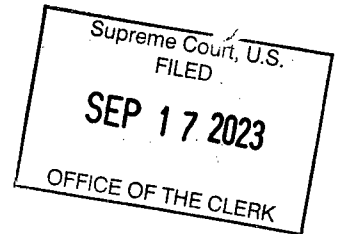


23-5644
No.

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES



ROBERT TIMOTHY BLAKE , PETITIONER

v.

UNITED STATES OF AMERICA

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

ROBERT TIMOTHY BLAKE
46959380
FCI BASTROP
P.O. BOX 1010
BASTROP, TEXAS 78602
(No Institution phone available)
Pro Se Petitioner.

QUESTIONS PRESENTED FOR REVIEW

1. Did Trial Counsel Fail to Adequately inform Defendant of the Consequences of Accepting the Plea Bargain?
2. Was the Strickland V. Washington standard of review for ineffective assistance of counsel, Frustrated by the lower Court's failure to notice, objective record evidence, that can satisfy the COA mandate in the defendant's favor? Was the lower Court's findings based upon clear misinterpretations of the record, and mere speculations, adequate to deny defendant's motion 2255?
3. Was the defendant deprived Due Process by the lower Court's, when the District Court, and the Circuit Court fail to notice, Clear record evidence, That will Contradict the Government's witness's testimony? Testimony that will have critical force in the outcome of the case, and it's denial.
4. Has the Circuit Court committed reversible error / or manifest error, by not noticing the district court's failure to consider evidence that, will dispute the district Court's findings of fact , when the evidence was presented by the defendant's attorney to the District Court, and then clearly presented to the Circuit Court on post judgement appeal, and pro - se petition by the defendant?
5. Has the Petitioner satisfied the COA mandate, and experienced Prejudice that will render his Plea Invalid? Was the petitioner provided with Constitutionally Competent advice, by his attorney?

LIST OF PARTIES

All Parties appear in the caption of the Case on the cover page.

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OPINION BELOW

1. The Opinion of the United States Court of Appeals for the Fifth Circuit will deny the petition for a Certificate of Appealability ; to the United States District Court for the Western District of Texas. Is attached to this petition as Appendix A. Opinion may not yet be reported in Publications.
2. The Opinion of the United States Court of Appeals for the Fifth Circuit , that will deny Robert Blake's petition for reconsideration is attached to this petition as Appendix B. Opinion is Unpublished.
3. The Opinion's related to the District Court for this Matter, are attached to this petition as Appendix C , and Appendix D. Opinion's may not yet be reported in Publications.

JURISDICTION

The Opinion and Judgment of the Court of Appeals were entered on **March 30, 2023**.

A timely Petition for rehearing was denied by the United States Court of Appeals on **May 23, 2023** , and a copy of the order denying rehearing appears at Appendix B.

The Jurisdiction of this Court is invoked under,
28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Sixth Amendment to the United States Constitution provides, in pertinent part:
" In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence.
2. The Fifth Amendment to the United States Constitution provides, " No Person shall... be deprived of life, liberty, or property, without due process of law. "
3. The Fourteenth Amendment to the United States Constitution , Section One, Provides, " Citizens of the United States and of the state wherein they reside, No State... shall deprive any Person of life, liberty, or property, without due process of law. "

STATEMENT OF THE CASE

On February 4, 2015 in the Western District of Texas, San Antonio Division, Movant Robert Timothy Blake was charged in a five count indictment. Blake was charged in count one with distribution of child pornography, in violation of 18 U.S.C. § 2252A(a)(2)and(b) ; in count two with receipt of child pornography, in violation of 18 U.S.C. § 2252A(a)(2), and in counts three through five with possession of child pornography, in violation of 18 U.S.C. § 2252A(a)(5)(B).

On January 7, 2016, a signed plea agreement was filed with the court wherein Blake pled guilty to counts one and three of the indictment. On January 7, 2016, Blake entered his guilty pleas before the Honorable District Judge Rodriguez.

On June 29, 2016, Blake was sentenced to a term of 240 months imprisonment on count one and a consecutive term of 22 months imprisonment on count three; lifetime supervised release; a \$100 special assesment on each count and Blake was ordered to pay \$9,000. in restitution.

Blake filed a direct appeal, challenging the judgment and sentencing on July 8, 2016. Blake presented on appeal that, the government breached the plea agreement at the sentencing hearing; the sentence was not reasonable; and whether the sentencing court subjected appellant's sentence to the thorough adversarial testing contemplated by Federal Sentencing Procedure. Upon review of the presented briefs, the Fifth

Circuit dismissed the appeal, due to appeal waiver. The Fifth Circuit Court of Appeals did not address any issues related to ineffective assistance of counsel, Or that Blake did not recieve adequate advice and information from his Trial Attorney prior to Blake's change of Plea, that **Could** render the Plea and waiver invalid.

On September 19, 2018 Blake timely filed a Motion 2255 with the District Court in the Western District of Texas, San Antonio Texas, 5th District Court.

Blake submitted a motion 2255 for Ineffective Assistance of Counsel, with the following Grounds Raised:

Ground One: Trial Counsel improperly informed Movant/ Defendant that he would receive probation if he pleaded guilty.

Ground Two: Trial Counsel Failed to Adequately Inform Defendant of the Consequences of Accepting Plea Bargain.

Ground Three: Trial Counsel Failed to have any Member of the Defense Team Actually Look at the Photographs Allegedly Found on the Computer at Issue, When said Pictures were Available.

Ground Four: Counsel Failed to Investigate Defendant's Theory that the Images Got on His Computer by Sources Other Than Him.

Ground Five: Trial Counsel's Failure to Present Defendant's Witnesses at Sentencing Hearing, Even though Defendant's Witnesses were Present at the Courthouse for the Purpose of Testifying.

(Trial Counsel had Defendant's Witnesses Wait Outside of the Courtroom, so they were not Even Present in the Hearing.)

Ground Six: Trial Counsel's Failure to Object to the Government's Introduction of Improper Evidence at the Sentencing Hearing.

Ground Seven: Counsel Failed to Object to the Government's Misrepresentation of Evidence at the Sentencing Hearing.

Ground Eight: Counsel Failed to Adequately Explain the Federal Sentencing Guidelines to Defendant.

Ground Nine : Counsel Advised Defendant to Accept a Plea Deal after Defendant Informed Counsel that Portions of the Allegations were Not True.

(See Doc. No. 93 ,09/19/2018) (emphasis added).

On 12/21/2018 , the Government will file their Response to motion, and provide the Affidavit from Attorney Cavazos.

