TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-H-A

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23-7196

No._____

FILED
MAR 14 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ADAM CARSON - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO:

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

# PETITION FOR WRIT OF CERTIORARI

ADAM CARSON 64595-060

USP LEWISBURG

PO BOX 1000

LEWISBURG, PA 17837

PETITIONER, PRO SE

TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-H-A

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FROM: 64595060
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SUBJECT: Questions presented
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QUESTIONS PRESENTED

I. If the court holds a hearing to put a PLEA PROPOSAL on the record, and the Government OFFERS a 3 point deduction for acceptance of responsibility if the defendant PLEADS guilty, which allows for a significantly lower sentencing range, is that considered a PLEA OFFER?

*THIS IS A QUESTION OF FIRST IMPRESSION FOR THE COURT

If the answer to that question is YES, you must decide:

Whether the panel's opinion which denied Carson's claim that his appointed counsel violated his Sixth amendment right by failing to accept the Government's plea proposal directly conflicts with the Supreme Court's opinion in Lafler v. Cooper, 566 U.S. 156, 132 S. Ct. 1376 (2012) and Missouri v. Frye, 566 U.S. 134, 132 S. Ct. 1399 (2012) because Carson provided evidence of his unequivocal desire to not proceed to trial and accept the offered plea?

II. Whether the panel was allowed to ignore violations of the Federal Rules of Evidence and Carson's constitutional rights, because they felt there was overwhelming evidence of his guilt, violates the precedents established in Strickland v. Washington, 466 U.S. 668, 687 (1984) and Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2039, 80 L. Ed. 2d 657 (1986)?

III. Whether the panels determination that Carson knowingly and voluntarily waived his right to testify violated his constitutional rights and directly conflicts with Supreme Court precedent established in Rock v. Arkansas, 483 U.S. 44, 49-52, 107 S. Ct. 2704 (1987) and Sixth Circuit precedent in Hodge v. Haeberlin, 579 F. 3d 627, 639 (6th Cir. 2009) and United States v. Webber, 208 F. 3d 545, 550-51 (6th Cir. 2000)?

IV. Whether the panel violated Carson's rights by not remanding the case for an evidentiary hearing after he proved that several factual disputes exist, which directly conflicts with the Supreme Court precedent established in Fontaine v. United States, 411 U.S. 213, 215, 93 S. Ct. 1461 (1973) and Sixth Circuit precedent established in Valentine v. United States, 488 F. 3d 325, 333 (6th Cir. 2007)?

V. If a petitioner loses his Direct Appeal, and another Circuit Judge issues 10 COA's regarding constitutional concerns relating to the petitioner's case, which relates back to and calls into question the reliability of the panels decision of his Direct Appeal, should the judge who wrote the opinion in the Direct Appeal, who claimed there were no constitutional concerns or errors, be allowed to sit on the panel that ultimately scrutinizes her own decision because it raises concerns of impartiality?

* THIS IS A QUESTION OF FIRST IMPRESSION FOR THE COURT

## LIST OF PARTIES

[X] 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

- Adam Carson v. United States of America, No. 1:17-cr-00008; 1:21-cv-01939, U.S. District Court for the Northern District of Ohio, Judgment entered March 22, 2022

Adam Carson v. United States of America, Nos. 22-3386/3419, U.S. Court of Appeals for the Sixth Circuit, Judgment entered January 19, 2023 (Order Granting CoA's)

Adam Carson v. United States of America, Nos. 22-3386/3419, U.S. Court of Appeals for the Sixth Circuit, Judgment entered December 13, 2023

TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-H-A

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TABLE OF AUTHORITIES

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

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[X] reported at 88 F. 4th 633 (6th Cir. 2023); 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 C to the petition and is

[X] reported at 2022 U.S. Dist. LEXIS 51392 (N.D. Ohio, 3-22-22) 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

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

The date on which the United States Court of Appeals decided my case was December 13, 2023

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: January 26, 2024, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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).

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SUBJECT: Statement of the case (1)
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STATEMENT OF THE CASE

I. CHARGES AND PRE-TRIAL MATTERS

On January 5, 2017, a grand jury returned an indictment charging the petitioner, Adam Carson, with bank robbery, in violation of 18 U.S.C. 2113(a) (R. 1: Indictment, pg id# 1) The District Court appointed Attorney Donald Butler as counsel. On May 3, 2017, a superseding indictment was filed, adding one count of witness tampering, in violation of 18 U.S.C. 1512 (b)(1) (R. 15: Superseding Indictment, pg id # 31-32)

On June 5, 2017, Carson filed a pro se motion with the District Court requesting new counsel be appointed. (R. 17: Motion for new counsel,pg id # 37-45). Carson claimed his attorney had failed to file motions on his behalf, failed to meet with him, and had failed to investigate his case. (R.17: Motion for new counsel, pg id # 37-45). The following day, the district court issued an order denying Carson's request for new counsel;the totality of the order stated, "Mr. Butler is an outstanding trial attorney, with over 40 years experience. If Defendant wishes new counsel, he can hire his own." (R. 18: Order, pg id # 46)

Two weeks after the court denied the Petitioner's motion, Carson sent Attorney Butler a letter asking him to withdraw as his assigned counsel because of their conflicts. Attorney Butler responded to Carson's request by filing a motion to determine competency on June 29, 2017. (R. 21: Motion, pg id # 50-51)

Carson was subsequently referred to the Bureau of Prisons (BOP) to undergo an evaluation and was sent to Federal Detention Center, Miami. The evaluation determined that Carson was competent to stand trial, and the psychiatric report assessed his knowledge of the legal system as being "very strong."

During the time the Petitioner was in Miami, the relationship between him and Attorney Butler deteriorated even more. When Carson returned to Cleveland, he reiterated to the District Court of the furthering extent of the conflict between him and Attorney Butler at a hearing held on December 27, 2017. (R. 137, Hear Trans, pg id # 1569-1575) Carson stated on the record, "I'm feeling I'm being prejudiced by my counsel because he hasn't done absolutely anything for me." ID at 1570. The Petitioner went on to say:

"I've got favorable evidence available that Mr. Butler has refused to get. He's failed to subpoena witnesses at my request that will discredit one of the Government's witnesses. He's failed to request funds for experts that will help prove my innocence and obtain funds for an investigator...he has not provided me with all Discovery items, and he has failed to respond to my letters, causing a total lack of communication." ID

The Petitioner also claimed that,"...I strongly believe Attorney Butler may be in the early stages of dementia or Alzheimer's Disease because of his failure to remember conversation between me and him, forgetting facts and details about the case. Illogical conversations that have occurred have led me to believe there is a memory problem." ID at 1571.

The Court responded to these serious allegations stating that the Petitioner can go ahead and hire whomever he wants. The petitioner responded that he does not have the funds to retain a lawyer. ID. The court was about to end the hearing, but Carson reiterated his concerns stating, "I need another Attorney. This is not working. I mean, if I have to defend myself, I don't want to, but it's just at least then I could file the appropriate motions at least, then I could subpoena people. It's just he's doing absolutely nothing for me Your Honor. Nothing. I can't do this." ID at 1574. Carson was being forced out of the Courtroom by U.S. Marshall's when the following exchange occurred:

The Court: Thank you. I get it. All right. We'll see you on January 30th
Defendant: Thank you. Can I go pro se then? I can't have Mr. Butler, I can't.
The Court: File something
Defendant: I do not want him to be my Attorney
Mr. Butler: File a motion
Defendant: I mean, Your Honor--
The Court: File something
Defendant: But I need an Attorney, but I don't need him because he hasn't done a thing
The Court: Then go hire your own
Defendant: I'm already a CJA Appointment, so obviously I don't have the financial resources
The Court: Then you have Mr. Butler or you go on your own
The Defendant: Mr. Butler isn't doing anything
The Court: All right - I've heard enough.
(R. 137: Hear Trans, pg id # 1574-75)

A week later, on January 3, 2018, Carson filed a pro se motion to dismiss Attorney Butler, reiterating the concerns expressed from the previous hearing. (R. 33: Motion to Dismiss Counsel, pg id # 93-95) The District Court denied the motion in a marginal entry order stating, "This motion has absolutely no merit." (R. 37: Order, pg id # 114)

The parties appeared for a status hearing before the District Court on February 15, 2018. (R. 139: Hear Trans, pg Id # 1582-96). At the hearing, AUSA Skutnik stated, "Your Honor, when the Court is ready, I believe on a previous date, the court ordered me to be prepared to discuss Mr. Carson's perspective Guidelines placement of the PLEA." (R. 139: Hear Trans, pg id # 1584) Ms. Skutnik continued, "If he pled guilty and received acceptance of responsibility with these, that same criminal history category, he would be at an advisory range of 151-188" (ID at 1586) If Carson went to trial, his Guideline range would be 210-262 months. The record of the hearing fully supports that a plea proposal did exist in this case. Is Carson pled guilty, he would have received points deducted for acceptance of responsibility and received a significantly lesser sentence.

On March 14, 2018, Carson filed a motion to proceed pro se. (R. 53: Motion, pg id # 165) In that motion, Carson details his conflicts with Attorney Butler, indicating that defense counsel had only visited with him twice in fourteen months. (R. 53:

Motion, pg id # 165) Carson explained that he had written to his attorney several times without any response. He detailed his concerns about Attorney Butler's ability to represent him at trial and requested a hearing on the motion. (R. 53: Motion, pg id # 166-67)

At the hearing conducted on April 3, 2018, the court did not conduct the proper inquiry to see if Carson wanted to proceed pro se. (R. 136: Hear. Trans, pg id # 1558-1564). When asked about self-representation, the petitioner responded that he did not have the resources at the County Jail to even attempt to make an adequate defense. He went on to say that he does know some things, but would want help in regards to the Rules of Evidence. He also stated that, "there's a lot of issues that's getting swept under the rug." (ID at 1560). The court then tried to quickly end the inquiry. Carson DID Not say he wanted Attorney Butler to continue to represent him. Furthermore, AUSA Skutnik stated,"we've talked about everything but the ultimate issue." ID at 1561. Ms. Skutnik acknowledged:

"On one hand, Carson says, well I want to represent myself because Mr. Butler is ineffective. That's the motion he filed. Then he filed his own motions pro se. Now we're here and he says, well you know, I want to represent myself, and I know some things, but I don't know other things...and yet he insists that he does know the law and that he wants to represent himself...we can't have a record like that. We can't have him saying Mr. Butler is too busy working on other cases to represent him, because what he's saying is, it's a backdoor way to build in a 2255...we need to inquire about this. We need to flush this out. We need to make sure the record is clear...It's not clear on the record." (R. 136: Hear. Trans, pg id # 1562-63)

Even after Ms. Skutnik stated her concerns, the court did not even attempt to determine if Carson wanted to make a knowing and voluntary waiver to the right of assistance of counsel or conduct a Faretta inquiry and ruled that Butler would continue in his representation of Carson.

