

No. **24-5330**

**IN THE
SUPREME COURT OF THE UNITED STATES**

LEONUS STEVENSON PETERSON,

Petitioner,

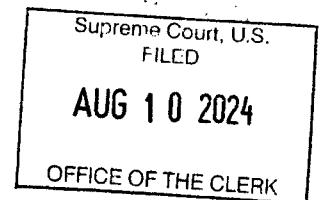
v.

UNITED STATES OF AMERICA,

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES APPEALS COURT FOR
THE FOURTH CIRCUIT*

PETITION FOR WRIT OF CERTIORARI



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QUESTION(S) PRESENTED

1. Did the lower courts err in conflating Fifth and Sixth Amendment rights, thereby denying both due process and effective assistance of counsel, when the district court relied on speculative conclusions to impose an upward variance, impacting the fairness of the trial and quality of legal representation?

2. Did Mr. Peterson's counsel provide ineffective assistance in violating the Sixth Amendment by failing to adequately challenge the speculative basis for the upward variance in sentencing, resulting in a sentence based on unreliable and unsupported evidence?

3. Did the district court contravene established legal principles by imposing an upward variance in sentencing based on speculative conclusions regarding the death of Ms. Rosie and other potential overdoses, thereby violating the requirement that sentences be grounded in reliable and accurate information?

4. Did the district court err in denying an evidentiary hearing on Mr. Peterson's § 2255 motion, thus depriving him of a meaningful opportunity to present his claims and resolve factual disputes, as established in *Machibroda v. United States*, 368 U.S. 487 (1962)?

LIST OF PARTIES

All parties appear in the case caption on the cover page.

RELATED PROCEEDINGS

United States District Court (E. D. Va.):

United States v. Peterson, No. 3:13-cr-00090-JAG-1

United States Court of Appeals (4th Cir):

United States v. Peterson, No. 21-4176 (4th Cir. 2021)

Peterson v. United States, No. 23-7264 (4th Cir. 2024)

United States Supreme Court:

Peterson v. United States, No. 21-6443 (2021)

TABLE OF CONTENTS

QUESTION(S) PRESENTED	ii
LIST OF PARTIES	iii
RELATED PROCEEDINGS	iii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	v
APPENDIX	vii
PETITION FOR A WRIT OF CERTIORARI	1
JURISDICTION	2
STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
A. PROCEEDINGS BELOW	3
B. LEGAL BACKGROUND	4
REASONS FOR GRANTING THE PETITION ..	7
I. CONFLATION OF FIFTH AND SIXTH AMENDMENT RIGHTS	7
II. INEFFECTIVE ASSISTANCE OF COUNSEL	15
III. SPECULATIVE BASIS FOR UPWARD VARIANCE	19
IV. DENIAL OF EVIDENTIARY HEARING	24
CONCLUSION	28
PROOF OF SERVICE	32

TABLE OF AUTHORITIES

Cases

<i>Buck v. Davis</i> , 580 U.S. 100, 115-17 (2017)	7, 8
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	5
<i>Gall v. United States</i> , 552 U.S. 38, 50 (2007) ...	17,
20	
<i>Gideon v. Wainwright</i> , 372 U.S. 335, 344 (1963). 9	
<i>Machibroda v. United States</i> , 368 U.S. 487 (1962)	
.....	2, 5, 23
<i>Malloy v. Hogan</i> , 378 U.S. 1, 6 (1964).....	6
<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010)	10
<i>Padilla v. Kentucky</i> , 559 U.S. 356, 366 (2010)...	12
<i>Strickland v. Washington</i> , 466 U.S. 668, 687	
(1984)	14
<i>Townsend v. Sain</i> , 372 U.S. 293, 312 (1963).....	24
<i>United States v. Farley</i> , 72 F.3d 158, 161 (7th Cir.	
1995).....	10
<i>United States v. Maclin</i> , 915 F.3d 440, 444 (7th	
Cir. 2019)	5, 17, 20
<i>United States v. Rigas</i> , 583 F.3d 108, 123 (2d Cir.	
2009).....	5, 21
<i>United States v. Terry</i> , 142 F.3d 702, 708–09 (4th	
Cir. 1998)	8, 22
<i>United States v. Tucker</i> , 404 U.S. 443, 447 (1972)	
.....	5, 15, 20

<i>United States v. White</i> , 366 F.3d 291, 297 (4th Cir. 2004)	25
<i>Whiteside v. United States</i> , 748 F.3d 191, 196 (4th Cir. 2016)	10
<i>Wiggins v. Smith</i> , 539 U.S. 510, 521 (2003).....	16

