No. 23-5810

ORIGINAL

In the
Supreme Court of the United States

CHRISTOPHER L. LAUREANO-PEREZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Should a writ of certiorari be granted to determine if the First Circuit of Appeals erred in not granting a certificate of appealability?

2. Should a writ of certiorari is required to examine whether the district court's failure to address the motion for eave of court to supplement Title 28 U.S.C. § 2255, considering Federal Rule of Civil Procedure, Rule 15, and its denial of Laureano-Perez's opportunity to file a reply to the government's defenses, constituted an error?

3. Does a Title 28 U.S.C. § 2255 motion make a substantial showing of a denial of a constitutional right by sufficiently alleging a constitutional claim regarding whether trial counsel's failure to object to an improper jury verdict form, which was presented to the jury, rendered Laureano-Perez's conviction invalid?

PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the First Circuit and the United States District Court for the District of Puerto Rico.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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PETITION FOR WRIT OF CERTIORARI

Christopher L. Laureano-Perez, Petitioner herein, respectfully prays that a writ of certiorari is issued to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the First Circuit, whose judgment is herein sought to be reviewed, was entered on June 22, 2023, an unpublished decision in *Laureano-Perez v. United States,* No. 22-1414 (1st Cir. June 22, 2023) is reprinted in the separate Appendix A to this Petition.

The opinion of the United States District Court for the District of Puerto Rico, whose judgment is herein sought to be reviewed, was entered on March 31, 2022, an unpublished decision in *Laureano-Perez v. United States,* No. 18-1837 (D.P.R. Mar. 31, 2022) is reprinted in the separate Appendix B to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on June 22, 2023. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

The Fifth Amendment to the Constitution of the United States provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Id. Fifth Amendment.

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Id. Sixth Amendment.

STATEMENT OF THE CASE AND FACTS

Laureano-Perez faced charges related to his alleged involvement with a drug trafficking organization operating in the Villa de Monterrey housing project in Bayamon, Puerto Rico. He was accused of being the leader of this organization, purportedly controlling the majority of drug sales within the housing project. The charges against him included supplying weapons to the organization's enforcers and runners and overseeing their drug trafficking activities. The organization was accused of distributing various controlled substances, such as heroin, cocaine base, powder cocaine, marijuana, oxycodone (Percocet), and alprazolam (Xanax), both inside the housing project and in its surrounding areas. Additionally, these drug-related activities were alleged to have taken place within 1,000 feet of a protected location (Count Seven). Laureano-Perez also faced charges related to conspiracy to possess firearms in furtherance of a drug trafficking crime, which included the same controlled substances as mentioned in Count Seven (Count Nine).

Following a trial, Laureano-Perez was found guilty of both charges. However, the verdict form did not specify whether the drug quantities mentioned were associated with Count Seven or Count Nine.

He was subsequently sentenced to life imprisonment for both counts on September 13, 2013. Nevertheless, the First Circuit Court of Appeals upheld his conviction but remanded the case for resentencing. The purpose of the remand was to impose separate sentences for Counts Seven and Nine. As a result, in January 2016, Laureano-Perez was re-sentenced to 480 months of incarceration for Count Seven and 240 months for Count Nine, to be served concurrently. After sentencing, Laureano-Perez proceeded on appeal a second time. The First Circuit affirmed the sentence and conviction a second time. *United States v. Laureano-Pérez*, No. 16-1202, 2017 U.S. App. LEXIS 28813 (1st Cir. Oct. 30, 2017). No writ of certiorari was filed.

