23-7650
NO. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

SAMUEL CUELLAR, Petitioner.

Vs.

WILLIS CHAPMAN, Warden.

Ann M. Sherman, Solicitor General,
Jared D. Schultz.
Attorneys for Respondent.

On Petition for Writ of Certiorari to

the Sixth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

By: Samuel Cuellar M.D.O.C. #180704
Acting in Pro se.
Macomb Correctional Facility,
34625 26 Mile Road
Lonex Township, Michigan
48048.

Questions Presented for Review

I. PETITIONER IS ENTITLED TO REINSTATEMENT OF PLEA OFFER WHERE COUNSEL FAILED TO INFORM HIM DURING PLEA NEGOTIATIONS THAT IF HE WAS CONVICTED UNDER MCL 769.12(1)(a), THAT HE WOULD RECEIVE, A MANDATORY 25 YEAR MINIMUM SENTENCE COUNSEL'S INEFFECTIVENESS DEPRIVED PETITIONER OF THE ABILITY TO MAKE AN INFORMED AND UNDERSTANDING DECISION ABOUT WHETHER OR NOT TO WAIVE TRIAL.

II. PETITIONER CUELLAR RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND HAS GOOD CAUSE FOR FAILING TO RAISE THE CONSTITUTIONAL VIOLATION SET FOURTH HEREIN ON APPEAL.

Table of Contents

APPENDIX'S

Table Of Authorities

Michigan Statutes

Designation Of Relevant Court Documents

Statement of Jurisdiction

Petitioner seeks review pursuant to 28 U.S.C. § 1254, of the Sixth Circuit Court of Appeals opinion in, Samuel Cuellar v. Willis Chapman, case #23-1607. This Supreme Court of the United States, may review by Write of Certiorari the judgment or decrees rendered by the United States Court of Appeals for the Sixth Circuit, entered on February 21, 2024.

A timely petition for rehearing was denied by the United States Court of Appeals on the April 12, 2024. See (APPENDIX E). Wherefore, this United States Supreme Court has Jurisdiction to hear this case.

Constitutional Provision

U.S. Const. amend. VI.

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.

STATEMENT OF THE CASE

On February 14, 2013, Petitioner Samuel Cuellar was charged in the State of Michigan, Saginaw County, of Armed Robbery Mich. Comp. Law 750.529. On March 12, 2013, the Prosecution filed a notice of intent to seek Fourth Habitual, under Mich. Comp. Law 769.13. The information notice states that, the Petitioner was subject to the penaltie[s] under, Mich. Comp. Law 769.12". (APPENDIX A).

Plea Offer

On October 15, 2013, Matthew Frey, defense counsel informed Petitioner that the prosecution made a plea offer of 10½ years, counsel stated the following ;

[DEFENSE COUNSEL]; Matthew Frey, on behalf of Mr. Cuellar we are your honor I do want to put one thing on the record at this junction as of todays date Mr. Coppolino did offer that if Mr. Cuellar pled guilty as charged, acknowledge his HOA status, that they would recommend the bottom of the guideline which have been scored at 126 - to maximum range a minimum sentence of 420 months Mr. Cuellar to my understanding, is rejecting that offer and wishes to proceed to trial, this is a 25 year actually I think it's a 24 and 6 month difference between the low end of the guidelines...

[THE COURT]; Mr. Cuellar, did you hear the plea that was made ?

[DEFENDANT]; Yes. I did.

[THE COURT]; Do you understand its just basically a 10-year sentence on the low end of the guidelines ?

[DEFENDANT]; Yes.

[THE COURT]; You understand your facing a potential additional 24 years, plus if convicted by a jury ?

[DEFENDANT]; Yes. (Transcripts Excerpt, page's 3-4, October 15, 2013).

Defense counsel only informed Petitioner that his sentencing guidelines was from 10½ to 35 years. Petitioner rejected the plea offer and proceeded to trial, and was found guilty of Armed Robbery Mich. Comp.Law 750.529. The trial court sentenced the Petitioner as a Fourth Habitual Offender, Mich. Comp. Law 769.12, to a discretionary prison term of 25 to 50 years (Sentencing Tr. pg's 7-8,).

Direct Appeal

Petitioner appealed as of right in the Michigan Court of Appeals. In lieu of granting leave to appeal, the Court remanded the case to the trial court for a Corsby hearing in light of. People v. Lockridge, 870 N.W.2d 502 (Mich 2015), docket entry (Michigan Court of Appeals case #319872, October 13, 2015).

On October 28, 2015, the prosecution submitted his Sentencing Memorandum in response to the Lockridge remand, making the following arguments;

> The People would also bring to this court's attention the fact that as a fourth habitual offender, defendant-appellants sentence is subject to a mandatory minimum sentence of 25 year's, with a discretionary maximum sentence of life in prison. Thus, the People argues that, if this court determines that resentencing is appropriate, this court would impose the statutory mandatory minimum of 25 years and increase defendant-appellants maximum sentence to life in prison.
>
> See MCL 769.12(1)(A),
>
> (1) If a person has been convicted of any combination of 3 or more felonies ... and that person commits a subsequent felony within this state, the person "shall" be punished upon conviction of the subsequent felony and sentencing under MCL 769.13 as follows;
>
> (a) If the subsequent felony is a serious crime or a conspiracy to commit a serious crime, and 1 or more of the prior conviction's are listed prior felonies, the court "Shall" sentence the person to imprisonment for not less than 25 years.
>
> Further, under MCL 769.12(6)(c), a serious crime is defined as a offense against a person in violation of section 750.529 and, under MCL 769.12(6)(a)(iii), a listed prior felony is defined as a violation or attempted violation of section 750.520b. Thus, the defendant-appellant's minimum sentence is required to be set at a mandatory minimum of 25 years because defendant-appellant's subsequent felony, Armed Robbery under MCL 750.529, is a serious crime, and one of the defendant-appellant's prior felony conviction is a listed prior felony, such that defendant-appellant was convicted of Criminal Sexual Conduct under MCL 750.520b. See, People's Sentencing Memorandum, page's 3-4. Attached herewith as (APPENDIX B).

