

23-5065

No. \_\_\_\_\_

FILED

JUN 28 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

MARIO REYNOSO, Pro se - PETITIONER

v.

UNITED STATES OF AMERICA, - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES TENTH CIRCUIT COURT OF APPEALS

PETITION FOR A WRIT OF CERTIORARI

MARIO REYNOSO, Pro se

P.O. Box 3000-Medium

Forrest City, AR 72336

QUESTION(S) PRESENTED

DID THE TENTH CIRCUIT COURT OF APPEALS ERROUNEOUSLY FIND  
THAT THE COURTS LACKED SUBJECT MATTER JURISDICTION AND THAT  
YOUR PETITIONER'S MOTION FOR APPOINTMENT OF COUNSEL IS MOOT?

DOES THE TENTH CIRCUIT COURT OF APPEALS ORDER AND JUDGMENT  
CONFLICT WITH THIS COURTS PRECEDENTS WILKINS v. UNITED STATES,  
441 U.S. 468, 99 S. Ct. 1829 (1979) CONCERNING YOUR PETITIONER'S  
DILEMMA ADVANCED IN HIS MOTION FOR APPOINTMENT OF COUNSEL?

LIST OF PARTIES

[ X ] 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:

IN THE  
SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below:

OPINIONS BELOW

For cases from a Federal Court:

The opinion of the United States Court of Appeals for the Tenth Circuit Court appears at ATTACHMENT A to this petition and reported at;

JURISDICTION

For cases from a Federal Court:

The date on which the United States Court of Appeals decided my case was June 29, 2021.

No petition for REHEARING was timely filed in my case.

The jurisdiction of this United States Supreme Court's is invoked under 28 U.S.C. § 1254.

STATEMENT OF THE CASE

In a criminal trial proceeding giving raise to an earlier appeal, the district court sentenced Mario Reynoso (hereinafter "Petitioner") to 280 months' imprisonment after a jury found him guilty of distribution of five grams or more of methamphetamine. Petitioner appealed, and a panel of the Tenth Circuit Court [AFFIRMED]. After missing the deadline to file a petition for a Writ of Certiorari in the United States Supreme Court, Petitioner filed the current motion for "APPOINTMENT OF COUNSEL" in the United States District Court of which the district court denied on the merits, and Petitioner in turn appealed to the Tenth Circuit Court of Appeals of which the circuit court [AFFIRMED] after finding that "LACK OF SUBJECT MATTER JURISDICTION" exist. See APPENDIX A. Petitioner now argues that the Tenth Circuit Court of Appeals ORDER AND JUDGMENT for "LACK OF SUBJECT MATTER JURISDICTION" is an incorrect application of law to his matter at cause.

In his "Motion for Appointment of Counsel", Petitioner presented his dilemma that he was deprived of his CJA "right" to petition this United States Supreme Court to seek review of the Tenth Circuit Court of Appeals [adverse] judgment render in Petitioner's Federal Criminal Direct Appeals review because his appointed CJA counsel of the record Mr. Russell Dean Clark "failed" comply with Tenth Circuit Court's adopted Criminal Justice Plan pursuant to 18 U.S.C. § 3006A(a), as it relates to filing a petition for a Writ of Certiorari in the United States Supreme Court. The Tenth Circuit's CJA Plan provides that a court-appointed lawyer must either (1) represent the defendant

in filing a petition for certiorari if the defendant wishes to seek review and there are reasonable grounds for counsel to assert in the petition or (2) notify the defendant that there are no reasonable grounds for filing a petition, move to withdraw from representing the defendant, promptly notify the defendant of such, and advise the defendant of his or her right to file a pro se petition for certiorari.

The Tenth Circuit Court of Appeals issued an April 20, 2023, ORDER AND JUDGMENT, without an OPINION, denying Petitioner's MOTION FOR APPOINTMENT OF COUNSEL for LACK OF SUBJECT MATTER JURISDICTION, and the Circuit Court GRANTED your Petitioner's MOTION TO PROCEED IN FORMA PAUPERIS after concluding that he has advanced a reasoned, nonfrivolous argument with respect to both the law and facts in this proceeding. See APPENDIX A attached hereto.

Petitioner now requests for Certiorari to review and hopefully VACATE the Tenth Circuit Court's April 20, 2023, ORDER AND JUDGMENT for LACK OF SUBJECT MATTER JURISDICTION.

## REASONS FOR GRANTING WRIT

Your Petitioner argues that this writ should be granted upon the Tenth Circuit Court's erroneous finding of law that both lower courts LACK SUBJECT MATTER JURISDICTION to grant him the relief he seeks on his MOTION FOR APPOINTMENT OF COUNSEL. In the Court's April 20, 2023, ORDER AND JUDGMENT, the court found that your Petitioner seeks relief through the "correct" remedy he submitted to the lower courts. See APPENDIX A page 11. The Court also concluded that your Petitioner supported his motion with sufficient "evidence" in form of a correspondence letter from his CJA counsel of the record showing that counsel did not comply with the Tenth Circuit Court's CJA plan when counsel failed to do three things required under the Tenth Circuit Court's Plan: (1) promptly notify Mr. Reynoso of this court's decision affirming the conviction and sentence, (2) move to withdraw from representing Mr. Reynoso, and (3) advise Mr. Reynoso of his right to file a pro se petition for writ of certiorari. Instead, fifty-one days after this court affirmed Mr. Reynoso's conviction and sentences, CJA attorney sent Mr. Reynoso a letter stating: "As your case has now been affirmed, my appointment terminates and I no longer represent you." This statement is incorrect and incomplete. See APPENDIX A pages 9-12.