On November 5, 2018, Laureano-Perez initiated his first action under Title 28 U.S.C. § 2255, alleging multiple instances of ineffective assistance of counsel. The court, on May 24, 2019, directed the government to respond to Laureano-Perez's pro se filing. After two requested extensions, the government submitted a response opposing

Laureano-Perez's claims on September 23, 2019. At this juncture, Laureano-Perez retained attorney Jorge Armenteros-Chervoni ("Armenteros-Chervoni") to prepare a reply to the government's opposition to the § 2255 motion. Armenteros-Chervoni filed a notice of appearance and requested a 30-day extension to file the reply, as mandated by Section 2255 Procedure Rule 5. The court granted this extension request. Subsequently, Armenteros-Chervoni filed two additional motions requesting extensions of time to file the reply on December 19, 2019, and January 20, 2020. On the final extension request, the court granted Armenteros-Chervoni until March 9, 2020, to file the reply memorandum. Regrettably, this was the last communication from Armenteros-Chervoni as he disappeared from the case.

On December 11, 2020, since Laureano-Perez was unable to locate counsel, he filed a motion requesting that counsel be removed from the case, and he sought permission to proceed *pro se*. On the same day, Laureano-Perez filed a Motion for Leave of Court to file a Supplemental § 2255 motion, as permitted by Federal Rule of Civil Procedure 15. Notably, the court did not address these motions. However, on March 12,

2021, the court issued an order instructing counsel to confer with Laureano-Perez and address the issues raised by him, with a requirement to report within ten days if the situation had been resolved. Unfortunately, Armenteros-Chervoni neither reported to the court nor contacted Laureano-Perez.

On March 31, 2022, while the motion for leave to supplement was pending and without the benefit of a reply, the court issued an order denying the § 2255 motion and rejecting the issuance of a Certificate of Appealability (COA). Subsequently, on May 10, 2022, Laureano-Perez filed a timely notice of appeal. Laureano-Perez proceeded to the First Circuit of Appeals however, on June 22, 2023, the First Circuit refused to an unpublished decision in *Laureano-Perez v. United States,* No. 22-1414 (1st Cir. June 22, 2023). This timely writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons, therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

> (a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Id. Supreme Court Rule 10.1(a), (c).

QUESTIONS PRESENTED

I. SHOULD A WRIT OF CERTIORARI BE GRANTED TO DETERMINE IF THE FIRST CIRCUIT COURT OF APPEALS ERRED IN NOT GRANTING A CERTIFICATE OF APPEALABILITY?

Established precedent dictates that when reviewing the finality of a district court's order, we must ascertain whether all issues in the case have been adjudicated. As articulated in *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015) and *United States v. Barker*, 692 Fed. Appx. 724, 725 (4th Cir. 2017), a district court's failure to consider potential claims or address all issues prevents the order from attaining finality. This principle holds true even in habeas cases, as reaffirmed by *Porter,* 803 F.3d at 696. Therefore, the First Circuit lacked appellate jurisdiction when a district court believes it has disposed of the entire case but has neglected to enter judgment on all claims. *Porter*, 803 F.3d at 696-97. In accordance with the Supreme Court's ruling in *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978), a final judgment signifies the conclusion of litigation on the merits, leaving no further action for the court but the execution of the judgment. It is crucial to recognize that merely labeling a judgment as final does not confer finality, as emphasized in *Stillman v. Travelers Ins. Co.*, 88 F.3d 911, 913 (11th Cir. 1996).

In this case, Laureano-Perez had submitted a motion for leave to amend under Federal Rule of Civil Procedure 15. This motion was pending, accompanied by supplemental arguments related to the original § 2255 motion. It was evident that not all of the claims raised had been addressed by the district court when it issued the final order on the § 2255 motion. In light of these circumstances, it was appropriate for the First Circuit to have dismissed the then-present appeal and remanded the matter to the district court. The purpose of that remand was to allow the district court to thoroughly consider the § 2255 claims that had not yet been addressed, as they were encompassed within the pending motion to amend. As writ of certiorari should be granted on the disputed claim.