Trial was scheduled for the following Monday - April 9, 2018 - however, over the weekend, Attorney Butler fell ill and was hospitalized. (R. 140: Hear Trans, pg id # 1599). Given the circumstances, the district court continued the trial. (R. 140: Hear Trans, pg id # 1599) Carson was present for the hearing, and stated he did not want Attorney Butler's health to get worse on his account, indicating that he would sign any waiver if the district court chose to appoint new counsel. (R. 140: Hear Trans, pg id # 1600) The District Court still refused to appoint Carson with another attorney.

Because Carson did not want to proceed to trial with Attorney Butler representing him, he wrote two letters to Attorney Butler, instructing counsel to arrange a guilty plea so he could receive the benefit of acceptance of responsibility. These letters, sent two months before trial began, dated April 9 and April 19, 2018, expressed an unequivocal desire to plead guilty. (R. 180-2: Letter, pg id # 1906-07; R. 180-4: Letter, pg id # 1910) The first letter states, "will plea guilty today! No

trial! (R. 180-2: Letter, pg id # 1906-07) The second letter states, "I do not want to go to trial. I want to get this case over with." (R. 180-4: Letter, pg id # 1910) Attorney Butler told Carson the plea proposal was off the table and he had to go to trial, but not to worry because this is a good trial case. (At sentencing, Carson referenced these letters and had them with him. [R. 131: Sent. Trans, pg id # 1519-20])

On May 7, 2018, Carson filed a pro se motion requesting Attorney Butler be removed as counsel due to his medical conditions. (R. 76: Motion to Dismiss Counsel, pg id # 305-08) Carson detailed he and Attorney Butler had met twice since Attorney Butler was in the hospital; Carson expressed reservations about Attorney Butler's health and competence to proceed as trial counsel. (R. 76: Motion to Dismiss Counsel, pg id # 305-06). The District Court denied Carson's motion in a marginal entry order. (R. 81: Order, pg id # 333) On May 31, 2018, a pretrial was held; while Attorney Butler and government counsel were present, Carson was not present, and no court reporter was present. (R. 82: Minutes, pg id # 334). The minutes from the conference indicate that trial was to proceed on June 4, 2018. (R. 82: Minutes, pg id # 334).

II. RELEVANT TRIAL TESTIMONY

The Jury trial commenced on June 4, 2018, and concluded on June 11, 2018, resulting in a guilty verdict on both counts. (R. 90: Judgment, pg id # 344-45). In total, the government called 23 witnesses and the defense called two witnesses. (R. 90: Judgment, pg id # 344-45).

In the government's opening statement, an overview was given of the November 21, 2016, bank robbery of the Chemical Bank in Amherst, Ohio and the subsequent investigation. (R. 99: Trial Trans, pg id # 500-10). The Government explained the robber was captured on surveillance video, detailing the robber's clothes. The robber was also wearing a disguise, including a fake mustache, fake beard, glasses, and cap. (R. 99: Trial Trans, pg id # 500). The government claimed witnesses had identified Carson from a photo taken from surveillance video. The government specifically identified "Officer Warchol" as a witness who saw this photo and claimed Carson was in the photo. (R. 99: Trial Trans, pg id # 502). The government stated the day following the robbery, Carson stole a car from a gas station, and was arrested in that car hours later. (R. 99: Trial Trans, pg id # 507).

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When Attorney Butler gave his opening statement, one of the first things he told the jury was that Carson did steal a car from a gas station. (R. 99: Trial Trans, pg id # 510-11). Immediately thereafter, Attorney Butler told the jury that Carson was "going on various drug binges" with Karin Deeb; he then told the jury Deeb was the true bank robber in this case, not Carson. (R. 99: Trial Trans, pg id # 511)

The government called Carson's parole officer, Ronald Warchol, as a witness. (R. 100: Trial Trans, pg id # 758). Allowing a parole officer to testify violates several of the Federal Rules of Evidence, and Attorney Butler did not try to get this testimony excluded. Warchol told the jury he was employed by a "governmental agency...a state agency" and as a result of his employment, he had "the occasion to meet and deal with" Carson. (R. 100: Trial Trans,pg id # 758-59). He explained he met with Carson five or six times at Warchol's office. (R. 100: Trial Trans, pg id # 759). Warchol was contacted by police officer's following the November 21, 2016 bank robbery, which led Warchol to a newspaper article about the bank robbery. The article contained a photograph from the robbery, and Warchol testified that Carson was depicted in that photograph. (R. 100: Trial Trans, pg id # 761-62) Warchol testified that when he first saw the photo, he told an Amherst detective that Carson was the man in the photo. (R. 100: Trial Trans,pg id # 763) Warchol testified that he also spoke with Carson's mother but did not discuss the bank robbery because it involved an "ongoing investigation and it's not proper or appropriate to share information with an open investigation." (R. 100: Trial Trans, pg id # 764) Attorney Butler made two objections to Warchol's testimony when he attempted to testify to conversations with Carson's mother but was otherwise silent. (R. 100: Trial Trans, pg id # 761, 763) Attorney Butler asked no questions on cross examination. (R. 100: Trial Trans, pg id # 765)

On November 25, 2016, after Carson was arrested for stealing a car, Officer Richard Ginley processed him at the jail, by taking his fingerprints and taking booking photos. (R. 101. Trial Trans, pg id # 834-36). On cross-examination, in response to Attorney Butler's questions, Officer Ginley stated he contacted Carson's "parole officer because he was on parole" and his parole officer advised that Carson was a suspect. (R. 101: Trial Trans, pg id # 845) Following Ginley's testimony, the government asked the court to inquire whether Attorney Butler wanted to give the jury a curative instruction because of the testimony about Carson's parole officer. Attorney Butler made no response and no curative instruction was given. (R. 101: Trial Trans, pg id # 848).

Co-defendant Karin Deeb also testified. She had already pled guilty to her role in the November 2016 robbery of the Chemical Bank and was receiving a huge sentence reduction for testifying. (R. 102: Trial Trans, pg id # 1016-1019). She was addicted to crack, was heavily using crack in the days before the Chemical Bank robbery and had used drugs with

Carson in a motel for days before the bank robbery occurred. (R. 102: Trial Trans, pg id # 1027-29). She detailed how they planned the bank robbery, including the purchase of disguises and clothing. (R. 102: Trial Trans,pg id # 1034-49) She claims that she sat in the car while Carson robbed the bank. (R. 102: Trial Trans, pg id # 1053).

Days after the robbery, and after Carson had been arrested, Deeb met with FBI agents. (R. 102: Trial Trans, pg id # 1078). She told the agents she was not involved in the robbery and repeated this statement to the grand jury. She told the jury she lied, both to the agents and under oath at the grand jury. (R. 102: Trial Trans, pg id # 1080-82). After testifying before the grand jury, in January of 2017, Deeb committed another bank robbery on her own. She presented a note claiming a bomb was strapped to her. The note said she had been kidnapped by Carson's friends and forced to rob the bank, neither of which was true. (R. 102: Trial Trans, pg id # 1083-1086). Hours later, she was arrested, and again lied to the FBI. (R.102: Trial Trans, pg id # 1087)

The Defense then called two witnesses: Carson's mother followed by his mother's boyfriend. (R. 102: Trial Trans, pg id # 1254-1307). When the government cross examined Carson's mother, the government asked whether she was aware that "the furnace that your son tried to return to Webb Heating and Cooling had actually been taken out of the back of the van where Tim King's dead heroin overdosed body lay?" (R. 102: Trial Trans, pg id # 1254-1307). Carson, not his counsel, objected to this question, stating "that's not true." (R. 102: Trial Trans, pg id # 1275)

After the second defense witness, Attorney Butler stated he had no other witnesses, and the district court indicated they would be adjourning for the day. (R. 102: Trial Trans, pg id # 1308). Attorney Butler stated, "Judge, he (Mr. Carson) says he wants to testify, and I think he better think about it." (R. 102: Trial Trans, pg id # 1309.) The district court responded, "he can. That's your right, of course. So maybe we'll hear from Mr. Carson on Monday morning." (R. 102: Trial Trans,pg id # 1309).

When court resumed on Monday, outside the presence of the jury, Attorney Butler stated, "my client has informed me he does not want to testify, but he wants to do closing arguments. So if the court allows it, I have no objection to it." (R. 103: Trial Trans, pg id # 1323). Following the government's objection, the district court ordered Attorney Butler to do the closing argument. (R. 103: Trial Trans, pg id # 1323) The district court then asked if there was any additional testimony, and Attorney Butler responded no. (R. 103: Trial Trans, pg id # 1323). Attorney Butler then renewed his Rule 29 motion, to which the district court overruled. (R. 103: Trial Trans, pg id # 1324.) Carson then spoke up, stating "one issue, your honor," to which the district court responded, "talk to your lawyer," and then proceeded to immediately charging the jury. (R. 103: Trial trans, pg id # 1324)

In closing argument, the government summarized the testimony of Ronald Warchol, again referring to him as "Officer

Warchol." (R. 103: Trial Trans, pg id # 1355-56). In closing, Attorney Butler discussed the testimony of Karin Deeb, and the lies she told to others during the investigation. (R. 103: Trial Trans,pg id # 1371-72). Attorney Butler then referenced Carson's booking photos, concluding these photo's depicted Carson as being "just over five feet tall." (R. 103: Trial Trans, pg id # 1373) Attorney Butler contrasted this fact against the bank teller's testimony that the robber was "at least 5'6, 5'7." (R. 103: Trial Trans, pg id # 1374). In rebuttal, the government seized on Attorney Butler's claim, showing the jury Carson's driver's license, which listed his height at 5'6. (R. 103: Trial Trans, pg id # 1400).

The jury returned a verdict of guilty on both counts. (R. 103: Trial Trans, pg id # 1417).