The Tenth Circuit Court's findings for LACK OF SUBJECT MATTER JURISDICTION and MOOTNESS, is erroneous as a matter of law. In WILKINS v. UNITED STATES, 441 U.S. 468, 60 L. Ed 2d 365, 99 S. Ct. 1829 (1979) the "Supreme Court" clearly signaled that the Court of Appeals should make appropriate relief available so that

defendants are not disadvantaged by the failures in representation by CJA counsel. The Wilkins court held, "had the petitioner presented his dilemma to the Court of Appeals by way of a [MOTION FOR THE APPOINTMENT OF COUNSEL] to assist him in seeking review here, the circuit court then could have vacated its judgment affirming the convictions and entered a new one, so that this petitioner could file a timely petition for certiorari." Likewise, in DOHERTY v. UNITED STATES, 404 U.S. 28, 30 L. Ed 2d 149, 92 S. Ct. 175 (1971), the Supreme Court pointed out that, "the Judicial Conference's Committee to Implement the Criminal Justice Act of 1964 submitted in 1965 an interim recommendation that: [C]ounsel appointed on appeal should advise the defendant of his "right" to initiate a further review by filing a petition for certiorari, and to file such petition, if requested by the defendant." See REPORT ON CRIMINAL JUSTICE ACT, 36 FRD 285, 291 (1965).

While the District Court might have been correct that it could not RECALL the Circuit Court's July 21, 2021, MANDATE, on your Petitioner's criminal direct review, the Tenth Circuit Court is wrong concerning the law on his MOTION FOR APPOINTMENT OF COUNSEL presenting the "dilemma" he presents concerning his CJA Attorney never informing nor advising him of his CJA "right" to seek further review in this Supreme Court to challenge the Tenth Circuit Court's June 29, 2021, ADVERSE JUDGMENT, via a Writ for Certiorari. The Circuit Court's LACK OF SUBJECT MATTER JURISDICTION and its MOOTNESS determinations presents a "CONFLICT" in law and is contrary to this Supreme Court's controlling precedents as well as other Circuit Court of Appeals precedents that have resolved and address this matter your Petitioner

advanced in his MOTION FOR APPOINTMENT OF COUNSEL. See WILKINS v. UNITED STATES, 441 U.S. 468, 60 L. Ed 2d 365, 99 S. Ct. 1829 (1979); also see DOHERTY v. UNITED STATES, 404 U.S. 28 30 L. Ed 2d 149, 92 S. Ct. 175 (1971); also see SOTELLO v. UNITED STATES, 474 U.S. 806, 807 (1985); also see SCHREINER v. UNITED STATES, 404 U.S. 67, 68 (1971); also see GORDON v. UNITED STATES, 429 U.S. 1085, 1086 (1977); also see TERRELL v. UNITED STATES, 419 U.S. 813, 814 (1974); also see DOHERTY v. UNITED STATES, 404 U.S. 28, 29 (1971). Various circuit courts have likewise applied this remedy. See MASTERS v. UNITED STATES, 976 F.2d 728, 1992 WL 232466, at \*3 (4th Cir. 1992); also see JAMES v. UNITED STATES, 990 F.2d 804, 805 (5th Cir. 1993); also see HOWELL v. UNITED STATES, 37 F.3d 1207, 1210 (7th Cir. 1994); also see WILSON v. UNITED STATES, 554 F. 2d 893, 894-95 (8th Cir. 1977); also see DIAZ v. UNITED STATES, No. 20-1269, 2022 WL 104362, at 1 (10th Cir. April 7th, 2022).

Your Petitioner argues that these above cited cases supports the relief that he seeks based on his CJA counsel's failing to follow the CJA Plan adopted by the Tenth Circuit Court, entitling him to relief from the court's June 29, 2021, ADVERSE JUDGMENT, and the Circuit Court's July 21, 2021, MANDATE, so that your Petitioner may seek a "timely" review in this United States Supreme Court via a Writ of Certiorari Petition to challenge the Circuit Court's June 29, 2021, ADVERSE JUDGMENT on his criminal direct appeals review.

The April 20, 2023, ORDER AND JUDGMENT, presents an important question concerning the law and facts of your Petitioner's case that is important to the public. JURISDICTIONAL judgments are

always IMPORTANT questions of the law that deserves this court's review.

#### CONCLUSION

This Petition for a Writ of Certiorari should be GRANTED.

Respectfully Submitted,  
MARIO REYNOSO, pro se.

MARIO REYNOSO