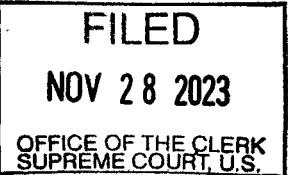


No. 23 - 6392



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IN THE  
SUPREME COURT OF THE UNITED STATES

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**PHILLIP WATKINS- PETITIONER**

**vs.**

**UNITED STATES OF AMERICA-RESPONDENT(S)**

**ON PETITION FOR A WRIT OF CERTIORARI TO  
SIXTH CIRCUIT COURT OF APPEALS**

**PETITION FOR WRIT OF CERTIORARI**

Mr. Phillip Watkins #76259-061

FCI-Manchester/ P.O. Box 4000

Manchester, KY. 40962

## **QUESTION(S) PRESENTED**

### **QUESTION NUMBER ONE:**

Whether the Sixth Circuit abused its discretion by affirming the district court's failure to conduct an Evidentiary Hearing regarding the fact his Guilty Plea and Acceptance of the Government's Plea Agreement was the product of Attorney Haas and Attorney Tierney ineffective assistance of counsel in violation of his Sixth Amendment of the U.S. Constitution ?

### **QUESTION NUMBER TWO:**

Whether the Sixth Circuit abused its discretion by affirming the district court's failure to conduct an Evidentiary Hearing regarding the fact his Guilty Plea was tainted by Conflict of Interest as to his former attorneys Mr. Haas and Mr. Tierney, thus, should his convictions be **VACATED** as his Sixth Amendment Rights of the U.S. Constitution were violated ?

### **QUESTION NUMBER THREE:**

Whether the Sixth Circuit abused its discretion by affirming the district court's failure to conduct an Evidentiary Hearing, thus, did his ex-lawyer provide him with ineffective assistance of counsel by failing to file a pre-trial Motion to Dismiss Fatally Defective Counts Two-Eight as they are duplicitous in violation of his Fifth and Sixth Amendment Rights of the U.S. Constitution. Did Phillip Watkins' ex-

lawyer violate his Sixth Amendment Rights of the U.S. Constitution ?

**QUESTION NUMBER FOUR:**

Whether the Sixth Circuit abused its discretion by affirming the district court's decision to Summarily Dismissing Ground Four that Phillip Watkins stands "actually innocent" of his statutory enhancement for "serious bodily injury" as charged within Count One, Conspiracy and the Section 2D1.1 (a) (2) Guidelines Adjustment, thus, did that constitute a clear miscarriage of justice to justify **VACATING** his conviction ?

**QUESTION NUMBER FIVE:**

Whether the Sixth Circuit abused its discretion by affirming the district court's holding that Ground Five was "procedurally defaulted" even though Watkins raised a claim of appellate ineffectiveness to establish "cause," thus, as a "pre-trial detainee" he was subjected to punishment in violation of his Fifth Amendment Rights and his Sixth Amendment Rights were violated inference with phone privileges with access to counsel does this merit **GRANTING** a C.O.A. ?

**QUESTION NUMBER SIX:**

Whether the Sixth Circuit abused its discretion by affirming the district court's denial to conduct an Evidentiary Hearing to Petitioner's sentencing phase ineffective assistance of counsel claim where his ex-lawyer failed to object to the PSR and at sentencing, thus,

waiving any challenge to Section 2D1.1 (a) (2) Enhancement; the Denial of Acceptance of Responsibility; Section 2D1.1 (b) (12); Section 2D1.1 (b) (15) Enhancement; Section 3B1.1 Enhancement; and failing to request a “downward variance” due to his harsh pre-trial detention, did this violate his Sixth Amendment Rights of the U.S. Constitution ?

**QUESTION NUMBER SEVEN:**

Whether the Sixth Circuit abused its discretion by affirming the district court’s denial of failing to conduct an Evidentiary Hearing regarding Petitioner’s appellate ineffective assistance of counsel claim and did this violate his Sixth Amendment Rights of the U.S. Constitution ?

**QUESTION NUMBER EIGHT:**

Whether the Sixth Circuit abused its discretion by affirming the district court’s denial of Mr. Watkins’ Motion to Amend, thus, the U.S. Supreme Court should **VACATE** and **REMAND** as leave should be freely given constitute with Civil Procedure 15 (a) (2), and his due process of law rights ?

## 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:

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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 B 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

## JURISDICTION

**[x] For cases from federal courts:**

The date on which the United States Court of Appeals decided my case was June 21, 2023

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 09/01/2023

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

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (1).

