

ORIGINAL

No. 20-1771

DISTRICT NO 3:14-CR-30173

APPELLATE NO. 20-1771

FILED
JAN 10 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

TIMOTHY EDWARDS
PETITIONER

v.

UNITED STATES OF AMERICA
RESPONDENT

ON WRIT OF CERTIORARI TO THE

UNITED STATES COURT

OF APPEALS FOR THE SEVENTH CIRCUIT

Timothy Edwards
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1/10/23

PETITION FOR WRIT OF CERTIORARI FROM FINAL JUDGEMENT

(SUP. CT. R. 11)

QUESTIONS PRESENTED

- 1. Whether the ruling in GARZA V, IDAHO 139 S. CT 739 (2019) applies to Plaintiff's Constitutional guarantee?**
 - A. Pending judgement (Writ of Cert.) in Supreme Court tolls 2255 from one year of Supreme Court's decision?**
 - B. Would Retroactivity of Garza ruling afford a fair and even application of the 6th Amendment to all citizens but specifically Plaintiff's individual circumstances?**
- 2. Whether a split circuit ruling by 7th and 4th circuit, in not applying Garza creates inconsistencies in Constitutional application of Supreme Court ruling?**
- 3. Whether Due Process violations in grand jury testimony and Brady violations would be a miscarriage of justice severe enough to invalidate the entire indictment?**
- 4. Whether Protected Class of citizens with PTSD and comprehension disability can be held to same standard as Government and Attorney's?**

i.

LIST OF PARTIES AND RELATED CASES

[X] All parties appear in the caption of the case on cover page.

District Court case numbers

3:14-cr-30173

Appeals Court case numbers

17-2365(M)USCA-7,

17-2436(M) USCA 7,

18-3254(M) USCA-7,

18-3548(M) USCA-7,

19-1878 (M)USCA-7

Supreme Case

18-6718

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DISCLOSURE STATEMENT

The Petitioner-Defendant, Timothy Edwards is PRO SE.

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Date 1/10, 2023

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that writ of certiorari issue to review judgement 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 is unpublished.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 _____ 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
10/12/22

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: 10/12/22, and a copy of the order denying rehearing appears at Appendix "A" _____

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

RELEVANT CONSTITUTIONAL PROVISIONS AND RULES

Rule for filing 28 USC 2255 is clear a defendant has one year from the time of Supreme Court's denial of Writ of Certiorari to file a 28 USC 2255

UNITED STATES CONSTITUTION AMENDMENT 6, rights of the accused, a that a defendant has the Constitutional Right to be provided adequate legal representation throughout all legal proceedings, without conflict, as found in GARZA V. IDAHO, ruling by this Honorable Supreme Court.

Due Process of 5th and 14th Amendment has been said to be the foundation of our Constitutional Rights as Citizens of this United States of America. When Due Process has been violated by the Government, it therefore, waives its jurisdiction to prosecute a citizen of United States of America or even as recently shown for asylum seekers.

Brady v. Maryland (1963), 373 U.S. 83 Brady violation in and throughout Plaintiff's case.

STATEMENT OF CASE

1. Petitioner has diligently attempted in PRO SE capacity, when abandoned by his retained counsel to protect and preserve his GOD given Constitutional Rights as prescribed by our Constitution and our founding fathers of this great nation. All this while being incarcerated in Federal Prison.

2. This application for WRIT of Certiorari from a District Court and Appeal Court denial of Petitioners 28 USC 2255, as untimely is a Circuit Court discrepancy from this Honorable Supreme Court ruling found in GARZA V, IDAHO, as well as set precedent found timely appeals from this Supreme Courts denial of Writ of Certiorari from a Direct Appeal. As my PRO SE understanding that a Petitioner is entitled to appeal Constitutional right violations, this is in fact (as docket clearly shows) what the Petitioner has done.

3. Petitioner comes before this Honorable Supreme Court within 90 days from receiving the denial from the Seventh Circuit Court of Appeals.

