No. 23-7491

IN THE

SUPREME COURT OF THE UNITED STATES

CAESAR V. VACA - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE

COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR REHEARING

CAESAR V. VACA
Reg. No. 14439-045
FCI-Marianna
P. O. Box 7007
Marianna, FL 32447

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ARGUMENT

Petitioner, Caesar V. Vaca, respectfully requests a rehearing pursuant to Rule 44 from the denial of his petition for a writ of certiorari on June 17, 2024. Mr. Vaca requests a rehearing because he believes the Court overlooked or misapprehended that his Sixth Amendment right to effective assistance of counsel was violated.

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to effective assistance of counsel. To be eligible for habeas corpus relief based on ineffective assistance of counsel, a defendant must satisfy the two-part test announced in Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). First, a defendant must establish that defense counsel's representation was constitutionally deficient, which requires a showing that counsel's performance fell below an objective standard of reasonableness. Id. at 687-688. This requires showing that counsel made errors so serious that defense counsel was not functioning as counsel guaranteed by the Sixth Amendment. Id. at 687-688.

Second, it must demonstrate that defense counsel's performance prejudiced the defense. Strickland, 466 U.S. at 687. In other words, under this prong, it must be proven that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. at 694. A reasonable probability is one

"sufficient to undermine confidence in the outcome." Id. at 694.

Before trial, the government filed a notice of intent to offer evidence of other bad acts under Fed. R. Evid. 404(b) which included a 1995 Johnson County, Kansas conviction for aggravated battery, case no. 94-CR-1367. Specifically, it contended that Mr. Vaca possessed a firearm during the prior aggravated battery incident, and it would show that Mr. Vaca's claim that he has never owned or possessed a firearm in his life are false exculpatory statements that the jury may consider as consciousness of guilt. It also argued the evidence was admissible because Mr. Vaca placed his state of mind at issue, and Mr. Vaca's possession of a firearm in 1994 is relevent to showing Mr. Vaca's knowledge and intent in allegedly possessing a firearm on November 20, 2016.

Mr. Vaca contends that defense counsel's failure to perform basic research on the prior aggravated battery conviction that was used as evidence under Rule 404(b) (See App. to Pet. for Cert. pg. 14a) resulted in "counsels' performance falling below an objective standard of reasonableness." Strickland, 466 U.S. at 687-688.

Had counsel researched the prior aggravated battery conviction he would have discovered that as a result of conviction Mr. Vaca's civil rights had been restored, including rights to possess a firearm by operation of Kansas law. (See Pet. for Cert. pp. 12-14)

The significance of Mr. Vaca's civil rights restored under Kansas law is that he was convicted of violating 18

U.S.C.S. § 922(g)(1) which prohibits firearm possession by any person convicted in any court of a crime punishable by imprisonment for a term exceeding one year. In determining what constitutes a conviction for a qualifying crime, 18 U.S.C.S. § 921(a)(20) contains what are referred to as "choice-of-law clause--the law of the jurisdiction in which the proceeding was held," and an "exemption clause--any conviction which has had civil rights restored shall not be considered a conviction." Beecham v. United States, 511 U.S. 368, 371-372, 114 S. Ct. 1169, 128 L. Ed. 2d 383 (1994).

Since the prior aggravated battery case no. 94-CR-1367 did not constitute a conviction under federal law, it was not admissible as evidence to be used against the Defendant. Therefore, the certified record of aggravated battery conviction (Government Exhibit 37) was not sufficient evidence to satisfy Fed. R. Evid. 404(b) requirement of proof that Mr. Vaca had previously possessed a firearm to prove knowledge, intent, and consciousness of guilt. See Huddleston v. United States, 485 U.S. 681, 690, 108 S. Ct. 1496, 99 L. Ed. 23 771 (1988)(explaining that the prosecution must present sufficient evidence from which a jury could find by a preponderance of evidence that the prior act occurred).

"An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland." Hinton v. Alabama, 571 U.S. 263, 274, 134 S. Ct. 1081, 188 L. Ed. 2d 1 (2014).