**[ ] For cases from state courts:**

The date in 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**

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## **STATEMENT OF THE CASE**

In January of 2022, Petitioner Watkins filed his 2255 Motion to Vacate. The Government filed their Response Brief on May 02, 2022. In mid-June of 2022, Petitioner Watkins filed his Reply Brief to conduct briefing schedule. On September 08, 2022, the district court denied Petitioner Watkins' 2255 Motion to Vacate within its written Opinion and declined to grant a Certificate of Appealability. A timely Notice of Appeal was filed and on June 21, 2023, the Sixth Circuit Court of Appeals denied Petitioner Watkins' request for a Certificate of Appealability within a 6-page written Opinion, thus, rendering it an adequate review for purposes of granting or denying a Certificate of Appealability as to Phillip Watkins.

Petitioner Watkins, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One, Two, Three, Four, Five, Six, Seven, and Eight or as this Supreme Court deems warranted in the case herein.

## **REASONS FOR GRANTING THE PETITION**

Petitioner Watkins, acknowledges that a review on a writ of Certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Watkins, respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, Three, Four, Five, Six, Seven, and Eight as relevant to question # 1, Phillip Watkins argues that his Guilty Plea and Acceptance of the Government's Plea Agreement was the product of Attorney Haas and Attorney Tierney ineffective assistance of counsel in which he was deprived of his Sixth Amendment Rights of the U.S. Constitution. Regarding question # 2, Phillip Watkins argues that his guilty plea was tainted by a Conflict of Interest as to his former attorneys Mr. Haas and Mr. Tierney, thus, his convictions should be VACATED as his Sixth Amendment Rights of the U.S. Constitution was violated. Regarding question # 3, Phillip Watkins argues that his ex-lawyers' provided him with ineffective assistance of counsel by failing to file a pre-trial Motion to Dismiss Fatally Defective Counts Two-Eight as they are duplicitous in violation of his Fifth and Sixth Amendment Rights of the U.S. Constitution and he suffers from ineffectiveness in violation of his Sixth Amendment Rights of the U.S. Constitution. Regarding question # 4, Phillip Watkins stands "actually innocent" of his statutory enhancement for "serious bodily injury" as charged within Count One, Conspiracy and Section 2D1.1 (a) (2) Guideline Adjustment, thus, to prevent a clear miscarriage of justice his conviction should be VACATED as to Count 1,

Conspiracy. Regarding question # 5, Phillip Watkins, argues that while he was in pre-trial custody as a pre-trial detainee he was subjected to punishment due to 23-hour lockdown and prohibited from visits and telephone calls with family, and his lawyers, thus, such Solitary Confinement also impaired his ability to conduct legal research in which lead to a Mental Breakdown in violation of his Due Process Clause Rights of the Fifth Amendment and Sixth Amendment of the U.S. Constitution, thus, his convictions should be VACATED. Regarding question # 6, Phillip Watkins, argues that his ex-lawyer Cornelius Lewis failed to object to the PSR as to his Section 2D1.1 (a) (2) Enhancement; the Denial of Acceptance of Responsibility; Section 2D1.1 (b) (12) Enhancement; Section 2D1.1 (b) (15) Enhancement; Section 3B1.1 (c) Enhancement; and failing to request a “downward variance” due to his harsh pre-trial detention, thus, Petitioner Watkins suffers from sentencing phase ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution. All seven (7) of these are raised under an abuse of discretion in failing to conduct an evidentiary hearing as articulated below herein. Regarding question # 7 Phillip Watkins, argues that the Sixth Circuit abused its discretion in failing to conduct an evidentiary hearing regarding his ex-appellate attorney’s ineffectiveness in violation of his Sixth Amendment Rights of the U.S. Constitution. Regarding question # 8, the Sixth Circuit

abused its discretion by denying Petitioner Watkins' Motion to Amend, thus, as Civil Procedure 15 (a) (2), holds that leave to amend should be freely given and did that violate his due process of law rights in violation of his Fifth Amendment Rights. Consistent with 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in Slack and Miller-El, thus, Phillip Watkins is entitled to issuance of Certificate of Appealability as to Questions 1, 2, 3, 4, 5, 6, 7, and 8, in the matter herein.