II. A WRIT OF CERTIORARI IS REQUIRED TO EXAMINE WHETHER THE DISTRICT COURT'S FAILURE TO ADDRESS THE MOTION FOR LEAVE OF COURT TO SUPPLEMENT TITLE 28 U.S.C. § 2255, CONSIDERING FEDERAL RULE OF CIVIL PROCEDURE RULE 15, AND ITS DENIAL OF LAUREANO-PEREZ'S OPPORTUNITY TO FILE A REPLY TO THE GOVERNMENT'S DEFENSES, CONSTITUTED AN ERROR?

Laureano-Perez submitted his supplemental Title 28 U.S.C. § 2255 after the deadline for filing a § 2255 had expired. (D.P.R, Cv. Doc. 21, 21). Consequently, these claims are considered untimely but are connected to the original § 2255. Rule 15 allows untimely claims that stem from the

conduct, transaction, or occurrence outlined in the original pleading to be permissible under the relation back doctrine. Fed. R. Civ. P. 12(c). This doctrine is applied on a claim-by-claim basis. *Capozzi v. United States*, 768 F.3d 32, 33 (1st Cir. 2014) and *Mayle v. Felix*, 545 U.S. 644, 664 (2005) ("So long as the original and amended [section 2255] petitions state claims that are tied to a common core or operative facts, relation back will be in order."). In the original § 2255, Laureano-Perez asserted that counsel failed to object to the superseding indictment as "duplicitous or multiplicitous" *Id.* Cv. Doc. 1 at 6-8. Essentially, Laureano-Perez challenged the validity of the indictment and how it was charged. Therefore, the supplemental argument concerning the charging of the indictment and the jury verdict is related to allegations of ineffectiveness. The jury verdict was ambiguous as returned by the jury. As a result, given that the arguments raised by Laureano-Perez are tied to the original § 2255, the district court committed reversible error by failing to address the pleading when it denied the § 2255, and consequently, the merits of the claims have never been addressed.

It is firmly established that if the record indicates that the district court has not adjudicated all of the issues in a case, then a final order has

not been issued. This principle has been upheld in prior cases. *Porter v. Zook*, 803 F.3d 694, 696 (4th Cir. 2015), and *United States v. Barker*, 692 Fed. Appx. 724, 725 (4th Cir. 2017) (remanding a § 2255 motion was deemed necessary when the district court failed to consider a potential claim.) Importantly, this rule extends to habeas cases. *Porter,* 803 F.3d at 696. Therefore, even if a district court believes it has resolved an entire case, appellate jurisdiction was lacking if the court has not entered judgment on all claims. *Porter*, 803 F.3d at 696-97.

A final judgment is one that brings an end to litigation on the merits, leaving no further action for the court except the execution of the judgment. This definition aligns with *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 467 (1978), where it was stated that a final judgment "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Similar sentiments were expressed in *Pan Eastern Exploration Co. v. Hufo Oils*, 798 F.2d 837, 838 (5th Cir. 1986). It is essential to note that merely designating a judgment as final does not confer finality, as evidenced in *Stillman v. Travelers Ins. Co.*, 88 F.3d 911, 913 (11th Cir. 1996). When a motion to amend is appropriately filed before the entry of judgment, the district court should assess the motion

using the "liberal standard of Fed. R. Civ. P. 15(a)." *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006). This means that amendments can be allowed prior to the judgment, even after a dismissal for failure to state a claim, and leave to amend should be granted "freely when justice so requires." Fed. R. Civ. P. 15(a). It's important to note that the request for amendment must be properly made for this standard to apply.

However, in the case of post-judgment motions, the district court cannot permit an amended pleading if a final judgment has already been rendered, unless that judgment is first set aside or vacated in accordance with Fed. R. Civ. P. 59 or 60. *United States ex rel. Ge v. Takeda Pharm. Co.*, 737 F.3d 116, 127 (1st Cir. 2013). In this situation, given that counsel went missing and remains unavailable, Laureano-Perez deemed it necessary to request the court's relief from counsel's representation. He subsequently filed his own Rule 15 motion along with the accompanying legal argument. Even when the court specifically directed counsel to address the request to be relieved from representation, counsel failed to take any action. *Id.* Cv. Doc. 22. Regrettably, this order was also left unaddressed. At the very least, considering that the Rule 15 supplement was never addressed, it becomes evident that not all the allegations

presented in the § 2255 have been considered. Consequently, it would be premature to address these claims at this juncture.