(See Doc. No.96 & 96-1 , 12/21/2018). (Appendix I)

However the Defendant was not provided the Document at FCI Bastrop, as required for a Pro-Se Petitioner. Defendant will call the Court on 04/01/2019 , and discover that his Address is Not Correct with the Court, and was changed on 11/13/2018 by someone other than Defendant.(see Doc No.95),and Docket Entry on 04/01/2019.

During Blake's Motion 2255 in the District Court, there will be several brief's submitted to the District Court. Movant will provide the Court with extensive detailed testimony related to his experience with Attorney Cavazos throughout the attorney's representation.

(See Crim. Docket, No. 103, 104, 107, 112, 115.)

On 12/11/2019 the District Court will deny the motion 2255, (Doc No.118&119) Movant will Appeal, and receive a COA, and Remand for an Evidentiary Hearing.

(Case.No.19-51187. Doc.No.00515794543, 03/24/2021.)(Appendix G).

Attorney Acosta will be appointed to represent Movant for the hearing that will ultimately take place on 02/25/2022. The hearing will reveal testimony from Attorney Cavazos, Movant Blake, Blake's Former wife (Debbie Warren), and his Uncle James Dyson. Movant's witnesses who have had full and extensive interaction with Attorney Cavazos.

The Hearing will Reveal New testimony from Attorney Cavazos, and support many and various issues that Movant has raised in His motion 2255, and Briefs.

Post Brief argument's are filed by the Attorney's, including a very clear and concise " Objection's " from Attorney Acosta. (Doc.No.197, 10/27/2022.)(Appendix E).

The District Court will Overrule all of the defendant's Objection's, and deny the motion 2255 and COA. Movant Blake will Proceed Pro-Se on Appeal. Now comes this Petition, For Writ Of Certiorari. Respectfully.

REASONS FOR GRANTING THE WRIT

1. The Court should grant Certiorari to resolve whether the District Court Properly denied defendant's Motion 2255 for Ineffictive Assistance of Counsel, where the Circuit Court of Appeals fails to notice that, the District Court's findings are Clearly Erroneous, are based upon Speculation, and are Not supported by the record. Where an abuse of discretion in the District Court has Occured.
2. The Court should resolve that the defendant has satisfied the burden required by the standard of review in, Strickland V. Washington , for ineffective assistance of counsel, where the defendant's Plea , was Not Knowingly and Willfully Made, and he was Pejudiced by his attorney's errors, failures, and poor advice that was not corrected.

SECTION ONE

A. Concerning the District Court's Erroneous Finding's .

1. On October 13, 2022, the Honorable United States District judge Xavier Rodriguez will receive a " Report and Recommendation of the United States Magistrate Judge." (Doc.No.194).
(Appendix D).

The Report will highlight the Court's Findings to evaluate and decide the,issued COA mandate,from the Circuit Court of Appeals for the Fifth Circuit, that will require an evidentiary hearing to resolve a Conflict of Affidavit's.

(Case No.19-51187. Doc:00515794543)(Appendix G).

(See also , Warren Affidavit, as Appendix H , and Cavazos

Affidavit, as Appendix I).

The COA Mandate will Show:

" Here, Blake's wife's affidavit is competent evidence that, if beleived, demonstrates that Blake's counsel grossly misinformed Blake of the likely penalty he would face if he accepted the plea agreement.

We have held that similar mistakes fall " below an objective standard of reasonable lawyering," and establish a reasonable likelihood of prejudice. " (emphasis added).

(COA Mandate, No.19-51187.Doc.No:00515794543).
(Appendix G).

The Circuit Court will also Write:

"Because the record does not conclusively show that Blake is entitled to no relief on this claim, the District Court erred by denying this portion of his 28 U.S.C. § 2255 without an evidentiary hearing." (emphasis added).

id.,.

2. **The Magistrate Judge will present in the Report and Recommendation, concerning the evidentiary hearing that was held on Remand:**

" Rather, the evidence reflects, Cavazos had an initial consultation with Blake and Warren at which matters were discussed only in general terms, given that no formal charges had yet been brought. And Blake and Warren spoke initially to Cavazos in terms of Possession of child pornography and nothing else." (emphasis added).

(Doc.No.194,Pg 17.)(Appendix D).

And ,

The Magistrate will write:

" In sum, the testimony and record in it's entirety reveals, at most, that Cavazos provided Blake and his wife an initial assessment based on incomplete information and **assuming** future charges of only possession, which later Cavazos updated in discussions with Blake..." (emphasis added)(Doc.No.194,pg, 19.)(Appx D).

The Court will Also recall the testimony of Attorney Cavazos at the evidentiary Hearing:

" He testified recalling Blake and Warren's visit to his office, and their preliminary discussions about the case. At that point, Blake had explained that the FBI was at his house because of " Child pornography images... in his computer.Tr.141:4-7. Cavazos recalled that he spoke in " general terms " with Blake and Warren " because he didn't have anything specific in front of him."Tr.142:4-5." (emphasis added)(Doc.No.194,Pg,6)(Appx D).

3. I will Now ask this Court to please Notice the related testimony provided by Attorney Cavazos at the same Point in the hearing, that the Court will leave OUT.

Between the AUSA and attorney Cavazos:

" Q. Did they indicate to you that it was FBI that executed the search warrat?

A. I don't know that they said the words " FBI ", but I beleive he said " government ".

Q. Okay. Do you recall whether there was any discussion as to whether charges could be filed in the State Court System, the Federal Court

system or both ?

A. I beleive I mentioned to him that at that point, because, there hadn't been a charging instrument filed, that -- and I didn't really know the specifics of the agencies that were involved, I told him that there could possibly be federal and/or State Charges. "

(see Transcript, Doc.No.185. Pg 142:6-17). (emphasis added).

Also Please Notice, by Attorney Cavazos:

" Again, you know, we spoke in -- or I spoke in general terms because I didn't have anything **Specific** in front of me. "

(Doc.No.185.Pg 142: 3 - 5)(emphasis added).

Next, Please Notice additional testimony from Attorney Cavazos, that is material to the Court's finding's, however the Court will NOT notice this specific testimony that will reveal, where the Attorney's testimony is not accurate, or correctly account's for the Attorney's version, or memory of the meeting he had with the Blake's (Warren), on December 4, 2014.

Between attorney Cavazos and Attorney Acosta:

" Q. And in this case you mentioned that you recall Mr.Blake and his wife coming to your office and talking to you about agents going into their house and conducting a search warrant operation ?

A. Yes.

Q. Okay. And were you advised or were you informed as to whether these agents were interested in Obtaining a Polygraph Examination of Mr. Blake ?

A. I don't recall Agent Miller asking me for a Polygraph Examination of Mr. Blake. But if he had, I would not have recommended it.

Q. But if -- But if he had been an FBI agent, you would have known that it was a federal investigation, and you would have called him if he had given you -- given you the card for the FBI agent ?