**QUESTION NUMBER ONE:**

Whether the Sixth Circuit abused its discretion by affirming the district court's failure to conduct an Evidentiary Hearing regarding the fact his Guilty Plea and Acceptance of the Government's Plea Agreement was the product of Attorney Haas and Attorney Tierney ineffective assistance of counsel in violation of his Sixth Amendment of the U.S. Constitution ?

**Reasons To Justify Issuance Of A COA As To Question Number One:**

The District Court adopted the U.S. Magistrate Judge's Report and Recommendation that Ground One, ineffectiveness claim was barred by his Guilty Plea, see Decision and Order at Doc. # 227, PageID. 1255-1256, however, such Ruling is debatable amongst jurists of reason as a different court could resolve Ground One in a different manner. Petitioner Watkins, argues that to the contrary Phillip Watkins's Question Number One claim is brought under ineffective

assistance of counsel in which is **related to his decision to plead guilty**. See Tollett v. Henderson, 411 U.S. 258, 266 (1973) (“The focus of federal habeas inquiry is the nature of the advice and the voluntariness of the plea, not the existence as such of an antecedent constitutional infirmity.”); and United States v. Fabian, 798 F. Supp. 2d 647, 670-680 (D. Md., 2011) (assessing the merits of each pre-trial ineffectiveness claim raised by Movant Fabian within his 2255 Motion to Vacate as such affected his decision to plead guilty, however, was denied upon the merits of his ineffective assistance of counsel claims) (emphasis added). Petitioner Watkins, states that he was provided with ‘deficient performance’ by failing to do the following:

- (1) Failed to investigate the “serious bodily injury” statutory enhancement pursuant to 21 U.S.C. 841 (b) (1) (C), to ensure that the “but-for” cause requirement of the U.S. Supreme Court Ruling in Burrage was met in violation of Sixth Circuit precedents in Towns v. Smith, 395 F.3d 251, 248 (6<sup>th</sup> Cir. 2005); and Strickland, 466 U.S. at 691 (1984).
- (2) Failed to require the Production by the Government of Exculpatory Medical Records as to Victim 2, in violation of Sixth Circuit precedents in Townsend v. Bomar, 351 F.2d 499 (6<sup>th</sup> Cir. 1965); and Hawk v. Olson, 326 U.S. 271, 278 (1945).
- (3) Failed to discuss the evidence as it bears of those elements to

establish guilt for the “serious bodily injury” statutory enhancement pursuant to 21 U.S.C. 841 (b) (1) (C), as charged in Count One, Conspiracy and Tampering with a Witness, thus, violating Sixth Circuit precedents in Smith v. United States, 348 F.3d at 552 (6<sup>th</sup> Cir. 2003); (4) Erroneous advisement to plead guilty without adequate and thorough pre-trial investigations, thus, violating federal case law in Sparman v. Edwards, 25 F. Supp. 2d 450 (E.D.N.Y, 1997); and McQueen v. Swenson, 498 F.2d 207 (8<sup>th</sup> Cir. 1974).

The reasons for Acceptance of the Plea Agreement were as the result of counsels’ advisement that he would be released from Solitary Confinement, thus, this induced his decision to accept the Government’s Plea Agreement as it was taken under **DURESS**, and as the result that he was advised by counsels’ that he could litigate the “serious bodily injury” statutory enhancement and tampering Guideline enhancement during the sentencing phase, however, his ex-lawyers’ advisement was erroneous in the case herein. Mr. Watkins, states that through the aid of a Private Investigator in which his mother hired a Springfield Township Police Department Investigative Report dated Sunday, August 21, 2016, see Attachment A, was discovered in which was never handed over to his criminal defense but could have been discovered through adequate pre-trial Investigations (as the Springfield Township Police seized from the

search of the area where Kathy Fairbanks overdosed a Marijuana Grinder, Pill Crusher, and Char Boy and two cell phones), and this evidence was critical to gain access to for the defense so that paraphernalia could be tested to determine the “but-for” cause of the drugs Ms. Fairbanks overdosed off on August 21, 2016, in the case herein. See *United States v. Murillo*, 2011 U.S. Dist. LEXIS 84231, 2011 WL 3320006 (E.D. Mich., Aug. 1, 2011) (GRANTING prompt Evidentiary Hearing as to counsel’s failure to investigate and his conviction was vacated after hearing was conducted); *United States v. DeCoster*, 487 F.2d 1197, 1204 (D.C. Cir. 1973) (VACATED and REMANDED 2255 Denial as to failure to investigate and the Appellate Court ordered a prompt evidentiary hearing); and *Vick v. Lockhart*, 952 F.2d 999, 1004 (8<sup>th</sup> Cir. 1991) (VACATED and REMANDED for a prompt Evidentiary Hearing based upon trial counsel’s failure to obtain medical reports, thus, constituted ineffective assistance of counsel) (emphasis added).