Furthermore, Mr. Vaca can and will prove that "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.

First, it was extremely prejudicial when Detective Mattivi testified that a certified record of conviction (Government Exhibit 37) showed that Mr. Vaca in 1995 pled guilty to aggravated battery and used a handgun to commit the crime (See App. to Pet. for Cert. pp. 17a-20a). This testimony only suggested insofar that Mr. Vaca over two decades ago knowingly possessed a firearm during a crime, therefore, on November 20, 2016, he was acting in conformity with his past predilection to possess firearms for illegal purposes. That is pure propensity evidence.

As the Supreme Court has observed, a defendant's prior trouble with the law or specific criminal acts "might logically be persuasive that he is by propensity a probable perpetrator of the crime." Michelson v. United States, 335 U.S. 469, 475, 93 L. Ed. 168, 69 S. Ct. 213 (1948). The evidence is not rejected as irrelevant, but "it is said to weigh too much with the jury and overpersuades them to prejudge one with a bad general record and deny him a fair opportunity to defend against a particular charge." Id. at 476.

Second, the limiting instruction did not cure the Rule 404(b) error. The Court told the jury that it could give this prior aggravated battery conviction such weight as the jury felt it deserved for purposes of knowledge and intent (See App. to Pet. for Cert. pp. 16a-17a). But, because the prior

aggravated battery conviction was not admissible the jury should have not been able to give it any weight. By telling the jury it could consider the prior conviction--which was relevant only for its forbidden propensity inference--the Court wrongly invited the jury to rely on prejudicial evidence it should have never heard in the first place.

Lastly, it was also extremely prejudicial when the Government used the prior aggravated battery conviction in its initial and rebuttal closing argument (See App. to Pet. for Cert. pp. 43a-45a). The Government told the jury to use the prior aggravated battery conviction in a false exculpatory statement instruction (Jury Instruction No. 20). But, because the prior conviction was not admissible the jury should not have been able to consider it for purposes of consciousness of guilt. Again, by telling the jury to consider the prior conviction--which was relevant only for its forbidden propensity inference--the Government wrongly invited the jury to rely on prejudicial evidence it should have never heard in the first place.

Mr. Vaca has demonstrated a reasonable probability that, without the evidence of certified record of 1995 Kansas conviction for aggravated battery presented by Detective Mattivi which included that Mr. Vaca had used a handgun to commit the crime, at least one juror would have harbored reasonable doubt about whether Mr. Vaca possessed a firearm in 2016, and would have not been able to make a finding of guilty. See Cullen v. Pinholster, 563 U.S. 170, 131 S. Ct. 1388, 179 L. Ed. 2d 557, 574 (2011)("the purpose of the Sixth Amendment is not to

improve the quality of legal representation...[but] simply to ensure that criminal defendants receive a fair trial. Thus, the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adverisal process that the trial cannot be relied on as having produced a just result," citing Strickland, 466 U.S. at 689, 686).

CONCLUSION

For the reasons stated above, Petitioner, Caesar V. Vaca respectfully requests that this Court issue the requested Certificate of Appealability to prevent the risk of injustice or the risk of undermining the public's confidence in the judicial process.

RESPECTFULLY SUBMITTED THIS 10 DAY OF July, 2024.

Caesar V. Vaca

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CERTIFICATE OF GOOD FAITH

I hereby certify that the foregoing Motion for Rehearing has been filed in good faith and not in any effort to delay, and presents intervening circumstnaces that merit consideration and other substantial grounds not previously presented.

Caesar V. Vaca

Caesar V. Vaca
Petitioner - Pro Se

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PROOF OF SERVICE

I, Caesar V. Vaca, do swear or declare that on this date, July 10, 2024, as required by Supreme Court Rule 29, I have served the enclosed PETITION FOR REHEARING and CERTIFICATE OF GOOD FAITH on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third party commercial carrier for delivery within three calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON July 10, 2024.

Caesar V. Vaca

Caesar V. Vaca