A. Probably, yes, Sir. "

(see Doc.No.185. Pg, 163-165 ,at 163:25, 164:4, 164:11, 164:16, 165:12, and 165:16).

Please Also Notice additional testimony from attorney Cavazos that can demonstrate his lack of professional attention in this case.

Between Attorney Cavazos and Attorney Acosta:

" Q. Okay. And did he inform you that he wished to appeal the case?

A. His family wanted an appeal. He wanted and appeal...

Q And -- but you did not file it on his behalf ?

A. No, Sir. I did Not.

(Doc.185.Pg 189: 18-25).

4. The Magistrate Judge will form the report and recommendation, that will include Various critical Misunderstandings and Opinion's , regarding the record and evidentiary hearing related to this issue at hand.

The Magistrate will write:

" It is impossible to reconcile the two versions and comparing the **Credibility** of Blake with his counsel reveals that Cavazos provided the only Credible version of events. " And, " Blake's witnesses do not assist his claim; they at most appeared uninformed or confused."(Doc.194.Pg18&19).

And the Magistrate Judge will also rely on Speculation by adding:

"... there is ample reason to conclude that Blake withheld from them or failed to convey to them information as he learned it through the multiple discussions he had with Cavazos. " id; Pg 19. (emphasis added).

Petitioner adds the above instance of Speculation, where the Court here may appreciate , A Flawed Opinion, not supported. (Petitioner will expand on the Court's various finding's guided by Misinterpretation , and speculation further down).

B. Attorney Acosta will provide an " Objection's to the Magistrate's report and recommendation".

(doc No.197)(Appendix E).

1. Petitioner will ask this Court to notice where Attorney Acosta will provide a Clear and Concise Evaluation to the District Court. The Attorney's Objection's will inform the District Court of the oversight , misunderstanding's, and Errors of the Magistrate Judge. The Attorney will present record evidence that will contradict Attorney Cavazos, and place his testimony into serious Question. (please see specifically related portions; Doc.No.197, Pg 2-4.)

Attorney Acosta Writes:

- a. " Interestingly, the Report and Recommendation, then, highlights the following exchange between AUSA Thompson concerning Blake and Warren's initial meting with Cavazos to establish that "at most" , Cavazos's estimate for a possible sentence was based on only possession-of child-pornography charges:

The AUSA will Question Blake:

"Q. What did you tell Mr. Cavazos in that first meeting about what you thought the charges would be? Because at that time no charges had been filed against you, correct?

A. Not that I know of.

Q. What did you tell him you thought the charges would be?

A. I told him the agents were looking for child pornography.

Q. And did you tell him that they would find it ?

A. I told him I've seen it, and it had come through my e - mails, and it's possible that there was material that had not been deleted.

Q. And that's when he told you that, based on what you had told him, the punishment may be probation or time served ?

A. Yes."

(doc.No.197. Pg2)(emphasis added).

Also, Attorney Acosta Writes:

" Blake clearly described that the material came to his possession via " e- mails "- a method of communication which is commonly used to both receive and distribute child pornography. "(emphasis added)(Doc.No.197.Pg3).

Most importantly, Attorney Acosta Writes:

" During the Evidentiary Hearing, Attorney Cavazos recalled that Blake had a business card of the case agent. DKt.No.185,p.165:9-11. And Attorney Cavazos in fact conferred with FBI Agent Rex Miller later that same day.Dkt.No.70,p.43:15-6. " (id; No.197.Pg3).

Attorney Acosta will also present to the District Court:

1. That Blake was provided with the Copy and document of the Search Warrant, and it outlines all aspects of a Child Pornography Case, where it informs the Attorney of a Federal Investigation for more (on 12/4/14)/than " Just Possession of Child Pornography ".
 2. During the Suppression Hearing, FBI Special Agent Rex Miller testified that he talked to Blake about e - mails , and asked Blake for consent to " Assume his e - mail... (on 12/4/14) ... Blake... wanted to review the document with his wife and Attorney... "(Dkt.70, 41:19-24).
 3. Blake Clearly advised Attorney Cavazos that (investigators were interested on his e-mails.
 4. The search Warrant documents reveal that investigators were looking for evidence of trafficking, receiving and distributing of contraband.
(Doc.no.197 Pg 3).(emphasis added). (on 12/4/14)
2. The Above, is where Attorney Acosta will alert the District Court accordingly in the Defendant's Objection's, to the finding's of the Magistrate Judge , that is related to the issue at hand . To decide that the Attorney advised Blake for a Punishment for " At Most " Possession of Child Pornography." The Attorney Shows Record Evidence that clearly calls the "Findings" , into Question, and show that the Court did not regard obvious, Objective and Record Evidence here. The Court will NOT notice the Error.

3. Attorney Acosta will also Summarize to the District Court Here: (A Statement supporting Objections) :

" There is no dispute that Attorney Cavazos spoke to Blake and his wife about punishment in their initial meeting... it is undisputed that Blake appraised his Attorney about the nature of the Government's investigation: " "... The Court's admonitions at Rearraignment were insufficient to cure Attorney Cavazos' deficient Performance. " (emphasis added).

(Doc.No.197.Pg.14-15)(appendix E).

C . The District Court will Overrule all of the Defendant's Objections.

1. On November 21, 2022 , the District Court will adopt the Magistrates report, and Overrule the Defendant's Objection's , including the items presented above. The District Court will make few comment's related to the Magistrate's finding's, However the District Court will NOT notice , where Attorney Acosta presents

** Extrinsic, Objective, Record Evidence , that WILL call into Question the testimony of Attorney Cavazos, and the Magistrate's finding of Fact concerning this issue. That there is a Critical Error. The District Court will Deny Blake's Motion 2255 , and not issue a Certificate of Appealability.

(Case 5:15-cr-00066-XR Document 198 Filed 11/21/22).

(Appendix C).

2. Attorney Acosta will withdraw as appointed Counsel, and Blake will Proceed as PRO- SE.

D. Petitioner Blake will present to the Circuit Court an Appeal , pro- se , and request for a certificate of Appealability. Submitting a full brief in support that, will outline the issues raised above.

(Case. No.22-51054, Doc.No.20. Filed 01/06/2023).

(Petitioner's Copy attached as Appendix L).

1. The Petitioner , at the Best of his ability, explains to the Circuit Court , the various issues and Errors in the District Court's finding's, including the record information that Attorney Acosta presented in the Objection's, that will clearly contradict the District Court's findings, and attorney Cavazos's testimony, that, "He had No real information to rely on at the 12/04/2014 meeting with the Blake's."

Notice here, that Blake will fully show the Circuit Court, Where the District Court has Ignored the evidence that was presented, by Attorney Acosta in Objection's.