Thus, Mr. Watkins Question Number One was properly before the district court and is certainly entitle to an Evidentiary Hearing as to his colorable claim when fully developed the case herein. See *Woodard v. Collins*, 898 F.2d 1027, 1029 (5<sup>th</sup> Cir. 1990) (The Fifth Circuit VACATED and REMAND to conduct an Evidentiary Hearing to determine whether petitioner was prejudiced by his counsel’s failure to investigate a crime to which, upon counsel’s advice, petitioner pled guilty.). Here, Phillip

Watkins swears under the penalty of perjury that he would have proceeded to Jury Trial absent his guilty plea and acceptance of the government's plea agreement was the product of ineffective assistance of counsel taken these allegations as true the district court abused its discretion in not conducting an Evidentiary Hearing. See Schriro v. Landrigan, 550 U.S. 465, 474 (2007) ("In deciding whether to grant evidentiary hearing, a federal court must consider whether such hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief."). Consistent with the U.S. Supreme Court precedents in Slack and Miller-El, thus, a Certificate of Appealability must issue as to Question Number One in the situation herein. See Slack, 529 U.S. 473, 484 (2000).

**QUESTION NUMBER TWO:**

Whether the Sixth Circuit abused its discretion by affirming the district court's failure to conduct an Evidentiary Hearing regarding the fact his Guilty Plea was tainted by Conflict of Interest as to his former attorneys Mr. Haas and Mr. Tierney, thus, should his convictions be **VACATED** as his Sixth Amendment Rights of the U.S. Constitution were violated ?

**Reasons To Justify Issuance Of A COA As To Question Number Two:**

Petitioner Watkins, asserts that the U.S. Magistrate Judge's Report

and Recommendation denying relief as to Question Number Two, Conflict of Interest claim by holding that: "Under those circumstances they could not continue and were obligated to seek leave to withdraw. Watkins does not suggest what they should have done instead."

Ground Two is without merit and should be dismissed with prejudice." See R. & R. at Doc. # 225, PageID.1208-1209. Phillip Watkins, argues that the U.S. Magistrate Judge fails to actually address the merits of his Conflict of Interest claim as to Question Number Two, as when he plead guilty on September 7, 2017, he was in fact represented by Attorney Herbert Haas and Attorney Kevin M. Tierney, thus, the heart of the claim is that his guilty plea resulted from counsel's Conflict of Interest in violation of his Sixth Amendment Rights of the U.S. Constitution. Petitioner Watkins, articulated reasoning outlined with the Supreme Court's Ruling in Culyer, 446 U.S. 335, 348-50 (1980), a prompt Evidentiary Hearing is warranted to resolve Question Number Two, as to 2255 Proceedings Record does not conclusively show that he is not entitled to relief as to Question Number Two in the case at bar. 28 U.S.C. 2255 (b); and Smith, 348 F.3d at 551 (6<sup>th</sup> Cir. 2003).

Consistent with 28 U.S.C. Section 2255 (b), the district court in turn abused its discretion by failing to conduct an Evidentiary Hearing as to Question Number Two, as "the motion and the files and records of

the case **does not** conclusively show that [Phillip Watkins], is not entitled to relief" as to Question Number Two, see *Machibroda v. United States*, 368 U.S. 487, 495-96 (1962); *Walker v. Johnston*, 312 U.S. 275, 287 (1941); and *United States v. Marr*, 856 F.2d 1471, 1472-73 (10<sup>th</sup> Cir. 1988) (emphasis added).

Phillip Watkins, is in fact entitled to a Certificate of Appealability being **GRANTED** as to Question Number Two as he was deprived of his Sixth Amendment Rights of the U.S. Constitution by his former attorneys operating under a Conflict of Interest in which is adequate to deserve to encouragement to proceed further, see Slack, 120 S. Ct. at 1603-04 (2000).

### **QUESTION NUMBER THREE:**

Whether the Sixth Circuit abused its discretion by affirming the district court's failure to conduct an Evidentiary Hearing, thus, did his ex-lawyer provide him with ineffective assistance of counsel by failing to file a pre-trial Motion to Dismiss Fatally Defective Counts Two-Eight as they are duplicitous in violation of his Fifth and Sixth Amendment Rights of the U.S. Constitution. Did Phillip Watkins' ex-lawyer violate his Sixth Amendment Rights of the U.S. Constitution ?

