?

Certificate of interested Persons
Siler v. US, Case No.19-12701-BB

Berger, Michael

Caruso, Michael

Farina, Vincent

Ferrer, Wilfredo

Gayles, Hon. Darren P.

Howard, Freddy

Korchin, Paul Maury

Keuhne, Bennedict

Lawler, Timothy

Louis, Hon. Lauren Fleisher

Maderal, Jr., Francisco Raul

McAliley, Hon. Chris M.

Rabin, Jr., Samuel Joseph

Reid, Hon. Lisette M.

Siler, Richard Anthony

Smachetti, Emily M.

Standifer, Tangela

Turnoff, Hon. William C.

White, HOn. Patrick A.

Williams, Hon. Kathleen M.

Wu, Jason

RELATED CASES

1. Jury Trial/ Verdict, United States v. Richard A. Siler (14-cr-20116-DPG)
2. Richard A. Siler v. United States Case No. 14-14792-E
   USDC Case No. 14-cr-20116-Gayles.
3. Richard A. Siler v. United States Case No. 14-14792-EE
   Writ of Certiorari **Denied** June 12, 2017.
4. Richard A. Siler v. United States, Case No. 17-cv-24294-DPG
   Eleventh Circuit Court of Appeals, (filed November 28, 2017)
5. Richard A. Siler v. United States, Case No. 17-cv-24294-DPG
   Eleventh Circuit Court of Appeals, (**Denied** §2255 June 29, 2019)
6. Richard A. Siler v. United States, Case No. 17-cv-24294-DPG
   Eleventh Circuit Court of Appeals, (Relief from Judgement 60(b)
   (filed October 16, 2019)
7. Richard A. Siler v. United States, Case No. 19-12701-B
   Eleventh Circuit Court of Appeals, Certificate of Appeal, (**Granted**
   April 10, 2020).
8. Richard A. Siler v. United States, Case No. 19-12701-B
   DC Docket17-cv-24294-DPG, 14-cr-20116-DPG.
   Eleventh Circuit Court of Appeals, (Motion **Denied** April 21, 2021)

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JURISDICTION

Richard A. Siler petitions for **Writ of Certiorari** to review the judgement of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals is reprted at 2020 US App LEXIS 11475 (11th Cir. 2020). Then **denied** at 852 Fed. Appx 490 (11th Cir. 2021).

This petition is filed within the time frame allotted, as required in Rule 13.1 of the Supreme Court Rules. This Court's **jurisdiction** rests on **28 U.S.C. § 1254** and Supreme Court Rules 10.1(a) & (c) and (13).

PREFACE

The petitioner/defendant in the instant case is Richard A. Siler. Mr. Siler is a former Miami Dolphin tirned leads broker, who is currently serving an over the guidelines sentence of 154 months in federal prison for a crime that involves **no victims, no actual dollar loss, and no stolen identities of any kind.**

As a commission-based salesperson with Global Matrix Leads, Mr. Siler over a five year period of time amassed over one million identities, which he sold on a daily basis to over 100 clients.

All business owners.

This case involves a reverse sting operation involving Mr. Siler and a tax-preparation business owner by the name of Freddy Howard, whom the FBI groomed in order to implicate him.

To this day, Mr. Howard, the Confidential Informant, is the only client, of Mr. Siler's hundreds of clients, that has ever alleged any fraudulent activity on Mr. Siler's behalf.

It is also the defendant's courteous request that his pleadings be held to a less stringent standard than that of an attorney. **Hughes v. Lott, 350 F.3d 1157, 1160 (11th Cir. 2003)**, "Pro se pleadings will be held to a less stringent standard than pleadings drafted by attorneys and will therefore be literally construed."