The prosecution brought to Petitioners attention for the first time that, as the result of being convicted as a fourth habitual under Mich. Comp. Law 769.12,

that the Petitioner was subjected to a more serious charge, a mandatory 25 year minimum. Because, the Petitioner was convicted of armed robber, a serious crime and that, Petitioner has a listed prior felony for criminal sexual conduct. Thus, the Petitioners minimum sentence was required to be set at a mandatory 25 year minimum pursuant to Mich. Comp. Law 769.12(1)(a), with a discretionary maximum sentence of life under, Mich. Comp. Law 769.12(1)(b).

Furthermore, State Law requires that "when a specific statute provision differs from a related general one, the specific one controls". People v. Meeks, 293 Mich App 115, 118 (2011). In this case, the more specific provision was Mich. Comp. Law 769.12(1)(a), because it gives specific statutory definition's the phrase, "serious crime" and "listed prior felonies", to enforce the mandatory penalty. Thus, if the plain and ordinary meaning of the language is clear, judicial construction is not required or permitted. People v Weeder, 468 Mich 493, 497 (2002). Petitioner decided to option out of his Lockridge hearing, in fear of receiving a life sentence (Tr. Excerpt, pg-6, September 13, 2017).

Motion for Relief from Judgment

On November 21, 2017, Petitioner submitted in the trial court his Motion for Relief from Judgment pursuant to Michigan Court Rule 6.500, raising the issue of ineffective assistance of counsel, for failing to know statutory law under Mich. Comp. Law 769.12(1)(a), and for failing to inform Petitioner about the mandatory sentencing guidelines during plea negotiation. Petitioner also raised the issue of ineffective assistance of appellant counsel for failing to raise the herein issue on direct appeal. On December 1, 2017, the trial court denied relief for failing to establish cause and prejudice under, Mich Court Rules 6.508(D)(3). On May 7, 2018, Petitioner applied for leave to appeal in the Michigan Court of

Appeal's. In lieu of granting leave to appeal the court, remanded the case to the trial court for an evidentiary hearing and decision whether Petitioner was denied effective assistance of counsel. Docket entry (Michigan Court of Appeals case #343954, November 7, 2018).

Evidentiary Hearing

On March 14, 2019, the trial court conducted the evidentiary hearing, where Matthew Frey (P68239) trial counsel, testified on direct review to the following questions by, Ann Prater, appointed counsel for the hearing ;

Q. Were you aware during the plea offer that the Legislation amended the fourth habitual status MCL 769.12(1)(a) by mandating a 25 year minimum sentence for serious subsequent fourth habitual offenses ?

A. I was aware of that. I don't believe he was charged with that in this case. I think there was some discussions that he has to be PROPERLY NOTIFIED OF THAT THROUGH THE FELONY INFORMATION that is filed by the prosecuting attorneys office.

Q. Were you aware during the plea offer that Mr. Cuellar's armed robbery charge is defined under MCL 769.12(6)(c) as a serious crime ?

A. Yes.

Q. Prior to trial or during the plea offer did you make an independent examination of Mr. Cuellar's prior convictions which are listed within the prosecutions fourth habitual notice ?

A. Yes. (Tr. Excerpt page's 6-7, March 14, 2019).

Q. Did you inform Mr. Cuellar, during the plea offer of the consequences of rejecting the plea offer and going to trial, if he was found guilty of armed robbery, that his sentence would be subjected to a mandatory 25 year minimum under MCL 769.12(1)(a).

A. No, because he was not charged with that. (Tr Excerpt, page 9).

Counsel, did not inform Petitioner about the mandatory term, because "he believed" the prosecution had to give notice of it through the habitual notice. However, the Michigan Court of Appeals rejected this argument in, People v. Head 323 Mich App 526, 546 (2018) for (failing to establish legal authority). In addition, in 2013, Michigan Court Rule 6.112(F), only required that, "such

notice must provide the prior conviction's that may be relied upon of purposes of sentencing enhancement". It does not require for the prosecutor to give a defendant notice of the mandatory term. In fact, this court rule was recently amended to now require such notice **effective May 1, 2023.**

Douglas Baker, attorney on direct appeal, testified that Petitioner told him about the plea offer during direct appeal, but that "he did not investigate the circumstances of the plea offer". Nor did he investigate the statutory sentencing laws concerning Petitioners fourth habitual status under Mich.Comp.Law 769.12(1)(a), to determine whether or not trial counsel properly explained them to the Petitioner during the plea offer. Mr. Baker, only became aware of the mandatory term when he received a copy of the Peoples Memorandum after direct appeal (Tr Excerpt pgs 24-25 March 14, 2019). The Petitioner testified he would have accepted the plea offer if counsel would have told him about the mandatory term, and that he always plead guilty in his prior convictions (Tr. Excerpt, pg's 35-36. March 14, 2019).

During the hearing, the Petitioner submitted a copy of the People's Sentencing Memorandum to the court, so that the court can evaluate the validity of counsel's testimony that, "the prosecutor did not charge Petitioner with the mandatory term", when, the prosecution argued on pages 3-4, to the contrary, that Petitioner was charged, and subjected to the mandatory term. At the conclusion of the hearing the court ignored the evidence and testimony and denied relief for the following reasons;

> I did not sentence him pursuant to the 25 year mandatory minimum, nor take it into consideration. Therefore, whether or not he was INFORMED of the 25 year mandatory minimum is irrelevant and harmless there because HE WASN'T SENTENCE pursuant to that, AND FOR THAT REASON I FIND, that there was effective assistance of counsel. (Tr Excerpt, pages 47-48, March 14, 2019).

The court determined that it was irrelevant as to whether or not Petitioner was informed of the mandatory term, because Petitioner wasn't sentence pursuant to that,

and for that reason the court found that there was effective assistance. However, the trial court unreasonable applied federal law. First, the court made his sentencing authority the focus of his factual analysis, instead, of evaluating trial counsel's sentencing guidelines advice based upon the mandatory sentencing requirements called for under Petitioners fourth habitual offender status, and the Peoples Sentencing Memorandum argument. Second, the court failed to determine, whether counsels advice during the plea negotiations was reasonable under, Stricklands first prong analysis, and if not, was the Petitioner deprived of the ability to make an informed and understanding decision to waive his constitutional rights to a jury trial, and to accept the plea offer. The trial courts focus of inquiry "must" be on the fundamental fairness of the proceeding whose results is being challenged. Because the trial court failed to consider any of the evidence presented at the evidentiary hearing on the question of counsels ineffectiveness, the court unreasonably applied federal law as decided by, Strickland, Lafler, and Padilla. Issue One.

