23-5102

IN THE SUPREME COURT OF THE UNITED STATES

Taiwo Onamuti,

Petitioner,

v.

United States of America,

Respondent.

On Petition For Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

Petition for Writ of Certiorari

Taiwo Onamuti
Reg. No. 69971-019
FCC Coleman Medium
P.O. Box 1032
Coleman, Florida 33521-1032
Phone Number: N/A

QUESTIONS PRESENTED

1) Can an original guilty plea be completely knowing and voluntary, when counsel, the government, and the district court wrongly advised defendant about § 287 being a lawful predicate for an aggravated identity theft under § 1028A? And must the entire plea be vacated?

2) Is Plenary Resentencing necessary when the District Court based its § 3C1.1 obstruction enhancement on defendant's refusal to plead guilty to aggravated identity theft § 1028A when the court had no jurisdiction to receive such plea?

3) Is Plenary Resentencing now mandatory considering the Supreme Court's recent decision in **United States v. Dubin**, No. 22-10?

4) Did the district court sentence Onamuti in excess of the statutory maximum?

TABLE OF AUTHORITIES

Cases — Page(s)

Lee v United States, 137 S.Ct. 1958, 1965 (2017)

TABLE OF STATUTES

TABLE OF CONTENTS

INDEX TO APPENDICES

OPINIONS BELOW

Taiwo Onamuti's Order Granting Motion to Vacate is attached as Appendix "A." Taiwo Onamuti's Certificate of Appealability is attached as Appendix "B."

JURISDICTION

The Seventh Circuit Court of Appeals's jurisdiction was invoked under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case concerns if an original guilty plea can be completely knowing and voluntary, when counsel, the government, and the district court wrongly advised defendant about § 287 being a lawful predicate for an aggravated identity theft under § 1028A? And must the entire plea be vacated? In addition, is Plenary Resentencing necessary when the district court based its § 3C1.1 obstruction enhancement on defendant's refusal to plead guilty to aggravated identity theft § 1028A when the court had no jurisdiction to receive such plea?

STATEMENT OF THE CASE

Mr. Onamuti was charged in a second Superseding indictment on June 6, 2017, charging Onamuti with eleven counts of presenting false claims, in violation of 18 U.S.C. § 287 (Counts 1-11); nine counts of identity theft in violation of 18 U.S.C. § 1028(a)(7) (Counts 12-20); two counts of aggravated identity theft in violation of 18 U.S.C. § 1028A (Counts 21-22); and one count of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371 (Count 23).

On September 1, 2017, the court held Onamuti's change of plea hearing. (Crim. D. 191). Onamuti agreed to plead guilty to Counts 1, 12, and 21. (Crim. D. 186). On April 12, 2018, Onamuti filed a motion to withdraw his plea. (Crim. D. 236). On November 26, 2018 the court denied Onamuti's motion to withdraw his guilty plea. (Crim. D. 256).

Sentencing was held on December 27, 2018 (Crim. D. 263). The court sentenced Onamuti to 204 months imprisonment (60 months on Count 1; 180 months on Count 12; and 24 months for Count 21). (Sent. T. 211).

On November 22, 2019, Onamuti filed a notice of appeal. (Crim. D. 169). The Seventh Circuit held that without substantial evidence impugning the validity of his plea he would not be allowed to withdraw his plea, and that Onamuti had offered "no evidence" that his lawyer had failed to advise him about the mandatory deportation nature of the charges against him.

On June 10, 2021, Onamuti filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255 (D. 1). Onamuti claimed his counsel was ineffective, resulting in an involuntary plea, because he failed: (1) to dismiss the aggravated identity theft count; (2) challenge the venue of the identity theft offense; and (3) inform him of the immigration consequences. (Id).

The government and the District Court agreed that Onamuti's counsel was ineffective and performed deficiently in failing to challenge the aggravated identity theft counts (Count 21 and 22) and as a result, Onamuti was prejudiced because Onamuti's § 1028A offense was predicated upon a violation of § 287. But § 287 is not enumerated in § 1028A(c), and thus the district court vacated Count 21.

