

No. _____

In The
Supreme Court of the United States

JOSE LUIS RAMIREZ, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED IN DISMISSING THE PETITIONER'S MERITORIOUS APPEAL OF HIS CONVICTION OF SECURITIES FRAUD AND MONEY LAUNDERING BECAUSE OF THE APPEAL WAIVER OF THE PLEA AGREEMENT

LIST OF THE PARTIES

JOSE LUIS RAMIREZ., *Petitioner*

UNITED STATES OF AMERICA, *Respondent*

TABLE OF CONTENTS

	Page:
QUESTIONS PRESENTED FOR REVIEW	i
LIST OF THE PARTIES	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES	v
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINION BELOW.....	1
JURISDICTION.....	1
STATUTORY PROVISIONS AND RULES AND REGULATIONS INVOLVED	1
STATEMENT OF THE CASE.....	1
STATEMENT OF THE FACTS	2
REASONS FOR GRANTING THE WRIT	6
1. WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED IN DISMISSING THE PETITIONER'S MERITORIOUS APPEAL OF HIS CONVICTION FOR SECURITIES FRAUD AND MONEY LAUNDERING OFFENSES BECAUSE OF THE APPEAL WAIVER OF THE PLEA AGREEMENT WHEN THE PETITIONER'S APPEAL WAS BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL	6
A. Standard of Review.....	6
B. The Plea Was Not Entered into Knowingly and Intelligently	6
CONCLUSION.....	7

APPENDIX:

Judgment
U.S. Court of Appeals for the Fourth Circuit
entered August 23, 2022 Appendix A

Order
U.S. Court of Appeals for the Fourth Circuit
entered August 23, 2022 Appendix B

Order
U.S. Court of Appeals for the Fourth Circuit
entered September 23, 2022 Appendix C

TABLE OF AUTHORITIES

	Page(s):
Cases:	
<i>United States v. Atkinson</i> , 815 Fed. Appx. 704 (4 th Cir. 2020).....	6
<i>United States v. Craig</i> , 985 F.2d 175 (4 th Cir. 1993)	6
<i>United States v. Johnson</i> , 410 F.3 137 (4 th Cir. 2005)	6
<i>United States v. McCoy</i> , 895 F.3d 358 (4 th Cir. 2018)	6
Statutes:	
18 U.S.C. § 2.....	1, 2, 3
18 U.S.C. § 922(g)(1)	1, 2,3
21 U.S.C. § 841(a)(1)	1, 2, 3
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2101.....	1
Rules:	
Fed. R. App. P. 32.1	1
Fed. R. Crim. P. 35(b)	1, 3
Sup Ct. R. 13(1).....	1
Sentencing Guideline:	
U.S.S.G. § 5K1.1	1, 3

PETITION FOR A WRIT OF CERTIORARI

Petitioner Jose Luis Ramirez, Jr. (hereinafter “Petitioner”) respectfully prays for a Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The opinion of the Fourth Circuit is reported at *United States of America v. Jose Luis Ramirez* (4th Cir. 22-4132). Pursuant to Federal Rules of Appellate Procedure 32.1, the decision is unpublished.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit decided this case on 23 August 2022. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1), and this Petition is timely filed within ninety days of the underlying Judgment of the Fourth Circuit pursuant to United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101.

STATUTORY PROVISIONS AND RULES AND REGULATIONS INVOLVED

Federal Rules of Appellate Procedure 32.1, Federal Rule of Criminal Procedure 35(b), United States Supreme Court Rule 13(1), 18 U.S.C. § 2, 18 U.S.C. § 922(g)(1), 21 U.S.C. § 841(a)(1), 28 U.S.C. § 1254(1), 28 U.S.C. § 2101, U.S.S.G. § 5K1.1.

STATEMENT OF THE CASE

On October 21, 2020, the Grand Jury for the Western District of North Carolina indicted Jose Luis Ramirez, Jr. (hereinafter the “Appellant”) with One Count of Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g)(1). (J.A.