Application for Leave to Appeal

After the evidentiary hearing, Petitioner applied for leave to appeal in the Michigan Court of Appeals, raising the herein issues arguing, that the trial court unreasonable applied the standards set fourth in Strickland v Washington, 466 U.S. 668, at 690 (1984), and that the trial courts ruling was in contrary to the Supreme Courts clearly established precedent under Padilla v. Kentucky, 559 U.S. 356, 369 (2010). Wherefore, the trial court failed to identify a "reasonable basis" for concluding that counsels provided effective assistance of counsel. Thus, the courts assessment of counsels conduct was unreasonable, considering the evidence presented to the court. However, the court of appeals denied relief without addressing the issue. Docket entry (Court of Appeals case #349638, August 13, 2019).

The Petitioner timely submitted his application for leave to appeal in the Michigan Supreme Court, raising the herein issues. However, that Court also denied relief in a two sentence analysis. Docket entry (Michigan Supreme Court case #160913, final order from the State Courts, June 28, 2020).

Writ of Habeas Corpus

On September 15, 2020, the Petitioner timely submitted his petition for Writ of Habeas Corpus pursuant to 28 U.S.C § 2254(d)(1) and (2), in the United States, District Court Eastern District, of Michigan Southern Division, case #4-20-cv-12669, raising the herein issues the Honorable Matthew Leitman, presided over the case. Under the "contrary to" clause of § 2254(d), a federal habeas court may grant the writ, if the state court arrives at a conclusion opposite to that reached by the Supreme Court on a question of law, or if the state court decides a case differently than the Supreme Court has on a set of materially indistinguishable facts.

On April 9, 2021, Jared D. Schultz, assistant Attorney General of Michigan responded on behalf of the Warden (Respondent), making the following argument ;

> Cuellar has not shown that his counsel was ineffective during the plea-bargaining process.
>
> First, trial counsel's performance was not objectively unreasonable for not advising Cuellar of the 25 year mandatory minimum statute because he correctly determine that the statute did not apply. The statute at issue has four separate provisions. The first provision provides that, if the subsequent felony is a "serious crime" and one of the prior felonies is a "listed prior felony", then a 25 year mandatory minimum sentence applies. Mich. Comp. Law 769.12(1)(a). The second provision provides that, if the subsequent felony is punishable by five years or more in prison the trial court may sentence the defendant to prison "for life or for a lesser term 769.12(1)(b)". Id Page 26, Respondents Answer.
>
> True, Cuellar's conviction was a "serious crime" and, one of his prior convictions was a listed felony, meaning that he could have been charged under the mandatory minimum provision. But he was not. And because he was not charged under that provision, he could not have been sentenced to it.

> Cuellar argues that the Michigan Court of Appeals said that a defendant does not need to be notified that he is subject to a 25 year mandatory minimum sentence before such a sentence is imposed, citing People v Head, 917 N.W.2d 752 (Mich. Ct App. 2018). ..... The Head court considered an argument that the notice must indicate that the 25 year mandatory minimum sentence applies in order to impose such a sentence Id. at 764. The court rejected the argument for two reasons; (1) the defendant failed to properly brief the issue, and (2) the defendant Head was INFORMED of the mandatory minimum BY COUNSEL before trial.
>
> That rule in Michigan is aptly demonstrated by the analysis in People v Garrett, No. 338311, 2019 WL 97129, at *7 (Mich. Ct. App Jan 3, 2019). In Garrett, the defendant argued that the prosecution's failure to file a proof of service of its notice to seek the 25 year mandatory minimum sentence under the fourth habitual offender statute entitles him to be resentenced without that enhancedment. Docket entry (Respondent Answer Pg's 27-28. April 9, 2021).

The Respondents relies upon the UNPUBLISHED OPINION in People v Garrett, 925 NW.2d 199 (Mich. Ct. App 2019), to support counsels testimony that Petitioner has to be given notice of the mandatory term within the habitual notice. However the court only concluded that, Garrett did not receive notice of his "HABITUAL STATUS WITHIN 21-DAYS" as required by Mich. Comp. Law 769.13(1). The Appeals Court did not find that Garrett had to be informed of the mandatory term. Thus, Respondent reliance upon Garrett is misplaced to support counsels testimony.

U.S. District Court Ruling

On June 6, 2023, the U.S. District Court issued an Order denying Petitioners Writ of Habeas Corpus, and granted a Certificate of Appealability on this issue. The Courts analysis resembles de novo review where the court determined that.

The felony information filed against Petitioner, notified him that he was being charged for armed robbery, and being a fourth habitual offender subject to the penalties provided by Mich. Comp. Law 769.12. The first penalty, under that provision (1)(a), mandates for a court to impose a mandatory 25 year minimum to any person who has been convicted of 3 or more felonies, who commits a serious

subsequent crime. The second penalty under (1)(b), allows for the court to impose an indeterminate sentence, if the subsequent felony is punishable upon a first conviction by imprisonment for a maximum term of 5-years or more or for life. The District Court found that, the Petitioner was convicted of armed robbery, a serious crime, and that he has a prior listed conviction for criminal sexual conduct. Thus, Petitioner apparently faced a mandatory minimum of 25 years. But the "PENALTY" section does not inform Petitioner that he faced that sentence thus, he was not charged with it. See (APPENDIX C, pgs 3-7, June 6, 2023).

However, the District Court failed to give required deference to the contrary ruling of the trial court. The trial court did not find that the, penalty section of the information does not charge the mandatory term. Instead, the trial court determined that it was irrelevant as to whether or not Petitioner was informed of the mandatory term (Tr. Excerpt pg 47-48, March 14, 2019). Thus, the district court had no legal basis for determining that the PENALTY section must give notice of the mandatory term. Nor was there any factual basis for determining that trial counsel was not ineffective.

Thus, instead of evaluating trial counsels performance under the contrary to clause of § 2254(d), for failing to inform Petitioner about the mandatory term, to determine whether or not the Petitioner was prejudice by being deprived of the ability to make an informed decision to accept the plea offer and whether the advice impeded the plea process from further negotiations. The District Court concluded that,

The Petitioner's ineffective assistance of counsel claim fails because,"if", as Respondent claims that Petitioner was not subject to the 25 year mandatory term, then trial counsel did not perform deficiently in failing to so advise

Petitioner. On the other hand, "if" as the Petitioner claims he was subject to the mandatory term, then he did not suffer any prejudice when he rejected the plea offer, that is because if he was subject to the mandatory term, then the plea offer was a nullity that could not have been performed. Simply put, the trial court would have been prohibited by law from sentencing the Petitioner consistent with the prosecution's plea offer of ten years. Petitioner did not lose anything when he rejected the plea offer. In short, there is no scenario under which Petitioner can demonstrate both deficient performance and prejudice and his ineffective assistance of trial counsel claim fails. Id, pg's 19-20 District Courts order.