Statutes

18 U.S.C. § 3553(a)	20
21 U.S.C. § 846	11
21 U.S.C. §§ 841(b)(1)(D).....	11
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2255	passim

Constitutional Provisions

Amendment V.....	1
Amendment VI	1
Sixth Amendment.....	passim
Fifth Amendment	passim

U .S. Sentencing Guidelines

USSG § 5K2.1	passim
--------------------	--------

Treatises

Roderick R. Ingram, <i>A Clash of Fundamental Rights: Conflicts Between the Fifth and Sixth Amendments in Criminal Trials</i> , 5 Wm. & Mary Bill Rts. J. 299 (1996),	
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

https://scholarship.law.wm.edu/wmborj/vol5/iss1/9	12
-------------------------------------------------------------------------------------------------------------------------	----

APPENDIX

APPENDIX A: Fourth Circuit Court of Appeals,
ORDER, Denial of Motion for Reconsideration
(July 17, 2024) 1a

APPENDIX B: Fourth Circuit Court of Appeals,
ORDER of Dismissal of Appeal (April 22, 2024)
2a

APPENDIX C: OPINION, United States District
Court, Eastern District of Virginia (November 14,
2023) 3a

PETITION FOR A WRIT OF CERTIORARI

Petitioner Leonus Stevenson Peterson, appearing pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit, which failed to address a novel question regarding conflating the Fifth Amendment procedural protections to preclude relief when raising a Sixth Amendment claim depriving a petitioner of due process.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unpublished and included in this petition's appendix. The appendix also includes the opinion of the denial of the motion to reconsider and the district court's order denying relief on the petitioner's motion under 28 U.S.C. § 2255.

JURISDICTION

The Fourth Circuit Court of Appeals judgment was entered on July 17, 2024, and April 22, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to the assistance of Counsel for his defence." Amendment VI.

The Fifth Amendment guarantees that "No person shall be held to answer for a capital or otherwise infamous crime ... nor be deprived of life, liberty, or property, without due process of law." Amendment V.

28 U.S.C. § 2255 permits a federal prisoner in custody to petition the court for the right to be released on the ground that the sentence was imposed in violation of the Constitution or laws of the United States, that the court was without jurisdiction to impose such a sentence, that the sentence was in excess of the maximum authorized by law, or that it is otherwise subject to collateral attack.

STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

Petitioner Leonus Stevenson Peterson was convicted and sentenced for conspiracy to possess with intent to distribute more than 100 grams of heroin. The district court imposed a sentence of 240 months, significantly exceeding the guideline range. The court based this upward variance on speculative conclusions regarding Mr. Peterson's alleged role in causing deaths and overdoses despite a lack of direct evidence.

The petitioner filed a direct appeal, arguing that his sentence was procedurally and substantively unreasonable and that his plea was not knowingly and intelligently entered. The Government moved to dismiss the appeal. The petitioner opposed the motion, and the Fourth Circuit agreed with the United States and dismissed the appeal despite the agreement containing a provision allowing for appeals of unreasonable sentences.

Petitioner filed a motion to vacate his sentence under 28 U.S.C. § 2255, arguing, among other things, ineffective assistance of counsel and that the sentence was based on speculative and unsupported conclusions.

The district court denied the motion without an evidentiary hearing, disregarding substantial factual disputes and the need for a comprehensive review of the speculative basis for the upward variance.

The district court used the plea colloquy to deny his motion. In doing so, the lower courts conflated Mr. Peterson's *Fifth Amendment* right to due process with his *Sixth Amendment* right to effective assistance of counsel. This conflation resulted in a dual denial of his constitutional protections, impacting the fairness of his proceedings and the quality of legal representation.

The Fourth Circuit affirmed the district court's denial without adequately addressing the critical issues of speculative sentencing and ineffective assistance of counsel, despite an affidavit attached to the pleadings that the District Court did not consider. Subsequently, Mr. Peterson's motion for reconsideration was denied, further solidifying the errors and constitutional violations in the lower court proceedings.