Onamuti argued further that his entire plea was involuntary as it was predicated on inaccurate information, which resulted in the denial of his Sixth Amendment right to effective assistance of counsel.

The district court denied Full plenary resentencing, maintaining there were no circumstances that would change the court's position on sentencing Onamuti to the statutory maximum sentence of 60 months on Count 1, and 180 months on Count 12. (Crim. Dkt. 279 at p. 187-189). Nor would the court increase Onamuti's sentence by resentencing him to consecutive sentences on Counts 1 and 12.

Judgement was entered by the court on June 6, 2022. (Docket 27). Onamuti timely filed a notice of appeal (Docket 36). Application for Certificate of Appealability was submitted to the Seventh Circuit Court of Appeals on August 23, 2022. (No. 22-2115). Onamuti submitted for reasonable jurists whether a defendant was denied effective assistance of counsel rendering his entire guilty plea involuntary, and the Court found no denial of a Constitutional right and entered final judgement on March 31, 2023. This writ follows.

REASONS FOR GRANTING THE WRIT

Full Plenary resentencing is warranted when the unintelligent and unknowing plea is a result of all parties being mistaken about the law, pre-pleas, plea and at the sentencing hearing.

Onamuti raised three claims in his original 28 U.S.C. § 2255. Ultimately the government agreed that his counsel was ineffective for: (1) failing to challenge the two counts of aggravated identity theft, (Counts 21-22); and (2) advising him to plead guilty. The district court agreed and vacated his sentence, but denied a resentencing hearing and refused Onamuti permission to withdraw his plea agreement. **Onamuti v. United States of America**, No. 1:21-cv-01627-JRS-DML (June 6, 2022).

At issue is whether or not Onamuti is entitled to a full plenary resentencing or retrial. The United States contended that Onamuti's case should have been set for resentencing on the remaining two counts (Doc. 27 at 127), presumably to address the enhancements based on Onamuti's obstruction enhancement and the United States withdrawal of acceptance of responsibility, both of which are related to Onamuti's refusal to plea to what later became an unconstitutional plea.

The District Court refused to unravel the plea agreement, despite the district court's finding that Onamuti had met both prongs of **Strickland v. Washington**, 466 U.S. 668 (1984), namely deficiency and said deficiency caused prejudice.

Onamuti should have never been indicted nor later convicted of aggravated identity theft under § 1028A(a)(1), which states: "Whoever, during and in relation to any felony violation enumerated in sub section (c), knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person shall, in addition to the punishment provided for such felony, be sentenced to a term of imprisonment of 2 years." Subsection (c) of the statute enumerates the qualifying predicates. Onamuti's § 1028A offense was predicated upon a violation of § 287. (DKT. 16 at p. 13) (citing Crim. DKT. 91 at 12).

But § 287 is not enumerated in § 1028A(c). Section 287 is found in Chapter 15, which is not one of the enumerated chapters. Thus, Onamuti's guilty plea in its entirety should be invalid.

Onamuti's trial counsel did not understand the law in relation to multiple counts against Onamuti, presumably trial counsel would have investigated this case differently, would have prepared a defense differently, and would have approached plea negotiations and plea agreement advice differently.

Strickland's "deficient performance" prong requires a defendant to show by a preponderance of the evidence "that counsel's representation fell below an objective standard of reasonableness" such that counsel was not functioning as "counsel guaranteed by the Sixth Amendment." **Strickland**, 466 U.S. at 687-88. The Sixth Amendment requires a criminal defense attorney to know the charges against the accused. Counsel's "ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance." **Hinton v. Alabama**, 571 U.S. 263, 275 (2014) (where trial counsel knew he needed additional funds for trial but failed to make even a cursory investigation of the law).

