

No. USAP 3, No. 09-3745

23-7204

ORIGINAL

FILED

JAN 19 2024

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

IN THE

SUPREME COURT OF THE UNITED STATES

Sean L. Hagins

— PETITIONER

(Your Name)

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Third Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Sean L. Hagins

(Your Name)

P.O. Box 1000

(Address)

Otisville, NY 10963

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Did the lower court have the obligation to correct an illegal sentence, brought to its attention, regardless of the passage of time?
2. Did the lower court fail in its duty to correct an illegal sentence, subject to plain error review, during defendant's direct appeal, even though defense counsel failed to challenge such?
3. Did the lower court abuse its discretion by not intervening when Petitioner raised serious issues regarding defense counsel's representation, including his failure to challenge a clearly illegal sentence?
4. Should a defendant, who did everything in his power as a pro se inmate litigant, be time barred from raising clearly unconstitutional and illegal violation, including an illegal sentence, when all of the delays were caused by the failures of his court appointed attorney?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

NONE

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4 to 7
REASONS FOR GRANTING THE WRIT	8 to 10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A	Opinion of the Third Circuit Court of Appeals
APPENDIX B	Judgement and Commitment of the Third Circuit District Court
APPENDIX C	Pertinent Sentencing Transcripts(Pgs 184-190 and Pgs 208-211)
APPENDIX D	Presentence Investigation Report and pro-se motions and pleas to the Court of Appeals
APPENDIX E	Docket Entry and letter by Appellate Counsel to the 3rd Circuit Court of Appeals
APPENDIX F	Original Indictment and Superseding Indictment

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
-------	-------------

United States v. Ward, 626 F.3d 179	9
United States v. Jacobs, 21 F.4th 106	9
Rosales-Mireles v. United States, 201 L.Ed.2d 376	10

STATUTES AND RULES

United States Sentencing Guidelines §5G1.2	5
--	---

OTHER

5th Amendment to the United States Constitution	3
6th Amendment to the United States Constitution	3
14th Amendment to the United States Constitution	3

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was December 27, 2023.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

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

Fourteenth Amendment, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On December 19, 2007, Petitioner was charged, through a second superceding indictment, with conspiracy to make false statements in the purchase of firearms, in violation of 18 U.S.C. §371 and four counts of being a felon in possession of a firearm, in violation of 18 U.S.C. §922(g)(1).

On March 6, 2008, following a jury trial before the Honorable Legrome D. Davis, Appellant was found guilty of all five counts. Appellant was represented at trial by Mr. Michael J. Engle, of Philadelphia, PA, a CJA appointed attorney.

Prior to the sentencing date of September 14, 2009, Mr. Engle was relieved as counsel for Appellant, and Mr. Bruce Wolf, of Philadelphia, PA was appointed to represent Petitioner at sentencing.

A sentencing hearing was held on September 14, 2009, before Judge Davis. At said hearing, both the Petitioner himself and his counsel raised objections to a number of issues in the presentence report and calculation of the sentencing guideline range (more fully detailed below), preserving these issues for appellate review. The Government, through counsel, conceded one such issue which did not impact sentencing. Judge Davis overruled all other objections, without a hearing nor opportunity for full briefing, despite clear evidence to their validity. Judge Davis proceeded to sentence Petitioner to a total term of 360 months incarceration, with credit for time served, followed by 3 years supervised release. In pronouncing

sentence, Judge Davis proclaimed an improper general sentence, in which he issued a sentence of 60 months concurrent on four of the counts, 120 months consecutive on fifth count (for a total of 180 months, then stated "Let's just make it a total of three sixty," without further explanations. Such sentence was in violation of United States Sentencing Guidelines §5G1.2.

Petitioner timely appealed, filing notice on September 18, 2009. On September 23, 2009, the Court of Appeals entered an order appointing Mr. Wolf again as appellate counsel.

Petitioner immediately began attempting to contact Mr. Wold regarding the issues raised at sentencing, to be sure they were raised on appeal. Mr. Wold ignored all of Petitioner's communication attempts. Mr. Wolf never once spoke to Petitioner regarding the appeal, and continually missed the Court of Appel's deadlines. Such lack of communication continued even after appeal, necessitating Court of Appeals to order Mr. Wolf to send the sentencing transcripts and case file to Petitioner, an Order Mr. Wolf ignored for an inordinate amount of time.