4. Petitioner, furthermore, humbly asks this Honorable Supreme Court to acknowledge him as a protected class being as his history of comprehension disability and suffering from PTSD.

STATEMENT OF ISSUES

1. Whether the ruling in GARZA V, IDAHO 139 S. CT 739 (2019) applies to Plaintiff's Constitutional guarantee?

Plaintiff's pro se humble understanding from this Honorable Supreme Court ruling found in Garza is that, securing a defendant's fundamental right to decide whether to appeal a Conviction, even one obtained through plea bargain with an appeal waiver. Plaintiff never signed a waiver with his retained attorney to not appeal, but in fact, emailed his attorney to retract his guilty plea. This shows intent as does the docket sheet itself (see appendix "B" by Plaintiff appealing). Plaintiff asked his attorney to appeal, has two witnesses, of doing such, yet the District Court denied the claim. Plaintiff's attorney never presented a signed notice of no intent to appeal, nor paper advising Plaintiff of right to appeal, and was asked to retract guilty plea via email.

AUSA Reed alleges no prejudice by retained attorney but as found in Garza prejudice is presumed by attorney refusing to file the appeal as requested by Plaintiff. Additionally, the Government alleges no rational defendant would appeal and yet here we are. Brady material withheld on the change of plea day, (which is docketed as change of plea), there were 4 hours coercion, threats and promises in an effort to push a plea of guilty. Yet, Plaintiff was never made aware that the Government's witness was not at court that day to testify. Did the Plaintiff's attorney at the time know about this witness not being available on the change of plea day? If so, he never advised his client during the 4-hour hallway discussion. What the

Plaintiff did say is that the Plaintiff would lose his child to DCFS, that his fiancé would be charged in same alleged crime and also convicted.

A. Pending judgement (Writ of Cert.) in Supreme Court tolls 2255 from one year of Supreme Court's decision

The docket is a perfect indication of intent as shown herein as Appendix "B", the Plaintiff has despite his limited ability (due to his documented struggle with PTSD and comprehension disability), continues to fully exhaust all his Constitutional Rights to be afforded with the right to appeal.

Plaintiff's final exhaustion of appellate rights cannot be said to be complete upon denial or approval from the Supreme Court. In this instance plaintiff's writ of cert was denied on 1/7/19 and thereafter files 28 USC 2255 March 2019. This within 3 months from supreme court denial of writ. Plaintiff could not perfect especially being Pro se, an adequate 2255 prior to Supreme Court decision. Due to the Writ of Certiorari pending in Supreme Court, the District Court lacked jurisdiction to rule on the 28 USC 2255.

[255] on 5/1/19 an Order was issued from Judge Rosenstengel stating "the remainder of Defendant's motions is denied for lack of jurisdiction since this case is pending on appeal."

Plaintiff's "Lis Pendens" and additional "Lis Pendens", Original Lis Pendens was not closed until after sentencing and documents show, Plaintiff did appeal this Lis Pendens. Per, case law precedent states a Defendant can appeal forfeiture that was finalized after sentencing. Per, Pro

Se understanding of Order was merged with Plaintiff's Direct Appeal this was taken to Supreme Court writ which was denied on 1/7/19. Furthermore, ASUA on 3/15/18 [221] see appendix "B" files an additional "Lis Pendens" an additional sanction punishing Plaintiff after sentencing this a move in his original case number but furthering the punishment without jury nor additional charges.

*4/7/17 [174], The Plaintiff's sentencing hearing "final order" of criminal is.

*5/16/17, self-surrenders to Federal Prison expecting notice of appeal filed already.

*6/7/17 [179] files Pro Se motion to appeal "motion for extension of time to file late notice of appeal" while in prison.