The mistake here is not one of a justifiable strategic choice. **Wooley v. Rednour**, 702 F.3d 411, 423 (7th Cir. 2012). Neither was counsel's mistake one of misunderstanding of fact or law. **Thomas v. Clements**, 789 F.3d 760, 768-69 (7th Cir. 2015), but rather a mistake where counsel was unfamiliar with the law. **Morris v. California**, 966 F.3d 448, 454-55 (9th Cir. 1992). Under **Strickland**, 466 U.S. 668 (1984), "Strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S., at 690-691 (1984). In **Hinton v. Alabama**, 571 U.S. 263 (2014), defendant's attorney knew he needed more funding for his investigation but failed to research the law in regard to procuring those funds, which ultimately lead to the court finding that an attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under **Strickland**. Id.

When Onamuti's counsel reviewed his case, the singular most important aspect is to actually read the United States Code itself.

The U.S.C. was written well before Onamuti's case. The record demonstrates counsel did not object to the erroneous standard at the change of plea. It was never brought to the attention of the government or the court. Onamuti has already demonstrated that because of counsel's ignorance of the law, his plea could not be knowing, intelligent, or "voluntary" and "intelligent." **Brady v. United States**, 397 U.S. 742, 748 (1970). Because a plea waives a constitutional right to a trial, it must be entered into with sufficient awareness of the relevant circumstances and likely consequences." Id. The district court seeks to excise only one Count as if the entire plea is not affected by counsel's unawareness of the law. Retrial or Plenary Resentencing is necessary so that Onamuti is returned to the District Court.

PLENARY OR RETRIAL IS NECESSARY

The District Court later upheld by the Seventh Circuit Court of Appeals, found that even though Onamuti had proven prejudice in the context of his change of plea, the court would not allow Onamuti to withdraw his entire guilty plea, and plea agreement, relying on **United States v. Sprenger**, 14 F.4th 785, 791-92 (7th Cir. 2021), which relates "[w]hen a defendant enters a guilty plea to multiple counts and one plea is subsequently invalidated, we consider whether the defendant's plea to the remaining counts "represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." **North Carolina v. Alford**, 400 U.S. 25, 31, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970); see **McKeever v. Warden SCI-Graterford**, 486 F.3d 81, 86 (3d. Cir. 2007) ("We decline to adopt a rule that renders a multi-count plea agreement per se invalid when a subsequent change in the law renders a defendant innocent of some, but not all, of the counts therein and reject the argument that such a plea could never be entered by a defendant voluntarily and intelligently."). But as we have indicated previously, "there is no absolute right to withdraw a guilty plea ... and a defendant seeking to do so faces an uphill battle after a thorough Rule 11 colloquy." **United States v. Bradley**, 381 F.3d 641, 645 (7th Cir. 2004) (quotations and citation omitted). In fact, we have an "obligation to ensure that guilty pleas are not lightly discarded because of the presumption of verity accorded the defendant's admissions in a Rule 11 colloquy." Id. (cleaned up).

The District Court seeks to attach case law that renders a multi-count plea agreement invalid when a subsequent change in the law renders a defendant innocent of some. **McKeever v. Warden SCI-Graterford**, 486 F.3d 81, 86 (3d Cir. 2007).

Ineffective assistance of counsel at the change of plea stage in the proceedings is governed by the familiar **Strickland**, 466 U.S. 668, 687 (1984) standard. As the Supreme Court held in **Hill v. Lockhart**, 474 U.S. 52, 58-59 (1985), there must be ineffective representation coupled with prejudice, which in the change of plea setting means that the prejudice affected the outcome of the entire hearing. The court wrote:

"The two-part **Strickland** test applies to challenges to guilty pleas based on ineffective assistance of counsel. In the context of guilty pleas, the first half of the **Strickland** test is nothing more than a restatement of the standard of attorney competence already set forth in **Tollet v. Henderson**, supra, and **McMann v. Richardson**, supra. The second, or 'prejudice' requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. In other words, in order to satisfy the prejudice requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial."
Id. There is no option for keeping the plea agreement.