COMES NOW, the petitioner, Richard A. Siler, #02154-104, an inmate who wishes to, on a pro se basis move the honorable court in this judicial instance in the interest of **habeas relief.**

On February 14, 2014, the petitioner was arrested and subsequently charged with three counts of **Aggravated Identity Theft, 1028(A),** as well as three counts of **Unauthorized Access Device, 1029(A).**

Following a jury trial, **(CR-14-20116-DPG),** the petitioner was found guilty on 5 of the 6 charges levied against him. After receiving an over the guidelines sentence of 154 months, the petitioner has timely filed every motion for relief made available to him by the courts, including two direct appeals and a §2255 motion alleging **ineffective assistance of counsel.**

Petitioner's §2255 motion was denied, but based on his timely objection to the magistrate's **Report and Recommendation,** the Eleventh Circuit Court of Appeals, **granted** the petitioner Mr. Siler a **Certificate of Appealability,** so that this case could be reviewed objectively.

When a federal district court denies a **writ of habeas corpus,** the petitioner cannot simply appeal the decision. He or she **must** obtain a **COA** which vests the court of appeals with jurisdiction to hear the appeal. The purpose of the **COA** is to prevent **frivolous appeals.**

Background of the Case

In 2017, the petitioner filed his 28 USC § 2255 motion citing ineffective assistance of counsel a Sixth Amendment violation, under Strickland v. Washington, 466 US 668(1984).

Following the recusal of four different Magistrates, one was finally hand-picked for the assignment, then provided an analysis in less than 10 business days.

The petitioner then filed for the issuance of COA, which the Eleventh Circuit Court of Appeals granted on three issues:

1. Whether the petitioner's appellate counsel was ineffective for not arguing that the district court erred by refusing to clarify a jury question.

2. Whether the district court erred by failing to address whether the cumulative error of claims 1 through 12 warranted habeas relief.

3. Whether the district court abused its discretion in failing to hold an evidentiary hearing.

The scope of review on appeal is limited to the issues specified in the COA.

The Sixth Amendment guarantees criminal defendants the right to the effective assistance of counsel during criminal proceedings against them. Strickland v. Washington, 466 US 668, 684-85(1984). To previal on a claim of ineffective assistance of counsel, a petitioner must demonstrate that: (1) his or her counsel's performance was deficient , ie., the performance fell below an objective standard of reasonableness; and (2) he or she suffered prejudice as a result of that deficiency. Id. at 687-88. The benchmark for judging a claim of ineffective assistance of counsel is whether counsel's performance so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. Id at 686.

Ineffective Assistance of Counsel claims present mixed questions of law and fact, which we review de novo. **Osley v. United States, 751 F.3d 1214 1222 (11th Cir. 2014).**

To establish deficient performance, the defendant must show that, in light of all the circumstances, counsel's performance was outside the range of professional competence. **Strickland, 466 US at 690.**

The petitioner wishes to demonstrate further that his defense was prejudiced by counsel's performance.

Regarding the prejudice component, the Supreme Court has explained that "the defendant must show that there is a reasonable probability that for counsel's unprofessional errors, the result of the proceeding would have been different." at 694. A reasonable probability is one sufficient enough to undermine confidence in the outcome. Id.

Statement of the Facts

On August 11, 2014, a jury was seated for the instant case. The district court provided for the jurors the following preliminary instructions:

"It will be your duty to find from the evidence what the facts are. You and you alone will be the judges of the facts. You will then have to apply those facts to the law as the **court will give it to you.** You must follow the law whether you agree with it or not." (DE:80-91).

On that very same day, August 11, the prosecution began their opening statement by declaring to the jury. **"This is a case about stolen identities."**

As the instant trial proceeded, it was revealed that the identities in question were in fact **not stolen,** but had been **legally purchased.** A fact which confused the jury, and caused concern on the issue of the defendant's alleged illegal act. That concern prompted questions.

Going back to the preliminary instructions, the court stated that the jury would be provided facts in which they would later use to determine the defendant's guilt or innocence. Then shortly afterwards the government's opening statement painted a picture of **stolen identities** in the instant case.

Therefore from the start, the jury was rightfully anticipating evidence that would support the **fact** that the identities in question were **stolen,** instead the evidence, **conclusively disproved** the allegations of stolen identities.