III. DOES A TITLE 28 U.S.C. § 2255 MOTION MAKE A SUBSTANTIAL SHOWING OF A DENIAL OF A CONSTITUTIONAL RIGHT BY SUFFICIENTLY ALLEGING A CONSTITUTIONAL CLAIM REGARDING WHETHER TRIAL COUNSEL'S FAILURE TO OBJECT TO AN IMPROPER JURY VERDICT FORM, WHICH WAS PRESENTED TO THE JURY, RENDERED LAUREANO-PEREZ'S CONVICTION INVALID?

At the outset, it's crucial to note that Laureano-Perez never had the opportunity for the court to consider this claim, as it was introduced as a supplement to the original 2255. In his claim, Laureano-Perez contends that the jury verdict form, in its original form, suffered from defects and was inherently ambiguous regarding which specific count the drug quantity pertained to when it was returned by the jury. The ambiguity persists as to whether the jury verdict applied to the conspiracy drug charges outlined in Count Seven (involving conspiracy to possess and distribute narcotics under Title 21 U.S.C. §846) or to the drug quantities specified in Count Nine, which coincidentally referenced the same drug quantity as Count Seven. Both Count Seven and Count Nine include references to identical drug quantities and drug types in their respective charges. Nevertheless, it remains uncertain which particular drug

quantity the jury's verdict was addressing. The language of the superseding indictment read as follows:

COUNT SEVEN

> Beginning on a date unknown, but not later than in or about 2000, and continuing up to and until the return of the instant superseding indictment, in the Municipality of Bayamon, in the District of Puerto Rico, elsewhere, and within the jurisdiction of this Court, [2] CHRISTOPHER L. LAUREANO-PEREZ A/K/A "EL NEGRO", "BLACKIE", the defendants herein, did knowingly and intentionally combine, conspire and agree with each other and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is: to possess with the intent to distribute one (1) kilogram or more of a mixture or substance containing a detectable amount of heroin, a Schedule I Narcotic Drug Controlled Substance; two-hundred and eighty (280) grams or more of a mixture or substance containing a detectable amount of cocaine base ("crack"), a Schedule II Narcotic Drug Controlled Substance; five (5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II Narcotic Drug Controlled Substance; and a measurable amount of a mixture or substance containing a detectable amount of marijuana, a Schedule I Controlled Substance; a mixture or substance containing detectable amounts of Oxycodone (commonly known as Percocet), a Schedule II Controlled Substance; and a mixture or substance containing detectable amounts of Alprazolam (commonly known as Xanax), a Schedule IV Controlled Substance, all within one thousand (1,000) feet of the real property comprising a public elementary school known as Escuela de la Comunidad Rexville, a housing facility owned by a public housing authority, that is, the Villas de Monterrey Public Housing Project and a playground located within Villas de Monterrey, and other areas within and near the Municipality of Bayamon, Puerto Rico. All in violation of Title 21, United States Code, Sections 846, 841(a)(1) and 860.