(No.22-51-51054, Doc.No.20. Pg 4-9, Issue One.)(Appendix L).

2. Please Notice that within Petitioner's Brief (Doc.20), there will be several issues of error and misunderstanding's Presented on. **Appeal** , to include that attorney Cavazos Called the FBI agent to deny a Polygraph exam on the same day he met with the Blake's, and provided the poor advice of a sentence that will be time served, or low sentence, and or "Probation with a Plea, " regardless of the Plea conditions. That the COA mandate has been satisfied by the Hearing. id; (doc.20).

3. The Circuit Court will DENY the petitioner's Pro-se Appeal and request for COA.

(See Document: 00516695463)(Appendix A).

4. The Circuit Court's Denial will NOT notice the Issue presented in Defendant's Brief, Issue One , The Circuit Court will also Not Comment on several Critical issues raised in Defendant's brief on Appeal. The Circuit Court will NOT Provide any Full or Meaningful Opinion of the Error's Alleged in Issue One. Of petitioner's appeal. id; (Appendix A).

5. The Circuit Court Of Appeals for the Fifth Circuit , WILL NOT consider the petitioner's Pro - Se Brief Doc.20, as " a Motion " in the alternative, for, a remand on Error, Under, Federal Rules of Civil Procedure 52(a). For, " Clearly Erroneous Review ".

The Circuit Court abandons it's function at a critical stage of this Case, and has denied meaningful review, and Due Process of Defendant's case, on Appeal.

6. Petitioner will properly request a reconsideration of the Circuit Court. The Petitioner will also alert the Court that the COA/Appeal Denial had OBVIOUS errors from a Jurist, who may not be familiar with Defendant's case, where the Court explains that Blake : " In addition, for the first time on appeal, Blake argues that counsel rendered ineffective assistance by failing to investigate and provide him with evidence prior to his guilty plea." (emphasis added).

(see Document: 00516695463) (Appendix A).

7. The above Comment by the Circuit Court can Not survive scrutiny. The Justice who has the review is NOT familiar with this case. (Petitioner is Very Concerned Here.) It is completely un-disputable , that the defendant has constantly maintained throughout the entire motion 2255, Where his Trial Attorney, Mr. Cavazos, Never presented any evidence or reports to Blake prior to a plea, and even after. (Distribution Evidence was NEVER disclosed/Reviewed). The Court will demonstrate it's failure to apply any de novo review, or consider the issues at hand. The Circuit Court, Erred.
8. Petitioner will present these concerns with the Circuit Court within his petition for a reconsideration.
Appendix J , K). (Doc.No.38 4/13/2023)(Doc.42 05/09/2023).
(Doc. No. 38-42).
9. The Circuit Court will Deny Defendants Appeal/ Request with No comment or review. (Doc.No. 44-2)(Appendix B).
10. The Court will Not Consider the Errors, or call the previous Opinions into question, or remand pursuant to Rule 52(a). ,id.

Attorney Acosta presented Objective Record Evidence, including evidence, that will clearly Show where Attorney Cavazos did have a "large ammount of information" to alert the attorney properly on the day he met with the Blake's, and Advised Blake. Cavazos's Testimony is contradicted by Record Evidence.

A Reason for Granting A Writ Of Certiorari

E. Petitioner has presented an ehaustive account of detail to the District, and Circuit Court, That Attorney Cavazos DID have the information and the Duty on 12/04/2014 to properly advise Blake of a possible sentence with a Plea Deal. That the Attorney Never did update or revise this advice with Blake, To Plea, and why.

Now, as a Pro- se Petitioner, I can not see any other Court to rely on, to consider my case, and Constitutional Rights.

I ask this Court to Notice that Petitioner has provided an honest, clear point of view, and understanding of his case, and his attorney's advice. (Trial Attorney Cavazos). Where petitioner has had the benefit of Attorney Acosta, and his well placed legal analysis on Remand. (Doc. 188 & 197). Where this Court can easily notice that the Defendant's Rights of Assistance of Counsel, and Due Process, May Have been violated at a Constitutional Level.

This Court is in a Superior position to Notice the Errors of the lower Court's, and decide that the Defendant May require a Redress.

Supporting Case Law on This Issue

- 1.) " Documents or Objective evidence may Contradict the witness' story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable fact finder would not credit it. Where such factors are present, the Court of Appeals may well find Clear Error even in a finding Purportedly based on a Credibility determination. "

United States V. United States Gypsum Co., Supra, at 396, 92L Ed 746, 68 S. Ct 525.

Found in:

Anderson V. Bessemer City, 105 S.Ct 1054, 84 LED 2D 518, 470 us 564, at (470 us 575).

The above is Standard, and used in every Circuit Court in the Nation.

- 2.) " Under Federal Rule of Civil Procedure 52(a)-which provides that findings of fact shall Not be set aside unless clearly erroneous,..." " a Finding is ' clearly erroneous ' when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm Conviction that a mistake has been committed."
United States V. United States Gypsum Co., 333 U.S. 364, 394-395, 92 L Ed 746, 68 S.Ct 525.
- 3.) " The Court's Finding is Not Conclusive where it is Contradicted by extrinsic evidence."
Shanklin V. Bender, 283 A.2d 651, November 15, 1971.
District of Cloumbia.
- 4.) " It can be clearly erroneous to rely on testimony that is Contradicted by extrinsic evidence. "
United States V. Herman, 842 Fed. Appx6, October 23, 2020,
8 th Cir.
- 5.) " The Clearly erronous Standard is a high one to meet; " To be clearly erroneous a decision must Strike us as more than just maybe or Probably wrong: it must... Strike us as wrong with the force of a Five - week - old, unrefrigerated dead fish. "
Piraino V. International Orientation Resources, INC.,
137 F.3d 987,990 (7th Cir. 1998).
- 6.) "The " Clearly Erroneous " rule applies in all nonjury cases even when findings are based soely on documentary evidence or on inferences from undisputed facts."
Maxwell V. Summer, 673 F. 2d 1031,1036(9th Cir.),February 25,1982.
- 7.) " The Appellate Court must determine whether the trial Court's findings are clearly erroneous, Sustain them if they are not, but set them aside if they are.
Unites States V. Tex. Educ. Agency, 647 F.2d 504(5th Cir.),May 28,1981.

8.) "The Supreme Court has explained how to apply a Clear - Error Standard to a district Court's Credibility Findings at a bench Trial.

The Anderson Court Cautioned that a Trial Court could not insulate it's findings from review by denominating them Credibility determinations and outlined certain "factors" for consideration that could show error. Namely, documents or Objective evidence may contradict the witness Story;

or the story may be so internally inconsistent or implausible on it's face that a reasonable fact finder would not credit it. If such factors are present, the Court of Appeals may well find clear error even in a finding Puportedly based upon a credibility determination."