III. SENTENCING

The presentence report set the adjusted offense level at 24, but in applying the career offender enhancement, recommended an increase to total offense level 32. (R. 104: Presentence Report, pg id # 1429). The presentence report claimed Carson had two prior robbery convictions, each of which constituted a crime of violence, setting the sentencing guideline range at 210 to 262 months. (R. 104: Presentence Report, pg id # 1445)

On September 17, 2018, the sentencing hearing took place. (R. 131: Sent. Trans, pg id # 1507-45). Carson objected to the application of the career offender guideline, claiming the Sixth Circuit's holding in United States v. Yates, 866 F. 3d 723 (6th Cir. 2017), prevented his robbery conviction from qualifying as a crime of violence. (R. 131: Sent. Trans, pg id # 1508 -11). The district court overruled the objection, finding Yates concerned a different section of Ohio's robbery statute. (R. 131: Sent. Trans, pg id # 1511). The district court found Carson's guidelines range to be 210 to 262 months. (R. 131: Sent. Trans, pg id # 1516).

When Carson addressed the district court, he detailed his issues with Attorney Butler's representation throughout the case. (R. 131: Sent. Trans, pg id # 1519). Carson explained how he sent Attorney Butler two letters instructing him to resolve the case by arranging for him to plead guilty and had copies of the letters with him. (R. 131: Sent. trans, pg id # 1519-20) Carson stated Attorney Butler told him the government's plea proposal "was off the table" and that they had good chances at trial. R.131: Sent. Trans, pg id # 1520). He stated that Attorney Butler failed to disclose important information about the government's evidence, and further failed to have Carson present for important hearings. (R. 131: Sent. Trans, pg id # 1519). Carson detailed he suffered from mental health issues resulting from being molested by his father at a young age, and his use of drugs was his way of coping with these issues. (R. 131: Sent trans, pg id # 1524). He explained his struggles with drug addiction his entire adult life, and his thoughts of suicide. (R. 131: Sent. Trans, pg id # 1524-26).

Attorney Butler asked to be heard, stating Carson "never wanted to plead," he "never discussed a plea with me," and his claims about wanting to plea was "misleading to this Court." (even though Carson presented evidence of his desire to resolve this case in lieu of trial) (R. 131: Sent. Trans, pg id # 1532-33). The District court stated, "no one ever stopped you

from pleading guilty if you wanted to do that." (R. 131: Sent. Trans, pg id # 1533-34). Carson responded, referencing the letters he sent Attorney Butler and stated, "I didn't want to go to trial with him. So I said take the deal. (the government's plea proposal)." (R. 131: Sent. Trans, pg id # 1534. The district court imposed a sentence of 240 months. (R. 131: Sent. Trans, pg id # 1542). A timely notice of appeal was filed. (R. 109: Notice of Appeal, pg id # 1473).

IV. DIRECT APPEAL

The direct appeal proceedings are set forth in Sixth Circuit Case No. 18-3919. Carson retained new counsel for the appeal and raised ten issues. United States v. Carson, Case No. 18-3919, Appellant's Brief, Doc. 63. Some of the issues included: Attorney Butler provided ineffective assistance of counsel, Id. at 18-20; the district court erred in denying Carson's motions for substitute counsel, Id at 21-26; the district court erred in not allowing Carson to represent himself, Id at 26-29; the district court erred in not permitting Carson to be present at material stages of the trial, Id at 29-31, and multiple violations of the Federal Rules of Evidence for allowing Carson's parole officer to testify, Id at 32-35.

On November 26, 2019, Judge Joan Larsen wrote the opinion that Affirmed Carson's conviction and sentence. United States v. Carson, 796 F. App'x 238 (6th Cir. 2019). She claimed that no constitutional violations or errors occurred during Carson's legal proceedings. Regarding the claims of ineffective assistance of counsel, the Court held the alleged ineffectiveness of Carson's trial counsel is not apparent from the record, the claim was not properly developed on direct appeal, and would better be raised in a post-conviction proceeding. Carson, 796 F. App'x at 242.

Carson filed a pro se petition for en banc review, which was denied. United States v. Carson, Case No. 18-3919, Doc 89,90. Carson also filed a petition for writ of certiorari to the United States Supreme Court, which was denied. United States v. Carson, Case No. 18-3919, Doc, 94,95; Carson v. United States, Sup Ct. Case No. 19-8172 (May 4, 2020).

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SUBJECT: Statement of the case (3)
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V. POST-CONVICTION PROCEEDINGS UNDER 28 U.S.C. 2255

In preparation for his post-conviction petition, Carson filed a motion with the district court, requesting Attorney Butler turn over his case file to Carson. (R. 150: Motion to Compel, pg id # 1645-52). Attorney Butler indicated in response that he provide Carson with the entire file. (R. 151: Response, pg id # 1653). Carson filed a Supplemental Motion to Compel Attorney Butler to turn over his entire case file requesting specific documents that were missing from his case file and his request was denied. (R. 152: Supp. Motion, pg id # 1654-60; R. 153: Order, pg id # 1661).

Carson appealed the denial of his motion to compel (R. 154: Notice of Appeal, pg id # 1662-65). Judge Larsen was assigned to the panel and denied Carson's appeal to obtain his case file. United States v. Carson, 2021 U.S. App. Lexis, 27036 (6th Cir. 2021).

Judge Larsen also denied Carson's Recall Mandate even after he proved he was no longer subject to the career offender enhancement and was entitled to be resentenced based upon the new precedential decision decided by the Sixth Circuit in United States v. Butts, 40 F. 4th 766, 773 (6th Cir. 2022) which held that second degree robbery in Ohio was no longer a crime of violence under the elements clause of 4B1.2(a) of the Guidelines. United States v. Carson, Case No 18-3919.

On October 12, 2021, Carson filed a motion to vacate his conviction and sentence pursuant to 28 U.S.C. 2255. (R. 167: Motion to Vacate, pg id # 1714-81) Carson's petition contained three grounds for relief: 1) ineffective assistance of counsel; 2) he was denied the right to testify at trial; and 3) the special conditions of supervised release were unconstitutional. (R. 167-1: Motion to Vacate, pg id # 1726-55). As to the ineffective assistance of counsel claim, there were eleven subparts to this claim related to Attorney Butler's deficient performance.

While the post-conviction petition was pending, Carson filed two motions for an evidentiary hearing, pursuant to Rule 8 of the Rules Governing 28 U.S.C. 2255 Proceedings. (R. 171: Motion, pg id # 1794-98; R. 181: Motion, pg id # 1917-20).

Also, during the pendency of the post-conviction petition, on May 20, 2021, the government filed a motion with the district court seeking garnishment of funds in Carson's prison account to be paid toward his restitution obligations. (R. 160: Motion, pg id # 1688-93.). The following day, the district court granted the government's motion, and ordered the funds in Carson's account be garnished. (R. 161: Order, pg id # 1696-97). Carson appealed, and filed his own pro se Appellate brief. The Sixth Circuit vacated the District Court's order, as the order contained no findings of fact and cited no Authorities. (R. 193: Opinion Vacating and Remanding, pg id # 1980-88; United States v. Carson, Sixth Circuit Case No. 21-3518 (December 19, 2022). Judge Larsen was not on that panel.

On March 22, 2022, the District Court denied Carson's motion to vacate without holding an evidentiary hearing (R. 183: Order, pg id # 1927-43). Nineteen days after the District Court issued its order denying his 2255 petition, Carson filed a Motion to Alter or Amend the Judgment pursuant to Fed. R. Civ. P. 59(e) (R. 185: Motion, pg id # 1945-64). Three days later, the District Court denied the motion stating, "A motion to alter or amend judgment under Fed R. Civ. P. 59(e) is intended for the initial judgment in a matter, and is not a method of post-conviction relief. Additionally, it must have been filed no later than 28 days after the entry of the judgment." (R. 186: Order, pg id # 1965).

Carson filed a Notice of Appeal as to the denial of his Rule 59(e) motion (R. 187: NOA, pg id # 1966-68) and for the denial of his 2255 petition (R. 188: NOA, pg id # 1969) Carson then filed a motion for a certificate of appealability in the Sixth Circuit (Case No. 22-3386/3419).

On January 18, 2023, Carson was granted the largest certificate of appealability grant in the history of the Sixth Circuit with 10 COA's granted. See: Carson v. United States, 2023 U.S. App. Lexis 1239 (6th Cir. 2023). The court granted the following COA's regarding:

1. Ineffective Assistance of Counsel, with the following subparts:
   A. Counsel's failure to accept a plea offer
   B. Counsel's failure to object to parole officer's testimony
   C. Counsel's failure to object to the prosecutor's improper comments
   D. Counsel's opening and closing statement
   E. Ineffective Assistance of Appellate Counsel
2. Denial of right to testify
3. Denial of Motion under Fed. R. Civ.P. 59(e)
4. Denial of an evidentiary hearing, supplemental discovery, and expanded record

On December 13, 2023, a panel from the Sixth Circuit that contained the judge who wrote Carson's opinion denying his Direct Appeal, denied all ten issues that Carson was granted COA's on and declined to remand his case back to the District Court for an evidentiary hearing despite the existence of several factual disputes. Carson v. United States, 88 F. 4th 633 (6th Cir. 2023)

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FROM: 64595060
TO:
SUBJECT: Certiorari (1)
DATE: 04/01/2024 07:20:49 AM

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No._____

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IN THE
SUPREME COURT OF THE UNITED STATES

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ADAM CARSON - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

Now comes the Petitioner, Adam Carson, pro se, who respectfully submits this petition for a writ of certiorari for this honorable courts consideration. The opinion issued by the Sixth Circuit Court of Appeals in Case No. 22-3386/3419 on December 13, 2023 was in error and directly conflicts with Supreme Court precedent in numerous cases and totally ignores the constitutional concerns raised by another circuit judge from the Sixth Circuit regarding Carson's case. In this petition, Carson presents significant issues of constitutional importance and first impression in this court, that affects other similarly situated defendants nationwide, that needs to be addressed by the Justices of this honorable court. Petitioner Carson is seeking that this Petition for writ of certiorari be GRANTED and the opinion issued in Sixth Circuit Case No. 22-3386/3419 either be reversed or vacated based upon the following:

I. CASE BACKGROUND

In 2018, a jury found Adam Carson guilty of bank robbery, in violation of 18 U.S.C. 2113(a), and witness tampering, in violation of 18 U.S.C. 1512(b)(1). He was sentenced to 240 months in prison, to be followed by three years of supervised release. (R. 131: Sent. Trans, pg id # 1542) The Sixth Circuit Affirmed Carson's conviction on November 26, 2019, See: United States v. Carson, 796 F. App'x 238 (6th Cir. 2019) and the United States Supreme Court denied certiorari on May 4, 2020. (Sup. Ct. Case No. 19-8172)

On October 12, 2021, Carson filed a motion to vacate his conviction and sentence pursuant to 28 U.S.C. 2255 (R. 167:Motion to Vacate, pg id # 1714-81). Carson's petition claimed three grounds for relief: (1.) Ineffective assistance of counsel with eleven subparts to this claim related to Attorney Donald Butler's deficient performance; (2.) He was denied his

right to testify at trial; and (3.) the special conditions of his supervised release were unconstitutional.