Since defendants often do not want to give up the benefits of their agreements and face trial on the charges against them, the **Strickland** test is not often applied in the change of plea setting. In **Padilla v. Kentucky**, 559 U.S. 356, 372 (2010), the court relied on the holding from **Hill** to apply the **Strickland** test to defense counsel's failure to apprise his client that he would be deported upon entering a guilty plea. There, the court held that the failure of advice need not be an affirmative failure, but can occur merely through counsel's silence on the issue. Id. In explaining why that holding would not release a flood of litigation in cases involving ineffectiveness at the change of plea stage, the court summed up the problem Onamuti faces here:

"In the 25 years since we first applied **Strickland** to claims of ineffective assistance at the plea stage, practice has shown that pleas are less frequently the subject of collateral challenges than convictions obtained after a trial. Pleas account for nearly 95% of all criminal convictions. But they account for only approximately 30% of the habeas petitions filed. The nature of relief secured by a successful collateral challenge to a guilty plea - an opportunity to withdraw the plea and proceed to trial - imposes its own significant limiting principle: Those

who collaterally attack their guilty pleas lose the benefit of the bargain obtained as a result of the plea. Thus, a different calculas informs whether it is wise to challenge a guilty plea in a habeas proceeding, because ultimately the challenge may result in a less favorable outcome for the defense, whereas a collateral challenge to a conviction obtained after a jury trial has no similar downside potential. Id. (emphasis added).

The Court recently applied the same test in **Lee v. United States**, 137 S. Ct. 1958 (2017), and noted that prejudice from claimed ineffectiveness at the plea stage occurs when "his counsel's performance deprived him of a trial by causing him to accept a plea..." Id. Thus, the court held that **Lee** had "adequately demonstrated a reasonable probability that he would have rejected the plea had he known it would lead to mandatory deportation." Id.

Onamuti has established that his "counsel's deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself." **Roe v. Flores-Ortega**, 528 U.S. 470, 483 (2000), as a "different calculas" applies when an attorney misrepresents an element of a crime at a change of plea. **Padilla**, 559 U.S. at 372.

DISTRICT COURT REASONING

The District Court does not agree that the plea hearing itself is corrupted. In fact the court states "Counsel's advice to plead guilty, even to Count 21 (which will now be vacated) was competent advice under the circumstances." **Onamuti**, No. 1:21-cv-01627-JRS-DML, at 7, and again the court commends Onamuti's counsel, stating "the record reflects that counsel's advice to take the plea deal was excellent advice." Id. at 11. The court clearly has a bias against Onamuti, even commending ineffective counsel for being ineffective.

The court largely bases its decision and reasoning on **United States v. Sprenger**, 14 F.4th 785, 791-92 (7th Cir. 2021) and how it distinguishes with **United States v. Bradley**, 381 F.3d at 647-48. **Sprenger** notes when a defendant enters a plea to multiple counts and the plea is subsequently invalidated, the court should consider whether the defendant's plea to the remaining counts should still be valid. In **Sprenger**, the defendant pled guilty to a four-count indictment. He was ultimately found guilty pursuant to that plea agreement of Count 1 and 4. They were ran into a

concurrent sentence. **Sprenger** appealed, contending that given a recent decision in **United States v. Howard**, 968 F.3d 717 (7th Cir. 2020) that there was no longer a sufficient factual basis to establish he committed the Count 1 offense. **Sprenger** also contended he was entitled to withdraw not just his Count 1 plea, but also his Count 4 agreement.