### **Reasons To Justify Issuance Of COA As To Question Number Three:**

Petitioner Watkins, states that consistent with the Ninth Circuit's Ruling in *United States v. Ramirez*, 273 F.3d 903 (9<sup>th</sup> Cir. 2001), thus,

Counts 2-8, were in fact duplicitous in violation of his Fifth and Sixth Amendment Rights, therefore, those counts should have been dismissed and his ex-lawyer failed to file a pre-trial Motion to Dismiss Counts 2-8, constitutes ‘deficient performance’ in which satisfies the first prong of Hill, 474 U.S. at 58 (1985).

Absent such ‘deficient performance’ by his former attorneys, thus, there is a reasonable probability that a more favorable Plea Offer would have been negotiated or Phillip Watkins would have proceeded to Jury Trial in which constitutes ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution in the situation herein. Hill, 474 U.S. at 59 (1985); Lee v. United States, 137 S. Ct. 1958, 198 L. Ed. 2d 476 (2017); and United States v. Weathers, 186 F.3d 948, 958-59 (D.C. Cir. 1999) (Counsel’s failure to object an indictment that was improperly multiplicitous warranted an evidentiary hearing to resolve claim of ineffective assistance of counsel) (emphasis added).

Thus, Petitioner Watkins, argues that the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing was required to permit Phillip Watkins to fully develop his colorable claim of ineffective assistance of counsel by his former attorneys in which violated his Sixth Amendment Rights of the U.S. Constitution in the case at bar. See Schriro v. Landigan, 550 U.S. 465, 474 (2007) (“In deciding

whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition allegations, which, if true would entitle the applicant to federal habeas relief.”).

Petitioner Watkins, asserts that this Honorable Sixth Circuit should **GRANT** a Certificate of Appealability as to Question Number Three, as the question of whether he was deprived of his Sixth Amendment Rights of the U.S. Constitution by his defense counsel by failing to conduct pre-trial Motion to Dismiss Fatally Defective Counts 2-8, of Indictment are adequate to deserve encouragement to proceed further, see Slack, 120 S. Ct. at 1603-04 (2000) (emphasis added).

#### **QUESTION NUMBER FOUR:**

Whether the Sixth Circuit abused its discretion by affirming the district court’s decision to Summarily Dismissing Ground Four that Phillip Watkins stands “actually innocent” of his statutory enhancement for “serious bodily injury” as charged within Count One, Conspiracy and the Section 2D1.1 (a) (2) Guidelines Adjustment, thus, did that constitute a clear miscarriage of justice to justify **VACATING** his conviction ?

#### **Reasons To Justify Issuance Of A COA As To Question Number Four:**

The Sixth Circuit abused its discretion affirming the district court’s decision to Summarily Dismissing Mr. Watkins “actual innocence” of his

statutory enhancement for “serious bodily injury” as required by the U.S. Supreme Court Ruling in *Burrage v. United States*, 571 U.S. 204, 210 (2014), thus, due to the lack of a factual basis for the “serious bodily injury” in violation of 21 U.S.C. 841 (b) (1) (C), therefore, his conviction as to Count One, Conspiracy should be vacated or guilty plea withdrawn in the case at bar.

Considering *Dretke v. Haley*, 541 U.S. at 397 (2004), Petitioner Watkins, stands actually innocent due to a lack of factual basis for his statutory enhancement, thus, it follows Phillip Watkins’ due process of law rights has been violated in the situation herein.

In the instant case, Petitioner Watkins, asserts that the factual basis relied upon by the district court to comply with the Federal Rules of Criminal Procedure-Rule 11 (b) (3), is the statement of Special Agent Bohan, see Doc. # 115, PageID.371-372, see Appendix D (A copy of the statement of Special Agent Bohan of Phillip Watkins Rule 11 Plea Colloquy Hearing on November 15, 2017, before the Honorable Susan J. Dlott), however, no mens rea is included and no evidence was offered to support that the drugs sold was the “**but-for**” cause of Victim Two’s ‘serious bodily injury’ as required by U.S. Supreme Court precedents in *Burrage*, 571 U.S. at 210 (2014), as to essential element number three (c) That serious bodily injury **resulted from a controlled substance distributed by the conspiracy**. Thus,