Hess Corp V. Schlumberger Tech Corp.:26F.4th 229(5th Cir.)
February 7, 2022.

Please Consider

Petitioner has at the best of his ability, as Pro- Se , Appealed to the Circuit Court, and reinforced the issues presented by Attorney Acosta in the "Objection's to the District Court.(doc.No.197).

The Circuit Court will deny a COA, and not review the presented errors. Preventing Meaningful appellate review.

The Circuit Court will Deny a Reconsideration, and close the case.

The Lower Court's have not properly evaluated the issues raised in this case. I ask this court to review the Constitutional issues here, and notice where the lower court's have made decisions in error, and where Blake was not properly

Advised by Attorney Cavazos.

SECTION TWO

B. Concerning the Misunderstanding's , Misinterpretation's And, Speculation's.

1. Within the Magistrate's "Report and recommendation " there will be several items evaluated incorrectly. Items that are critical to the outcome of the hearing, the testimony provided, credibility assessments , and of the COA mandate.
2. Attorney Acosta will point out and Highlight the Points on Issue of Importance, and show the District Court that they have value, and where the Magistrate **did not** notice these "Obvious points and testimony", **on record.**

(Doc No. 197) Appendix E).

Petitioner here wishes to show the Court the Points that were highlighted by Attorney Acosta, and for the purposefulness of this petition, show how these errors of the Lower Court can impact the proper review under Strickland V. Washington, for ineffective Assistance of Counsel, in the Context of accepting a Plea Deal.

Attorney Acosta Writes :

- a.) " The report highlights that Attorney Cavazos also recalled that the Court provided a Copy of the Complaint containing the same statutory penalty range to Blake at the initial apperance. Id. at7. "

" During Cross- examination, however, Attorney Cavazos clarified that the normal practice during the proceeding would have been for the clerk of the Court to hand him, and not Blake a copy of the

Criminal Complaint. Dkt.No.185, 168:14-22. "

(Doc. No.197, Pg 5.) (emphasis added).

- b.) " Attorney Cavazos testimony establishes that he did Not review the document with Mr. Blake, but instead gave it to Mr. Blake to read on his own. "

(Doc.No.197, Pg6.)

- c.) " The report and Recommendation, then Highlights a lengthier exchange during cross-examination to suggest that Blake acknowledged during his plea hearing that he had discussed the guidelines with Attorney Cavazos and how they might apply in his case.Dkt.No.194,p.11-12. A Closer look at the exchange, however, reveals that Blake's answer did not change:"(please review)

"
... Q. Well, did he go over the guideline range- did he go over the guidelines with you ?

A. No.

... A. Yes. That's what I understood. I didn't know any different. I was told I would be looking at a criminal history of one.

" Dkt. No. 185,p.60:17-

61:22 : ... "

(Doc.No.197, pg 9.) (Original altered for effect).

(please review).

- d.) " The report and recommendation further suggests that Attorney Cavazos must have discussed the application of the sentencing guidelines with Blake because Warren recalled Attorney Cavazos discussing these during the initial consultation. Dkt.No.194,p10" ...

... " The Report and Recommendation, however, Ignores the following exchange with Warren during her Direct Examination:

Q. Okay. and you mentioned a couple of times the sentencing guidelines. Were you shown a sentencing guideline book?

A. No, I was never personally shown a sentencing guideline book.

Q. Were you shown a Sentencing Guideline table?

A. No. I don't - we were - the information from that table was shared in subsequent conversations, at least ones that I had with Mr. Cavazos, myself, after expressing Concerns. But Not a specific table, No.

... Dkt.No.185, p.89: 11-90:5 ." (emphasis added).
(see Doc.No.197. pg, 9-10)

Please Notice that the above portion of Warren's testimony will reveal that Warren was not shown any guideline range, Nor did Warren know of or discuss any Calculated Guideline's range with The Attorney, or Blake.

The Magistrate will rely on the understanding that Warren was provided with a guidelines Range Calculation at the initial meeting on 12/04/2014 with Attorney Cavazos.

The Magistrate's assesment is flawed, and should be reviewed.

e.) Attorney Acosta will continue to highlight specific details within the Magistrate's report that are made in error. The Attorney Writes:

" The Report and Recommendation also suggests that Attorney Cavazos appears to be more credible because he " testified in plain terms that he went over the Guidelines with Blake in Significant detail..."
Dkt.No.194,p.12. Attorney Cavazos, however, failed to answer the most basic question posed to him during his direct examination about the punishment that Blake was facing :

Q. Did you calculate an advisory guideline
rangs in this case ?

A. I beleive I did.

Q. Do you remember what it was ?

A. I don't recall specifically...

Dkt.No.185,p.148:1-4, And,

Q. In your Opinion, did he appear to understand
that he could be facing a Sentence of significantly
above 20 years ?

A. I dont' know about the specific number of years,
but he knew that he was facing severe penalties yes.

Id.at,P.149:5-8.

Attorney Cavazos admitted being vauge about the possible
punishment in his discussions with Blake's family
members.,:... " (emphasis added)(Doc.No197.p,10-11).

The above detail was highlighted by Attorney Acosta, and
the rest of page 11 in Doc.No.197 will reveal that Blake,
Warren, and Blake's family was not aware of any
Consecutive **Sentence** / exposure, or calculated guideline
range at any time. (**Cavazos Never Provided**).

May this Court Please also Notice for its review, and
Consideration,

Attorney Cavazos will Not mention, or testify regarding
any " Distribution of Child Pornography ", and, Or
anything that is related to Distribution Enhancements,
Evidence, or the Charges of Distribution by the AUSA.
The record is Void of any advice of understanding
provided from Attorney Cavazos on this critical issue.

**Most Importantly, The Magistrate will not notice that
Attorney Cavazos failed to provide the Defendant with a
understanding of the Facts and the Laws in this case.**

3. Concerning Speculation's of the Lower Court.

a.) The Magistrate writes:

"Cavazos had an initial Consultation with Blake and Warren at which matters were discussed only in general terms, given that no formal charge had yet been brought. And Blake and Warren spoke initially to Cavazos in terms of " Possession of Child Pornography and Nothing Else." (Doc. No.194.p, 17) (emphasis added).

The above is speculation where the Attorney is only required to advise in General Terms. The Court here will actually Conceed , That attorney Cavazos did not advise properly, or for more than only Possession Charges.

** It Should be Noticed where: The COA mandate is established to determine where the " Attorney's advice is deficient ", and Blake's wife's Affidavit is Beleived. (Appendix G).