The error in the District Court prejudice analysis, was that it was based upon the "assumption" that the prosecution had no authority to make a ten year plea offer, where the trial court would have had to impose the mandatory term. However, the question before the trial court was not the legitimacy of the prosecution's plea offer, but the validity of trial counsels advice during the plea bargaining process, and whether that advice was objectively unreasonable under U.S. Supreme Court precedents. Here the Courts focus was on the sentencing proceeding instead of focusing on the fundamental fairness of the plea bargaining process, whose result is being challenged. Strickland 466 U.S. at 696.

Furthermore, the District Court rejected the Supreme Courts determination that, a defendant who goes to trial instead of taking a more favorable plea offer may be prejudice from either a conviction on more serious count or the imposition of a more severe sentence. Lafler v Cooper, 566 U.S 156, 160 (2010). The District Court also failed to take into consideration the People's Sentencing Memorandum where, the prosecutor argued that as the result of being convicted as a fourth

habitual offender that Petitioner was subject to a more serious charge, a mandatory 25 year minimum, which is a more severe sentence then the prosecutors recommended 10½ year plea offer. In light of this evidence reasonable jurists could agree that the District Court erroneously applied Supreme Court precedents when it denied relief.

Sixth Circuit Court of Appeals

On July 21, 2023, the Petitioner appealed the U.S. District Courts ruling in the Sixth Circuit Court of Appeals case #23-1607, on the ground's that the District Court failed to apply the appropriate, United States Supreme Court analysis on the issue of ineffective assistance of counsel, in the context of a rejected plea offer under Strickland, and Lafler.

On November 27, 2023, Ann M. Sherman, Solicitor General responded making the argument that the district court correctly found that Cuellar could not meet both prongs of the ineffective assistance test, because counsel's performance was not objectively unreasonable for not advising Cuellar of the mandatory 25 year minimum requirements because he correctly determined that the statute did not apply (page 19 of Respondents Brief). The Respondent also argued that, Cuellar did not suffer any prejudice as the result of counsels conduct, because Cuellar argues that the 25 year mandatory minimum provision had to be imposed simply because he met the requirements of the provision. But if that is the case, then the provision would have had to have been imposed even if Cuellar had accepted the plea deal. Because the deal was to plea guilty as charged, with no reduction in his habitual status. Thus, he cannot show that the plea terms would have been less severe than the sentence actually imposed. Docket entry (Respondents Brief, pg's 25-26).

On December 13, 2023, Petitioner submitted his Reply Brief making the rebuttal argument that Petitioner can establish prejudice, even though the prosecution never offered a more favorable plea offer. First the United States Supreme Court in Lafler and Missouri v Frye, 566 U.S. 134, at 140, (2012), did not establish a threshold requirement of a more favorable plea offer. Rather they affirmed a defendants right to effective assistance of counsel during the plea bargaining process.

Furthermore, under Sixth Circuit Court precedent the court has determined that, "a defendant could establish prejudice when his counsel failed to alert him that accepting a plea offer could subject him to deportation EVEN IF THE PROSECUTOR NEVER OFFERED A PLEA THAT EXCLUDED adverse immigration consequences". The Sixth Circuit Court, has held that a defendant could do so by establishing that he would have negotiated a more favorable plea deal, and with proper advice the outcome of those negotiations would have been different. Rodriguez-Penton v. United States, 905 F.ed 481, at 489 (6th Cir. 2018). See, DeBartolo v. United States, 790 F.3d 775, (7th Cir. 2015), where the court found prejudice because a defendant "could have tried to negotiate a different plea deal", notwithstanding the fact that, the prosecutor in that case never offered a more favorable plea offer. Id at 779. See Docket entry (Petitioners Reply Brief pg's 8-9, of December 13, 2023).

Sixth Circuit Courts Ruling

On February 21, 2024, the Sixth Circuit Court issued an Order affirming the district courts ruling. The Court determine that, it is not clear that state law at the time required for such notice before the imposition of the 25 year mandatory minimum, quoting. People v. Head, 917 N.W.2d 752, 764 (Mich Ct.App 2018)(noting the absence of authority on this point). The Court also recognized that the relevant court rule was recently amended to specifically NOW REQUIRE such notice, see

Mich. Ct. R. 6.112(F)(eff. May 1, 2023). Ultimately, we need not resolve whether the mandatory minimum could have been applied because, under either scenario, Cuellar cannot prevail on his ineffective assistance claim. First "assuming" that the States interpretation is correct and the 25 year minimum did not apply, then trial counsel did not perform deficiently by failing to inform Cuellar of it. "Assuming", on the other hand, that Cuellar's interpretation is correct and he was subject to the mandatory term, his claim still fails because he cannot show prejudice, because the trial court would have been unable to impose the recommended 10½ year sentence had Cuellar accepted the plea offer. Instead, it would have had to either impose the mandatory term, or allow Cuellar to withdraw his plea.

Cuellar also argues that, if he had been properly advised, he might have been able to negotiate a better deal that dropped the fourth habitual charge altogether. "Perhaps", but the record supports that the prosecutor did not intend to drop the fourth habitual in the plea agreement, and Cuellar presents no evidence that the prosecutor would have agreed to do so. And to show prejudice Cuellar must demonstrate that the plea offer would have been presented to the court and not withdrawn by the prosecutor "in light of intervening circumstance." See (APPENDIX D, pg 4).

The Sixth Circuit Court erred in a number of ways. First, the court correctly determine that there was no legal authority that required for the prosecutor to give notice of the mandatory term within the PENALTY section of the information notice. Thus, reasonable jurists could agree this determination rejects the district courts conclusion that, because the PENALTY section does not charge the mandatory term, that Petitioner was not charged with it. Second, reasonable jurists could have also agreed that there was no reasonable justification for trial counsel to not have inform Petitioner about the mandatory term, where this Court has held that "counsels

has a duty to give correct advice when the law is clear". Padilla v. Kentucky, 559 U.S. 356, 369 (2010), satisfying the first prong of Strickland, 466 U.S. at 681. And Third, the court correctly identified the prejudice test under Lafler. However, the Respondent never argued that the Petitioner cannot establish prejudice because the, prosecution would have withdrawn the plea offer in light of intervening circumstances. Thus, the Court on it's own identified what it believed was the critical prejudice issue to deny relief. In doing so, the sixth circuit court transform its legitimate advisory role to the improper role of an advocate for the Respondents.

