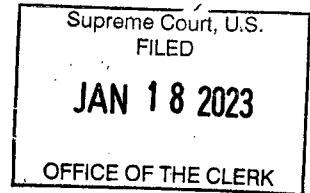


1
22-6632 ORIGINAL
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



MICHAEL BENANTI — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SIXTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL BENANTI 07163-067
(Your Name)

PO BOX 19001
(Address)

ATWATER CA 95301
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. whether the Court Failed to obtain a knowing and intelligent waiver of counsel.
2. whether the Court Failed to make an inquiry as to the nature and extent of the conflict of interest
3. whether the Court Denied Counsel at a critical stage
(Circuit Conflict)
4. whether the district Court and appeals Court Failed to Acknowledge that Benanti Raised ineffective appeals counsel because He Raised the issues here
Failed to
5. whether the Court Failed to acknowledge that these errors were structural and held to a different standard of review

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:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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Constitutional Provisions

US Constitution Amendment Six

US Constitution Amendment Fourteen

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 D to the petition and is

☐ reported at No. 22-5063; 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☐ is unpublished.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 C to the petition and is

☐ reported at Doc 343; 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☐ is unpublished.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 AUGUST 11 2022 ENBANC DENIED OCT 21, 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: OCT 21 2022, and a copy of the order denying rehearing appears at Appendix D.

☐ 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).

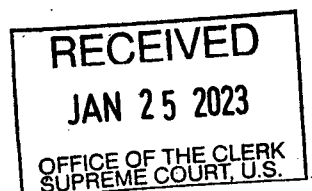
☐ For cases from **state courts**:

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 & Statutory provisions involved

- The sixth amendment of the Constitution guarantees the right of Assistance of Counsel

- The Fourteenth amendment of the Constitution guarantees the right not to be deprived of life, liberty or property without due process of law.

- The petitioner has a Constitutional Sixth Amendment "Right to Counsel" at all critical stages of the criminal process. *IOWA V TOVAR* 541 US 77, 80-81 (2004)

- The Supreme Court has yet to address a conflict in the circuit courts as to whether a motion for new trial constitutes a critical stage. *MARSHALL V RODGERS* 569 US 58 (2013)

- When confronted with a claim of conflict of interest the district court must make a conflict inquiry. "A reversal is mandated when the trial court fails to make an inquiry into a potential conflict." *HOLLOWAY V ARKANSAS* 435 US 475 (1978)

- The failure to obtain an intelligent, knowing and voluntary waiver of counsel is a structural error. "A criminal defendant must knowingly and voluntarily waive the benefits associated with the right to counsel before being allowed to represent himself." *FARETTA V CALIFORNIA* 422 US 806 (1975), *US V GONZALES-LOPEZ* 548 US 140 (2006)

- In order for the waiver to be knowing and voluntary "the record must show, or there must be an allegation and evidence which shows, that the accused was offered counsel but intelligently and understandingly rejected it, any thing else is not a valid waiver" *CARNELY V COCHRAN* 369 US 506, 516 (1962)

- The district court abused its discretion when it assumed it understood the nature and extent of the conflict of interest. "Presuming a waiver from a silent record is impermissible" *CARNELY V COCHRAN*

- Failure to obtain a knowing & voluntary waiver of counsel is structural error. "A structural error is a defect affecting the framework within which the trial proceeds, rather than an error in the trial" *ARIZONA V FULMINTA* 499 US 279, 309-10 (1991)

- Denial of counsel at a critical stage is a structural error entitling the defendant to a new trial without a specific showing of prejudice, because the error makes the adversarial process itself presumptively unreliable. "Significant consequences might have resulted from the absence of counsel" *US V CRONIN* 466 US 648, 659 (1984)

- Appellate courts failure to raise the district courts failure to conduct a conflict inquiry or obtain a valid waiver is appropriately reviewed on 2255 under *STRICKLAND V WASHINGTON* 466 US 668, 687 (1984) prejudice presumed. *CYLER V SULLIVAN* 466 US 355, 348-50 (1980)

Statement of the CASE

ON Feb 14 2017, AFTER A jury TRIAL, The petitioner WAS CONVICTED of BANK ROBBERY AND Related offenses. DURING the TRIAL BENANTI identified SEVERAL instances of MISCONDUCT by BOTH the GOVERNMENT AND DEFENSE COUNSEL. DEFENSE COUNSEL ACKNOWLEDGED that RAISING such ISSUES would NECESSARILY be RAISING deficiency in his own performance, and REFUSED to adopt MOTION FOR NEW TRIAL.