On March 22, 2022, the District Court denied Carson's motion to vacate without holding an evidentiary hearing. (R. 183: Order, pg id # 1927-43). Carson filed a notice of appeal as to the denial of his 2255 petition (R. 188:NOA, pg id # 1969) and he filed a motion for a certificate of appealability (COA) in the Sixth Circuit (Case No. 22-3386).

On January 18, 2023, Carson was granted the largest Certificate of Appealability Grant in the history of the Sixth Circuit with 10 COA's granted. See: Carson v. United States, 2023 U.S. App. LEXIS 1239 (6th Cir. 2023). The Court granted the following COA's regarding:

1. Carson's claims that trial counsel was ineffective for failing to accept a plea agreement on his behalf
2. Counsel failing to object to testimony by Carson's parole officer
3. Counsel failing to object to the Government's improper comments
4. Counsel inadequately presenting opening and closing arguments
5. Ineffective assistance of appellate counsel relating to the ineffective assistance of trial counsel claim
6. Carson's claim that he was denied his right to testify at trial
7. Whether the District Court erred in denying Carson's Rule 59(e) motion
8. Whether the District Court erred in denying Carson's motion for an evidentiary hearing
9. Whether the District Court erred in denying Carson's motion for supplemental discovery
10. Whether the District Court erred in denying Carson's motion for an expanded record

Carson's case was an absolute constitutional abomination. In the order granting Carson's COA's the court provided specific examples of exactly how Carson's constitutional rights were violated. In regards to the failure to accept the Government's plea offer, the court stated,"the record shows the Government had extended some type of plea proposal, and Carson pointed to evidence (e.g. letters to Butler and the sentencing transcript) he wanted to accept it and had communicated that to Butler." (R. 197: COA Order, pg id # 1994-95)

Regarding the failure to object to the parole officer's testimony, the court stated, "Warchol's [Carson's parole officer] testimony presented substantial risks of unfair prejudice. See Fed. R. Evid. 403(a). The record also indicates that there may be concerns about whether this testimony implicated Fed. R. Evid. 404(b) and 609 that renders Butler's failure to object ineffective." (R. 197: COA Order, pg id # 1998)

On the issue of the failure to object to the prosecutor's improper comments about Carson's friends "dead heroin overdosed body," this court stated that "the failure to object to the prosecutor's statement or move for a mistrial was so prejudicial that it could not have been a tactical strategy but deficient performance." (R. 197: COA Order, pg id # 1999-2000)

Regarding Carson's right to testify at trial, the court stated, "a reasonable jurist could find that Carson did alert the District Court to his desire to testify at trial" (R. 197: COA Order, pg id # 2005) and explained how the District Court erred by denying Carson an evidentiary hearing. (R. 197: COA Order, pg id # 2007)

On December 13, 2023, a panel from the Sixth Circuit denied all ten issues that Carson was granted a COA on and declined to remand his case back to the District Court for an evidentiary hearing despite the existence of several factual disputes. In denying Carson's appeal, the panel stated "Carson's ineffective assistance claims fail on prejudice grounds. Even if a dispute of fact exists over whether he asked counsel to look into a plea deal, only speculation supports his claim that the parties would have reached a deal but for counsel's inaction. The overwhelming evidence of his guilt also shows that counsel's conduct at trial did not affect the verdict. Lastly, Carson did not object to his counsel's statement that he did not want to testify. So our cases require us to presume that he knowingly waived this right. And while Carson now asserts that counsel misrepresented his wishes, he cannot rebut our presumption with this after the fact allegation." (Carson v. United States, No. 22-3386, p. 1-2)

How can one judge recognize such blatant constitutional violations but other judges not see ANY constitutional concerns? Less than 3% of Appellants get one COA issue granted. Carson had an unprecedented 10 COA issues granted and the panel assigned to his case claim there was not one thing wrong or any dispute of facts existed that warranted an evidentiary hearing despite the specific concerns raised by another Circuit judge. Reasonable jurists should easily conclude that something is terribly wrong with the panels assessment and that Carson is being prejudiced and treated very unfairly.

Carson feels this prejudice being displayed towards him is from Circuit Judge Joan Larsen. Judge Larsen was the Circuit Judge that wrote the opinion that denied Carson's Direct Appeal and Affirmed his sentence even after Carson proved that several of his constitutional rights were violated in his appellate brief. See: United States v. Carson, 796 F. App'x 238 (6th Cir. 2019).

Judge Larsen was also assigned to the panel that denied Carson's appeal to obtain his case file from his attorney so he could gather more evidence for his ineffective assistance of counsel claims for his 28 U.S.C 2255 petition. See: United States v. Carson, 2021 U.S. App. LEXIS 27036 (6th Cir. 2020)

Judge Larsen also denied Carson's Recall Mandate even after he proved that he was no longer subject to the career offender enhancement and was entitled to be resentenced based upon the new precedential decision decided by the Sixth Circuit in United States v. Butts, 40 F. 4th 766, 773 (6th Cir. 2022) which held that second degree robbery in Ohio was no longer a crime of violence under the elements clause of 4B1.2(a) of the Guidelines.

Then, Judge Larsen was somehow "randomly" placed on the panel which determined that none of the ten COA issues that were granted to Carson had ANY merit. There are over 20 judges in the Sixth Circuit. Panels are suppose to be randomly

selected. The odds of the same judge appearing on 4 different panels is astronomical. If you put all the judges names in a hat, and draw 4 panels, it is phenomenally unlikely that the same judge would be on all 4 panels. Try it. While mathematically possible, the odds would be infinitesimal.

It is the Petitioner's belief that Judge Larsen is interfering with the panel selection process and requested to be placed on Carson's panel for his 2255 Appeal to protect her erroneous and unconstitutional decision in Carson's Direct Appeal. Another Circuit Judge had the courage and integrity to do the right thing and raised several concerns of constitutional importance regarding Carson's trial that was overlooked or ignored by Judge Larsen on his Direct Appeal. If a panel ruled in Carson's favor on his 2255 appeal, it would have exposed Judge Larsen for disregarding Carson's constitutional rights and ignoring all the errors that occurred in Carson's case. No Judge wants to have their opinion questioned and Judge Larsen is no exception to this. One has to wonder how she becomes an integral part of the decision making process in all of Carson's cases.

If this court were to research all of Judge Larsen's decisions, you would see that she has only ruled in favor of a Federal criminal defendant in less than 1% of cases assigned to her. According to the BOP Lexis Nexis database, Judge Larsen has been assigned to 2432 cases. Of those 2432 cases, she has only vacated the sentence of a Federal defendant 6 times (because the predicate offense was no longer a crime of violence) and only reversed and remanded 2 cases. There were 4 cases in which defendants either won a suppression motion or had their charges dismissed in the District Court and, when the Government appealed, she reversed and remanded the relief granted to the defendants. There have been 189 applications for a COA before her and she only granted 1.

The statistics don't lie. Judge Larsen has been notorious for rubber stamping the Government's position in appellate briefs. That is not ok. A federal judge, especially a federal appellate judge, has a duty to ensure that the constitution is being upheld and that individuals are being afforded all of their constitutional protections, receive due process of law, and make sure that they were treated fairly throughout their judicial proceedings. Carson is not trying to sound like some crazy conspiracy theorist nutjob who thinks that everyone is out to get him, but for a judge who seems to be biased against Carson to keep appearing on his appeal panels seems suspicious.

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FROM: 64595060
TO:
SUBJECT: Certiorari (2)
DATE: 04/01/2024 07:25:00 AM

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Carson can not afford an elite, high priced, well connected attorney that can get his case noticed. Instead, since the day of his arrest, he has dedicated himself to studying law and has fought hard to get the higher courts to acknowledge that his constitutional rights were violated in order to get his conviction vacated. It has been a long uphill battle with lots of bumps in the road, but Carson continues to persevere and fight through all the obstacles thrown at him.

After Carson obtained the largest COA grant in the history of the Sixth Circuit, he thought this nightmare would finally be over and he could be reunited with his family again. When the panel denied all 10 of Carson's issues, he was devastated. He has not told is mom or grandma about the denial in fear that the news would literally kill them. They are both in bad health and Carson feels the hope that he might be coming home soon is keeping them alive. This is practically Carson's last shot at freedom.

The law and the facts are on Carson's side. He presented an airtight case of ineffective assistance of counsel and how his constitutional rights were violated. Carson's case deals with significant issues of constitutional importance and deserves the attention of the Supreme Court. In this petition, there is a national importance in deciding Carson's issues because he presents issues of first impression and importance beyond the particular facts and parties involved and the decision affects other similarly situated defendants. Carson asks that his case be looked at objectively and decided fairly. Carson presents the following for this Honorable Courts consideration:

II. ISSUES PRESENTED FOR CONSIDERATION

A. If the Court holds a hearing to put a plea proposal on the record, and the Government OFFERS a 3 point deduction for acceptance of responsibility if the defendant PLEADS guilty, which allows for a significantly lower sentencing range, is that considered a PLEA OFFER?

The answer to that question is YES! When a court holds a hearing for the specific purpose of having the Government put a PLEA PROPOSAL on the record, the offered proposal is a PLEA OFFER and the hearing held was a PLEA HEARING. "A defendant has a right to effective assistance of counsel which includes accepting a plea on terms and conditions that may be favorable." Missouri v. Frye, 566 U.S. 134, 132 S. Ct. 1399, 182 L. Ed. 2d 379 (2012)

There seems to be some serious confusion in the Sixth Circuit Court of Appeals in regards to this important issue of constitutional significance. One Circuit Judge emphatically states that "the record shows the Government had extended [Carson] some type of plea proposal and Carson pointed to evidence...he wanted to accept it and had communicated that to [his attorney]" (R. 197: COA Order, pg id # 1994-95) Yet another panel ruled that "the prosecution never made a plea offer"

to Carson or his attorney." (Carson v. United States, Case No. 22-3386, p.9) The underlying facts regarding this issue severely forecloses the panel's erroneous position on this matter. A plea proposal was put on the record in this case.

