

No. 23-6442

In The
SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

Pedro Hernandez Zarate,

Petitioner,

v.

The United States of America,

Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

Pedro Hernandez Zarate
Pro Se Appellant
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QUESTION PRESENTED

Wherther Due Process and the statutory right to appeal, requires the Court of Appeals to adequately explain the decisions made in a defendant's case in order to allow meaningful appellate review, whether through a request for an En Banc Hearing or Writ of Certiorari?

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Pedro Hernandez Zarate, indigent, was the criminal defendant in the district court, and an indigent defendant upon direct review. Petitioner was an unsuccessful appellant upon direct review.

Respondent United States of America was the plaintiff in the district court and the successful appellee in the court of appeals.

The solicitor General of the United States of America has been served along with respondent.

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No. _____

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

PEDRO HERNANDEZ ZARATE,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondents.

?PETITION FOR A WRIT OF CERTIORARI

Petitioner Pedro Hernandez Zarate respectfully prays that his Petition for a Writ of Certiorari be granted to review the judgment of the Fifth Circuit.

OPINIONS BELOW

The opinions of the Fifth Circuit Court of Appeals is included in the Appendix, which is attached.

JURISDICTION

Jurisdiction in the Court of Appeals was invoked pursuant to 28 U.S.C. 1291. The Fifth circuit Court of Appeals entered its judgment denying the Appellant's direct review on September 5, 2023. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth and Fourteenth Amendment's right to Due Process are implicated in this Petition.

STATEMENT OF THE CASE

It is well-established and settled law that courts of review must adequately explain the decisions made in a defendant's case in order to allow meaningful appellate review. Dillon v. United States, 560 U.S. 817, 828, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010). Just as the sentencing court must set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority, the appellate court must, also, satisfy the Supreme Court that it has considered the parties arguments and has a reasoned basis for exercising its own legal decisionmaking authority.

Criminal defendants have the statutory right to appeal the decisions made by the district court, and that statutory right extends to filing writs of certiorari with the Supreme Court.

When a court of appeals dismisses an appellant's case without specifically determining what the basis for the denial is, Petitioner is left with the appropriate means in which to obtain or seek any meaningful appellate review in this Court. This is the situation that Mr. Zarate finds himself in.

After being sentenced to a 30-year term of imprisonment in the district court, Mr. Zarate filed a timely notice of appeal to the Fifth Circuit Court of Appeals. His counsel, subsequently filed a brief pursuant to *Anders v. California*. In response, Mr. Zarate filed a merits brief challenging or alleging three (3) errors made by the district court. Errors which counsel did not address in his *Anders* Brief.

In dismissing Petitioner's appeal, the Fifth Circuit Court of Appeals issued a mandate and order which stated "We concur with counsel's assessment that the appeal presents no nonfrivolous issue for

appellate review. Accordingly, counsel's motion for leave to withdraw is GRANTED, counsel is excused from further responsibilities herein, and the appeal is DISMISSED." The Fifth Circuit Court of Appeals made this decision without addressing the three (3) claims of error presented by Mr. Zarate, without stating how his claims fail, and without adequately explaining it's decision to allow meaningful appellate review.

Mr. Zarate, first, Mr. Zarate argued that the district court committed reversible error in /it's drug quantity determination, where the drug quantity determined by the district court violated Mr. Zarate's right to due process.

Next, Mr. Zarate, argued that the district court erred in it's determination that he was subject to a two-level enhancement for possession of a dangerous weapon pursuant to USSG 2D1.1(b)(1).

And finally, Mr. Zarate argued that the district court erred in it's determination that he was subject to a three-level enhancement for a manager or supervisor role pursuant to USSG 3B1.1(b).

In presenting an Ander's brief to the Fifth Circuit Court of Appeals, counsel argued that there were nonfrivolous issues to be presented on appeal, without mentioning any of the arguments presented by Mr. Zarate. In dismissing Mr. Zarate's appeal, the Fifth Circuit dismissed his case without mentioning or determining any of the claims presented by Mr. Zarate. If this judgment is allowed to stand, not only Mr. Zarate, but thousands of appellants will be foreclosed from any meaningful appellate review in this Court, because it is impossible for one to appeal the denial of his case when the court fails to give specific reasons for the decision made.

What follows is a short statemtn of how Petitioner finds himself in his current position.

A. Original Proceedings

On March 23, 2021, Appellant was indicted by a Federal Grand Jury in a six count indictment for methamphetamine related offenses. Mr. Zarate was charged in Counts One and Two of the Indictment.

On October 19, 2021, after waiving indictment, Appellant was named in a one-count superseding information filed in the Northern District of Texas-Dallas Division. The Superceding Information charged him with Conspiracy to Possess with Intent to Distribut a Controlled Substance, specifically methamphetamine, in violation of 21 U.S.C. 846, 841(a)(1)& (b)(1)(B).