*6/16/17 [181] "arrest warrant returned Medina" (Government witness who didn't show up and Plaintiff was never told prior to change of plea, had Plaintiff known, this would have changed the Plaintiff's feeling of being forced into accepting a plea. This was shown in colloquy the day of change of plea on record Plaintiff clearly stated, "I have no choice". Those 4 documented words serve as evidence that a guilty plea was entered due to coercion. Later here (Medina) shown arrested for not appearing);

*7/5/17 [185] appeals denial by District Court to file appeal due to denial by counsel;

*7/5/17[189] motion by Government finding no third party to 1st lis pendens;

*7/6/17[192] Order granting [189] finding no third party (forfeiture);

*7/17/17 [194] Plaintiff's notice of appeal re [194] forfeiture, Plaintiff's understanding is that the appeals were merged or said to be not needed and/or merged (see Order) with the first

notice of appeal [179], this was taken all the way to Supreme Court as 18-6718 denied on 1/7/19. Then Plaintiff files 28 USC 2255 on 3/15/19, which fails to appear on docket yet is referred to in motions. This happened less than one year from exhaustion of diligently pursuing to protect and preserve Constitutional rights. See MARCELO MANRIQUE V. UNITED STATES, 581 U.S. ___ (2017);

*3/15/18 [221] Government files an additional Lis Pendens on Plaintiff's same property, 2cd forfeiture, this one after sentencing. See MANRIQUE V. UNITED STATES 581 U.S. ___ (2017);

Plaintiff was sentenced 4/7/17, yet on 3/15/18 (nearly a year later) docket clearly shows that the Government placed additional punishment and sanctions to deprive Plaintiff of his legal property. How is it possible for the Government to enforce additional punishment on a Plaintiff who was sentenced nearly a year prior.

The interesting question here is when is "final Judgment" because docket here shows clearly that Government placed additional punishment and sanctions depriving Plaintiff to his legal property? Did this create a renewed sense of 14 day from final judgement? How could it not, when considering our Constitutional protections to life liberty and property?

*8/17/18 [221] Plaintiff filed 33(b) in Pro se capacity while in prison and finding new evidence such as Brady violation when Government key witness was not at court to testify. If renewed sense of 14 day from final judgement as shown above [221] could this be said to be timely Direct Appeal, or since District Courts have broad discretion to intrepid Pro Se ruling, should or could this have been considered a 28 USC 2255?

*10/22/18 [234] notice of appeal re [232] final of 33(b) while direct appeal pending see

UNITED STATES V. O'MALLEY 739 F.3D 1001 (2014)

*11/16/18 Plaintiff files motion with District Court to "withdraw plea of guilty" Pro Se understanding for this was from District Court ruling in denial of 33(B)[221] suggesting that was proper route from new evidence to be presented in Brady violation. This was denied by District Court for lack of jurisdiction 1/19/18 [241].

*1/7/19 Plaintiff Writ of Certiorari 18-6718 Direct Appeal was denied.

* 3/15/19 Plaintiff files 28 USC 2255 complete memorandum per requirements, timely from fully exhausting Direct appeal to Supreme Court. See MANRIQUE V. UNITED STATES 581 U.S.__(2017)

Plaintiff's case was pending see [255] on 5/1/19 on appendix "B" (District Court docket 3:14-cr-30173), Appendix "C" (7th circuit docket no 20-1771) and Appendix "D" (Supreme Court Docket No. 18-6718)

B. Would Retroactivity of Garza ruling afford a fair and even application of the 6th Amendment to all citizens but specifically Plaintiff's individual circumstances?

Without fully applying to protections our founding forefathers afforded us, the GOD given rights of our Constitution, specifically the 6th Amendment the right which is of the accused to be represented by adequate legal representation through all critical stages of proceedings, being made retroactive, the ruling in Garza, would it not deprive an individual of the 6th Amendment.

Based on Constitutional Rights, does not the ruling of Garza itself mean that it be made retroactive? If not made retroactive, could it not at least be applied based on individual circumstances in a case that was pending on appeal, during the Garza decision? This question of application of Garza retroactively includes the fact of a case pending during/after Garza, would Garza not apply? Like a case such as the Plaintiff's that is pending on appeal, after Garza ruling should Garza be applied.