The above Speculation can not cure the Attorney's poor advice on 12/04/2014. It is Clearly established that the Court agrees, the Attorney's Advice " as presented " is limited, and incorrect. The COA mandate is satisfied, and Prejudice is Persumed. The decision to Plea was influenced.

b.) The Magistrate Writes :

" In sum, the testimony and record in it's entirety reveals, at most, that Cavazos provided Blake and his wife an initial assessment based on incomplete information and assuming future charges of possession, which later Cavazos updated in discussions with Blake... " =====
(Doc. No. 194.p19) (emphasis added).

(here the Magistrate expects the Attorney to Assume, and provides no understanding of the Court's finding that the " Attorney Updated" the previous advice.)

The above is careless, and shows that the Court will allow the advising Attorney to Assume, with no further advice. The Magistrate will also Speculate on how or what information was: "which later Cavazos updated in discussions with Blake..." (Doc.No.194. Pg 19).

There is No testimony from Attorney Cavazos that informs the Court, where Attorney Cavazos provided any specific, information related to Sentencing, Guidelines, or Distribution. The Court only Speculates here, and this should not be a harmless error. **Cavazos Never Updated.**

c.) The Magistrate will continue to rely of Mere Speculation concerning the witnesses in this case, and information they received; "they at most appeared uninformed or confused". (Id. p.19.)

The Magistrate writes:

" There is ample reason to conclude that Blake withheld from them or failed to convey to them information as he learned it through the multiple discussions he had with Cavazos. " (Doc.No. 194.p,19)(emphasis added).

Once More, the Court Provides Speculation to decide a Critical issue. The Court makes No Citation to the record. There is No record evidence or Testimony from the Attorney Cavazos, that the Court can rely on. The attorney will not inform the Court or the Record that he provided Blake with any specific information about sentencing Guidelines, or for Distribution, Guidelines, enhancements, or evidence. The Court only Speculates on the Attorney's advice. This opinion of the Court is harmful to the Petitioner here.

Attorney Cavazos will not explain to the record at any time, that there was any effort to keep any information away from the Blake Family, ie, Witnesses.(Warren & Dyson). Credibility determinations by the Magistrate are further Speculation. **,Here are Errors that are Not harmless.**

There is No record evidence to support that Cavazos Updated his initial sentencing assesment on 12/04/2014.

Nothing will support :

1. When , Cavazos may have provided Blake with an update.
2. What , Cavazos might of updated to Blake in " Multiple Discussions ".
3. How , Cavazos educated Blake with an understanding of, The Evidence, The Facts, or the law. **However still,**

The Magistrate's Opinion tells us:

**" There is Ample reason to conclude...
that Blake withheld...
Information as he learned it through
multiple discussions he had with Cavazos. "**
(Doc.No.194.p,19)(Emphasis modified).

The Court will not provide any testimony or evidence to rely on. There is No such Testimony from Cavazos. (Ample/?).

d.) The Next , Issue of Speculation is extremely flawed, and has been a previous untested theory in this case.

1. First, the Factual basis in the Plea, and or the FBI agent's Report/ Notes of an interview with Blake are False, and are NOT a "Confession" in any way.

The FBI's Report was not tested, and remains Not tested.

Petitioner Asserts that this item is relevant for this brief, because the Lower Court will qualify it's denial by writing:

" Blake in other words, had no reasonable opportunity to avoid a guilty Verdict. "

(Doc.No.194. Pg 20).

The above is an Opinion by the Magistrate, where the Court decided on it's own that the untested Agent's Report is definitive, and solid as a signed Confession."

The Agent's Report will dictate the entire Factual Basis of the Plea Document. The Defendant was not made aware of these Facts Before the Plea Document. Defendant Blake advised the Attorney of the False Facts, and was never provided with any evidence, or explanation from Attorney Cavazos, where Blake can fully understand the facts and the law/ Related to this Case.

The Magistrate is careless to state that Blake had no reasonable opportunity to avoid a Guilty Verdict. How can he know this for sure? The Court here Speculates on Blake's Options based upon untested information in the Agent's Notes.

The Court will also decide that testing the agent's notes would not be reasonable. Blake would not agree to this. The Court also fails to notice that the Suppression of Evidence Hearing was entirely focused on, that the Police Action was " Overbearing ", and Unreasonable." This hearing will Not address or inform on the nature of the information in the agent's Notes from this morning interview. The agent's report's of the interview were not discussed at suppression hearing.

2. Petitioner has consistently repeated, and explained where he informed Attorney Cavazos that the Factual Basis in the Plea Document was not correct.(from agent's report). This is Prudent to this petition because, The Attorney will not investigate or challenge the agent's report, and continue to advise Blake to Plea. To plea,without providing any update to his initial advice on 12/04/2014. To Plea,without explaining enhancements, or Guideline Ranges.

Blake Writes:,Very Early On :

" Mr. Blake informed Attorney Cavazos that several stated facts that appeared in the plea were in fact conclusions based from the questions the agents asked the defendant. Questions that the defendant refused to answer, and questions that were answered to. However, the reply that was given by the defendant did not reflect what was written in the information, in the Plea Document. "

(Doc.No.103.Numbered Page 25, Ground 9, Item 5).

Blake Writes:

" Blake explained to his attorney that he never made any confessions to the agents or to anyone at any time, and these statements of Fact were False..."

(Doc. No. 103.Numbered Page 26, Ground 9, Item 6).

3. It was also recently Provided to this Magistrate at the 2/25/2022 Evidentiary Hearing where Blake informed his Attorney that the Factual Basis was Not Correct. Blake provided testimony to support his understanding and debate concerning the Agent's report and Factual basis in the Plea.

Attorney Cavazos provided No testimony in Conflict with Blake's Position on the Agent's Reports, and Plea Facts.

Defendant's Testimony:

" No. It was my Opinion. I didn't agree with the way the wording was. It made me look like I was seeking and purposefully interacting with these individuals for that sole purpose. And the Attorney explained to me that, you did use the internet, and you did use your computer, you did use e-mail. So, I agreed to that. "

(Doc.185.pg 59 :4-9). (emphasis added).

Please also Notice; (Doc185. Pg 34-35 , Pg 41:5-8 , Pg 54:5-9).

I also wish this Court to be aware, That there is record testimony that was removed from the Transcript Record for the 2/25/2022 Evidentiary Hearing. This Testimony is related to the instant topic discussed above, and is missing from the Record. Why?

Defendant here is Not aware of any Redactions, request for modifications, or any strike from the record. The testimony was removed for a reason, and is not an accident.

Please See, Case No.22-51054 , Doc No.20, Pg 10 , Issue Two, Notice Attachment "B" in Doc.20. (Appendix L in this Petition).

(will explain the Missing Record Testimony from the hearing).

- e. The Magistrate will Misinterpret the Affidavit provided by Attorney Cavazos. (Cavazos Affidavit, Doc.96-1) (Appendix I).