Nevertheless, the Petitioner argued in his Reply Brief, that he has shown prejudice by, counsels own testimony during the evidentiary hearing, where the prosecution questioned counsel about the following scenario;

Q. Have you had clients that faced the violent habitual status before ?

A. I have there was one I believed shortly thereafter Mr. Cuellars trial that I tried with a colleague of your Mr. Stevenson where the habitual 4th applied but the judge agreed to not go along with that habitual fourth, even though the Department of Corrections had tried to impose it. We wrote back to them and that was STRICKEN. He was sentenced to THREE years VERSUS the MANDATORY 25 years. (Transcripts Excerpt pg's 18-19, of March 14, 2019).

Trial counsels testimony suggest that he was successful in negotiating for the prosecutor to dismiss the mandatory term in his prior clients case, and that he succeeded in getting the judge to go along with the dismissal. Thus, its reasonable to conclude that a competent attorney could have succeeded in negotiating for the mandatory term to be dismissed in the Petitioner's case, resulting in a different outcome. But, also see, United States v Rodriguez-Vaga, 797 F.3d 781, 788 (9th Cir. 2015), where that court found that a petitioner can establish prejudice by showing "a willingness by the government to permit a defendant charged with the same or a

similar crime" to plea guilty to a non-removal offense. Counsels testimony establish that same scenario. In addition, the sixth circuit court of appeals has already approved of this logic in, Rodriguez-Penton v. United States, 905 F.3d 481, at 488 (6th Cir. 2018), where that court determined that, "a defendant could establish Strickland prejudice when his counsel failed to alert him that accepting a plea offer could subject him to deportation, even if the prosecution NEVER OFFERED a plea that excluded adverse immigration consequences". Id, at 488. The court held that the defendant could do so by establishing that he would have negotiated a more favorable plea deal and that with proper advice, the outcome of those negotiations would have been different. Also see, Gabay v. Woodford, 418 F.App'x 649, 651 (9th Cir. 2011) Suggesting defendant could have established prejudice based on counsels failure to engage in plea negotiations if he shown that the government was willing to offer a plea deal. It is therefore, well recognized that a defendant can establish prejudice even though the prosecution never offered a more favorable plea offer. However, the sixth circuit court denied relief.

On March 4th, 2024, the Petitioner timely submitted his Petition for Panel Rehearing, Fed.R.App.P 40(a)(1). The Sixth Circuit Court of Appeals denied relief on April 12, 2024, (APPENDIX E). Petitioner now appeal to this Supreme Court.

Argument

I. PETITIONER ENTITLED TO REINSTATEMENT OF PLEA OFFER WHERE COUNSEL FAILED TO INFORM HIM DURING PLEA NEGOTIATIONS THAT IF HE WAS CONVICTED UNDER MCL 769.12(1)(a), THAT HE WOULD RECEIVE A MANDATORY 25 YEAR MINIMUM SENTENCE COUNSEL'S INEFFECTIVENESS, DEPRIVED PETITIONER OF THE ABILITY TO MAKE AN INFORMED AND UNDERSTANDING DECISION ABOUT WHETHER OR NOT TO WAIVE TRIAL.

This case presents a violation of Petitioners Sixth Amendment right to have effective assistance of counsel during the plea bargaining process, where counsel was unaware of the charge, and laws involved in the case, and where counsel misinformed the Petitioner of his true sentencing guidelines, depriving him of the ability to make an informed decision about whether or not to waive his constitutional rights to a jury trial, U.S. Const. AM VI.

This United States Supreme Court has long held that counsels has a legal duty to know the charges, facts, circumstances, and laws involved in the case. Strickland v. Washington, 466 U.S. 668, at 681 (1984). The Petitioner was charged for Armed Robbery Mich. Comp. Law 750.529, and charged as a Fourth Habitual Offender Mich. Comp. Law 769.12. Counsels challenged conduct occurred on October 15, 2013, prior to jury selections, where the prosecution made a recommended plea offer of 10½ years. Trial counsel informed Petitioner that his sentencing guidelines as a fourth habitual was from 10½ to 35 years. (Tr. Excerpt, pg 3, October 15, 2013). Petitioner rejected the plea offer and proceeded to trial where he was found guilty as charged. The court sentenced Petitioner to a discretionary prison term of 25 to 50 years. (Tr. Excerpt pg's 7-9, December 5, 2013).

While on direct appeal in the Michigan Court of Appeals, Petitioner received a favorable ruling for resentencing. Docket entry (Mich Ct. App case #319872, October 13, 2015).

The Prosecution responded by bring to the courts attention the fact that, "as the result of being convicted as a fourth habitual offender, Petitioner sentence was subject to a mandatory 25 year minimum pursuant to the mandatory sentencing requirements called for under Mich. Comp. Law 769.12(1)(a), with a discretionary maximum sentence of life." See (APPENDIX B, pg's 3-4). Petitioner option out of his resentencing hearing in fear of receiving a life sentence.

Petitioner submitted in the trial court his Motion for Relief from Judgment Mich Ct. R. 6.500. Claiming that his Sixth Amendment right to counsel was violated during his plea bargaining process, where a claim of ineffective assistance of counsel may be based on trial counsels failure to inform Petitioner of the direct consequences of accepting or rejecting a plea offer. Missouri v. Frye, 566 U.S. 134, 145 (2012); Padilla v. Kentucky, 559 U.S. 356, 375 (2010); Lafler v. Cooper, 566 U.S. 156, 168 (2012); People v. Douglas, 295 Mich App 186, rev'd in part on other grounds, 496 Mich 577 (2014). However, the trial court denied relief for failing to raise the issue on direct appeal. Petitioner appealed the decision, and in lieu of granting leave, the Michigan Court of Appeals remanded the case back for an evidentiary hearing and decision whether Petitioner was denied effective assistance of counsel. Docket entry (Mich. Ct. App case #343954, November 7, 2018).

