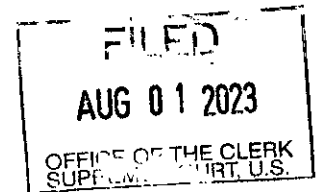


No. 23-5384 ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

Washington, D.C.

Wayne L. Johnson — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

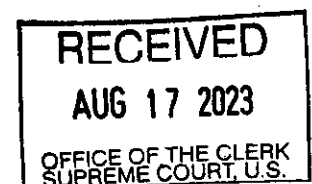
PETITION FOR WRIT OF CERTIORARI

Wayne L. Johnson #72155-018
(Your Name)

FCC Coleman Medium PO Box 1032
(Address)

Coleman, FL 33521
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

Whether the Lower Court should have allowed counsel to withdraw from Petitioner's Appeal, knowing the Petitioner had issues of merit for an Appeal in his Appeal Brief, that was pro-se to the Court of Appeals.

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A - *Court of Appeals Decision*

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

1. <i>Anders v. California</i> , 386 U.S. 738 (1967)	1
2. <i>Hill v. Lockhart</i> , 474 U.S. 52 (1985)	2
3. <i>Class v. United States</i> , 138 S.Ct. 798 (2018)	2
4. <i>Flores-Roe v. Ortega</i> , 528 U.S. 470 (2000)	2, 5
5. <i>Lee v. United States</i> , 137 S.Ct. 1958 (2017)	2
6. <i>Padilla v. Kentucky</i> , 130 S.Ct. 1473-1476 (2010)	2
7. <i>Olano v. United States</i> , 504 U.S. 725-732 (2005)	4
8. <i>Garza v. Idaho</i> , 139 S.Ct. 738 (2019)	5
9. <i>Dominguez-Benitez</i> , 542 U.S. 74, 76, 82 (2004)	6
10. <i>Rosales-Mireless v. United States</i> , 138 S.Ct. 1897 (2018)	6
11. <i>Santobello v. New York</i> , 404 U.S. 257 (1971)	2
12. <i>Molina-Martinez v. United States</i> , 136 S.Ct. 1338 (2016)	6

STATUTES AND RULES

Title 21 U.S.C. § 841(a)(1)	
Title 18 U.S.C. § 4242-4247	3

OTHER

U.S.S. Guideline Section 5K2.2	3
--------------------------------	---

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 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 N/A 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 5/10/2023.

☒ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A N/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

- Fifth Amendment of the United States Constitution
- Sixth Amendment of the United States Constitution

Statutes

• 21 U.S.C. § 841(a)(1)

STATEMENT OF THE CASE

Petitioner was arrested and charged with 3.1 grams of heroin, with less than one gram of fentanyl. Petitioner pled guilty to the charge with the promise of 30-37 months for his plea, but with no more than 110 months at most if he pled guilty. Petitioner pled guilty based on this promise from counsel, and the promise is in Petitioner's plea transcripts.

However, when Petitioner was sentenced, he was not given the 30-37 months with no more than 110 months at most, instead Petitioner was sentenced to 180 months in a Federal United States prison.

Petitioner's plea is therefore, involuntary, unintelligent, and unknowing, based on the Breach of the plea by counsel and the government.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable United States Supreme Court has the discretion to grant and or accept whatever cases it deems appropriate. Petitioner requests that this Honorable Court accept this case, because it is obvious that the Lower Court never even reviewed the Petitioner's Direct Appeal Claims because it would probably never have affirmed Petitioner's Direct Appeal, and would have granted Petitioner's Request for New Counsel before counsel filed a *Anders v. California*, 386 U.S. 738 (1967) Brief against his own client. Instead of protecting the Petitioner's substantial and Constitutional Rights as a counsel guaranteed to the Petitioner by the Sixth Amendment of the United States Constitution, counsel simply waived the Petitioner's rights away, denying the Petitioner his substantial and Constitutional Rights for the Lower Courts to review Petitioner's claims that were of merit.

Petitioner states the following in these arguments to this Honorable United States Supreme Court.

Arguments

Whether the Lower Court of Appeals should have allowed counsel to withdraw from Petitioner's Appeal, knowing

1) counsel refused to pursue the claims in this Writ of Certiorari that the Petitioner requested of counsel to do so. Counsel refused to Appeal in a Appeal Brief the 180 month sentence that the Petitioner received. Counsel told Petitioner that if he pled guilty that he would only receive 30-37 months, but no more than 110 months altogether, period. Had Petitioner known he would receive 180 months, he would never, ever have pled guilty at all, but would have instead proceeded to trial and proved his innocence in a court of law, before a jury of twelve.

