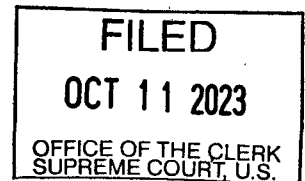


No. 23 - 6183



IN THE  
SUPREME COURT OF THE UNITED STATES

Steven Justin Villalona — PETITIONER  
(Your Name)

VS.

U.S.A. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S.C.A., For the 11<sup>th</sup> Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Steven Justin Villalona, #:55457-018  
(Your Name)

FBI- Fort Dix, Po Box 2000  
(Address)

New Joint Base, MDL, NJ, 08640  
(City, State, Zip Code)

none  
(Phone Number)

### QUESTION(S) PRESENTED

- ① Whether a claim of attorney abandonment or material omissions in the record may justify the granting of a motion to recall the mandate of an appellate court?
- ② Whether a member of a conspiracy may claim actual innocence for the acts of others which are not reasonably foreseeable to him?
- ③ Whether there are circumstances where a defendant may be actually innocent of a sentence in a non-capital case?
- ④ Whether it would manifest injustice to sentence a drug trafficking defendant for a drug quantity not reasonably foreseeable to him?

## 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

Villalona v. U.S., ~~64~~ 140 S.Ct. 497 (2019)

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	7
CONCLUSION.....	9

## INDEX TO APPENDICES

APPENDIX A	11 <sup>th</sup> Circuit opinion affirming conviction and sentence
APPENDIX B	District Court order denying Motion to Vacate
APPENDIX C	Transcript of Sentencing (Crim. Doc. 96)
APPENDIX D	Transcript of Evidentiary hearing pgs. 1, 36, and 37, 104 Civil. Doc. 67.
APPENDIX E	Presentence Report Addendum.
APPENDIX F	11 <sup>th</sup> Circuit order denying motion to recall mandate

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

<u>Maples v. Thomas</u> , 565 U.S. 266, 281 (2012) ...	7
<u>Umanzor v. U.S.</u> , 2012 U.S. Dist. LEXIS 5364, ... (N.D. Iowa, January 17, 2012)	7
<u>U.S. v. Verderame</u> , 51 F.3d 249, 252 (11th Cir. 1995) ..	8

### STATUTES AND RULES

Fed. R. Crim. P. 11(d)(1)

### OTHER

Code of Professional Responsibility . . . . . 8

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 \_\_\_\_\_ 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 02/05/2013.

☐ 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: \_\_\_\_\_, 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. § 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**

6th Amendment right to counsel

5th Amendment right to due process.

Criminal Justice Act.



### STATEMENT OF THE CASE

An indigent defendant, who after entering a plea of guilty before a Magistrate Judge, sought to withdraw his guilty plea before it was accepted by the district court on January 31, 2012. However, because there was a disagreement concerning the defendant's innocence, court appointed counsel ceased his representation on January 23, 2012, and the defendant could not afford private counsel to withdraw his guilty plea. Therefore, the defendant was convicted of conspiring to possess 5 kilograms of cocaine and the possession of a firearm in furtherance of a drug crime.

Because the defendant was having financial trouble retaining private counsel and sentencing was fast approaching, the lame duck appointed counsel moved in the district court for a "determination of counsel." Criminal Docket 67. However, that motion was denied which caused appointed counsel to appear at sentencing, Appendix C. Although appointed counsel orally objected to the quantity of drugs for which the defendant was being held accountable for, appointed counsel did not formally move to withdraw the guilty plea. Therefore, the defendant, on his own, requested the withdrawal of his guilty plea which was denied. However, the district court did grant the objection to the drug quantity the Probation Office calculated, and stated that the defendant

is only responsible for 2 kilograms of cocaine. Appendix C, at 4, and Appendix D, pgs. 36-37. Although the defendant was not responsible for 10 kilograms of cocaine, he received a ten year sentence for the drugs with 5 consecutive years for the Firearm. Appendix C, at 5. Also, the district court failed to make written findings concerning the quantity of drugs the defendant was responsible for.

On Appeal, the 11<sup>th</sup> Circuit determined that the district court did not err in denying the defendant's request to withdraw his guilty plea, because "Villalona failed to establish a 'fair and just reason' for the withdraw," and "had the close assistance of counsel prior to, and during his plea hearing." Appendix A, at 5. Although the 11<sup>th</sup> Circuit found that the defendant formed the intention of withdrawing his guilty plea when he had an absolute right to do so, "he", the defendant, "failed to act promptly on that intention." Appendix A, at 5.

On that note, the defendant moved in the district court to vacate his sentence, claiming that his court appointed attorney's failure to withdraw the guilty plea amounted to a constitutional violation. At the evidentiary hearing, the district court acknowledged that the objection to the drug amount was "successful." Appendix D, at 36-37. However, the district court denied the motion, finding that the court appointed attorney was not responsible for withdrawing the guilty plea because the defendant "fired" him, Appendix B, at 4; Although there's nothing in the record showing that the defendant waived his right to counsel, or that the

appointed attorney formally moved to withdraw from the case.

After several appeals were unsuccessful, the defendant moved in the 11<sup>th</sup> Circuit to recall the mandate rendered on direct appeal, because at the time the appellate decision was made, the record did not accurately convey what actually happened. The defendant claimed that the record at the time the decision was made did not reflect that the court appointed attorney was "fired" on January 23, 2012, and that the district court failed to make written findings to the drug quantity found at sentencing. Also, had the 11<sup>th</sup> Circuit known those key facts, the 11<sup>th</sup> Circuit would not have concluded that the defendant received the close assistance of counsel at the change of plea hearing, because the defendant entered a guilty plea to a quantity of drugs which he is not responsible for, and that he failed to act promptly on his intention of withdrawing his guilty plea, because he was abandoned by counsel. However, the 11<sup>th</sup> Circuit denied the motion and now the defendant seeks this belated appeal. Appendix E.

## REASONS FOR GRANTING PETITION

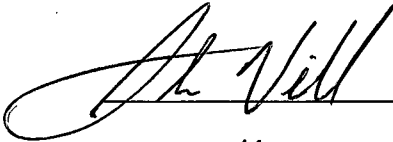
"The worst sin toward our fellow creatures is to be indifferent to them." George Bernard Shaw, Devils Disciple, Act II (1901). Here, the 11th Circuit's denial of the motion to recall its mandate manifest an indifference to the petitioner's claim that he was convicted of a crime he did not commit because the court did not provide counsel. Appendix E, at 2, and Appendix B, at 4. Moreover, the factual basis for the petitioner's claim was not present in the record at the time the 11th Circuit made its decision.

Indeed, had the 11th Circuit known that the petitioner's court appointed counsel was "fired" on January 23, 2012, eight days before the guilty plea was accepted, and that the district court granted the defendant's objection to the quantity of drugs at sentencing, the 11th Circuit or any fair minded person would not have faulted the defendant for failing "to act promptly" on his intention of withdrawing his plea, or concluded that there existed no fair and just reason for the withdrawal of the guilty plea. As such, the defendant's court appointed counsel "ceased" his representation without notifying the court or the defendant, which caused the defendant's conviction and sentence for an errant drug quantity. Maples v. Thomas, 565 U.S. 266, 281 (2012); see also, Umanzor v. U.S., 2012 U.S. Dist. LEXIS 5364, at 25 (N.D. Iowa, January 17, 2012) (finding counsel ineffective for having defendant plea guilty to a larger quantity of drugs which he was not responsible for and failing to move to withdraw the guilty plea on that basis).

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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Date: 11 / 12 / 2023