2. Whether a split circuit ruling by 7th and 4th circuit, in not applying Garza creates inconsistencies in Constitutional application of Supreme Court ruling?

The Supreme Court is referred as law of land when it comes to setting precedent in caselaw for application of Constitutional rulings. When lower Circuit and District Court are not applying the same set of principles and standards, it creates Inter-circuit discrepancy rulings found in the 4th and 7th circuit Court of Appeals by not acknowledging this Honorable Supreme Court ruling found in GARZA V. IDAHO. These Circuit Courts are not acknowledging the ruling by this Honorable Court, this discrepancy is causing Constitutional deprivation which in turn manifest injustice to our judicial system and to our citizens.

Being as our Sixth Amendment rights states that a defendant is entitled to adequate representation throughout the critical stages of proceedings, should it not be said that the ruling found by this Honorable Supreme Court in GARZA V. IDAHO, be retroactive as to not

create a manifest injustice and unconstitutional proceeding for our citizens.

Furthermore, could it not be said that if a defendant is currently procuring Constitutional appellate rights, would not be afforded same Constitutional protection from a new ruling by the Supreme Court be found as timely in application to new precedent law.

3. Whether Due Process violations in grand jury testimony and Brady violations would be a miscarriage of justice severe enough to invalidate the entire indictment?

A thorough de novo review of contradictory testimony from Stamm and Jenkins will shed light on Due process violation where their testimony was used to a Grand Jury to indict the Plaintiff. That alleged forced confession from Belman was attempted to be retracted but was pushed under the rug due to Governments threat to Belman that his deal with Government would be invalidated. Promises made to Tapia-Rocha who was incarcerated at the time for other offenses, for sentence leniency in exchange for testimony. This is same form of which hunt that Honorable Justices endured during their confirmations.

The docket shows the proof of a Brady violation as the Government key witness was issued an arrest warrant for contempt of court right after change of plea

As said by Honorable Justice Kavanuagh "Due Process is a foundation of American rule of Law". Our Judicial system is broken, it is talked about by Presidents, the Senate and House of Representatives.

4. Whether Protected Class of citizens with PTSD and comprehension disability can be held to same standard as Government and professional attorneys

Plaintiff has a long suffered with the effects of PTSD and comprehension disability, his adolescence was spent in the inner city, in a fatherless home, abandoned by his Mexican father. He was exposed to adult situations, poverty, physical abuse, mental abuse and drug/ alcohol abuse, while struggling throughout school in speech classes and comprehension. These are disabilities, protected federally, to afford our citizen with a fair chance at life, liberty and property. Yet, the government ridiculed the Plaintiff's speech and comprehension during Evidentiary hearing. Furthermore, District Court sets discrimination of the Plaintiff's abilities to communicate during said Evidentiary Hearing. The DOJ, District Court and BOP has ordered the Plaintiff to undergo drug and mental health treatment; this is telling as to how required session provided to Plaintiff, by DOJ's Counselor at Chestnut Health Systems assessment of the Plaintiff's condition and struggles with PTSD and Comprehension Disability has affected him especially during legal proceeding. See Appendix "E" statement from DOJ provided counselor. When a person with these disabilities is undergoing a legal situation that requires comprehension, focus and ability to interact with people of high authority, is set at a standard in which they are not capable, should then federal laws that require employers to be fair and equal, be expected by our judicial system. Would this not be discriminatory practices in that application?

CERTIFICATION

I, TIMOTHY EDWARDS, Pro Se, do hereby certify pursuant to 28 U. S. C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Date: 1/10, 2023

State of Illinois
County of Clinton
Signed (or subscribed or attested) before me on 1-10-23 (date)
by Timothy Edwards (name of person(s)).
Erin Sellers
(Signature of Notary Public)

Timothy Edwards
Timothy Edwards, Pro Se