2) Counsel even agreed to an upward departure against his own client without informing the Petitioner that he was going to receive an upward departure. See Sentencing Plea transcript pages 35, Lines 4-6. Counsel on page 35, Lines 4-6, agreed to an upward departure against his own client without permission from Petitioner, and without confronting his own client to get his client's opinion or consent to object to the upward departure. Instead of protecting the Petitioner's substantial and Guideline Rights, and Petitioner's Constitutional rights, counsel simply waived them away and did not even discuss, nor confront, his own client about violating his client's Sixth Amendment Rights as a counsel guaranteed to the Petitioner by the Sixth Amendment of the United States Constitution. Had Petitioner known counsel would just waive his rights away and not confront him about being upward departed and about being overly sentenced, then he would never have ever pled guilty, but would have proceeded to trial and proved his innocence in a court of law before a jury of twelve. *Hill v. Lockhart*, 474 U.S. 52 (1985); *Class v. United States*, 138 S. Ct. 798 (2018); *Floras-Roe v. Ortega*, 528 U.S. 470-480 (2000); *Santabello v. New York*, 404 U.S. 257 (1971); *Lee v. United States*, 137 S. Ct. 1958 (2017); and *Padilla v. Kentucky*, 130 S. Ct. 1473-1476 (2010).

- 3) The Lower Court judge in the U.S. District Court called the Petitioner a 'Junkie' (see page 35, Line 2). Had Petitioner known that the judge in the U.S. District Court in this case was biased against him because of the color of his skin, he would have asked counsel to file a Motion for a different judge that would not be prejudiced against the Petitioner just because of the color of his skin.
- 4) Counsel under-represented the Petitioner in this case when he (counsel) agreed to a United States Sentencing Guideline Section 5K2.2 upward departure to enhance his own client, a client who had been tested already as Mentally ill, suffering from a variety of mental health disorders and disabilities. Counsel knew all of this but instead of protecting his client's mental health rights, counsel simply ignored them and just allowed them to be waived away by ignoring that the Petitioner had a right to be mentally evaluated before taking a plea, and before ever pleading guilty. Counsel never even made the court aware that Petitioner should be mentally evaluated according to Title 18 U.S.C. § 4242-4247 requirements before ever taking such a plea.
- 5) Petitioner should never even have received 180 months with a promise from counsel that he would receive 110 months, but that the case carried 30-37 months. Had Petitioner known he was being

tricked and schemed, he would never have ever pled guilty, but would have instead proceeded to trial and proved his innocence in a court of law to a jury, and been acquitted.

These errors are plain, they are clear, and these errors stated above violate the Petitioner's substantial rights, they also affected the fairness and integrity of the judicial proceedings in this case, and if left unchecked would seriously affect the judicial proceedings and fairness that was not given to the Petitioner in this case. No justice, no fairness was given to the Petitioner in this case, and from the record, it is obvious. *Olano v. United States*, 504 U.S. 725-732 (2005).

6) Had Petitioner known that counsel would not keep his promise concerning the 110 months, and the 30-37 months, he would never have pled guilty but would have proceeded directly to trial and proved his innocence in a court of law before a jury.

7) Petitioner's plea is therefore, involuntary, unintelligent and unknowing. Also, counsel's refusal to pursue a mental health claim on the Petitioner before, prejudiced the Petitioner and his substantial rights. Counsel's allowing the Petitioner to be upward departed and not discussing it period with Petitioner, prejudiced the Petitioner's substantial rights, affected the judicial proceedings in this case, and the fairness of the judicial proceedings in this case by not willingly protecting the Petitioner's substantial rights, pre-

judiced the Petitioner and caused Petitioner 180 months in a Federal prison when in fact, counsel promised the Petitioner from at first, 30-37 months, for the 3.1 grams of heroin, with not even a gram of Fentanyl with the heroin, still Petitioner should and would never have agreed to 180 months and being called a 'Junkie' by the U.S. District Court judge, but would have proceeded to trial and proved his innocence in a court of law for that 3.1 grams of heroin to a jury and would have been acquitted.

8) Had counsel raised the claims of mental health violations in the plea agreement, and the fact that Petitioner was in fact promised that if he pled guilty, he would receive the sentence he stated above. See *Garza v. Idaho*, 139 S.Ct. 738-742 (2019); *Flores-Roe v. Ortega*, *supra*, Petitioner involuntarily waived all of his rights away unknowingly based on all of the above stated reasons.

9) Petitioner hopes and prays that this Honorable court accept this writ of certiorari for the reasons that it will prevent future clients from being violated under the Sixth and Fifth Amendments of the United States Constitution, and future clients' substantial rights not being just waived away without first discussing Petitioner's case with the Petitioner first so that Petitioner will at least be given the opportunity to have the final say in his own case, rather than counsel

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Wayne Johnson

Date: 08/2/2023