The trial court conducted the evidentiary hearing, where Matthew Frey (P68239) trial counsel testified that, "he was aware during the plea offer that the habitual statute calls for a mandatory 25 year minimum, but that he did not inform Petitioner about it because he believed that the prosecutor had to give notice of the term through the felony information notice." (Tr. Excerpt, pg's 6-9, March 14, 2019). However, at the time state law did not require for the prosecution to provide a defendant of the mandatory term through the habitual information notice. Michigan

Court Rule 6.112(F), only required that;

> "A notice to seek an enhanced sentence pursuant to MCL 769.13 must list the prior convictions that may be relied upon for the purpose's of sentencing enhancement".

This court rule was amended on May 1, 2023, to now require for such notice. Furthermore, counsels argument was rejected by the, Michigan Court of Appeals for failing to provide legal authority. People v. Head, 917 N.W.2d 752, 764 (Mich. Ct. App. 2018). Thus, counsel egregiously misinformed Petitioner that his sentencing guidelines was from 10½ to 35 years. When in fact, Petitioners was facing a 25 year mandatory minimum to life. Counsel has a duty to give correct advice when the law is clear, Padilla v. Kentucky, 559 U.S. 356, 369 (2010).

Following the evidentiary hearing the trial court denied relief for the following reasons;

> I did not sentenced him pursuant to the 25 year mandatory minimum, nor take it into consideration. Therefore, whether or not he was INFORMED of the 25 year mandatory minimum is irrelevant and harmless there because HE WASN'T SENTENCE pursuant to that, AND FOR THAT REASON I FIND that there was effective assistance of counsel. (Tr. Excerpt, pg's 47-48, March 14, 2019).

This Court has held that "a court deciding an ineffectiveness claim must judge the reasonableness of counsels conduct on the facts of the case". Here, the trial court made his discretionary sentencing authority the focus of his analysis of counsels conduct, in doing so, the trial court unreasonably applied Stricklands requirements. As the result, the court failed to consider any evidence from the hearing the, (Peoples Sentencing Memorandum legal arguments) on the question of trial counsel's ineffectiveness, and because the court failed to identify a reasonable "basis" for its assessment of counsels conduct, that failure was an unreasonable determination of the facts presented to the state courts. Strickland 466 U.S. at 690.

In addition, the trial courts deficient analysis of trial counsels conduct was contrary to clearly established federal law. Where the trial court held that "it was irrelevant as to whether or not the Petitioner was informed of the mandatory term". This Court found that, "silence under these circumstances would be fundamentally at odds with the critical obligation of counsel to advise the client of the advantages and disadvantages of a plea agreement". quoting, Libretti v. United States, 516 U.S. 29, 50-51 (1995).

Many court's, including this one have found ineffective assistance of counsel in violation of the Sixth Amendment where, a defendant's trial counsel fails to inform a defendant of his sentencing guidelines, see People v. Douglas, 296 Mich App 186, 205 (2014) finding, (defense counsels failure to inform defendant in that case that he would receive a 25 year mandatory minimum sentence if convicted of CSC 1st, fell below an objective standard of reasonableness); Jamison v. Klem, 544 F.3d 266, 276-77 (3rd Cir. 2008) holding (failure to advise defendant of mandatory minimum sentence was an unreasonable application of clearly establish federal law); Magana v. Hofbauer, 263 F.3d 542 (CA 6. 2001), (Defense counsels erroneous understanding of the applicable sentencing statute was objectively deficient). In, Padilla v Kentucky, 559 U.S. 356, 370 (2010), this Court held that (Counsels mistaken advise regarding the sentence that defendant faced at trial, fells below an objective standard of reasonableness). Likewise, in Petitioners case, defense counsels erroneous sentencing guideline advice of 10½ to 35 years, as opposed to, a mandatory 25 to life, fells below an objective standard of reasonableness under prevailing professional norms. Satisfying the first prong of Strickland, where this Supreme Court has emphasize that "[c]ounsel's duty to know the laws and charges applicable to his clients case, has been repeatedly reaffirmed". Id. at 691.

Under this circumstances Petitioner must show that, but for the ineffective assistance of counsel there is a "reasonable probability" that the outcome of the plea bargaining process would have been different with competent advice, and that;

1. The plea offer would have been presented to the court.

(a) The defendant would have accepted the plea, and

(b) The prosecutor would not have withdrawn it in light of intervening circumstances.

2. The court would have accepted its term, and

3. The conviction or sentence, or both, under the offer term would have been less severe than the than the punishment ultimately faced, Lafler 132 S.Ct at 1384.

A. PREJUDICE COMPONENT 1 (a); WOULD PETITIONER HAVE ACCEPTED THE PLEA OFFER ?

The Petitioner testified at the evidentiary hearing that, if trial counsel would have informed him about the mandatory term, that he would have accepted the plea offer, and that he has always pleaded guilty in his prior convictions. (Tr. Excerpt, pg 35, March 14, 2019). Furthermore, objective evidence that Petitioner would have accepted the plea offer is not required, where Petitioner can show a reasonable probability that he would have pleaded guilty based on a substantial disparity between the penalty offered by the prosecutor and the punishment called for by the indictment is sufficient to establish a reasonable probability that Petitioner would have accepted the plea offer. Griffin v. United States, 330 F.3d 733, 739 (6th Cir. 2003). Petitioner was offered a 10½ year plea offer, he was facing a mandatory 25 year minimum. This is sufficient to establish a reasonable probability that Petitioner would have accepted the plea offer. See Magana v. Hofbauer, 263 F.3d 542, at 552 (CA 6. 2001), finding the difference between a ten and twenty year sentence significant.

B. PREJUDICE COMPONENT 1 (b); WOULD THE PROSECUTOR HAVE WITHDRAWN THE PLEA IN LIGHT OF INTERVENING CIRCUMSTANCES ?

Petitioner claims that if he would have accepted the plea offer and the case proceeded to sentencing, and the prosecutor realized that Petitioner was subject to the mandatory term, its reasonable to conclude that the prosecutor would not have withdrawn its plea offer for the following reasons (1) The prosecutor was having problems locating his witnesses, they did not show up for a pre trial hearing to Suppress Identification held on 9-9-2013, Docket entry (Register of Action, pg-3). (2) The prosecutor made his plea offer just before jury selections because his witnesses did not show up on the first day of trial (Tr. Excerpt p-11 October 15, 2013). Furthermore, Michigan Court Rule 6.112(H) provides that "the trial court may permit the prosecutor to amend the information before, during or after trial". Thus, the prosecutor had discretionary authority to dismiss the mandatory term, and make a recommended plea offer of 10½ years. Wherefore, there is a reasonable probability that the prosecutor would not have withdrawn the plea offer in light of intervening circumstances.