The Magistrate Writes:

" Cavazos Affidavit further explaines that he discussed with Blake on Numerous Occasions waiving the right to appeal as well as the conclusions of a forensic specalist..."

(Doc.No. 194. Pg 21) (Emphasis added).

1. The Above rendition of the Affidavit that the Magistrate will rely on is Flawed. The Cavazos Affidavit will NOT explain in any way, that the Attorney discussed with Blake, "The Conclusions of a Forensic Specialist ".
2. This Flawed assesment **by** the Court, is Not harmless here. The Court wants to base its findings on a Determination of Credibility, and will not allow the defendant to show where the Attorney Never provided any Evidence information at a forensic level. In Fact the Attorney Never informed Blake or Warren that a Specialist was ever hired.^{*}-(Appendix H-3).
3. Cavazos provides NO testimony, that he explained any Forensic evidence, report, or discovery with Blake. The Magistrates Understanding here is Careless and Harmful.
4. This Issue has appeared before, in the District Court, and was fully addressed in a Previous reply by the petitioner. Please See: Doc.No.112, Numbered Pg 7-9, Pg 11-12, and, No.22-51054. Doc.No.20 , Numbered Page 19, Where this misunderstanding of the magistrate was provided to the Circuit Court on Appeal. **This** Distortion of the Cavazos Affidavit is not an Accident made by the Magistrate. It's a repeat.
5. May this reviewing Court appreciate the example provided above, and find that the Lower Court's Credibility Determination's may be less than accurate, and are not harmless to the defendant. Where this may have an distorting effect on the Strickland Standard.

* Appendix H-3, is Doc.103-1, Warren Affidavit.

SECTION THREE

C. Concerning a Rule 11 Violation , and Facts revealed
at the Evidentiary Hearing. , And Prejudice.

1. The COA mandate was issued to evaluate the Attorney's performance, and advice that was provided to the Blake's on 12/04/2014.
2. It can easily be noticed where the District Court will Adopt the Magistrates Opinion , that firmly indicates, that the Attorney only provided Very limited Advice for " Possession Only" , and Nothing More.
3. This alone satisfies the COA mandate. Nothing more is needed.

However , the Court wants to call into question whether attorney Cavazos " Updated " this advice. The Lower Court wants to conclude that the Attorney did Update, But provides no evidence for this finding.
4. Petitioner has offered the Court in his Motion 2255 that attorney Cavazos never spoke with him about the Distribution Evidence, or e-mails Evidence at any time.
5. For the First time when a Plea is presented, the topic is in discussion, however no evidence is revealed to the defendant. The attorney tells the defendant that, He HAS NOT seen any evidence related to any E-mail, or Distribution. (Doc.No.103,Ground Nine,Numbered Pg 24-27)

6. The Attorney will not offer any evidence, explanation, or understanding to defendant related to "Distribution". However, Blake insisted for this evidence ,to Plea. The Attorney will promise , he will investigate the evidence before the sentencing hearing, and fully Dispute the Distribution. He said the Distribution was no big deal, and that the defendant had to accept this last offer to Plea, as advised.

The Rule 11 Hearing : A Rule 11(b)(2) Violation Occurs.

1. **Attorney Acosta Writes:**

" Blake does not believe that the Court's admonishment is sufficient to cure attorney Cavazos's deficient advice that a minimum sentence of five years did not have to be imposed. "

" Furthermore, the Court appears to have failed to inquire during Rearraignment as to whether anyone had made any promises to Blake in connection with his decision to plead guilty. See Rearraignment Transcript. Dkt.No. 72. "

(Doc.No. 197. Pg 12). (emphasis added).

2. Considering the above, the Defendant was deprived of any opportunity to alert the Court at the Plea Hearing, that Attorney Cavazos Promised to investigate the E-mails, and Distribution Evidence, and that a 5 year minimum was not mandatory if the judge accepts the attorney's objections at sentencing, **Regarding Distribution.**
3. The Attorney never reported on the evidence, and failed to understand the distribution at sentencing. This failure was not harmless.

4. Predjudice and Harm at Sentencing, Because the Attorney Failed to examine the E-mail / Distribution Evidence.

a.) The Sentencing Court was provided with listed E-mails in the PSR that were modified, incomplete, and altered by the PSR writer. The Attorney and the AUSA failed to Notice.

(See Doc.No.112,Numbered Pg. 11-12)(Defendants Brief 11/04/2019).

b.) The Sentencing Court will Rely on , Peer - To - Peer file share software , used by Defendant. The Court will apply 5+ Points to a guidelines calculation, because of "Peer-to-Peer". However, There is NO Peer-to-peer in this case, Anywhere. Peer-toPeer is NOT in the record, PSR,or any testimony at all. The Attorney and the AUSA failed to Notice.

(See.No.22-51054. Doc 20, Issue 5, Numbered Pg 25-26)(Appendix L).

c.) The AUSA at sentencing, will speculate on Alleged E-mail evidence to the Court. The Court will hear false evidence that does not exist, and is not in the record. Not in the PSR,and not in any report or testimony. The AUSA presents no document. Attorney Cavazos will remain silent during this issue at Sentencing.

(See.Doc.No.103,Ground Seven, Numbered Pg 17, item 2). and, Sentencing Transcript,Doc.No. 73,Pg.36: 18-23. and, Docket Entries : 107, 108, 111, 112, 113, 114, 115, 116, 117.

5. The Above Examples are required to demonstrate where the defendent experienced Prejudice due to his Attorney's Poor Advice , and Performance , That A Rule 11(b)(2) Violation was NOT harmless. The Evidence Hearing Provides this issue. The Lower Court's do Not consider the Totality of the issues De Novo, on Remand.

Demonstrated Prejudice

- 1.) The Record in this Case will show the Prejudice that the Defendant has experienced at Sentencing, and by the poor and inneffective advice from his Attorney Cavazos, Overall. Where the Circuit Court is aware of this Prejudice, and the District Court will Fail to Notice the Prejudice. The Circuit Court will Not Notice the Prejudice presented on the Record., And presented on Appeal.
- 2.) The Circuit Court will Delay its Appeal Denial and a request for reconsideration, and not notify the Petitioner in a timely manner. See: Appendix M. Petitioner will lose an oppertunity to Further Petition the Lower Court's,

Please Notice:

Rule 59(e) for motions to alter or amend a Judgement has a 10 Day limit.

Please Consider:

" The Proper Course for appellants to seek review of the Court of Appeals alleged Mistakes was by Writ of Certiorari to the Supreme Court."

Eutectic Corp V. Metco, INC April 30, 1979 (2nd .Cir.)