Ultimately, his Count 1 factual basis admission was not sufficient to render Count 1 invalid. The court was left to decide whether the entire plea should be vacated. **Sprenger** relied on **United States v. Bradley**, 381 F.3d 641, 645 (7th Cir. 2004) in his attempt to vacate his entire plea. In **Bradley**, the Seventh Circuit found the district court abused its discretion because both parties were mistaken about the nature of the § 924(c) charge throughout the plea process. Id. at 644-46. The court ultimately held that, because there was not a meeting of the minds on all the essential elements of the § 924(c) charge due to mutual mistake, the defendant was entitled to withdraw his § 924(c) plea as it was not made knowingly and intelligently. **Bradley**, 381 F.3d at 647-48. The court then concluded that the defendant in **Bradley** was entitled to withdraw his plea to the § 841(a)(1) drug trafficking offense which was tainted by the § 924(c) plea. Id. at 648. In **Bradley** the court made this decision because the charges were independent. **Sprenger** was not allowed to withdraw his plea in totality because no interdependence existed between counts.

The District Court found that Onamuti's case was like **Sprenger**'s and was distinct from **Bradley**. But this is error. In **Sprenger**, the defendant's circumstances changed at a later date. The factual basis was actually insufficient to establish that he committed Count 1. In **Bradley**, the plea agreement was rendered invalid once again due to a factual basis argument, again at a later date. But Onamuti's counsel failed to advise him of the law as it was at the time of his plea. These cases the district court uses much more reflect the Supreme Court's decision in **Brady**, 397 U.S. 742 (1970), which anticipate a change in the law. There was no change in law in Onamuti's case. He was misadvised from the outset. At no point can § 287 act as a predicate for § 1028A.

In addition, the District Court likens the remedy to **Sprenger**, 14 F.4th 785, 791-92 (7th Cir. 2021), as opposed to **Bradley**, 381 F.3d 641, 645 (7th Cir. 2004). But once again the court was in error. The rule established in **Bradley** is one of interdependence. The "Sentencing Package Doctrine" creates a coherent sentencing

package of interdependent sentences. The reversal of one count may render the underlying package voidable. **United States v. Shue**, 825 F.2d 1111, 1114 (7th Cir. 1987) and this "sentencing package doctrine generally applies to sentences with interdependent consecutive counts, and not to concurrent sentences." **McKeever**, 486 F.3d at 87 (2007).

Onamuti's § 1028A aggravated identity theft Count 21 is a consecutive count to Count 1. Making these sentences interdependent, Onamuti should be entitled to withdraw his plea, based on the fact alone that his sentence meets the interdependent, consecutive count necessity for the sentencing package doctrine. Onamuti's case differs from most cases seeking to withdraw their plea and at minimum Onamuti is entitled to plenary resentencing on the remaining counts.

REASONS FOR GRANTING THE WRIT

Onamuti must be granted plenary resentencing or retrial when an enhancement is based on Onamuti wishing to withdraw his plea from what became a vacated unconstitutional count. The sentencing hearing must be forfeited.

Onamuti was given an enhancement for obstruction of justice under U.S.S.G. § 3C1.1. That enhancement was based in large part on Onamuti's wish to withdraw his plea at the sentencing hearing. Multiple times Onamuti informed the court he was pleading guilty on counsel's advice (S.T. 114 at 25) (S.T. 130 at 19-20) (S.T. 139 at 17-18) (S.T. 143 at 23-24) (S.T. 150 at 24-25), but did not want to plead guilty. At multiple points, Onamuti was confused about plea offers in general not being actual pleas (S.T. 137 at 4) (confused about Doc. 162) (S.T. 109) and at points Onamuti wanted to withdraw his plea and go to trial because he felt his counsel was ineffective (S.T. 109 at 7) (S.T. 110 at 1) (S.T. 128 at 23-24) (S.T. 137 at 3). The government noted that Onamuti had previously at the change of plea hearing raised his hand to plead guilty, and if he lied or changed his plea he would be guilty of perjury (S.T. 152 at 11-12) and (S.T. 130 at 19-20).

But in Onamuti's case, counsel's deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of a proceeding itself." **Flores-Ortega**, 528 U.S. at 483 (2000). When a defendant alleges his counsel's performance led him to accept a plea of guilt rather than to go to trial, the court should not ask whether, had he gone to trial the result of the trial or the proceedings "would have been different" than the result of the plea itself. That is because the Supreme Court ordinarily "applies a strong presumption of reliability to judicial proceedings," but the court will not "accord" any such presumption "to judicial proceedings that never took place." Id., at 482-483.