At a hearing held on February 15, 2018, AUSA Skutnik stated, "Your Honor, when the Court is ready, I believe on a previous date, the court ordered me to be prepared to discuss Mr. Carson's perspective Guidelines placement of the PLEA." (R. 139: Hear. Trans. pg id # 1584) Ms. Skutnik continued,"If he pled guilty and received acceptance of responsibility with these, that same criminal history category, he would be at an advisory range of 151-188." (ID at 1586)

A plea did exist in this case. If Carson pled guilty, he would have received points deducted for acceptance of responsibility and received a significantly lesser sentence. This is fully supported by the record of the hearing. (R. 139: Hear. Trans.) Having heard the benefit in sentencing by pleading guilty, Mr. Carson wrote two letters to Attorney Butler, instructing counsel to arrange a guilty plea so he could receive the benefit of acceptance of responsibility. These letters, sent two months before trial began, dated April 9 and April 19, 2018, expressed an unequivocal desire to plead guilty. (R. 180-2: Letter, pg id # 1906-07; R. 180-4: Letter, pg id # 1910) The first letter states, "will plea guilty today! No trial! (R. 180-2: Letter, pg id# 1906-07) The second letter states,"I do not want to go to trial. I want to get this case over with." (R. 180-4: Letter, pg id # 1910) At sentencing, Carson referenced these letters and had the letters with him. (R. 131: Sent. Trans. pg id # 1519-20)

The Supreme Court's decision in Lafler v. Cooper, 566 U.S. 156, 162-64 (2012) made clear that defendant's must show a "reasonable probability that they would have accepted a plea that would have resulted in a less severe sentence." If the court were to analyze Carson's statements, he made it abundantly and unequivocally clear to Attorney Butler that (1.) He was willing to plead out (2.) He wanted to get this case over with (3.) He did not want to proceed to trial (4.) He did not want to risk going to prison for 20 years. Carson's preference was to hopefully plead to just witness tampering so he could be eligible to participate in the Residential Drug Abuse Program (RDAP) (A bank robbery conviction is considered a crime of violence and would make Carson ineligible to participate in the RDAP program.) However, Carson also stated he would plead to an offense level 29. An offense level 29 can only include the bank robbery charge. CARSON NEVER STATED HE WOULD NOT ACCEPT A PLEA THAT INCLUDED THE BANK ROBBERY CHARGE. He did state in both letters that he wanted to get this

case over with. A plea was offered by the government at the February 15, 2018 hearing that would have provided Carson with a 3 point deduction for acceptance of responsibility, which would have enable Carson to receive a significantly lesser sentence. Butler rendered ineffective assistance of counsel when he never contacted the government and arranged for Carson to plea guilty after Carson expressed his desire to plead guilty.

TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-H-A

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FROM: 64595060
TO:
SUBJECT: #2
DATE: 03/31/2024 06:13:10 PM

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The panel affirming the denial of Carson's 2255 erroneously states in their opinion that, "The prosecution never made any plea offer to Carson or his Attorney so he can not prove prejudice" and that in order to obtain relief under Lafler and Frye, the prosecution must make a "formal plea offer" and that counsel deficiently precluded their clients from accepting it. (Carson v. United States, Case No. 22-3386, opinion p. 8-9) The panel's assessment is completely wrong.

First, nowhere in Frye did it state that a defendant could obtain relief ONLY if a lawyer deficiently precluded their clients from accepting the prosecutions "formal plea offer." Frye specifically stated, "In the context of pleas a defendant must show the outcome of the plea process would have been different with competent advice." See: Frye, ante, at 148, 132 S. Ct. 1399, 182 L. Ed. 23 379. See also: Hill v. Lockhart, 474 U.S. 52, 106 S. Ct. 366, 88 L. Ed. 2d 203 (1985) ("The...prejudice requirement...focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.")

The plea hearing held on February 15, 2018, was part of the plea process in this case. The court ordered the AUSA to put a plea proposal on the record so Carson can become aware that a guilty plea will earn him a significantly lower sentencing range. At the plea hearing, the Government offered Carson a 3 point deduction for acceptance of responsibility which lowered his sentencing range by 70 months. In order to receive this benefit, all he had to do was plead guilty. A formal plea offer was not required. The record belies the panel's claim that "the prosecution never made any plea offer to Carson or his attorney." If the court holds a hearing, and the government OFFERS a 3 point deduction for acceptance of responsibility, and the defendant PLEADS guilty and gets the benefit of a significantly lower sentencing range, THIS IS CONSIDERED A PLEA

OFFER.

Blacks Law Dictionary, Deluxe Ninth Edition defines GUILTY PLEA as - "An accused person's formal admission in court of having committed the charged offense. A guilty plea must be made voluntarily and only after the accused has been informed and understands his or her rights. A guilty plea is usu. PART OF A PLEA BARGIN. See also: Sentence Bargin."

SENTENCE BARGIN is defined as - "A plea bargin in which a prosecutor agrees to recommend a LIGHTER SENTENCE in exchange for a PLEA OF GUILTY or no contest from the defendant." The Government offering Carson 3 points off for acceptance of responsibility, which resulted in a LIGHTER SENTENCE meets this standard.

The purpose of the February 15th hearing was to put a plea proposal on the record. The District Court tried to persuade Carson into taking the Government's plea proposal by stating, "But, I'm saying, if everything went poorly for you at trial, you

got a significant sentence, this prevents you from two years later saying oh, I didn't know I could potentially get 150 months." (R. 139: Hear. Trans. pg id # 1588) As the court stated, Carson's guilty plea could have resulted in a 150 month sentence which is 90 months less than his current 240 month term. That is a significant disparity! Carson stated in his letters to Butler that he "can't risk going to prison for 20 years." (R. 180-2: Letter, pg id # 1907-08) Having heard the benefit of pleading guilty and the court's suggestion of a 150 month sentence, Carson instructed Butler to "plead this case out," meaning take the plea proposal that was offered by the Government at the February 15th hearing.

A PLEA did exist in this case. Carson's letters to Butler and affidavits prove he wanted to resolve this case by pleading guilty and had communicated that to Butler. Butler never contacted the Government to resolve this case as Carson requested which constituted deficient performance. It also prejudiced Carson because, but for counsel's failure to do what Carson asked, he would have pled guilty and not gone to trial. Carson proved a plea did exist and the panel was wrong to state otherwise.

Carson's case deals with the same issues that were presented in Frye...the ineffective assistance of counsel led to the rejection of the Government's plea proposal and having to stand trial, not choosing to waive it, is the prejudice alleged. Far from curing the error, the trial caused the injury from the error. To establish prejudice, a defendant must show that but for the ineffective assistance of counsel, there is a reasonable probability that the plea proposal would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence or both, under the offers terms would have been less severe than under the judgment and sentence that were imposed. Carson meets these standards here.

The Supreme Court's decision in Lafler v. Cooper, 566 U.S. 156, 162-64 (2012), made clear that defendant's must show a "reasonable probability that they would have accepted a plea that would have resulted in a less severe sentence." Carson maintains that absent ineffective counsel, he would have accepted a plea offer for a sentence the prosecution evidently deemed consistent with the sound administration of criminal justice and would be the sentence he or others in his position would have received in the ordinary course, absent the failings of counsel. If a plea proposal has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a more severe sentence. See: Frye, 566 U.S. 134, 140-44. Carson's situation is also similar to Lafler's in which "inadequate assistance of counsel caused inacceptance of a plea offer and further proceedings led to a less than favorable outcome" Lafler, 182 L.Ed 2d 398

Carson proves that he was prejudiced by Attorney Butler for failing to arrange for Carson to plead guilty so he could have

received the benefit of a 3 point reduction. Carson specifically stated in his April 19, 2018 letter, "I don't want to go to trial! I want to get this case over with." (R. 180-2: letter, pg id # 1907-08) The record conclusively shows that Butler never reached out to the government or the court to arrange for Carson to plead guilty so he could avoid going to trial. Carson stated in his Affidavit that, "I instructed Attorney Butler to accept the plea offered by the government because I did not want to proceed to trial with Attorney Butler representing me. Butler never accepted the plea and lied to me by telling me the offer was off the table. (R. 167-3: Affidavit, pg id # 1766) Carson's Affidavit proves that he considered the plea proposal of 151-188 months offered by the government at the February 15th hearing as the "PLEA" offered by the government and that he wanted to accept it. Carson could only be referring to the sentencing terms discussed at the February 15th hearing because the record shows no other offers were made to Carson. Because Butler failed to accept the Government's offer from the February 15th hearing by failing to arrange for Carson to plead guilty, he caused Carson to be extremely prejudiced and harmed and violated the rules for prejudice established in Lafler and Frye. (See: ID)

In summary, Carson established that the February 15, 2018 hearing was a PLEA hearing and the Government did offer Carson a PLEA. The AUSA stated,"...Carson's perspective Guidelines placement of the PLEA." (ID at 1584) The Court referred to the Government's offer as a PLEA (ID at 1590). A Circuit Judge from the Sixth Circuit in granting Carson's COA stated, "the Government had extended some type of plea proposal, and Carson pointed to evidence (e.g. letters to Butler and the Sentencing transcript) that he wanted to accept it and had communicated that to Butler. (ID at 1994-95) Carson clearly stated in his letters to Butler, "I can't risk going to prison for 20 years. I am willing to plead out to get this case over with." (ID at 1907-08) and "I do not want to go to trial! I want to get this case over with." (ID at 1910) Carson's Affidavit also makes clear that he wanted to accept the Government's only offer and Attorney Butler failed to accept it. Carson stated, "Donald Butler failed to accept the plea agreement offered by the Government. After all my motions to dismiss counsel were denied by the court, I instructed Attorney Butler to accept the plea offered by the Government because I did not want to proceed to trial with Attorney Butler representing me. Butler never accepted the plea and lied to me by telling me the offer was off the table." (ID at 1766) This proves that in Carson's mind, he absolutely believed the Government's February 15th proposal was a "plea offered by the Government." That was his mens rea.

Carson has proven that the panel's opinion was wrong, a plea was offered, and Carson was willing to accept it. Attorney Butler rendered ineffective assistance of counsel for failing to arrange for Carson to plead guilty, which caused him to be severely prejudiced and harmed. Carson has demonstrated how the opinion issued by the panel directly conflicts with the precedents established by the Supreme Court in Lafler and Frye and he is entitled to have his opinion vacated.