On September 23, 2010, a full year after his appointment, Mr. Wolf filed Petitioner's brief on appeal. Court of Appeal immediately issued a Non-Compliant Order regarding the brief and appendix. On October 4, 2010, Mr. Wolf filed a letter with Court of Appeals stating that he did not file a copy of Petitioner's PSR as no sentencing issues were being raised on appeal despite the many non-frivolous issues raised by Mr. Wolf himself at sentencing, along with Petitioner, all of which

Petitioner requested he raised on appeal. Excluding such issues was not the result of any valid strategy.

Petitioner made many attempts to correct this error, moving Third Circuit Court of Appeals for removal of Mr. Wolf as counsel, as well as permission to file a pro se supplemental brief on these issues. The Court of Appeals denied all Petitioner's motions. The Court of Appeal directed that petitioner's pro se brief be forwarded to Mr. Wolf, with leave to file it through counsel. Mr. Wolf ignored said brief and again never communicated with Petitioner.

On November 15, 2011, Third Circuit issued its mandate denying the appeal in all requests. In the time since, Petitioner has attempted to seek justice on these issues, but has been denied at every attempt because of the failure by Mr. Wolf to raise such issues on direct appeal, the proper avenue for doing so. As mentioned above, Mr. Wolf continued even after this point to ignore communication with Petitioner, delaying Petitioner's attempts to remedy this situation by years, and necessitating court intervention to even obtain the information and documentation necessary to file a collateral attack, and even the instant motion.

On 11-23, Petitioner filed a motion to recall the mandate with the Court of Appeals for the Third Circuit, arguing that the constitutional errors, coupled with the sentencing errors, rose to the level of plain error and required that the court recall its previous mandate denying Petitioner's appeal and granting a new appeal *nun pro tunc*. On

December 27, 2023, the Court of Appeals for the Third Circuit denied the motion in all respects, issuing a one line decision. Petitioner now seeks intervention from the United States Supreme Court.

REASONS FOR GRANTING THE PETITION

This case revolves around a singular point: Should a defendant, untrained in the law and relying on appointed counsel, forever be held to the errors and mistakes made by said counsel, including having to serve an illegal sentence? The Petitioner herein finds himself in such a situation. Despite his requests pleas and even motions, his appointed counsel failed to properly challenge his illegal sentence, as well as other aspects of his sentence, and forever doomed him to serving an illegally issued and illegally long sentence.

Petitioner, who had no legal training nor knowledge or experience, knew something was wrong, and tried to alert the court. He was ignored. He then spent years educating himself and gathering documentation so he could finally, properly move the court for relief, only to be told time and again he was barred from doing so, either due to his counsel's failures to preserve said issues, or due to the passage of time, both of which were out of his control. Our system of justice guarantees defendant's the right to due process, the right to counsel, and the right to equal protection, under the 5th, 6th and 14th Amendments. When a defendant done everything he can, and still his rights are violated, when should a court be able to, and indeed required to, intervene?

In this case case, the Petitioner received an illegal sentence. The district judge in the Third Circuit, after pronouncing various sentences totalling 180 months, then

doubled the sentence, issuing a general sentence of 360 months, without explanation. The Third Circuit itself has found this to be illegal, both before and since Petitioner's sentencing and appeal. (See United States v. Ward, 626 F.3d 179, October 27, 2010; see also United States v. Jacobs, 21 F.4th 106). The only way to get to 360, which the court again did not explain, would have been to "stack" the four §922(g) counts, which is also illegal. This issue alone constitutes plain error and a miscarriage of justice, and demand Petitioner's sentence be overturned. Despite numerous opportunities to do so, the Third Circuit continues to uphold the illegal sentence. Indeed, the Third Circuit completely failed in its duties to the Petitioner during his direct appeal, when it should have reviewed his sentence for plain error, despite Petitioner's counsel's failure to raise such. It should be noted, Petitioner alerted the court to such issues, they still chose to ignore them. At what point must a defendant simply give up, knowing his rights have been violated, and that he has done everything possible to correct them, only to be ignored. The right to due process and efficient counsel are the bed rocks of our system of justice. This Court should do all it can to ensure these fundamental rights are upheld, especially for an untrained, inexperienced pro se inmate litigant who has been subject to a severe violation of his rights. This Court has itself stated, "The public legitimacy of our justice system relies on procedures that are neutral, accurate consistent, trustworthy, and fair, and that provide opportunities for error correction," (emphasis

added internal quotes omitted; Rosales-Mireles v. United States, 201 L.Ed.2d 376, June 18, 2018). to ignore such blatant legal erros, all because a pro se inmate litigant didn't know how to properly attack them and took his time learning such, would be a grave miscarriage of justice that should "shock the conscience" of any jurist or citizen

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Sean Nagins

Date: 4-1-24