1) On November 17, 2020, the Grand Jury for the Western District of North Carolina entered the First Superseding Bill of Indictment and formally indicted the Appellant with One Count of Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(a)(1) (hereinafter “Count One”), One Count of Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (hereinafter “Count Two”), One Count of Carrying a Firearm During and in Relation to, and Possessing a Firearm in Furtherance of a drug Trafficking Crime (hereinafter “Count Three”), and One Count of Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g)(1) (hereinafter “Count Five”). (J.A. 9-13)

On May 7, 2021, the Appellant entered into a Plea Agreement with the Government whereby he pleaded guilty to Count Two of the Superseding Bill of Indictment. (J.A. 64) The Sentencing Hearing took place on February 18, 2022. (J.A. 34) The Court imposed a sentence with 210 months of custodial time. (J.A. 51) The Appellant timely filed a Notice of Appeal on February 25, 2022. (J.A. 63)

On June 29, 2022 Respondent filed a Motion to Dismiss Petitioner’s Appeal to the Fourth Circuit Court of Appeals. (Doc. 26) On August 23, 2022 the Fourth Circuit Court of Appeals dismissed Petitioner’s Appeal. (Doc. 31). Petitioner timely files this Writ of Certiorari before the United States Supreme Court.

STATEMENT OF THE FACTS

On October 21, 2020, the Grand Jury for the Western District of North Carolina indicted Jose Luis Ramirez, Jr. (hereinafter the “Appellant”) with One

Count of Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g)(1). (J.A. 7) On November 17, 2020, the Grand Jury for the Western District of North Carolina entered the First Superseding Bill of Indictment and formally indicted the Appellant with One Count of Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(a)(1) (hereinafter “Count One”), One Count of Possession with Intent to Distribute Methamphetamine in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2 (hereinafter “Count Two”), One Count of Carrying a Firearm During and in Relation to, and Possessing a Firearm in Furtherance of a drug Trafficking Crime (hereinafter “Count Three”), and One Count of Possession of a Firearm by a Felon in violation of 18 U.S.C. § 922(g)(1) (hereinafter “Count Five”). (J.A. 9-13)

On May 7, 2021, the Appellant entered into a Plea Agreement with the Government whereby he pleaded guilty to Count Two of the Superseding Bill of Indictment. (J.A. 64) The Plea Agreement requires the Appellant to cooperate with the United States, if requested to do so. (J.A. 69) However, if the Appellant assists the United States, then the United States will in its sole discretion determine if the assistance was substantial. (J.A. 70) On a determination by the United States that the Appellant has provided substantial assistance to the United States, then the United States may make a motion pursuant to U.S.S.G. § 5K1.1 for imposition of a sentence below the applicable Sentencing Guidelines or pursuant to Rule 35(b) for a reduction in the defendant’s term of imprisonment. (J.A. 70) The Plea Agreement further provides that any determination that the United States fails to determine

that substantial assistance has been provided, the Appellant waives all objections and rights of appeal or collateral attack of the determination. (J.A. 70) The Plea was entered in Court on May 11, 2021. (J.A. 16)

The Sentencing Hearing took place on February 18, 2022. (J.A. 34). Counsel for the Appellant described to the Court the Appellant's upbringing, as well as his progress with the 42-day program, and self-betterment classes during custody. (J.A. 37) Counsel for the Appellant also explained to the Court that the Appellant's criminal history is largely related to his use of illegal substances. *Id.* The Appellant's counsel also informed the Court that the United States would not be making a Motion for Substantial Assistance, which did not align with what the Appellant's Counsel understood the Appellant had provided to the United States. (J.A. 38) For instance, the Appellant offered his telephone to be dumped, was debriefed twice, and was overall as cooperative as possible. *Id.* The Appellant's Counsel was so concerned during the sentencing hearing that the Motion would not be made that he contacted the Investigators who debriefed the Appellant. *Id.* Appellant's Counsel relayed to the Court that the Investigators stated that the Appellant provided a wealth of knowledge during the debriefings, but that the information just did not pan out. (J.A. 39) The Appellant also addressed the Court and apologized for his actions and took full responsibility. (J.A. 41)