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FROM: 64595060
TO:
SUBJECT: B.
DATE: 04/01/2024 07:33:03 AM

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B. Whether the panel was allowed to ignore violations of the Federal Rules of Evidence and Carson's constitutional rights, because they felt there was overwhelming evidence of his guilt, violates the precedents established in Srtickland v. Washington,466 U.S. 668, 687 (1984) and Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2039, 80 L.Ed. 2d 657 (1986)?

Carson was granted four certificates of appealability by a Circuit Judge relating to the ineffective assistance of his trial counsel...Donald Butler. Each issue was briefed separately, and arguments were presented as to how Attorney Butler rendered ineffective assistance of counsel and how Carson suffered prejudice by his counsel's deficient performance. A brief summary of the issues is as follows:

1. FAILING TO ARRANGE FOR CARSON TO PLEAD GUILTY

Carson proved in the previous section that a PLEA PROPOSAL was offered, Carson was willing to accept it, and Attorney Butler rendered ineffective assistance of counsel for failing to arrange for Carson to plead guilty

2. FAILURE TO OBJECT TO PAROLE OFFICER'S TESTIMONY

In granting Carson's COA, a Circuit Judge explained, "an average juror could easily gleam that Warchol [Carson's parole officer] is a member of law enforcement and specifically Carson's parole officer. The court also stated that allowing the parole officer's testimony violated Fed. R. Evid. 403(a), 404(b), and 609 because the testimony is unduly prejudicial because it can alert the jury that the defendant is on parole for prior crimes. (ID at 1998-99) Butler rendered ineffective assistance by his failure to object or move for a mistrial. Carson was prejudiced by his Attorney's failure to prevent the jury from learning he was on parole and that he had prior convictions.

3. DEFENSE COUNSEL'S FAILURE TO OBJECT TO THE GOVERNMENTS IMPROPER COMMENTS

Defense counsel rendered ineffective assistance by failing to object during the cross-examination of Carson's mother. While the line of questioning began with the prosecutor asking Ms. Carson about her son's drug use, it then proceeded to the prosecutor asking Carson's mother whether she knew whether "the furnace that your son tried to return to Webb Heating and Cooling had actually been taken out of the back of the van where Tim King's dead heroin overdosed body lay." (R. 102: Trial Trans. pg id # 1275)

Despite the impropriety of the prosecutor's question, Carson's attorney failed to lodge any objection to this question. Carson himself was so outraged by this improper question that he, not his lawyer objected (ID at 1275). This question was not inextricably intertwined with the bank robbery, it had no relevance to the bank robbery, and certainly was not res gestae

evidence. The Government's question only served to persuade the jury that Carson stole from a dead person- to which there was no evidence - and consequently that Carson was the type of character who would also rob a bank. It sought to mislead the jury and seek to unfairly prejudice Carson, which is inadmissible under Fed. R. Evid 403.

In granting Carson's COA, the Sixth Circuit stated that the prosecutor's statement was improper impeachment of the witness and "the failure to object to the prosecutor's statement or move for a mistrial was so prejudicial that it could not have been a tactical strategy, but deficient performance." (ID at 1999-2000) The prosecutor's cross-examination of Ms. Carson, introducing unsupportive and inadmissible character evidence, should have been objected to by counsel and excluded by the court. Therefore, Attorney Butler's failure to object was not objectively reasonable and constituted deficient performance. Strickland, 466 U.S. at 688. Given the magnitude of this question - accusing Carson of stealing from a dead person - along with counsels decision not to echo his clients pro se objection, there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Therefore, under Strickland, Carson was prejudiced by his counsel's failure to object to the prosecutor's improper comments.

4. DEFENSE COUNSEL'S OPENING AND CLOSING STATEMENTS RENDERED COUNSEL CONSTITUTIONALLY INEFFECTIVE

Attorney Butler's opening and closing statements each contained objectively unreasonable statements which constituted deficient performance and prejudiced Carson. At the beginning of opening statements, Attorney Butler told the jury that Carson had, in fact, stolen a car from a gas station, another crime that occurred days after the bank robbery (R. 99: Trial Trans. pg id # 510-11) Right after that, he admitted Carson's connection to Karin Deeb indicating that they went on "various drug binges" (R. 99: Trial Trans. pg id # 511) Defense counsel then offered their theory of the crime, which was that Karin Deeb had been the one that robbed the bank. (ID at 511)

In closing argument, Defense counsel claimed Karin Deeb was the bank robber. In seeking to convince the jury of this fact, Attorney Butler claimed his client was "just over five feet tall" whereas the bank teller testified the robber was "at least 5'6, 5'7" therefore Carson was not the robber. (R. 103: Trial Trans. pg id # 1373-74). Defense counsel was wrong about this fact, which prompted the government, in rebuttal, to show Carson's driver's license to the jury, which listed his height at 5'6. (R. 103: Trial Trans. pg id # 1400) This error was significant and constituted ineffective assistance of counsel.

In granting Carson's COA, the Sixth Circuit stated, "Based on the significance of this revelation and its prejudicial effect, cumulative with the prejudice described above, Hewitt-El, 53 F. 4th at 981-82 a reasonable jurist could find that Carson was prejudiced by Butler's performance."

With this overview of these four subissues of ineffective assistance of counsel, Carson has proven that he has met the Strickland standard, he was prejudiced by his counsel's performance, that his counsel's representation fell below an

objective standard of reasonableness, and there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 694

There are instances where a reliable trial does not foreclose relief when counsel has failed to assert rights that may have altered the outcome. In Kimmelman v. Morrison, 477 U.S. 365, 106 S. Ct. 2574, 91 L. Ed. 2d 305 (1986) this court held that, "the constitutional rights of criminal defendants are granted to the innocent and the guilty alike. Consequently, we decline to hold either that the guarantee of effective assistance of counsel belongs solely to the innocent or that it attaches only to matters affecting the determination of actual guilt." The fact that the petitioner was found guilty does not mean he was not entitled by the Sixth Amendment to effective assistance or that an Attorney's deficient performance, which results in prejudice, during pretrial matters or during the trial is excused.

A court must apply the Strickland standard to asses claims of ineffective assistance. Here, the panel tries to minimize and diminish Carson's certified claims of ineffective assistance as mere complaints and refused to analyze the issues because they felt there was overwhelming evidence of his guilt. The panel completely disregarded Judge Moore's order which specifically explained how Carson was prejudiced by his attorney's deficient performance, how his constitutional rights were violated, and how the Federal Rules of Evidence were ignored. By failing to apply Strickland to asses the certified ineffective assistance of counsel claims raised by another Circuit judge, the courts adjudication was contrary to clearly established federal law. The evidence the panel states is overwhelming IS NOT. If Carson had competent counsel or was allowed to represent himself, the so called "evidence" could have been easily explained and defended. For example:

1. The bank surveillance video - The bank surveillance video does not prove Carson robbed the bank. Facial recognition software never identified Carson as the bank robber

2. Johnson's testimony that she noticed a tattoo near the collar of the robbers neck - Johnson drew the tattoo she saw on the bank robbery suspect for detectives immediately after the robbery. The tattoo Johnson remembered seeing was not on Carson's body.

3. People who identified Carson from the bank surveillance photo - The only people who identified Carson were biased members of law enforcement and scorned exlovers. Carson filed complaints against the two Rocky River Police Officers for illegally seizing his car and cell phone in October of 2016. Coincidently, those were the only police officers to identify Carson. The other identification was Carson's neighbor. When Carson started going out with Karin Deeb, he stopped sleeping with his neighbor, which created a resentment and resulted in her "identification" of the petitioner.

Carson worked at some of the busiest restaurants and clubs in Cleveland as a server. (The Cheescake Factory, Music Box Supper Club, Brio Tuscan Grille, The Rosewood Grill, The Big Bang Dueling Piano Bar, and Punch Bowl Social) Carson encountered thousands of people per week, but somehow no one other than people that were biased against Carson were

able to identify him as the robber.

4. Holiday Inn Video - Carson was seen on police body cam video with two socks filled with money. When asked by officers where Carson acquired the money from, he stated, "I work as a server and do HVAC on the side." Carson made hundreds of dollars per night working as a server, and made good money doing HVAC side jobs during the day. The government tried to insinuate that the money Carson had came from bank robbery proceeds. There was absolutely no proof that the money Carson possessed came from a bank robbery.

5. Shirt - The government claims that the shirt Carson possessed was the same one worn by the robber. No forensic expert ever corroborated that claim. Carson asserts that the shirt the robber had on during the robbery contained darker stripes and was a different color. No testing was ever done to show that Carson's shirt was a match for the bank robbers.

6. Gloves - The government speculates that the generic dollar store gloves thousands of people wear in Northern Ohio in November that Carson had in his possession were the same ones worn by the bank robber. Fibers were found at the bank robbery scene that did not match the gloves that were in Carson's possession.

7. Facebook Identification - Carson's Facebook page was Private. It would have been impossible for anyone who worked at the bank to pull up his Facebook page unless they were friends with Carson

Carson proved that the "evidence" against him was not "overwhelming" and could have been easily explained and defended and that his counsel "failed to assert rights that may have altered the outcome." Kimmelman, 477 U.S. at 380, 106 S. Ct. 2574. Attorney Butler's failure to object or move for a mistrial regarding Carson's parole officer's testimony and the flagrant remark made by the prosecutor resulted in Carson being extremely prejudiced and harmed. The testimony and remarks were damaging to Carson. Attorney Butler should have moved to have the improper testimony stricken from the record. The Federal Rules of Evidence and Carson's constitutional rights were clearly violated and counsel's failure to assert Carson's rights resulted in inadmissible evidence being presented to the jury and contributed to Carson's conviction. This puts into question the fairness and integrity of Carson trial. Carson was not afforded his Sixth Amendment protections and counsel's conduct so undermined the proper functioning of the adversarial process that the trial can not be relied on as having provided a just result. See: United States v. Cronic, 466 U.S. 648, 658 104 S. Ct. 2039, 80 L. Ed 2d 657 (1984). The clear violation of several Federal Rules of Evidence should have resulted in a mistrial being decaled. The cumulative effect of Attorney Butler's errors violated the precedents established in Strickland and Kimmelman and Carson was not provided his Sixth Amendment right to effective assistance. The only way to remedy all the errors that occurred is to Grant this Writ of Certiorari and vacate the opinion issued against Carson.