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COUNT NINE

(Conspiracy to Possess Firearms in Furtherance of a Drug Trafficking Crime) Beginning on a date unknown, but not later than in or about 2000, and continuing up to and until the return of the instant Superseding Indictment, in the Municipality of Bayamon, in the District of Puerto Rico, elsewhere, and within the jurisdiction of this Court,

[2] CHRISTOPHER L. LAUREANO-PEREZ A/K/A "EL NEGRO", "BLACKIE",

the defendants herein, did knowingly and intentionally combine, conspire, confederate and agree together and with each other, and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to knowingly and unlawfully possess firearms, as that term is defined in Title 18, United States Code, Section 921(a)(3), that is: firearms of unknown brands, models, calibers and serial numbers, in furtherance of drug trafficking crimes, as that term is defined in Title 18, United States Code, Section 924(c)(l)(D)(2), that is: possession with intent to distribute heroin, cocaine base, cocaine, marihuana, Oxycodone and Alprazolam, offenses for which they may be prosecuted in a court of the United States as a violation of Title 21, United States Code, Sections 841(a)(l), 846 & 860 as charged in Count Seven, of the instant Superseding Indictment. All in violation of Title 18, United States Code, Sections 924(c)(l) and 924(0).

The jury verdict did not necessitate specifying which conspiracy count it was assigning the drug quantities to, whether it be Count Seven or Count Nine. In response, the jury verdict was worded as follows:

> Count Seven – conspiracy to possess with intent to distribute a controlled substance in a protected area.

As to Count Seven, we the jury find defendant Juan M. Laureano-Perez (5):

X GUILTY _____ NOT GUILTY as charged in the superseding indictment.

As to Count Nine, we the jury find defendant Juan M. Laureano-Perez (5):

X GUILTY _____ NOT GUILTY as charged in the superseding indictment

How much cocaine was involved in the conspiracy?

X five or more kilograms of cocaine
___ less than five kilograms of cocaine

How much heroin was involved in the conspiracy?

_X more than 1 kilogram of heroin
___ less than 1 kilogram of heroin

How much cocaine base ("crack") was involved in the conspiracy?

_X more than 280 grams of cocaine base ("crack")
___ less than 280 grams of cocaine base ("crack")

How much marijuana was involved in the conspiracy?

_X a detectable amount of marijuana
___ a non-detectable amount of marijuana

The jury's verdict exhibited ambiguity regarding which conspiracy count, either Count Seven or Count Nine, it was associating with the determination of drug quantity. This ambiguity constitutes an unknown

factor. In essence, it remains uncertain whether the jury was addressing the drugs linked to the conspiracy outlined in Count Seven or those in Count Nine as charged in the indictment. The Court cannot conclusively assert that the jury verdict applies to either of these counts since there is no explicit indication within the verdict form as to which count the jury's drug quantity determination pertained. It is plausible that the jury's response encompassed drug quantities for either count, both counts, or specific drug quantities for one count while excluding the other. The ambiguity within the jury's verdict remains indeterminate.

While the Supreme Court has made it clear that the mere inconsistency of a verdict or a jury verdict's inconsistency alone does not constitute sufficient grounds for vacating a conviction, as evident in *United States v. Lopez*, 944 F.2d 33 (1st Cir. 1991), it is essential for the courts to establish that there was ample evidence to support the counts of conviction, as highlighted in *United States v. Sullivan*, 85 F.3d 743 (1st Cir. 1996). In the present case, it's crucial to note that the verdicts were not inherently inconsistent. Instead, the defect lay within the structure of the jury verdict form, which had the potential to confuse the jury regarding the count to which they were attributing the drug quantities

based on their verdict. If, in fact, the drug quantities were being linked to Count Nine, pertaining to the conspiracy to possess a firearm, rather than Count Seven, which involved the conspiracy to distribute narcotics, then there is an error in the sentencing for Count Seven. Given the ambiguity stemming from the jury verdict form, which failed to specify the count to which the drug quantities were being attributed due to the inclusion of two alleged conspiracies in the same form, it becomes imperative to vacate either Count Seven, Count Nine, or both, in the current matter.