BENANTI Filed A MOTION FOR NEW TRIAL AND to be granted CO COUNSEL status. The district Court took up the matter in a hearing held on MAY 2 2017 [DOC 243 EXHIBIT A]. BENANTI NEVER REQUESTED to FIRE COUNSEL [EXHIBIT A p 26]. The district Court RECOGNIZED that BENANTI WANTED his ATTORNEY AND to REPRESENT himself. [EXHIBIT A p 3] Both the DEFENSE COUNSEL AND the petitioner ADVISED the Court of A CONFLICT of interest. [EXHIBIT A p 5 AND p 35]. The Court FAILED to CONDUCT A CONFLICT inquiry OR QUESTION the REASON FOR the CONFLICT. DEFENSE COUNSEL simply said that he would NOT adopt the motion FOR NEW TRIAL because it WAS "inappropriate to FILE the MOTION AT THIS TIME" [EXHIBIT A p 3], COUNSEL did NOT state the claim WAS meritless. "THE COURT'S FAILURE to inquire into the ACTUAL CONFLICT of interest CONSTITUTES CONSTITUTIONAL ERROR AND NECESSITATES Automatic REVERSAL" WOOD V GEORGIA 450 US 261, 272 (1981)

DEFENSE COUNSEL ADVISED the Court that A solution WAS FOR the Court "to Appoint NEW COUNSEL to REVIEW it to determine if a different COUNSEL had a different opinion. [EXHIBIT A p 5]. But INSTEAD the Court CONDUCTED A "MODIFIED" FARETTA inquiry, where the Court FAILED to ADVISE BENANTI of his RIGHT to COUNSEL, offer him REPLACEMENT OR STANDBY COUNSEL. [EXHIBIT A p 32-39]. "THE RECORD must show that the ACCUSED WAS OFFERED COUNSEL but INTELLIGENTLY AND UNDERSTANDINGLY REJECTED the offer" CARNLEY V COCHRAN 369 US 506, 516 (1962)

The Court DENIED BENANTI COUNSEL AT A CRITICAL stage. The Court RULED that BENANTI would PROCEED pro se on the motion FOR NEW TRIAL, that COUNSEL would BE PROHIBITED FROM ASSISTING BENANTI and that BENANTI would PROCEED without the TRIAL TRANSCRIPTS. The Court FURTHER ORDERED that DEFENSE COUNSEL would RESUME REPRESENTATION AT SENTENCING without determining how the CONFLICT would AFFECT the ATTORNEYS performance. [DOC 163 p 4 EXHIBIT B]. All of which MUDDIED the WATERS FOR BENANTI'S APPEALS. Failure to provide TRANSCRIPTS [EXHIBIT A p 49-56] DENIED COUNSEL [EXHIBIT A p 45]

Both TRIAL Court [DOC 343 p 18-19 EXHIBIT C] AND the APPEALS Court for the SIXTH Circuit [10:22:5063 p 7 EXHIBIT D] RULED that the petitioner WAIVED the issue because

↑ ORDER APPENDED HERE.

Appeal Counsel, Kevin Schrod, Failed to Raise it, waiving the claim. Both Courts erroneously quote the prior Sixth Circuit opinion [NO 19-5605 p7 Exhibit E], while it did Refrain From Considering the Argument, it also stated "As for Benanti's claim that appellate Counsel was ineffective... the defendant should Raise those issues ON 2255".

Benanti Did indeed Raise ineffective Appeals Counsel in his 2255 motion [Exhibit F Doc 301 p9] and in the memo of law [Exhibit G Doc 302 p56-68] and in his Reply [Exhibit H, p15-16]. The appeals Court failed to Acknowledge that Benanti did Raise ineffective Appeal Counsel in His 2255 For his Failure to present the issues here.