Much of the government's case rested upon the validity of a **fabricated confession** that had been fashioned by FBI agent Timothy Lawler, from the defendant's **written vluntary statement,** where no admission of guilt had been iterated.

In his own handwriting, the agent wrote as follows: "I Richard Anthony Siler provided a voluntary statement regarding the sale of **stolen identities** to Freddy Howard and others." (DE:81-31).

Later during cross-examination, the agent's testimony is impeached.
Defense attorney: "In the statement he (Mr. Siler) gave you is there anywhere in the report where Mr. Siler says he **stole** the identities?"
Agent Lawler: "No." (DE:81:35)

The point the petitioner wishes to accentuate at this juncture is there is only left for the jury to consider, whether or not the business to business transaction of said identities was legal or not.

Because of this important discovery, the jury has the right to ask and have answered, the question concerning the lawfulness of the defendant's **only** action in the instant case. The defendant sells identities for a living, strictly on a business to business basis, and the jury rightfully wishes to know if it is legal for him to do so.

In light of the fact that there has been no evidence presented of **stolen identities, victims, or fraudulent filings.** The jury is confused

as to the existence of an actual crime being committed.

Thus, in the absence of any of the criminal elements which the government had earlier asserted, the jury is confused as to the commission of an actual crime.

Here was the jury's question, the second since the beginning of deliberation: "under **any circumstance** is a social security number allowed to be sold? Is any legal leads business allowed to sell a social security number?" (Case No. 14-cr-20116-Gayles Document 52)

The District Court's response: "Ladies and gentlemen, please rely on the evidence presented and the jury instructions."

As you can see, there is no attempt by the district court to clear away any confusion of the jury as it states in **Bollenbach** that they should have. Thus, epitomizing the court's **abuse of discretion.**

In **Cooper, 482 F.3d 656 (4th Cir. 2007)** the court held, "In responding to a jury's request for clarification on a charge, the district court's duty is simply to respond to the jury's apparent source of confusion fairly and accurately without **prejudice."**

The Arguments

The core issue of this case concerns the sale of personal identities, (PII), specifically the names and numbers of medicare recipients, that were first mis-characterized as social security numbers and then alleged as **stolen.**

At the outset of the jury trial, **US v. Siler, 14-cr-20116-DPG,** the government declared during their opening statement that, this was a trial about the,**"sale of stolen identities."** (DE:80-103.

The government later provided a handwritten "**confession**" attesting to the alleged sale of stolen identities. However, Special Agent Tim Lawler who's in charge of the investigation on behalf of the FBI, eventually winds up admitting to the jury that he himself had written the confession, (DE:88-198), which contradicted everything that had been stated by the petitioner during his post-arrest interview which was recorded in Agent Lawler's **302 Report.**

The Issues

I. District Court's Failure to Properly Answer Jury Questions, Appellate Counsel's Failure to Raise the Issue.

In **Adkinson, 135 F.3d 1363 (11th Cir./1998)**, the court held, "a court' reviews a judge's response to a jury query during deliberation."

In **Cooper, 482 F.3d 658, (5th Cir./2007)**, the court goes further. "In responding to a jury's response for clarification on a charge, the district court is simply to respond to the jury's apparent source of confusion fairly and accurately **without creating prejudice."**

See also **Schultz v. Rice 809 F.3d 643, 650 (10th Cir./1986)**, "A District Judge has a duty to guide the jury toward an intelligent understanding of the legal and factual issues it must resolve, particularly when the jury asks a question revealing its confusion over the central issue of a case."

The precedent has been clearly established as to the duties of the court in the event that a jury is confused and seeks **clarification** from the court."

However, the district court in this case refuses to clarify the issue, deciding instead to refer the jury to the record. Once it is pointed out at trial that the government witness has already answered that question, the court decides to refer the jury to the record, then refuses the defenses request to outline the witnesses testimony.

In **Lopez, 590 F.3d 1238 (11th Cir. 2009),** the court held, "while the District Court has considerable discretion regarding the extent and nature of supplemental jury instructions, it does not have discretion to mis-state the law or confuse the jury."