consistent with Burrage, 571 U.S. at 210 (2014) (1) knowingly and intentional distribution of heroin [and fentanyl]; and (2) serious bodily injury ('resulting from') by the use of that drug, id. at 210. To satisfy the second element, the Government must prove that use of that drug distribution by defendant or co-defendant was "but-for" cause of the serious bodily injury to Victim-2 Kathy Fairbanks, see United States v. Volkman, 797 F.3d 377, 392 (6<sup>th</sup> Cir. 2015). The Rule 11 Plea Colloquy is devoid of all the "essential elements" to establish **GUILT** as to Section 841 (b) (1) (C) "serious bodily injury," thus, his Guilty Plea as to Count One, Conspiracy was entered "unknowingly and unintelligently" and involuntarily entered in which is **VOID** as it violates his Due Process Clause Rights of the Fifth Amendment of the U.S. Constitution. See Boykin, 395 U.S. 238, 243 & f.n. 5 (1969); and Murray v. Carrier, 477 U.S. 478, 496 (1985) (The U.S. Supreme Court held that a federal habeas corpus may be granted for one who is "actually innocent" of conviction) (emphasis added).

Phillip Watkins, respectfully request that the Sixth Circuit will permit him to withdraw his Guilty Plea as to Count One, Conspiracy and set the matter for Jury Trial to prevent a clear miscarriage of **JUSTICE** in the case herein.

Petitioner Watkins, states that he presented a colorable actual innocence claim, thus, the district court's failure to grant an

Evidentiary Hearing constitutes an abuse of discretion, see *Sinisterra v. United States*, 600 F.3d 900, 909-912 (8<sup>th</sup> Cir. 2010) (summary dismissal improper because petitioner's claim ineffective assistance of counsel made sufficient factual allegations warranting evidentiary hearing); and *Owens v. United States*, 483 F.3d 48, 60-61 (1<sup>st</sup> Cir. 2007) (summary dismissal improper when Section 2255 motion asserted plausible allegations that warranted fact-finding hearing).

Petitioner Watkins, argues firmly that a Certificate of Appealability should be **GRANTED** as to Question Number Four actual innocence to prevent a clear miscarriage of justice as the question of whether he was deprived of his Fifth Amendment Rights of the due process clause U.S. Constitution are adequate to deserve encouragement to proceed further, see *Slack*, 120 S. Ct. at 1603-04 (2000) (emphasis added).

#### **QUESTION NUMBER FIVE:**

Whether the Sixth Circuit abused its discretion by affirming the district court's holding that Ground Five was "procedurally defaulted" even though Watkins raised a claim of appellate ineffectiveness to establish "cause," thus, as a "pre-trial detainee" he was subjected to punishment in violation of his Fifth Amendment Rights and his Sixth Amendment Rights were violated inference with phone privileges with access to counsel does this merit GRANTING a C.O.A. ?

#### **Reasons To Justify Issuance Of A COA As To Question Number Five:**

On December 28, 2016, the Butler County Jail at the direction from AUSA Megan Gaffney instructing the jail to place Mr. Watkins in Solitary Confinement in which he was placed in a single cell with no contact with any other inmates and only were permitted to exit his cell for 1 hour from 1 a.m. to 2 a.m. daily, thus, he had no contact with his family, friends, and making it impossible to call his lawyers and no access to law library to conduct legal research, see Doc. # 66.

The Due Process Clause prohibits punishment of pretrial detainee and protects them from excessive force that amounts to punishment, see Wolfish, 441 U.S. at 535-39 (1979).

The district court held that Question Number Five were “procedurally defaulted,” however, “cause” was established by his ex-appellate counsel’s failure to raise claim on his Direct Appeal, see Murray v. Carrier, 477 U.S. 478, 488 (1986) (“cause” is established by a showing that (3) the procedural default was the result of constitutionally ineffective assistance); and Edwards v. Carpenter, 529 U.S. \_\_\_, 146 L. Ed. 2d 518 (2000) (same).