A violation under *Foretta v California* 422 US 806 (1975) is structural, prejudice is not necessary to succeed on such a claim." *Pouncy v Palmer* 846 F3d 144 (6th 2017)

REASONS For granting the petition

Rule 10 Courts Supervisory power

The Petitioner Brings this writ of certiorari pursuant to part III Rule 10 (a) in the Supreme Court Rules. Both the District Court and the Sixth Circuit have "so far departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by the lower courts as to call for the exercise of this Courts supervisory power"

Both BENANTI and his defense counsel reported a conflict of interest to the District that prevented counsel from adopting BENANTI'S motion for New Trial. The motion was based on prosecutorial misconduct. By raising the issues presented - counsel would necessarily be advocating his own ineffectiveness. Counsel was made to choose between his own interests and his clients. Counsel's actual or significant conflict ran deeper than his refusal to adopt the motion. The district court abused its discretion by assuming the nature & extent of the conflict, without conducting a conflict inquiry, in violation of the sixth amendment of the Constitution.

In determining how to proceed, the district court conducted what it termed a "modified Facetta" hearing. The court completely failed to inform BENANTI of his right to counsel, it failed to offer BENANTI replacement or standby counsel. The court denied BENANTI the assistance of counsel by prohibiting counsel from aiding BENANTI in any way except administratively. The court prohibited BENANTI access to the trial transcripts in preparation by setting the deadline in three weeks which was not enough time to have the trial transcribed and because BENANTI could not afford to pay for transcription of the entire trial. For these reasons the court denied BENANTI'S sixth amendment right to counsel and his fourteenth amendment right to due process.

Both the district and appeal court erroneously denied the issues because they were waived. But BENANTI raised the ineffectiveness of appeal counsel on 2/25/55 for his failure to raise the issues on appeal. Because the errors are structural prejudice is presumed and harmless error does not apply. Reversal is required.

Rule 10 Circuit Courts Conflict

The circuit courts of appeal are conflicted as to whether a motion for New Trial is a critical stage. Although not controlling here, it is an opportunity for the Supreme Court to address the issue unaddressed in *Marshall v Rodgers* 569 US 58 (2013)

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CONCLUSION

A DOCUMENT FILED PRO SE IS TO BE "LIBERALLY CONSTRUED"

ERICKSON V PARUS 551 US 89, 94 (2007)

THE PETITIONER ASKS THIS HONORABLE COURT TO ACCEPT HIS ARGUMENTS THROUGHOUT THIS PLEADING LIBERALLY. THE PETITIONER RAISED SEVERAL ISSUES TO COUNSEL ABOUT HIS PERFORMANCE AT TRIAL, INCLUDING BUT NOT LIMITED TO, HIS FAILURE TO ADDRESS PROSECUTORIAL MISCONDUCT. SINCE BENANTI WAS MADE TO PROCEED PRO SE, THE GOVERNMENT & DISTRICT COURT HAVE TAKEN ADVANTAGE OF THE PETITIONER'S IGNORANCE & INEXPERIENCE, WHICH IS EVIDENCE BY THEIR RESPONSE & RULINGS RESPECTIVELY.

THE PETITIONER HAS NEVER HAD A FULL & FAIR CHANCE TO HAVE HIS ISSUES HEARD, BECAUSE THE COURT FAILED TO INQUIRE INTO THE ACTUAL CONFLICT OF INTEREST, BECAUSE IT FAILED TO OBTAIN A KNOWING & VOLUNTARY WAIVER OF COUNSEL, AND BECAUSE IT ACTIVELY DECEIVED THE PETITIONER THE ASSISTANCE OF COUNSEL DURING HIS MOTION FOR NEW TRIAL. AS A RESULT ALL BENANTI'S EFFORTS AND ATTEMPTS AT APPEAL WERE POSIONED.

THE PETITIONER REQUESTS A NEW TRIAL. ALTERNATIVELY A NUNC PRO TUNC DESIGNATION BACK TO THE MAY 3 2017 EVIDENTIARY HEARING. TO CONDUCT A CONFLICT INQUIRY WITH COUNSEL APPOINTED.
The petition for a writ of certiorari should be granted.

Thank you.

Respectfully submitted,

Michael Benanti

Date: 1/15/23