B. LEGAL BACKGROUND

Petitioner's legal claims include:

1. The district court conflated Mr. Peterson's *Fifth* Amendment right to due process with his *Sixth* Amendment right to effective assistance of counsel. This conflation impacted both the fairness of the trial and the quality of legal representation, resulting in a dual denial of his constitutional protections.
2. Counsel failed to adequately challenge the speculative basis for the upward variance in sentencing. This failure undermined the integrity of the sentencing process and contributed to a sentence based on unreliable and unsupported evidence, violating Mr. Peterson's *Sixth* Amendment rights.
3. The district court's reliance on speculative conclusions regarding the death of Ms. Rosie and other potential overdoses, without direct evidence, led to an improper upward variance in sentencing. Established legal principles require sentences to be based on reliable and accurate information. *United*

States v. Tucker, 404 U.S. 443, 447 (1972);
Gall v. United States, 552 U.S. 38 (2007);
United States v. Maclin, 915 F.3d 440 (7th
Cir. 2019); *United States v. Rigas*, 583 F.3d
108 (2d Cir. 2009).

4. The district court's refusal to grant an evidentiary hearing on Mr. Peterson's § 2255 motion denied him a meaningful opportunity to present his claims. The factual disputes in the § 2255 motion necessitated a hearing, as established in *Machibroda v. United States*, 368 U.S. 487 (1962).

REASONS FOR GRANTING THE PETITION

I. CONFLATION OF FIFTH AND SIXTH AMENDMENT RIGHTS

This case presents a critical constitutional issue: the lower courts' conflation of *Fifth* and *Sixth* Amendment rights. The district court's reliance on speculative conclusions to impose an upward variance has compromised Mr. Peterson's due process rights under the Fifth Amendment and undermined his right to effective assistance of counsel as guaranteed by the *Sixth* Amendment. This conflation of distinct constitutional protections warrants this Court's review to prevent further erosion of these fundamental rights and to ensure uniformity in their application across the nation.

The *Fifth Amendment* protects individuals from self-incrimination, guaranteeing that no person "shall be compelled in any criminal case to be a witness against himself." This protection is vital to ensuring a fair trial and safeguarding personal liberties, as affirmed in *Malloy v. Hogan*, 378 U.S. 1, 6 (1964). The *Sixth Amendment*, on the other hand, ensures the right to effective assistance of counsel during all critical stages of a criminal proceeding,

including plea negotiations, as recognized in *Buck v. Davis*, 580 U.S. 100, 115-17 (2017). These amendments serve distinct but equally crucial roles in protecting a defendant's constitutional rights.

In evaluating the appropriateness of the upward variance, the district court was required to consider specific factors outlined in USSG § 5K2.1. However, the court's decision was marred by speculative conclusions rather than a careful analysis of the evidence.

In Mr. Peterson's case, the district court imposed an upward variance under USSG § 5K2.1, which allows for an increased sentence if death resulted. However, this decision was based on speculative conclusions rather than the specific factors required by § 5K2.1. Notably, there was no evidence in the record that Mr. Peterson's drug distribution caused the death of Ms. Rosie. The court failed to consider properly:

1. **State of Mind:** There was no evidence indicating that Mr. Peterson intended or knowingly risked the death of Ms. Rosie or others.

2. Degree of Planning and Manner of Death:

The court's conclusions regarding additional deaths, including Ms. Rosie's, were speculative and not supported by the record.

3. Dangerousness of Conduct: The

dangerousness of Mr. Peterson's conduct was already accounted for in the original guideline calculation.

The court's conclusions regarding the death of Ms. Rosie and other potential overdoses were speculative, unsupported by the record, and failed to meet the rigorous standards required for an upward variance. The reliance on such unsubstantiated assertions invalidates the original sentence, and a re-evaluation without these speculative elements is necessary to ensure a fair and just sentence for Mr. Peterson. The district court's failure to appropriately consider these factors, as required by § 5K2.1, rendered the upward variance unreasonable and improper. The Fourth Circuit in *United States v. Terry*, 142 F.3d 702, 708–09 (4th Cir. 1998), and the Fifth Circuit in *United States v. Davis*, 30 F.3d 613, 615–16 (5th Cir. 1994), both held that a court must consider

factors such as state of mind and manner of death when determining the appropriateness of an upward variance under USSG §5K2.1. The court's speculative assertions regarding the death of Ms. Rosie and the potential overdoses of others, which are not supported by the evidence on record, make the original sentence improper under these precedents.

This speculative upward variance directly impacts Mr. Peterson's *Sixth Amendment* right to effective assistance of counsel. The plea colloquy, which primarily served to satisfy *Fifth Amendment* requirements, failed to address whether Mr. Peterson received effective legal advice concerning the plea agreement, particularly regarding the appellate waiver's scope. The *Sixth Amendment* requires that counsel provide comprehensive legal advice tailored to the plea agreement's complexities—a standard not met in Mr. Peterson's case.