The U.S. Magistrate Judge Report and Recommendation as to his Sixth Amendment violation as it relates to Question Number Five, see Doc. # 225, PageID.1211-1212, thus, the U.S. Magistrate Judge simply held that: “In response the United States admits having had Watkins prevented from contacting family members because of his use of that

access to attempt to have witnesses killed; indeed, the Statement of Facts attached to the Plea Agreement admits as much. On the other hand, the Government has documented that it did not prevent him from communicating with counsel, so there was no Sixth Amendment violation." The record of while Phillip Watkins were in Solitary Confinement accurately reflects that he were locked in a 8 ½ x 11 cell for 23 hrs. a day and he came out to shower from **1 a.m. to 2 a.m.**, see Doc. # 66. Thus, he had no means of communicating with his attorneys by telephone, see Murray v. Walker, 51 F.3d 714, 718 (7<sup>th</sup> Cir. 1995) (detainer states 6<sup>th</sup> Amendment claim if revocation of phone privileges interferes with access to counsel), therefore, the way Mr. Watkins were forced to be in Solitary Confinement he had no access to counsel in which violated his Sixth Amendment Rights of the U.S. Constitution in the case herein.

The district court abused its discretion by holding such Fifth Amendment claim was barred by procedural default and the Solitary Confinement constituted punishment in violation of due process rights of the Fifth Amendment, see Lyons v. Powell, 838 F.2d 28, 31 (1<sup>st</sup> Cir. 1988) (possible due process violation because detainee confined to cell for 22 to 23 hours per day for 27-day period and forced to sleep on floor mattress, which may have constituted punishment) (emphasis added).

Petitioner Watkins, contends that his guilty plea was entered “unknowingly and “unintelligently” as the Solitary Confinement induced his Guilty Plea and it was entered under duress as if he accepted the Government’s Plea Agreement he was advised he would be released from Solitary Confinement, thus, his Count One, Conspiracy and Count One, Tampering With Witness should be permitted to be withdrawn as his Fifth and Sixth Amendment constitutional rights were violated. See Greenup v. United States, 401 F.3d 758, 767-68 (6<sup>th</sup> Cir. 2005) (When a defendant has received ineffective assistance of counsel, [or a violation of a constitutional right], the district court has the power to remedy the violation by placing the defendant in the same position he was in prior to the ineffective assistance [or constitution violation]). If Question Number Five claim is permitted to be fully developed will constitute a colorable claim of a violation of his Fifth and Sixth Amendment constitutional rights may entitle him to relief in the case herein. See Harris v. Nelson, 394 U.S. 286, 300 (1969) (But where specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief, it is the **DUTY** of the court to provide the necessary facilities and procedures for an adequate inquiry.). It follows that the district court abused its discretion when it failed to conduct a prompt Evidentiary

Hearing as to Question Number Four, see *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) (“In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition’s factual allegations, which, if true, would entitle the applicant to federal habeas relief.”).

Petitioner Watkins, argues that this Honorable Sixth Circuit should **GRANT** a Certificate of Appealability as to Question Number Five as the question of whether he was deprived of his Fifth and Sixth Amendment Rights of the U.S. Constitution were violated, thus, it is adequate to deserve encouragement to proceed further, see Slack, 120 S. Ct. at 1603-04 (2000).

#### **QUESTION NUMBER SIX:**

Whether the Sixth Circuit abused its discretion by affirming the district court’s denial to conduct an Evidentiary Hearing to Petitioner’s sentencing phase ineffective assistance of counsel claim where his ex-lawyer failed to object to the PSR and at sentencing, thus, waiving any challenge to Section 2D1.1 (a) (2) Enhancement; the Denial of Acceptance of Responsibility; Section 2D1.1 (b) (12); Section 2D1.1 (b) (15) Enhancement; Section 3B1.1 Enhancement; and failing to request a “downward variance” due to his harsh pre-trial detention, did this violate his Sixth Amendment Rights of the U.S. Constitution ?

**Reasons To Justify Issuance Of COA As To Question Number Six:**

Petitioner Watkins, states that while he was represented by Attorney Haas and Attorney Tierney, thus, not less than three Extensions of Time to file PSI Objections were filed, see Doc. # 119. However, Mr. Watkins, asserts that although his ex-lawyer's were terminated as counsel of record Attorney Lewis failed to file PSR Objections and but he did file a Sentencing Memorandum on December 15, 2018, see Doc. # 57. Thus, consistent with the Federal Rules of Criminal Procedure-Rule 32 (i) (1) (B), required the parties to file any written Objections within 14 days, therefore, the failure to do so results in a **WAIVER** of the claim, see Fed. R. Crim. P. 32 (i) (3) (A); and United States v. Patterson, 595 F.3d 1324, 1326 (11<sup>th</sup> Cir. 2010) (defendant waived objection to PSR by not contesting facts contained in report).