The District Court accords just such a presumption to Onamuti's proceedings when he states "there are no circumstances under which the undersigned would sentence Onamuti to less than the statutory maximum sentence" (Doc. 27 at 13). The guilty plea proceedings and sentencing proceeding should never have taken place. The District Court had no jurisdiction to receive a guilty plea on Count 21, nor to sentence Onamuti for the aggravated identity theft consecutive § 1028A count. The deficient performance led not only to a proceeding of disputed reliability, but also to the "forfeiture to the proceeding itself." **Flores-Ortega**, 528 U.S., at 483 (2000).

The District Court granted an obstruction enhancement, but the proceeding that gave rise to the obstruction enhancement was unreliable and should be forfeited, and at minimum Onamuti should be returned to his pre-plea position with the option of either seeking trial or negotiating another plea deal.

REASONS FOR GRANTING THE WRIT

Plenary Resentencing is now mandatory considering the Supreme Court's recent decision in United States v. Dubin, No. 22-10.

This court has recently addressed a similar issue as that of Onamuti.

In **United States v. Dubin**, No. 22-10, Petitioner David Dubin was convicted of healthcare fraud, under 18 U.S.C. § 1347. The question in those proceedings was whether Dubin also committed aggravated identity theft under § 1028A(a)(1). Section § 1028A applies when a defendant, "during and in relation to any predicate offense [such as healthcare fraud] knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person."

Ultimately, this court held that under § 1028A(a)(1), a defendant "uses" another person's means of identification "in relation to" a predicate offense when the use is at the crux of what makes the conduct criminal. Pp. 4-21. The more targeted reading of **Dubin** requires that the use of a means of identification have a "genuine nexus" to the predicate offense. In Onamuti's proceeding, the statute itself never even listed § 287 as a statute where a "genuine nexus" could be made to the predicate offense.

However, **Dubin**, No. 22-10, is similar in that the list of § 1028A(a)(1)'s predicate offenses added a severe 2-year mandatory prison sentence onto underlying offenses that do not impose any mandatory prison sentence at all. Onamuti's proceedings heaped upon him a sentence that was never valid and then sought to never return him to his pre-plea position absent that count. **Dubin** instructs this court in the correct remedy when § 1028A(a)(1) is vacated. The entire finding of guilt is vacated as well with a remand to the lower court to correct the error.

REASONS FOR GRANTING THE WRIT

The District Court has imposed a sentence in excess of the statutory maximum of 15 years in violation of Apprendi v. New Jersey, 530 U.S. 466 (2000)

The district court further sentenced Onamuti in excess of the statutory maximum. Count 12, § 1028(a)(7) of the indictment far exceeded the applicable statutory maximum for that offense. In that, Count Twelve of the indictment improperly charged (in the disjunctive) that Petitioner did "transfer, possess, or **use**" a means of identification, in violation of 18 U.S.C. § 1028(a)(7). Nowhere in Count 12 is there any reference to Petitioner having "obtained anything of value aggregating $1,000 or more during a one-year period" as required to trigger the 15-year period of imprisonment" or "possession or use of 1 or more means of of identification." See, 18 U.S.C. § 1028(b)(1)(D). Notably, Onamuti did not either admit to having obtained anything of value exceeding $1,000 at the time of the guilty plea. The statute reads:

§ 1028. Fraud and related activity in connection with identification documents, authentication features, and information

(a) Whoever, in a circumstance described in subsection (c) of this section—

(1) knowingly and without lawful authority produces an identification document, authentication feature, or a false identification document;

(2) knowingly transfers an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority;

(3) knowingly possesses with intent to use unlawfully or transfer unlawfully five or more identification documents (other than those issued lawfully for the use of the possessor), authentication features, or false identification documents.

