

22-5760

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SUPREME COURT OF FLORIDA

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IN THE

SUPREME COURT OF THE UNITED STATES

PHILIP JOSEPH SPEAR — PETITIONER  
(Your Name)

vs

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

**PETITION FOR WRIT OF CERTIORARI**

Philip Joseph Spear #19930043

(Your Name)

PO Box 24550

(Address)

Tucson AZ 85734

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Did the appellate court err by overlooking a 5th Amendment Constitutional wrong, and by omission, fail to note, by the record, a breach of promise resulting in 6th Amendment presumed prejudice to the petitioner?

## 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 v. Spear, No. 1:17-cr-00017, U.S. District Court for the Southern District of Mississippi, Southern Division. Change of Plea Hearing March 9, 2017.

United States v. Spear, No. 1:17-cr-00017, U.S. District Court for the Southern District of Mississippi, Souther Division. Judgement entered July 6, 2017.

United States v. Spear, No. 1:17-cr-00017, U.S. District Court for the Southern District of Mississippi, Southern Division. Evidentiary Hearing June 13, 2018.

United States v. Spear, No. 1:17-cr-00017 and associated No. 1:17-cv-267, U.S. District Court for the Southern District of Mississippi, Southern Division. Judgement entered June 19, 2018.

United States v. Spear, No. 60530, U.S. Court of Appeals for the Fifth Circuit. Judgement entered May 18, 2022.

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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 \_\_\_\_\_; 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 is unpublished.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 May 18, 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

Constitutional Amendment V: "...nor be deprived of life, liberty, or property, without the due process of law;..."

Constitutional Amendment VI: "In all criminal prosecutions, the accused shall enjoy the right to...assistance of counsel for his defense."

18 U.S.C. § 4 Misprison of Felony: "Whoever, having knowledge of an actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned for no more than three years, or both."

## STATEMENT OF THE CASE

In Mr. Spear's Appellant Brief<sup>1</sup> he claims Ineffective Assistance of Counsel by presenting information that both defense and government counsels engaged in Misprison of Felony 18 U.S.C. § 4 an unlawful act for the purpose of extracting a guilty plea from him that would release from prosecution others possibly culpable of assisting him in criminal activity.

Ineffective assistance of counsel was again evident when a false agreement was offered to Mr. Spear by defense and government counsels stating that in exchange for his guilty plea there "will be a termination of the investigation...no further prosecution of the defendant (Mr. Spear) or his family."<sup>2</sup> The deception of the promise of termination of investigation was revealed in a later evidentiary hearing indicating, by the record, that two months prior to the aforementioned change of plea hearing both defense and government counsels knew Mr. Spear's plea of guilty would not stop the investigation.<sup>3</sup>

Relying on the premise that "...once a right and a violation has been shown, scope of a district (and appellate) court's equitable powers to remedy past wrongs is broad, for breadth and flexibility." Swann v. Charlotte-Mecklenberg Board of Education, 402

<sup>1</sup> Brief of the Appellant, U.S. v. Spear, No. 18-60530, (5th Cir.) page 1 (2022)

<sup>2</sup> Change of Plea Hearing, U.S. v. Spear, No. 1:17-cr-00017, U.S. Dist., SD Miss. SD, Doc. 58, pages 27,38, March 9, 2017

<sup>3</sup> Evidentiary Hearing, U.S. Spear, No. 1:17-cr-00017, U.S. Dist., SD Miss. SD, pages 54,55,57 June 6, 2018; and Brief of the Appellant, No. 60530 (5th Cir.) page 11 (2022)

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U.S. 1, 15, (1971)(see also United States v. Laurance County School District, 799 F.2d 1031, 1044 (5th and 11th Cir. 1986).

Mr. Spear quoted the authority that gave the 5th Circuit Appellate Court leave to re-examine a constitutional wrong in light of evidence not previously presented to the court in a recognizable manner because this and other "Federal Courts have always affirmed their equitable power to modify and final decree that has prospective application." id at 1046.<sup>4</sup>

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<sup>4</sup> Answer to Governments Reply Brief, U.S. v. Spear, No.60530, (5th Cir.) page 1,2 (2022)

## REASONS FOR GRANTING THE PETITION

The reasons for granting the writ of review is evident by the statement of the case.

In too many criminal prosecutions, both state and federal, the judicial process is understood and decided by public defenders leaving the accused clueless or at best semi-coherent of the court room opera. Sitting in the audience the defendant believes his plea is for a specific result only later understanding that what he thought to be true was a perception rather than a reality.

Mr. Spear believed his covenant promise guilty plea took effect when accepted by the court when in fact what he thought was true was not.

Only by granting a writ of certiorari can this Court make it clear to all circuits that the effect of a plea binds all parties when courts accept such and applies at the affirmation of the covenant promise of said parties involved and not some time later as is convenient for the government.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Philip J. Spear

Date: September 22, 2022