The waiver of such claims constitutes 'deficient performance' in which satisfies the first prong of the **Strickland** test and prejudice is presumed in light of his ex-lawyer's waiver of the claims. See Mitchell v. Mason, 325 F.3d 732, 747 (6<sup>th</sup> Cir. 2003); and United States v. Cronic, 466 U.S. 648 (1984).

Moreover, the failure to request a "downward variance" due to his harsh pre-trial confinement was a meritorious mitigating factor in which there is a reasonable probability that his 300-month

federal sentence would have been lesser in which establishes actual prejudice in violation of his Sixth Amendment Rights of the U.S. Constitution. See *Glover v. United States*, 531 U.S. 198, 203 (2001).

The district court abused its discretion by failing to conduct a prompt Evidentiary Hearing as to his colorable Question Number Six, thus, a Certificate of Appealability should issue as such claim is debatable amongst jurists of reasons. Slack, 529 U.S. 473, 484 (2000).

**QUESTION NUMBER SEVEN:**

Whether the Sixth Circuit abused its discretion by affirming the district court's denial of failing to conduct an Evidentiary Hearing regarding Petitioner's appellate ineffective assistance of counsel claim and did this violate his Sixth Amendment Rights of the U.S. Constitution ?

**Reasons To Justify Issuance Of A COA As To Question Number Seven:**

Petitioner Watkins, states that the district court held that he "procedurally defaulted" his Fifth Amendment due process claim, thus, the Sixth Circuit affirmed the district court's decision as to Question Number Six, however, his appellate counsel should have presented such a colorable claim on his Direct Appeal as well as Question Number Two and Three under a Conflict of Interest and ineffective assistance of

counsel, thus, non-frivolous issues were in fact omitted in which had a reasonable probability to result in reversal on his Direct Appeal in which amounts to appellate ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution in the case herein. See *Delgado v. Lewis*, 223 F.3d 976, 980-82 (9<sup>th</sup> Cir. 2000); *Smith v. Robbins*, 528 U.S. 259, 285 (2000); and *Banks v. Reynolds*, 54 F.3d 1508, 1515-16 (10<sup>th</sup> Cir. 1995).

Petitioner Watkins, asserts that Question Number Seven is debatable amongst jurists of reason and a Certificate of Appealability should issue as to his colorable appellate ineffectiveness claim in violation of his Sixth Amendment Rights of the U.S. Constitution.

Slack, 529 U.S. 473, 484 (2000).

#### **QUESTION NUMBER EIGHT:**

Whether the Sixth Circuit abused its discretion by affirming the district court's denial of Mr. Watkins' Motion to Amend, thus, the U.S. Supreme Court should **VACATE** and **REMAND** as leave should be freely given constitute with Civil Procedure 15 (a) (2), and his due process of law rights ?

#### **Reasons To Justify Issuance Of A COA As To Question Number Eight:**

In mid-June of 2022, Petitioner Watkins filed a Motion In Relation Back To Original 2255 Petition to add into the 2255 Proceedings Record as to Ground Six- to expound as to the claim raised of how

his sentencing phase counsel failed to conduct legal research [and developments in the law], relevant examples of ineffectiveness in which arose out of the conduct, transaction, or occurrences set out in the Original 2255 Petition as to Ground Six in the case herein. To arise out of the same conduct, transaction, or occurrence, the claims must be ‘tied to common core of operative facts.’ *Mayle v. Felix*, 545 U.S. 644, 664 (2005). “The allegations of ineffective assistance of counsel must be of the same time and type as those in the original motion, such that they arise from the same core set of operative facts.” *Dodd v. United States*, 614 F.3d 512, 515 (8<sup>th</sup> Cir. 2010). See Phillip Watkins’ Motion In Relation Back To Original 2255 Petition, see Appendix E; and U.S. Magistrate Judge Merz Denial Opinion; and U.S. District Court Judge Dlott Denial Opinion, see Appendix F.

The district court held that the Motion In Relation Back To Original 2255 Petition was denied, however, abused its discretion as leave should be freely given, however, regarding the relation back to the new claim is tied to common core of operative facts and under U.S. Supreme Court precedents it should have been granted as such new claim is meritorious and would entitle Watkins to have his sentence VACATED in the matter herein. An abuse of discretion occurred by the district court denying Motion in Relation Back To Original 2255 Petition and a Certificate of Appealability should issue

as to Question Number Eight in the case herein. Slack, 529 U.S. 473, 484 (2000) (adequate to deserve encouragement to proceed further).

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Philip MatMoza

Date: 11/28/2023