A District Court has the discretion to refuse to read back testimony where it would be too difficult to pick through the transcript and single out the the required testimony or where the testimony is simply too long." **United States v. Pacchioli, 718 F.3d 1294, 1306 (11th Cir. 2013).**

In the instant case however, no such difficulty exists. The jury questions posed to the court were, "Under **any circumstance,** is a social security number allowed to be sold? Is **any leads business allowed** to sell a social security number?

Defense counsel requested that the District Court instruct the jury that the answer to both questions was "yes." This response was supported by the testimony of Tangela Standifer, an assistant district manager at the Social Security Administration, a government witness. While Ms. Standifer could not specifically name companies, she was sure that private businesses "sold leads all the time." (DE:81-51-53). Mr. Siler, worked in the leads business.

Counsel for the government objected, confessing that he personally, "didn't know if it were legal or not."

The District Ciurt then in response, instructed the jury to "rely on the testimony." Which prompted the defense to request that Ms. Standifer's testimony be outlined for their convenience.

The District Court refused but did add he would outline Ms. Standifer's testimony if the jurors were to ask.

In **Bollenbach,** the Supreme Court held, "When a jury makes explicit its difficulties, a trial judge **must** clear them away with concrete accuracy." **Bollenbach v. United States, 326 US 607, 612-13 66 S.Ct 402, 90 L.Ed 350.**

We rely on the courts in this country, in order to ascertain facts in both criminal and civil matters alike. The fact in this instance is that Mr. Siler conducted a business to business transaction, that was in fact legal.

This transaction therefore could have been considered a crime, but the jury had the right to know that, in certain circumstances such a transaction was legal and in the immediate instance, this was one of those circumstances.

In **John 597 F.3d 263 (5th Cir. 2010),** the court held that, the term "personal identification information" as used in 2B1.1(b)(14)(A)(i) does **not** include information held by businesses, only individuals.

The petitioner respectfully moves the honorable court, find the district court's **abuse of discretion** egregious and worthy of remand and **reversal.**

In **Joyner, 899 F.3d 1238 (11th Cir. 2009),** the court held, the appellate court reviews a district court's response to a "jury question" for an abuse of discretion. Likewise a District court's refusal to give a requested jury instruction is reviewed for an abuse of discretion, and the appellate court **reverses** when it is left with a substantial and eradicable doubt as to whether the jury was properly guided in its deliberations. (see **Lopez 590 F.3d 1238 (11th Cir. 2009).**

The **United States Supreme Court** has explained that a trial judge may assist the jury by explaining and commenting upon the evidence and by "drawing their attention" to portions of the evidence it deems important, providing he makes it clear to the jury all **matters of fact** are submitted to their determination. **Querica v. US 289, US 466, 469, 53 S.Ct 698, 77 L.Ed 1321 (1933).**

The petitioner opines that, the district court be found in error, and cited for violations of the 5th and 14th Amendment as a result of its **abuse of discretion.** Likewise **appellate counsel** should also be held accountable for it's **failure to raise the issue of the district court's failure to clarity** a jury's question so central to the core of the instant case.

In summation, **appellate counsel's failure** to raise the aforementioned issues, should equate to **ineffective assistance of counsel,** thus warranting **habeas relief.**

II.

We review de novo whether the district court adequately addressed **all of the claims in a §2255 motion.** Dupree, 715 F.3d at 1298. We have held that a district court must **resolve all claims** raised in a §2255 motion, **regardless of whether relief is granted or denied,** and whether the claims for relief arise **out of the same operative facts.** Clisby v. Jones, 960 F.2d at 925. 936 (11th Cir./1992) **(addressing a petition): see also** Rhode, 583 F.3d at 1291-92 **(applying Clisby in context).**

A "claim for relief" is defined as "any allegation of constitutional violation." Clisby, 960 F.2d 936. Allegations of distinct constitutional violations constitute **separate claims for relief,** even if the allegations arise from the same opertaive facts.

It is the appellate court's contention that since the district court answered most of the issues raised by the defendant, that there was no need for them to respond to the issue of cumulative error as it concerned issues 1-12, but the above mentioned precedent states differently.