(4) knowingly possesses an identification document (other than one issued lawfully for the use of the possessor), authentication feature, or a false identification document, with the intent such document or feature be used to defraud the United States;

(5) knowingly produces, transfers, or possesses a document-making implement or authentication feature with the intent such document-making implement or authentication feature will be used in the production of a false identification document or another document-making implement or authentication feature which will be so used;

(6) knowingly possesses an identification document or authentication feature that is or appears to be an identification document or authentication feature of the United States or a sponsoring entity of an event designated as a special event of national significance which is stolen or produced without lawful authority knowing that such document or feature was stolen or produced without such authority;

(7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law; or

(8) knowingly traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification;

shall be punished as provided in subsection (b) of this section.

(b) The punishment for an offense under subsection (a) of this section is—

(1) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 15 years, or both, if the offense is—

(A) the production or transfer of an identification document, authentication feature, or false identification document that is or appears to be—

(i) an identification document or authentication feature issued by or under the authority of the United States; or

(ii) a birth certificate, or a driver's license or personal identification card;

(B) the production or transfer of more than five identification documents, authentication features, or false identification documents;

(C) an offense under paragraph (5) of such subsection; or

(D) an offense under paragraph (7) of such subsection that involves the transfer, possession, or use of 1 or more means of identification if, as a result of the offense, any individual committing the offense obtains anything of value aggregating $1,000 or more during any 1-year period;

(2) except as provided in paragraphs (3) and (4), a fine under this title or imprisonment for not more than 5 years, or both, if the offense is—

(A) any other production, transfer, or use of a means of identification, an identification document,[,] authentication features, or a false identification document; or

(B) an offense under paragraph (3) or (7) of such subsection.

Section (b) of § 1028 is known as the penalty provision, and the five year maximum is under Section (b)(2).

In order to be found guilty of 18 U.S.C. § 1028(a)(7), a defendant would need to admit in a plea colloquy or be found guilty in a jury trial of:

(7) knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with, any unlawful activity that constitutes a violation of Federal law, or that constitutes a felony under any applicable State or local law.

The five year statutory maximum variety is found in § 1028(b)(2)(B).

In Onamuti's Guilty plea (Document 186 at 2-3), the elements admitted pertaining to Count 12 were as follows:

Count 12

First, the defendant knowingly possessed or used a means of identification of another person;

Second, the defendant knew that the means of identification belonged to another person;

Third, the defendant acted with the intent to commit, or aid or abet, in connection with any unlawful activity that constitutes a violation of federal law; namely, present a false claim to the Internal Revenue Service;

Fourth, the defendant acted without lawful authority; and

Fifth, the transfer, possession, or use of the means of identification occurred in or affected interstate or foreign commerce or the means of identification was transported in the mail. (Document 186 at 2-3).

Onamuti simply did not admit to any element that triggers the 15 years statutory maximum. There was no admission to a "use of 1 or more means of identification," nor is there an admission of obtaining "anything of value aggregating $1,000 or more during a 1-year period."

Onamuti did however admit to the § 1028(b)(2)(B), which refers to an offense under paragraph (3) or (7) of such subsection and presumably the elements therein.

ELEMENTS OF THE OFFENSE

Even for guilty pleas, Fifth Amendment due process requires that the Government prove beyond a reasonable doubt every element of the crime which the defendant is charged. **In Re Winship**, 397 U.S. 358, 364 (1970). Here, the Government merely proved that Onamuti admitted the elements to the 5-year statutory maximum variety sentence and not the harsher 15-year, under § 1028(b)(1)(D). The law would require the admission of "more than 1 means of identification" and that the defendant committing the offense obtains "anything of value aggregating $1,000 or more during a 1-year period." Neither element was admitted.