Upon reviewing the jury verdict form alongside trial counsel, there should have been an objection raised concerning the preparation of the jury verdict form and how it referred to the alleged drug quantities. The presence of ambiguities within the jury verdict form and the jury instructions, coupled with the possibility that the jury's decision was irrational when rendering their verdict, makes it impossible to ascertain whether the jury definitively resolved the issue of drug quantity based on Count Seven or Count Nine, as outlined in the charged indictment. In this context, the ambiguity concerning the jury's determination of drug quantity cannot be attributed to one count or the other; it remains

unclear to which count the jury was assigning the drug quantities at the time of the verdict. A review of the jury instructions mandated the jury to identify the drugs involved in the conspiracy; however, only one request pertaining to drug quantities was presented in the jury verdict.

The Rule of Lenity, as established in *United States v. Bass*, 404 U.S. 336 (1971), maintains that the law must employ "clear and definite" language if it intends to establish something as a criminal offense. In line with the Rule of Lenity, when criminal law is ambiguous, or, in this instance, when a jury verdict is ambiguous, any doubt should be resolved in favor of the defendant, as emphasized in United States v. Bass. Counsel's failure to object to the flawed jury verdict led to a guilty verdict on both counts, with only a single drug determination made by the jury.

In the absence of counsel's errors, there exists a reasonable probability that the jury may not have returned a guilty verdict or may not have reached the statutory drug quantities required for the charged offense in Count Seven. Consequently, an evidentiary hearing should be granted to ascertain whether either Count Seven or Count Nine can be upheld in light of the erroneous jury verdict form.

Therefore, it is incumbent upon this court to concur that a reasonable jurist would agree that there is a substantial likelihood that counsel provided ineffective assistance, thereby warranting further proceedings in this matter, granting a writ of certiorari and remanding this case to the First Circuit Court of Appeals.

IV. DID THE INEFFECTIVE ASSISTANCE OF COUNSEL AND THE DENIAL OF LAUREANO-SALGADO'S RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL OCCUR WHEN APPELLATE COUNSEL FAILED TO RAISE, ON APPEAL, THE ERROR IN THE VERDICT FORM, EVEN WHEN ASSESSED UNDER A PLAIN ERROR STANDARD OF REVIEW, THUS CONSTITUTING A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT?

While the issue was not preserved by trial counsel, which in itself could be deemed as an ineffectiveness action, the error in question should have still been addressed during the appellate stage. Despite the court having the option to reject the request for clarification or amendment of the jury's verdict, the matter should have nonetheless been subject to appeal. The issue in question was not frivolous; it merited consideration for further proceedings and had the potential to yield a different outcome.

It's worth noting that although the *Strickland* test was originally devised in the context of evaluating trial counsel's performance, its application is equally relevant when assessing the defendants' challenge

to the performance of appellate counsel. *Diggs v. Owens*, 833 F.2d 439, 444-45 (3d Cir. 1987); *McKee v. United States*, 167 F.3d 103, 106 (2d Cir. 1999); *United States v. Cook*, 45 F.3d 388, 392 (10th Cir. 1995); and *United States v. Merida*, 985 F.2d 198, 202 (5th Cir. 1993). Consequently, a defendant who did not receive effective assistance from appellate counsel and suffered prejudice as a result is entitled to a new appeal. *Ramirez v. Tegels*, 963 F.3d 604, 606 (7th Cir. 2020).

In this case, the circumstances warrant a new appeal. Laureano-Perez had a legitimate right to a clear and unambiguous jury verdict. Even if the court had exercised its discretion to deny the request, it would have still presented a viable issue for appellate review. The evaluation of counsel's performance hinges on whether reasonable professional judgment was exercised, assessed from the perspective of a reasonable attorney at the time of the petitioner's appeal, without the distortion of hindsight, as emphasized in *Tegels*, at 606. When viewed through the lens of counsel's perspective at the time the decision was made regarding the issues to be raised on appeal, it is evident that counsel rendered ineffective assistance by failing to raise such a crucial issue on appeal.

As such a writ of certiorari should be granted, remanding the case to the First Circuit Court of Appeals.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the First Circuit.

Done this 15 day of September 2023.

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