SUPPORTING ARGUEMENT

1. Because the sentencing Court Relied on False information that was Not on the record. Where the information not on the record is related to "Distribution", and the Attorney's Failed to notice. This is not harmless to the Defendant. There was a signifigant breakdown in the adversary process At Sentencing that rendered the result of the Proceeding Unreliable.

2. Attorney Cavazos Promised the defendant that he will investigate the Distribution information before the Sentencing. This Promise was made during Plea Negotiations. The Attorney made no effort to educate the defendant or himself any details of the Facts and Laws Concerning the 2G2.2 Guideline Enhancements.

As a result the District Court was not informed of this Promise the Attorney Made to Blake, and the Attorney Failed to Notice the Misinformation at sentencing.

This should invoke Prejudice, and a **Rule 11(b)(2) Violation.**
The Lower Court's fail to Notice this Issue.

3. Furthermore, The Evidentiary Hearing held on 2/25/2022, will reveal that Attorney Cavazos failed to understand the nature of the Guidelines related to this Case, and he failed to properly educate the Defendant. Attorney Cavazos here is questioned by the AUSA, regarding a " **Calculated Guideline** ",... The Attorney's response is Confused, will not adequately answer the question, and Fails to mention " **Distribution** ", or a **Calculated Guideline.**

ATTORNEY CAVAZOS:

"A. I don't recall Specifically. But I do remember discussing with him the prepubescent one, the masochistic enhancement, the use of a computer enhancement, the number of images enhancement. I can't think of what else. "

(Doc. No.185, Pg 148 : 1-8) (emphasis added).

SUPPORTING LAW

" The Plea cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts."
Broce, 488 U.S. 563, 102 LEd. 2d. 927, 109S.Ct. 757(1989) ,

Mc Carthy V. United States, 394 U.S. 495, 466, 22LED. 2d 418, 89 S.Ct (1969).

- b. " Criminal Defendants require effective Counsel during Plea Negotiations."

Missouri V. Frye, 132 S CT 1399, 182 LED2D 379, 566 U.S. 134 Headnote 8.)

- c. " For the Sentencing Court to rely on False information to enhance defendants Sentence is Not harmless." AND, " Any ammount of additional jail time has Sixth Admendment Significance."

Glover V. United States, 121 S. CT 696, 148 LED2D 604, 531 us 198, at (531 us 200).

- d. " A Sentence based on a material misapprehension of Fact by the Sentencing Judge is unconstitutional. "

United States V. Tucker, 404 U.S., 447-49, 92 S.Ct 589, 30L.Ed. 2d 592(1972).

- * e. " A lawyers Duty is to Provide the Client an understanding of the law and to give competent advise, and if the lawyer is unfamiliar with the relevant facts and law, the clients guilty Plea cannot be knowingly and Voluntarily made because it will not represent an informed choice."

United States V. Shepherd, 880F.3d 734(5th Cir. Jan 26, 2018).

(Please Notice, Opinion above is from the same Court as petitioners Case).(in e.*).

SECTION FOUR

D. Concerning the Strickland Standard of Review for Ineffective Assistance of Counsel.

1. Was the Strickland Standard Frustrated by the lower Court's disregard of Record Evidence, and it's developed Misreprensentation's of the Facts ?
2. The District Court will decide Blake's Motion 2255 on a

Credibility Determination, and Minimize the Trial Attorney's Duty to properly advise the Client during Plea Negotiation's.

3. The Record and in this petition may indicate where the District Court fails to Notice Clear Record Evidence, that will contradict it's findings, Specifically , Concerning the testimony of Attorney Cavazos. Furthermore, the Record will clearly indicate that the Defendant did not receive Adequate and Competent advice from his Attorney to enter into an Informed and Voluntary Guilty Plea.
4. Please Consider where the lower Court's have committed several gross issues of Error, that must be reviewed where Reversible Error and Manifest Injustice can not survive.
5. May this reviewing Court find that the Petitioner here has experienced Prejudice, and a Violation of his Constitutional rights. To allow Petitioner to withdraw his invalid Guilty Plea on Remand, with the assistance of Appointed Counsel.

SUPPORTING LAW

- a. "Effective Counsel must Conduct a reasonable ammount of pretrial investigation." And, "When a defence counsel fails to investigate his clients only possible defence, although requested by him to do so it can hardly be said that the defendant has had the effective assistance of Counsel."
Washington V. Strickland 693 F.2d 1243 December 23, 1982.
- b. " An allegation that a defendants plea was based on grossly inaccurate advice about the actual time he would serve in prison gives rise to a colorable claim of a Constitutional Violation."
Gonzalez V. Crosby, 125 S.CT. 2641, 162LED2D 480, 545 U.S. 524, 542
- c. " A District Court would Necessarily abuse its discretion if it based its ruling on an erroneous view of the law or on a clearly erroneous assesment of the evidence."
McGregor V. Bd. of Comm'rs of Palm Beach County, 956 F.2d 1017, 1022(11th Cir.1992).

- d. " In the Context of a Plea of Guilty, the Pejudice inquiry is "Whether Counsel's Constitutionally ineffective performance affected the outcome of the plea process."

Hill V. Lockhart, 474 U.s. 52,59,106 S.Ct. 366,88 L.Ed.2d 203, (1985).

- e. "The Sixth Amendment of the United States Constitution has been Construed to require that a criminal defendant be afforded effective assistance of Counsel. Counsel's performance must be within the range of Competence demanded of attorney's in criminal cases."

Wiley V. Sowders 647 F.2d 642, April 24,1981(6th Cir.)

- f. " The Sixth Amendment right to Counsel exists, and is needed, in order to protect the fundamental right to a fair trial."

And, "The Right to Counsel is the right to the effective assistance of counsel.", And, " Counsel can deprive a Defendant of the right to effective Assistance of Counsel Simply by failing to render adequate legal assistance."

Strickland V. Washington, 104 S. Ct.,0252,80LED2D 674,466 US 668.

- g. " If the Court refused to Correct Obvious errors of their own devise that threaten to require individuals to linger longer in Federal Prison than the law demands, would affect the Defendants Substantial reights, and would affect the fairness, integrity, and Public reputation of the judicial Proceedings."

United States V. Sabillon-Umana,772F.3d 1328,1333(10th Cir.).

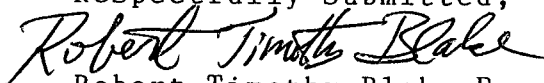
(Opinion by Justice Gorsuch.)

6. Attorney Cavazos did not update his initial sentencing assesment, or provide Blake with the Facts in relation to the law, prior to the Plea. Blake realized the errors not until after sentencing.

CONCLUSION

The Petition for a writ of Certiorari Should be Granted.

Respectfully Submitted,



Robert Timothy Blake, Pro-Se.

Dated: September 14, 2023.