The United States responded during the Sentencing Hearing to the Appellant's concerns regarding the motion for substantial assistance. (J.A. 43) The United States did not believe substantial assistance was provided because the information offered

by the Appellant was not anything new that the Court did not already know. *Id.* The Court responded to the United States position stating that the information provided had to “lead to something more valuable than you had without the cooperation.” (J.A. 44) The United States did say that there was no reason to believe that the Appellant was lying about the information. *Id.* However, the United States did not make a motion for a downward departure.

Overall, the United States did ask for a downward variance of one-level, for a total offense level of thirty-three (33), a criminal history of six, and a guideline range of 210 to 262 months, so that there was not any disparity between the Appellant’s sentence and his co-defendants. (J.A. 45) The United States asked the Court to impose custodial time of 210 months. *Id.*

The Court imposed a sentence with 210 months of custodial time. (J.A. 50) The Appellant timely filed a Notice of Appeal on February 25, 2022. (J.A. 63) However, the Fourth Circuit Court of Appeals dismissed this appeal on August 23, 2022 and concluded therein that “Ramirez knowingly and voluntarily waived his right to appeal and that the issues Ramirez seeks to raise on appeal fall squarely within the scope of his waiver of appellate rights.” (Doc. 31).

REASONS FOR GRANTING THE WRIT

1. **WHETHER THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ERRED IN DISMISSING THE PETITIONER'S MERITORIOUS APPEAL OF HIS CONVICTION FOR SECURITIES FRAUD AND MONEY LAUNDERING OFFENSES BECAUSE OF THE APPEAL WAIVER OF THE PLEA AGREEMENT WHEN THE PETITIONER'S APPEAL WAS BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL.**

A. Standard of Review

An appeal waiver within a plea agreement is valid when “the record establishes that: (1) the defendant knowingly and intelligently waived his right to appeal; and (2) the issues raised on appeal fall within the waiver’s scope.” *United States v. Atkinson*, 815 Fed. Appx. 704, 708, (4th Cir. 2020). The Court reviews whether a defendant effectively waived such a right *de novo*. *United States v. McCoy*, 895 F.3d 358, 362 (4th Cir. 2018).

B. The Plea Was Not Entered into Knowingly and Intelligently

The validity of a plea agreement appeal waiver is not valid when the record on appeal indicates that a defendant did not otherwise understand the full significance of the waiver. *United States v. Johnson*, 410 F.3 137, 151, (4th Cir. 2005). “Even if the court engages in a complete plea colloquy, a waiver of the right to appeal may not be knowing and voluntary if tainted by the advice of constitutionally ineffective trial counsel.” citing *United States v. Craig*, 985 F.2d 175, 178 (4th Cir. 1993).

Here, the record shows that the Appellant did not understand the full significance of the waiver in the Plea Agreement. Both the United States and the Investigators believed the Appellant to be honest in providing information to law enforcement officials, as he was interviewed multiple times and provided his cell

phones for a formal review. At the Sentencing Hearing, the Appellant believed he had provided sufficient substantial assistance to law enforcement such that the Government would make a motion for a downward departure pursuant to the Plea Agreement. The Appellant was clearly surprised from the record and transcripts of the Sentencing Hearing to learn he had not qualified for the downward departure, and the sentencing hearing took place without the Appellant being allowed an opportunity to be advised by counsel of the consequences of this new information. Therefore, the plea waiver was not voluntarily and knowingly entered.

The Appellant requests this Court to sever the appeal waiver from the Plea Agreement and allow the Appellant's appeal to continue on its' merits.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the United States Supreme Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

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