Due process also requires that for a guilty plea to be valid, it must be made voluntarily, intelligently, and knowingly. **Brady v. United States**, 397 U.S. 742, 747 (1970). Rule 11 of the Federal Rules of Criminal Procedure requires the same exacting standard. Unaware that § 1028(a)(7)'s 15 year statutory maximum also required an admission of "use of 1 or more means of identification" and "obtaining anything of value aggregating $1,000 or more during any 1-year period" and the transfer thereof, Onamuti's plea could not be valid in regard to these counts nor voluntary, intelligent, nor knowing. **McKarthy v. United States**, 394 U.S. 459, 466 (1969) ("Because a guilty plea is an admission of all the elements of a formal criminal change, it cannot be voluntary unless the defendant possesses an understanding of the law in relation to the facts.")

A guilty plea cannot "be voluntary in the sense that it constituted an intelligent admission that the defendant committed the offense unless the defendant received real notice of the true nature of the charges against him, the first and most universally recognized requirements of due process." **Henderson v. Morgan**, 426 U.S. 637, 645 (1976).

ONAMUTI'S SENTENCE EXCEEDS THE STATUTORY MAXIMUM

The Supreme Court of the United States of America has found in **Apprendi v. New Jersey**, 530 U.S. 466 (2000) that any fact that increases the penalty for a crime beyond the prescribed statutory maximum—other than the fact of a prior conviction—must be submitted to a jury and proven beyond a reasonable doubt. **Apprendi**'s premises are rooted in that, the Sixth Amendment and the Due Process Clause of the Fifth Amendment, taken together, indisputably entitle a criminal defendant to a determination that "he is guilty of every element of the crime with which he is charged." Id. at 476-477. Absent a knowing and voluntary waiver that requires such facts to be submitted to a jury, **Blakely v. Washington**, 542 U.S. 296 (2004), the court is under constraint to ensure a criminal defendant's rights are protected.

Here the court is presented with a clear **Apprendi** error. In **Apprendi** the court was faced with whether a 12 year sentence was permissible when the statutory maximum was 10 years. Here, Onamuti did not admit to the elements necessary to move his case from the run-of-the-mill 5-year statutory maximum in § 1028(b)(2)(B) to the harsher § 1028(b)(1)(D) 15-year statutory maximum sentence. Absent an admission of the elements or a waiver of his rights in regard to Count 12, the Court is bound to vacate Count 12 for its exceeding the 5-year statutory maximum.

CONCLUSION

A guilty plea must either be completely knowing and voluntary, or not knowing and voluntary at all. When Onamuti was incorrectly advised about a point of law, pre-plea, his case was set apart from the heartland, run-of-the-mill challenge to pleas. He cannot be partially intelligent about the nature of the charges against him, which is what the remedy the District Court has held would imply by only excising one count from the sentencing package. The proceeding ineffected with an unintelligent plea must be forfeited and Onamuti returned to a pre-plea position.

The District Court's reasoning for not granting full plenary resentencing falls flat. When this court considers precedent in the Seventh Circuit that involves the court's failure to illicit a correct factual basis in light of new precedent, versus a case like Onamuti's where the issue is the failure of counsel at plea to know the law, the government at the indictment stage to abide by the law, and the court in accepting a plea to a Count 21 it had no jurisdiction to receive.

In addition, this Court must consider this body's recent decision in **Dubin**, which allows for the entire finding of guilt to be vacated when considering the nexus/predicate nature of aggravated identity theft charges in relation to their predicates.

Finally, the district court violated **Apprendi**, 530 U.S. 466 (2000) by sentencing Onamuti in excess of the statutory maximum. **United States v. Villereal**, 253 F.3d 831 (5th Cir. 2001).

Respectfully,

Taiwo Onamuti #69971-019
FCC Coleman Medium
P.O. Box 1032
Coleman, Florida 33521-1032

Date: 06-23-2023

IN THE SUPREME COURT OF THE UNITED STATES

Taiwo Onamuti,

Petitioner,

v.

United States of America,

Respondent.

On Petition For Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

Certificate of Service

Taiwo Onamuti
Reg. No. 69971-019
FCC Coleman Medium
P.O. Box 1032
Coleman, Florida 33521-1032
Phone Number: N/A