C. PREJUDICE COMPONENT 2; WOULD THE COURT HAVE ACCEPTED THE PLEA OFFER ?

The district court concluded that, "If Petitioner had accepted the plea offer and the case proceeded to sentencing, the trial court would have recognized that Petitioner was subject to the mandatory term, (and if that was the case) the district court will not grant relief on the basis if Petitioner was subject to the mandatory term, the court would not have recognized that fact and would have erroneously sentenced Petitioner consistent with the prosecutors recommended plea offer. (APPENDIX C, n, Pg 20). However, if the trial court would have recognized there was a defect in the plea proceedings (the mandatory term) its reasonable to conclude that the court would have allowed the prosecutor, and defense counsel

to address the issue before imposing sentence. Wherefore, it's reasonable to conclude that a competent attorney would have requested for the mandatory term to be dismissed so that the trial court could sentence Petitioner according to the prosecutors recommended plea offer of 10½ years. But, see page 14, herein where counsel was successful in negotiating for the prosecutor to dismiss the mandatory term in a prior case, and he also got the judge to go along with it. Here, looking at the events that had transpired prior to jury selections the court stated to Petitioner that, "the plea offer was basically a 10 year sentence on the low end of the guidelines YOU SURE YOU WANT TO REJECT THAT OFFER". (Tr. Excerpt, pg 3, October 15, 2013). This suggest that the plea offer was an acceptable term in the eye's of the court. In fact, the court could have rejected the plea offer at that time. Thus, it's reasonable to conclude that the court would not have prevented the plea offer from being accepted or implemented when it was originally offered.

D. PREJUDICE COMPONENT 3; WOULD THE CONVICTION OR SENTENCE HAVE BEEN LESS SEVERE THAN THE PUNISHMENT ULTIMATELY FACED ?

The Petitioners fourth habitual status called for a 25 year mandatory minimum sentence. However, the prosecutor offered a recommended plea offer of 10½ years. Petitioner rejected the plea offer and proceeded to trial and was found guilty. This Court has held that, "A defendant who goes to trial instead of taking a more favorable plea offer, may be prejudice from either a conviction on more serious counts, or the imposition of a more serious sentence". Lafler, 132 S.Ct 1386. In this case, after the Petitioners conviction, the prosecutor brought to his attention that he was subjected to a more serious charge, a mandatory 25 year minimum sentence, which is a more severe sentence then the 10½ year plea offer. (APPENDIX B, Pg's 3-4). Thus, if Petitioner would have accepted the plea offer his sentence would have been less severe then the mandatory 25 year minimum.

Petitioner has establish that his attorney provided deficient representation in connection with the plea bargaining process. Where this Court has held that, "it is the critical obligation of counsel to inform the client of the direct consequences of rejecting a plea offer". Padilla v. Kentucky, 559 U.S. 356, 375 (2010). The mandatory 25 year minimum sentence was no less of a direct consequence of the Petitioners conviction. This Court has held that, "if the intention of the legislature was to impose punishment", that ends the inquiry. Smith v. Doe, 538 U.S. 84, 92 (2003). Because, Mich. Comp. Law 769.12(1)(a), is part of the sentence itself it is a direct consequence of a conviction, which Petitioner should have been informed of by trial counsel. The Petitioner was prejudice where counsels failure to inform impeded the initiation of the plea negotiations, and "caused the Petitioner to lose benefits" he would have received on the ordinary course of the negotiations. Lafler, 566 U.S at 169. Petitioner had available options to bargain for a guilty plea. Such as, bargaining for the mandatory term to be dismissed, or the fourth habitual to be reduced to third habitual taking the mandatory term off the table, but for counsels deficient performance.

The Remedy For The Constitutional Errors

The remedy for counsels errors would be for this Court to issue an Order to remand this case back to the Saginaw County Courthouse, with instructions for the prosecution to reinstate its original plea offer, effectively restoring Petitioner in the same position he was in when the error occurred. Lafler, 132 S.Ct at 1387.

II. PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLANT COUNSEL AND HAS GOOD CAUSE FOR FAILING TO RAISE THE CONSTITUTIONAL VIOLATION SET FOURTH HEREIN ON DIRECT APPEAL.

Standard Of Review.

Claims of ineffective assistance of counsel is a mixed question of facts and constitutional law reviewed de novo, Hill v Mitchell, 400 F.3d 308, 314 (6th Cir. 2005); People v Leblanc, 465 Mich 575, 579 (2002).

Petitioner is guaranteed effective assistance of appellant counsel by the due process of the United States Constitution, US Const Am VI, XIV; Halbert V Michigan 545 US 605 (2005); Evitts v Lucey, 469 US 387, 399-401; 105 S.Ct 830, 83 L.Ed.2d 821 (1985). Petitioner claims that he received ineffective assistance of appellate counsel when on November 4, 2015, after the Michigan Court of Appeals ruling on direct appeal case #319872, that he received a letter from appellate counsel Douglas Baker, in response to the Peoples Sentencing Memorandum stating;

> The prosecutor makes an argument I hadn't considered, that you are subject to a mandatory 25 year minimum under the relatively new super habitual provision of MCL 769.12 .. A quick look at the statute and your presentence report tell me the prosecutor may be correct .. I want to research the matter further and see whether I've missed anything that could allow us to ask for a sentence reduction.