In Bates v. US, the honorable court held, "resist reading words or clcmcnts into a statute that do not appear." **The defendant agrees with the Supreme Court of the United States of America.**

There is nothing in the court's decisions that say only certain issue must be answered in a defendant's §2255 motion.

Thusly, there is no doubt the defendant's constitutional rights have been violated in this instance by sheer virtue of the **fact** that the government **did not** answer the defendant's **cumulative error claim.** concerning issues 1-12.

Meanwhile the court's opinion in Clisby v. Jones insist that they should have. Clisby v. Jones, 960 F.2d 925 **(11th Cir./1992),** holding that the district courts must address and resolve **all** claims for relief that a habeas petitioner raises.

Therefore at this critical juncture, the defendant must opine with the the ruling from the Eleventh Circuit in its decision in the case of **Montsdeoca v. United States US App LEXIS 7426(11th Cir. March 3,2022).** In which the honorable court cites **Fed. R.Civ. P. 54(b).** "Otherwise, any order or other decision , however designated, that adjudicates fewer than all the claims, or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties."

To merit a COA, the defendant must make a substantial showing of the denial of a constitutional right. The petitioner satisfies this requirement by demonstating that reasonable jurists would find the district court's assessment of the constitutional claims, debatable or wrong or that issues deserve "encouragement to proceed further." Slack v. McDaniel.

In summation, the petitioner moves this honorable court side with the constitution by granting the defendant **habea relief** as **abuse of discretion** has been shown on behalf of the lower court by not responding to the petitioner's non-frivolous claim.

Violations of the 5th and 6th Amendment have been demonstrated and the petitioner courteously implores that justice be reached.

III. District Court's Failure to Grant Evidentiary Hearing.

Finally, following the magistrate's two week review of all 13 issues in petitioner's §2255 motion to set aside or vacate. It is then decided that none of the issues were worthy of review under an evidentiary hearing. Somehow the eleventh circuit has adopted the same opinion.

We review the district court's denial of an evidentiary for **abuse of discretion, Breedlove v. Moore, 279 F.3d 952 (11th Cir. 2002).**

Previously the eleventh circuit has opined as it did in **Aron v. US, 291 F.3d 708, 714-15 (11th Cir. 2002),** "Whenever a §2255 movant alleges facts that, if true, would entitle him to relief, the district court should order an evidentiary hearing.

The **7th Circuit's** opinion have all also been similar in construction and seem to support the petitioner's position in this instance. "In order to merit an **evidentiary hearing** on his claims a petitioner must allege facts that if proven would be sufficient to entitle him to relief." ., see **Matta-Ballesteros v. Henman, 896 F.2d 255, 258, (7th Cir.) cert denied 112 L.Ed 169, 111 S.ct. 209 (1990).**

It is the eleventh circuit's contention in this legal instance that, the petitioner **did not** offer claims within his motion that were supported by the record.

The petitioner disagrees and with good reason. The record is clear aligns perfectly with what the eleventh circuit has itself alleged all throughout the proceedings.

The court's themselves have stated that the defendant did not prove **efficiently enough** the legitimacy of leads sales, which would have been the sworn duty of counsel. Therefore by not doing so in the eleventh circuit's own words, **counsel was inefficient.**

However the record does not stop there. All throughout the circuit's opinions on the instant case, it is the circuit court themselves that point

to the defendant/petitioner's **warranting relief.**

Actually, it's been plainly stated by Judge Beverly Martin of the Eleventh Circuit that stated for the record. "The petitoner Mr. Siler has a number of colorable arguments." "and at least one that warrants review by means of an **evidentiary hearing.**" (**Siler v. USS, 19-12701**).

At this juncture in the proceeding the petitioner has no other choice but to agree and ask the honorable court to deliver an opinion in line with eleventh circuit precedent.

The petitoner implores the court at this time for relief in the form of reversal, set aside and vactae.

Respectfully submitted this 18th day

of April 2022

Richard A. Siler #02154-104

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