On November 30, 2021, Appellant pled guilty to the information before a United States Magistrate Judge. On December 15, 2021, the district court accepted the Report and Recommendation of the Magistrate Judge, adjudicating Mr. Zarate guilty.

On February 9, 2023, Mr. Zarate was sentenced to a 360-month term of imprisonment and four years of supervised release to be served after the prison term is completed.

Mr. Zarate filed a timely Notice of Appeal on February 17, 2023.

On May 3, 2023, counsel for Mr. Zarate filed a opening brief pursuant to Anders v. California.

In response, Mr. Zarate, timely, filed a Brief Responding to counsel's Ander's brief, wherein he claim three errors by the district court.

On September 5, 2023, the Fifth Circuit Court of Appeals issued an Order and Mandate, denying Mr. Zarate's appeal, without addressing any of the issues presented by Mr. Zarate.

REASONS FOR GRANTING THE PETITION

This Writ of Certiorari presents an extremely important question to this Court, that question is "Whether due process and the statutory right to appeal, requires the Court of Appeals to adequately explain the decisions made in a defendant's case in order to allow meaningful appellate review, whether through a request for an En Banc hearing or writ of certiorari?"

This very Court, the highest court of our land, has long-ago determined that "courts of review must adequately explain the decisions made in a defendant's case in order to allow meaningful appellate review." *Dillion v. United States*, 560 U.S. 817, 828, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010).

While the *Dillion* decision was based upon determinations made by a district court, Mr. Zarate takes the position that this court's decision in *Dillion*, also, applies to decisions made in the Circuit Courts of Appeals. Without any adequate or specific explanations of the decisions made in the Courts of Appeals, defendants are left without the ability to pursue their right for further appellate review.

In Mr. Zarate's case, while he is left with the firm conviction that the Fifth Circuit Court of Appeals was erroneous in dismissing his case, because that Court failed to address any of the three claims presented, Mr. Zarate is left with no ability to challenge the ruling of that court. The Fifth Circuit did not deny any of Mr. Zarate's claims because they lacked merit, or because determinations by this Court or the Fifth Circuit itself, rejects the claims. The Fifth Circuit Court of Appeals simply gave no reason for its denial of and dismissal of Mr. Zarate's claims.

When counsel files an Ander's Brief, and the appellant submits a response, arguing the issues of merit, federal law requires the Court of appeals to review the case de novo, consider each pro se claim presented, and to adequately explain the decisions made in regard to each of those claims. The Fifth Circuit failed to conduct the required review, and failed to make a record of it's reasons for it's decisions, thus leaving Mr. Zarate without the ability to challenge the decision made.

Counsel for Mr. Zarate filed an Ander's Brief, that is claiming that there were non-frivolous issues upon which to base an appeal. Yet, counsel's brief did not address any of the claims presented in Mr. Zarate's response brief. In dismissing Mr. Zarate's appeal, the Fifth Circuit stated that it agreed with counsel's assessment, but the Fifth Circuit, like counsel, failed to address any of the claims presented in Mr. Zarate's pro se brief. This Court must wonder, as Mr. Zarate does, whether or not the Court of Appeals consider or even read his pro se Response brief. Nothing in the record reflects or suggests that it did. The appellate court does not state that "after reviewing and considering, de novo, appellant's response brief, it concludes that the appeal presents no non-frivolous issues."

At the least, Mr. Zarate urges certiorari and a remand to the lower court for an on the record decision on the claims of his pro se Response Brief.

THIS ISSUE HAS NOT YET BEEN DECIDED BY THIS COURT

The question presented herein is of great importance to all litigants who would present claims of error to the Courts of appeals, and this question has yet to be decided by this Court.

Mr. Zarate has found no case where this Court has directly decided the question presented herein. While there are cases which specifically

require district courts to adequately explain the decisions made in order to provide fair and adequate appellate review, this Court has never considered whether this position applies to courts of appeal. For this reasons alone, this writ of certiorari should be granted.

Mr. Zarate's question to this Court is "Whether or not due process and the statutory right to appeal requires any Circuit Court of Appeals to adequately explain the decisions made in a defendant's case in order to allow meaningful appellate review, whether through a request for En Banc hearing or writ of certiorari?"

It is essential to due process, the fundamental rights of all defendants and to the interest of justice and fundamental fairness for this Court to grant certiorari and to decide this issue, a issue that is new or novel to this Court.

CONCLUSION

Mr. Zarate humbly moves the Supreme Court to grant his Petition for a Writ of Certiorari, to remand this case to the Fifth Circuit Court of Appeals, issuing an order requiring that Court to make a specific finding on the record as to its determinations of each of the claims presented on appeal.

Respectfully Submitted,

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