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FROM: 64595060
TO:
SUBJECT: Right to testify
DATE: 02/08/2024 07:46:08 PM

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C. Whether the panel's determination that Carson knowingly and voluntarily waived his right to testify violated his constitutional rights and directly conflicts with the Supreme Court precedent established in Rock v. Arkansas, 483 U.S. 44, 49-52, 97 L. Ed. 2d 37 (1987) and Sixth Circuit precedent established in Hodge v. Haeberlin, 579 F. 3d 627, 639-40 (6th Cir. 2009) and United States v. Webber, 208 F. 3d 545, 550-51 (6th Cir. 2000)

"The right to testify is personal to a Defendant and may not be waived by counsel." Rock v. Arkansas, 483 U.S. 44, 49-52, 97 L.Ed. 2d 37 (1987). "The right of a defendant to testify at trial is a constitutional right of fundamental dimension and is subject only to a knowing and voluntary waiver by the defendant." United States v. Webber, 208 F. 3d 545, 550-51 (6th Cir.. 2000) If counsel elects not to have a defendant testify, and the defendant disagrees with the decision, he must alert the trial court he desires to testify or there is a disagreement with defense counsel. See: Hodge v. Haeberlin, 579 F. 3d 627, 639-40 (6th Cir. 2009) (explaining a defendant must "present record evidence that he somehow alerted the trial court to his desire to testify.")

The facts surrounding this claim are detailed in the record. At the end of the Friday of trial, defense counsel initially told the district court there were no additional witnesses, then amended his statement to state Carson wants to testify when the trial resumed on Monday. (R. 102: Trial Trans. pg id # 1309). When trial resumed on Monday, defense counsel informed the District Court that Carson did not want to testify, but instead wanted to do the closing argument, which the District Court denied. (R. 103: Trial Trans. pg id # 1323). Defense counsel then stated there would be no further testimony, then renewed his motion for acquittal, which the District Court denied. (R. 103: Trial Trans. pg id # 1323-24). The District Court then indicated trial would resume saying, "Okay. We're ready to go," to which Carson spoke up, stating "one issue, your Honor." (R. 103: Trial Trans. pg id # 1324). The District Court did not permit Carson to say anything else, stating, "talk to your lawyer," and then proceeded immediately to charging the jury. (R. 103: Trial Trans. pg id # 1324).

The transcript demonstrates that Carson was attempting to assert his right to testify, but the district court prevented him from doing so. Carson indicated on Friday afternoon he wanted to testify, then on Monday Butler claims Carson amended his request by waiving his right to testify on the condition that he does the closing argument. When denied that opportunity, his counsel said there would be no further testimony, and then Carson tried to notify the District Court.

The panel, in denying Carson's right to testify issue, wrongfully claims that a "defendant must object on the record by expressing a continued desire to testify." (opinion p. 17). The law does not require a FORMAL OBJECTION from a

defendant. A defendant only needs to "alert the trial court that there is a disagreement with defense counsel regarding whether he should take the stand." See: Webber, 208 F. 3d at 551 and Haeberlin, 579 F.3d at 627. Carson meets this standard when he spoke up, stating "one issue your Honor." (R. 103: Trial Trans. pg id # 1324). THE ONLY REASONABLE CONCLUSION AS TO WHY CARSON TRIED TO GET THE COURTS ATTENTION IS BECAUSE HE WANTED TO AFFIRMATIVELY

ANNOUNCE HIS DESIRE TO TESTIFY. Carson proves this in his Affidavit stating, "When court resumed, Butler announced I will not be testifying. I tried to get the court's attention, but my pleas were ignored." (R. 167-3: Affidavit, pg id # 1766-70)

The panel stated that "Carson's right to testify claim depends on what he told the court on the record." (opinion p. 19) The record clearly shows his desire to testify. "Carson says he wants to testify, and I think he better think about it." (ID at 1309). Carson has proven his desire to testify (ID at 1766-70), that he tried to alert the trial court as to his disagreement with defense counsels statement (ID at 1324), that his constitutional rights were violated,and the panel's opinion directly conflicts with the precedents established in Webber and Hodge. For good cause, Carson asks that his writ of certiorari be granted and the panel's opinion be vacated.

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FROM: 64595060
TO:
SUBJECT: Evidentiary Hearing
DATE: 02/08/2024 07:47:18 PM

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D. Whether the panel violated Carson's rights by not remanding the case for an evidentiary hearing after he proved that several factual disputes exist, which directly conflicts with the Supreme Court precedent established in Fontaine v. United States, 411 U.S. 213, 215, 36 L. Ed. 2d 169 (1973) and Sixth Circuit precedent established in Valentine v. United States, 488 F. 3d 325, 333 (6th Cir. 2007)?

"An evidentiary hearing is required in a 2255 proceeding unless the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief." Fontaine v. United States, 411 U.S. 213, 215, 36 L. Ed. 2d 169 (1973). In reviewing a 2255 motion in which a factual dispute arises, "the habeas court must hold an evidentiary hearing to determine the truth of a petitioner's claims." Valentine v. United States, 488 F. 3d 325, 333 (6th Cir. 2007). "The burden on the petitioner in a habeas case for establishing entitlement to an evidentiary hearing is relatively light." Valentine, 488 F. 3d at 333.

An evidentiary hearing was the only way to properly resolve two factual issues raised in Carson's 2255 motion. First, defense counsel provided ineffective assistance of counsel by failing to arrange for Carson to accept the Government's plea proposal and arrange for him to plead guilty after Carson explicitly requested his attorney do so and expressed his desire to plead guilty. Second, Carson was denied his right to testify at trial. Both issues involve a factual dispute, which requires "an evidentiary hearing to determine the truth of the petitioner's claims." Valentine, 488 F. 3d at 333. As detailed in Valentine, this is not a high burden. (See ID.)

As to the claim that defense counsel failed to accept the Government's plea proposal after Carson requested it, there exists a clear factual dispute. On two occasions Carson presented evidence to the district court that he requested counsel to resolve this case in lieu of trial. At his sentencing hearing, Carson provided the letters he wrote to counsel, two months before trial, directing him to "plea this case out" because he did not want to go to trial. (R. 131: Sent Trans.pg id # 1519-20) In his 2255 petition, Carson included the letters as exhibits in support of his claim. (R. 180-2: Reply, pg id # 1910) Attorney Butler's Affidavit fails to address these letters and we continue to wonder whether he did not receive the letters, or whether he received them and ignored his client's request. Resolution of this issue is critical to the final determination of Carson's ineffective assistance of counsel claim.

An evidentiary hearing is also necessary to resolve Carson's claim that he was denied his right to testify. Attorney Butler's Affidavit addresses Carson's potential trial testimony in a mere three sentences. (R. 176-4: Butler Affidavit, pg id # 1864).

While Attorney Butler concludes that he did not stop Carson from testifying, the Affidavit does not address the critical part of Carson's claim - the events surrounding Carson's request to do the closing argument in lieu of testifying,and when that was denied, his request to address the district court which was denied. Shedding light on the conversations between Carson and Butler after the defense's request for Carson to do the closing argument was denied would be enlightening to the issue at bar. Also, finding out why Carson was trying to get the District Court's attention is necessary to resolve this issue. Carson and Butler's Affidavits conflict. Conducting an evidentiary hearing is the only way to clear up the record.

The panel in denying Carson's request for an evidentiary hearing stated, "He is correct that a District Court must hold an evidentiary hearing if a genuine dispute of fact exists...but this dispute must concern a 'legally important fact' " (opinion p. 10), and denied Carson's request.

The panel's decision regarding not granting Carson an evidentiary hearing is contrary to Judge Larsen and Judge Bush's decision in Hall v. United States, 2022 U.S. App. LEXIS 19683 (6th Cir. 2022) and in Nix V. United States, 2022 U.S. App. LEXIS 6676 (6th Cir. 2022). In those cases, Judges Boggs, Bush, and Larsen were assigned to a panel. Both cases dealt with a dispute of facts regarding their respective attorney's failing to file a Notice of Appeal after they were sentenced. Both appellants submitted either an affidavit or a sworn statement stating they instructed their lawyers to file a Notice of Appeal.

In Nix, the panel explained that "when a defendant presents an affidavit containing a factual narrative of the events that is neither contradicted by the record nor inherently incredible and the government offers nothing more than contrary representations to contradict it, the defendant is entitled to an evidentiary hearing. Huff v. United States, 734 F. 3d 600, 607 (6th Cir. 2013) (quoting Valentine v. United States, 498 F. 3d 325, 334 (6th Cir. 2007)" (Nix, 2022 U.S. App. Lexis 6676)

In Hall, in his 2255 motion, which was sworn under the penalty of perjury, Hall stated, "My counsel did not file a timely notice of appeal at all." And in a supporting memorandum, he alleged that counsel "did not file and failed to file his notice of appeal as he requested." For his part, Hall's former counsel stated in an affidavit that Hall "never indicated...that he desired a notice of appeal be filed."

The panel stated, "But Hall's statement in those filings do not allow for a conclusive determination that he never asked counsel to file a notice of appeal. And Hall's statement alone creates a dispute of fact." They went on to explain, "Hall's statement that counsel failed to file a notice of appeal as requested satisfied his relatively light burden of establishing his right to an evidentiary hearing. Turner, 183 F. 3d at 477. On the record, we find that the District Court could not determine that Hall never asked counsel to file a Notice of Appeal and therefore abused its discretion by ruling on Hall's ineffective assistance claim without conducting an evidentiary hearing." (See: Hall, 2022 U.S. App. LEXIS 19683)

Like Nix, Carson submitted an affidavit containing a factual narrative of the disputed events regarding his willingness to

accept the plea offered by the government at the February 15th hearing and his desire to testify at trial. These events were not contradicted by the record. Carson provided evidence of two letters he sent to Attorney Butler which instructed him to "plead this case out," meaning, accept the Government's February 15th offer. (See R. 180-2: Letter, pg id # 1907; R. 180-4: Letter, pg id # 1910) The trial transcript provides evidence that Carson tried to alert the District Court as to his desire to testify, but he was shut down by the court. (R. 103: Trial Trans, pg id # 1324)

Like Hall, Carson's statements alone in his 2255 motion (R. 167), 2255 Reply (R. 180), and two affidavits (R. 167-3, 180-1) create major disputes of facts and "satisfied his relatively light burden of establishing his right to an evidentiary hearing." Valentine, 488 F. 3d at 333. Carson provided significantly more evidence of a factual dispute than Nix and Hall and was denied an evidentiary hearing by the panel. He is being treated very unfairly and being held to a higher standard which violates the precedent established in Valentine.

