No. 22-7023

IN THE

SUPREME COURT OF THE UNITED STATES

Mana Orosco

Mana Orosco — PETITIONER
(Your Name)

vs.

United States District Court — RESPONDENT(S)
For the Eastern District of Texas;
United States of America
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the 5th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Maria Del Rasario Orosco #14231078
(Your Name)

C/o FDC Honolulu, PO Box 30080
(Address)

Honolulu, Hawaii 96820
(City, State, Zip Code)

n/a
(Phone Number)

QUESTION(S) PRESENTED

(1) In light of Garza v. Idaho, 139 S.Ct. 738 (2019) should my writ of certiorari be granted when my appointed attorney failed to file a timely notice of appeal when I asked him to?

(2) But for my attorney not filing a timely Notice of Appeal, should my subsequent 28 U.S.C.§ 2255's be granted as they were dismissed due to failure to file a timely Notice of Appeal?

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

U.S.C.A.5 No. 22-40391

TABLE OF AUTHORITIES CITED

CASES PAGE NUMBER

STATUTES AND RULES

OTHER

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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

[X] 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,
[X] is unpublished.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[ ] is unpublished.

[ ] 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[ ] is unpublished.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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was January 27, 2023.

[ ] 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

28 U.S.C. § 1251

Garza v. Idaho, 139 S.Ct. 739 (2019)

Due Process Clause U.S. Const. amend V

STATEMENT OF THE CASE

On September 10, 2007, I pled guilty, pursuant to a written plea agreement to one count of conspiracy to possess with intent to distribute heroin, resulting in serious bodily injury, in violation of 21 U.S.C. § 846. See Crim. ECF No. 4:07cr 42(6) at Dkt # 870, On December 19, 2007, the District Court sentenced me to 240 months' imprisonment. Id at Dkt. #1198. I did not file a direct appeal or a certificate of appeal even after I told my attorney to appeal my conviction as I did not break the law as there was no person(s) that resulted in serious bodily injury. After my attorney failed to file a timely notice of appeal, I filed unsuccessfully motions to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 and a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

On September 10, 2012, I filed my first § 2255 motion, which was denied because it was barred by the one-year statute of limitations of the Antiterrorism and Effective Death Penalty of 1996 ("AEDPA"). See Civ. ECF 4:12cv585. On September 30, 2016, I filed a second § 2255 motion, which was dismissed for lack of jurisdiction because it was a successive motion, and I had not obtained permission from the Fifth Circuit to file it. See Civ. ECF No. 4:16 cv 757. On May 13, 2019, I filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 in which again I challenged my conviction. It was recharacterized as a § 2255 motion and dismissed for lack of jurisdiction because it was successive. See Civ. ECF No. 4:19cv 362. I am entitled to relief from my conviction based on Garza v. Idaho, 139 S.Ct. 738 (2019) where presumption of prejudice applied, where I instructed my trial counsel to file a notice of appeal but trial counsel decided not to do so, resulting in all my denials of § 2255 and § 2241.

REASONS FOR GRANTING THE PETITION

Therefore, I respectfully ask that the decision be reversed (Exhibit A) in light of Garza v. Idaho, 139 S.Ct. 738 (2019) and my due process rights of the Fifth Amendment Due Process Clause to the United States Constitution when my trial court failed to file a timely notice of appeal, resulting in the subsequent denials of my § 2255 and § 2241 motions.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Del Rosario-O

Date: 02-27-2023