Petitioner claims that appellant counsel was ineffective during direct appeal for not knowing that Petitioners armed robbery conviction was subject to a 25 year mandatory minimum sentence pursuant to the statutory provision of Mich. Comp. Law 769.12(1)(a), Petitioner fourth habitual status, and for failing to investigate the circumstances surrounding the prosecutors plea offer for a possible issue on direct appeal. Petitioner informed appellate counsel about the plea offer during the process of preparing the brief on appeal. During the evidentiary hearing

appellate counsel testified on direct exam by, Ann Prater, to the following;

> Q. During that visit did Mr. Cuellar informed you, to investigate the plea offer and to look into the scoring and sentencing guidelines for a possible issue on direct appeal ?
>
> A. I don't remember that either.
>
> Q. You have no recollection of what the plea offer was ?
>
> A. Wall, I recall it based on Mr. Cuellars letter to me about the plea offer.
>
> Q. Okay.
>
> A. He told me that he had been offered a plea offer with a minimum term of 10 and a half years.
>
> Q. Okay, did you investigate the plea offer to determine whether or not trial counsel properly informed Mr. Cuellar of the true nature of his charges and the direct consequences of rejecting the plea offer and going to trial ?
>
> A. I don't think so, No.
>
> Q. Did you investigate the statutory sentencing laws concerning Mr. Cuellars 4th habitual status under the super habitual to determine whether or not counsel properly explained them to Mr. Cuellar during the plea offer ?
>
> A. No. not until later, after the appeal was over and the matter was pending a Corsby remand. (Tr. Excerpt, pg 23, March 14, 2019).

Good Cause And Prejudice

Cause for excusing procedural default is establish by proving ineffective assistance of "appellate counsel". People v Reed, 449 Mich 375, 378; 535 NW 2d 496 (1995); Franklin v Anderson, 434 F.3d 412, 418, 2006 US App, LEXIS 444 (6th Cir. 2006). Petitioner argued in the State Courts that there is good cause for failing to raise (Issue one), on direct appeal. Because, appellate counsel conceded that "during direct appeal" he did not investigate the plea offer for a possible issue, nor did he know about the 25 year mandatory sentencing requirements called for under Petitioners fourth habitual status. Counsel also testified to the following;

Q. Were you aware during the process of preparing Mr. Cuellars brief, that his conviction for armed robbery is defined as a serious crime under the habitual status, and that the sentence would subject him to a 25 year mandatory minimum sentence ?

A. That is what the quick research I referred to in my letter showed me, Yes.

Q. When you stated in, again the letter I spoke about did you end up finding anything about the 25 year mandatory minimum sentence that would apply to Mr. Cuellar ?

A. It looked like under the term of the statute, that is just looking at 769.12 that it would apply in a case such as his.

Q. During the process of preparing Mr. Cuellars brief on direct appeal, did you exercise reasonable judgment to bring out Mr. Cuellars Lafler issue that is now before this court ?

A. The Lafler issue, well I wasn't aware of a Lafler issue until I saw the Peoples Sentencing Memorandum following the appeal.

Q. If you had been aware of the fact that Mr. Cuellars sentence for armed robbery was subject to the super habitual during the process of preparing the brief, would you have raised that as an issue on direct appeal ?

A. If I came to the conclusion that he had been exposed to the 25 year mandatory minimum sentence, and that he hadn't been advised of that exposure and turned down the plea offer without knowing what he was looking at when he was sentenced, I CERTAINLY WOULD HAVE RAISED THAT ISSUE. (Tr. Excerpt pg's 28-30, March 14, 2019).

It is well established that appellate counsel has a duty to make a reasonable investigation or to make a reasonable decision that makes particular investigation unnecessary. Strickland, 466 U.S. at 691. Here, appellate counsel testified that he did not investigate the plea offer after being informed by Petitioner to do so. As the result, counsel could not have made a reasonable decision about whether or not to raise the Lafler issue. In fact, counsel stated, that if he came to the conclusion that Petitioner had been exposed to the 25 year mandatory minimum and had not been advised of that exposure, that he would have certainly raised the issue on direct appeal.

Procedural default has been established here, when appellate counsel failed to investigate the plea offer, where the evidence of the plea is clearly stated in the trial transcripts volume one, page's 3-4. Thus, it is evident, that counsel never made a strategic decision not to raise the issue of ineffective assistance of trial counsel. A strategic decision is not objectively reasonable when counsel fails to investigate his available options for potential issues, and make a reasonable choice between then for appellate review. Here, appellate counsels failure to not investigate constitute negligence, not strategic decision, see Workman v. Tate, 957 F.3d 1339, 1345 (6th Cir. 1992). Petitioner recognizes that counsel need not raise every issue urged by his clients, if "counsel decides as a matter of professional judgment" not to raise the argument. Evitts v. Lucey, 469 U.S. 387, 394 (1985). In Petitioners case, appellate counsel only became aware of the Lafler issue after the appeal was over.

Appellate counsel also has a duty to know the facts and laws surrounding the Petitioners conviction. Strickland v. Washington, 466 U.S. 668, at 681 (1984). Counsel testified that he was not aware of the fact that Petitioners armed robbery conviction was subjected to the 25 year mandatory sentencing requirements under Petitioners fourth habitual status during the process of preparing the brief on appeal. That failure was unreasonable under professional norms, thus, counsels conduct fell below an objective standard of reasonableness. Id, at 681. Petitioner raised this issue to establish the good cause and prejudice for failing to raise issue one on direct appeal, and to comply with the state procedural rule under Michigan Court Rule 6.508(D)(3).

Although Petitioner have no constitutional right to a plea offer, when the prosecution chooses to enter into plea negotiations, the constitution requires that Petitioner receive effective assistance in navigating that crucial process. Rodriguez -Penton v. United States, 905 F.3d 481, 489 (6th Cir. 2018).(citing Lafler, 566 U.S. at 168). That means accurate advice regarding sentencing exposure. Here, Counsel erroneously informed Petitioner that his sentencing guidelines was from 10½ to 35 years, when in fact, Petitioner was facing a mandatory 25 year minimum, to life in prison (APPENDIX B, pg's 3-4). This information was essential in order for Petitioner to make an informed decision to waive his constitutional rights to a jury trial, and to accept the plea offer. Wherefore, counsels failure to inform the Petitioner about the mandatory term, fell below an objective standard of reasonableness. Petitioner was prejudice where counsels failure to inform impeded the initiation of the plea negotiations, and caused the Petitioner to lose benefits he would have received on the ordinary course of the negotiations. Lafler, 566 U.S. at 169.

For these reasons, Petitioner Samuel Cuellar asks for this Supreme Court of the United States to grant this Petition for a Writ of Certiorari, and to remand the case back to the lower court to reinstate the original plea offer.

Respectfully Submitted,

Dated: 5-28-2024,

Samuel Cuellar

Samuel Cuellar #180704
Acting in Pro-se
Macomb Correctional Facility
34625 26 Mile Road
Lonex Township
Detroit, Michigan, 48048