Carson's disputes over his Sixth Amendment right to have his counsel arrange a guilty plea and his Fifth Amendment implied right to testify are both legally important facts of constitutional significance that require an evidentiary hearing to resolve the factual disputes. The Sixth Circuit made it abundantly clear in Valentine, 488 F. 3d at 333, that where there is a factual dispute, the District Court MUST HOLD an evidentiary hearing. The court did not state the District Court should consider holding or may consider holding an evidentiary hearing if a factual dispute exists, the court specifically stated an evidentiary hearing MUST BE HELD. Carson proved that there was the existence of several factual disputes and the panel's opinion directly conflicts with the precedent established in Valentine and Fontaine. Accordingly, Carson's writ of certiorari must be granted, the panel's opinion vacated, and Carson's case MUST be remanded for an evidentiary hearing to be held to resolve these important factual disputes.

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FROM: 64595060
TO:
SUBJECT: E.
DATE: 03/31/2024 06:56:14 PM

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E. If a Petitioner loses his Direct Appeal, and another Circuit Judge issues 10 COA's regarding constitutional concerns relating to the petitioner's case, which relates back to and calls into question the reliability of the panel's decision of his Direct Appeal, should the judge who wrote the opinion in the Direct Appeal, who claimed there were no constitutional concerns or errors, be allowed to sit on the panel that ultimately scrutinizes her own decision because it raises concerns of impartiality? (This is a question of first impression for the court)

The issue presented here questions if a judge is allowed to be the reviewing authority to determine if one of their prior opinions was proper and constitutionally sound after another Circuit Judge called into question the reliability of the prior decision. Common sense dictates that a judge can not be their own reviewing authority and must recuse themselves if this type of situation presents itself. There must be a system of checks and balances to ensure the publics confidence in the fair administration of justice. Carson presents the following in support:

On November 26, 2019, Judge Larsen wrote the opinion that denied Carson's Direct Appeal and Affirmed his sentence even after Carson proved that several of his constitutional rights were violated in his appellate brief. See: United States v. Carson, 796 F. App'x 238 (6th Cir. 2019). Another Judge reviewed Carson's case when he submitted his motion for a certificate of appealability and found several issues of concern. See: United States v. Carson, 2023 U.S. App. Lexis 1239 (6th Cir. 2023).

In this matter, the same set of facts were presented to two different judges. One judge (Judge Larsen) claimed that no constitutional violations or errors occurred during Carson's legal proceedings. Another judge (Judge Moore) determined that there were numerous errors and violations of Carson's constitutional rights and issues a record ten certificates of appealability. In this scenario, Judge Moore makes Judge Larsen look bad for overlooking the violations of Carson's constitutional rights.

For example, in Carson's Direct Appeal, he claimed the District Court violated Fed. R. Evid. 404(b) by allowing his parole officer to testify, which, by definition, insinuated prior conviction. Judge Larsen denied Carson's claim stating, "The parole officer never identified himself as such, instead testifying that he worked at a state agency. And his testimony made no mention of Carson's prior convictions."

Judge Moore examined the same issue and stated, "Warchol's [Carson's parole officer] testimony reveals a familiarity with law enforcement, uses law-enforcement jargon, addresses concerns about maintaining the integrity of an ongoing

investigation, and outlines the routine aspects of a parole officer's position. An average juror could easily glean that Warchol is a member of law enforcement and specifically Carson's parole officer." She further explained, "Warchol's testimony presented substantial risks of unfair prejudice. See Fed. R. Evid. 403(a). The record also indicates that there may be concerns about whether this testimony implicated Federal Rules of Evidence 404(b) and 609." (R. 197: COA Order, pg. id # 1998)

Both Judges read the same trial transcript. It was clear and obvious to Judge Moore that Warchol was a parole officer, his testimony violated the Federal Rules of Evidence, and presented substantial risks of unfair prejudice. But somehow, Judge Larsen didn't see any of these concerns.

Carson also explained in his Direct Appeal how Attorney Butler rendered constitutionally ineffective assistance. Judge Larsen stated the alleged ineffectiveness of Carson's trial counsel is not apparent from the record. However, Judge Moore reviewed the same trial transcripts and found that trial counsel was ineffective for failing to accept a plea agreement on his behalf, failing to object to testimony from Carson's parole officer, failing to object to the Government's improper comments, and inadequately presented opening and closing arguments.

For Judge Larsen to not acknowledge ANY of these errors that occurred during Carson's trial demonstrates that she was biased against Carson and violated his appellate due process rights. Judge Moore explained with precision in her COA order exactly how Attorney Butler rendered ineffective assistance of counsel and prejudiced Carson, but somehow, Judge Larsen didn't see anything at all wrong with Carson's trial.

No one likes to to be told that they were wrong and judges are no different than the average person. If it came to be determined that all these constitutional violations occurred in Carson's case, and Judge Larsen knowingly ignored them, which affected Carson's significant liberty interests and resulted in him being kept in prison for an extra decade, she could get in big trouble and possibly face disciplinary action or lose her judgeship. A judge facing these potential problems and accusations of misconduct would want to get on the panel that makes the final determination in this matter so their willful disregard of another individuals constitutional rights won't come to light.

Under 28 U.S.C. 455(a), all judges of the United States must disqualify themselves in any proceeding in which [their] impartiality might reasonably be questioned. The goal of section 455(a) is to avoid even the appearance of partiality. See: Liteky v. United States, 510 U.S. 540, 548, 114 S. Ct. 1147 (1994). The standard for recusal is "not whether a judge harbors an actual, subjective bias, but instead whether, as an objective matter, the average judge in his [or her] position is likely to be neutral, or whether there is an unconstitutional potential for bias." Williams v. Pennsylvania, 579 U.S. 1 (2016). The potential for bias presents itself here.

It is Carson's position that fraud upon the court was committed during the panel selection process of his 2255 Appeal. It is Carson's belief that Circuit Judge Joan Larsen is interfering with the panel selection process and requested to be placed on Carson's panel for his 2255 Appeal to protect her erroneous and unconstitutional decision in Carson's Direct Appeal. Carson is questioning the integrity of the panel selection process and here's why. In addition to Judge Larsen writing the opinion that denied Carson's Direct Appeal, she was also assigned to the panel that denied Carson's appeal to obtain his case file from his attorney so he could gather more evidence for his ineffective assistance of counsel claims for his 28 U.S.C. 2255 petition. See: United States v. Carson, 2021 U.S. App. LEXIS 27036 (6th Cir. 2020)

Judge Larsen also denied Carson's Recall Mandate even after he proved that he was no longer subject to the career offender enhancement and was entitled to be resentenced based upon the new precedential decision decided by the Sixth Circuit in United States v. Butts, 40 F. 4th 766, 773 (6th Cir. 2022) which held that second degree robbery in Ohio was no longer a crime of violence under the elements clause of 4B1.2(a) of the Guidelines.

Then, Judge Larsen was somehow "randomly" placed on the panel which determined that none of the ten COA issues that were granted to Carson had ANY merit. There are over 20 Judges in the Sixth Circuit. Panels are suppose to be randomly selected. The odds of the same judge appearing on 4 different panels is astronomical. If you put all the judges names in a hat, and draw 4 panels, it is phenomenally unlikely that the same judge would be on all 4 panels. Try it. While mathematically possible, the odds would be infinitesimal. This statistical improbability calls into question the fairness and integrity of the panel selection process.

It is the Petitioner's belief that Judge Larsen is interfering with the panel selection process and requested to be placed on Carson's panel for his 2255 Appeal to protect her erroneous and unconstitutional decision in Carson's Direct Appeal. Another Circuit Judge had the courage and integrity to do the right thing and raised several concerns of constitutional importance regarding Carson's trial that was overlooked or ignored by Judge Larsen on his Direct Appeal. If a panel ruled in Carson's favor on his 2255 appeal, it would have exposed Judge Larsen for disregarding Carson's constitutional rights and ignoring all the errors that occurred in Carson's case.

This scenario is why it is absolutely necessary to NEVER allow a judge to be the reviewing authority to determine if their opinion was constitutionally sound. A neutrality requirement must be applied or else the integrity of our judicial system will be compromised. "The appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself." Therefore, "an unconstitutional failure to recuse is structural error and thus not amenable to harmless error review." (See ID) Williams, 579 U.S. 1 (2016)

Structural errors are "so intrinsically harmful to the proceeding that they render the proceeding an unreliable vehicle for determining innocence or guilt." An error may qualify as structural if it "calls into question the objectivity of those charged

with bringing a defendant to judgment." Vasquez v. Hillery, 474 U.S. 254, 263, 106 S. Ct. 617 (1986)

A judge can not be their own reviewing authority and failure to recuse oneself if this type of situation arises is unconstitutional and amounts to structural error. Carson has proven that Judge Larsen's failure to recuse herself violated his constitutional rights and demonstrated the near impossibility of the same judge appearing on Carson's appellate panels four different times. This statistical improbability calls into question the integrity of the panel selection process and amounts to fraud upon the court. Carson is entitled to have the opinion issued in Sixth Circuit Case No. 22-3386/3419 VACATED, Judge Larsen be disqualified from appearing on Carson's 2255 Appeal panel, and this petition for writ of certiorari be Granted.

TRULINCS 64595060 - CARSON, ADAM - Unit: LEW-H-A

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FROM: 64595060
TO:
SUBJECT: Conclusion
DATE: 03/31/2024 07:09:06 PM

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CONCLUSION

Carson has proven that the panel's opinion was wrong and the constitutional concerns raised by another circuit judge were completely ignored. Carson has provided evidence proving that a plea was offered in his case, he was willing to accept it, communicated that to his attorney, and the outcome of the plea process would have been different. Carson also demonstrated he was denied his right to testify at trial, that there were multiple violations of the Federal Rules of Evidence, how his constitutional rights were violated, and he established how he was prejudiced by the deficient performance of his counsel and was injured by his errors. Most importantly, Carson has proven that a judge is not allowed to be the reviewing authority to determine if one of their prior opinions was proper and constitutionally sound after another judge calls into question the reliability and constitutionality of that prior decision.

This Petition for a Writ of Certiorari should be GRANTED. Carson has shown that the opinion issued by the panel directly conflicts with the precedents established in Lafler v. Cooper, 132 S. Ct. 1376, Missouri v. Frye, 132 S. Ct. 1399, Fontaine v. United States, 411 U.S. 213, 215, Strickland v. Washington, 104 S. Ct. 2052, and Kimmelman v. Morrison, 106 S. Ct. 2039. Carson is entitled to have the opinion issued by the United States Court of Appeals for the Sixth Circuit, Case No. 22-3386/3419 REVERSED OR VACATED.

Done this 1st day of April, 2024

Respectfully submitted,

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