To illustrate the harm caused by this conflation, consider a hypothetical scenario involving a defendant, John Doe, who pleads guilty based on his lawyer's advice that the plea agreement is favorable. During the plea colloquy, John acknowledges understanding the charges

and waiving certain rights, thereby satisfying the Fifth Amendment's procedural requirements. However, his lawyer fails to explain that the appellate waiver would preclude any appeal based on new evidence of innocence. Later, John discovers exculpatory evidence but is denied relief because the court views the plea colloquy as sufficient proof that he was fully informed. This unjust result highlights the critical distinction between the *Fifth Amendment's* procedural safeguards and the *Sixth Amendment's* substantive right to effective counsel.

Lower courts have struggled with this issue, leading to conflicting interpretations. For instance, the Fourth Circuit in *Whiteside v. United States*, 748 F.3d 191, 196 (4th Cir. 2016), emphasized the importance of resolving ambiguities in plea agreements, recognizing that this often exceeds the scope of a standard plea colloquy. Similarly, the Seventh Circuit in *United States v. Farley*, 72 F.3d 158, 161 (7th Cir. 1995), noted that procedural adherence cannot substitute for substantive legal advice. These decisions underscore the need for this Court's intervention to ensure consistent and fair application of constitutional protections.

In Mr. Peterson's case, the plea colloquy failed to address conflicting clauses in the plea agreement, leaving him with an incomplete understanding of his rights and the consequences of his plea. Specifically, the Magistrate advised Mr. Peterson that he was pleading guilty to an offense under 21 U.S.C. §§ 841(b)(1)(D) and 21 U.S.C. § 846, which carries a maximum sentence of five years, yet incorrectly suggested that the penalty could be five to 40 years. This discrepancy, coupled with counsel's failure to clarify the appellate waiver's scope, resulted in an unknowing and involuntary waiver of Mr. Peterson's right to appeal an unreasonable and procedurally flawed sentence.

The lower court's reliance on the plea colloquy to deny post-conviction relief further exacerbates this conflation. Courts frequently use these colloquies to negate findings of ineffective assistance of counsel, despite their inherent limitations in assessing the adequacy of legal representation. This approach mirrors the issue discussed in the document "*A Clash of Fundamental Rights*,¹" where the invocation of the Fifth

¹ Roderick R. Ingram, *A Clash of Fundamental Rights: Conflicts Between the Fifth and Sixth Amendments in Criminal*

Amendment right against self-incrimination can impede a defendant's *Sixth Amendment* right to present evidence or effectively cross-examine witnesses. The Supreme Court's decision in *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010), rejected the use of collateral consequences to define the scope of constitutionally "reasonable professional assistance," underscoring the need for effective legal counsel during plea negotiations.

Given the substantial constitutional concerns at stake, this Court should grant certiorari to address and rectify lower courts' conflation of *Fifth* and *Sixth* Amendment rights. The appropriate remedy is to vacate Mr. Peterson's plea and remand the case for further proceedings consistent with the *Sixth Amendment's* guarantee of effective assistance of counsel. This will ensure the fairness and integrity of the plea bargaining process, protecting defendants' rights nationwide.

Moreover, this issue has broader implications for the justice system. Lower courts create inconsistent and unjust outcomes by allowing the conflation of procedural and substantive rights, undermining the constitutional

Trials, 5 Wm. & Mary Bill Rts. J. 299 (1996),
<https://scholarship.law.wm.edu/wmborj/vol5/iss1/9>

protections the Supreme Court has long sought to uphold. The Court's intervention is necessary to restore the clear and consistent application of these fundamental rights across all jurisdictions, ensuring that defendants like Mr. Peterson receive the full protections afforded by the Constitution.

The conflation of *Fifth* and *Sixth Amendment* rights in Mr. Peterson's case, coupled with the speculative and unsupported nature of the upward variance under USSG § 5K2.1, has led to a denial of both due process and effective assistance of counsel, necessitating this Court's review. By granting certiorari, the Court can provide much-needed guidance on how to properly apply these constitutional protections in the context of plea negotiations and sentencing, promoting a fairer and more consistent judicial process nationwide.

This case presents an opportunity for the Court to clarify the boundaries between procedural and substantive rights, ensuring that lower courts do not erode constitutional protections through improper conflation. Certiorari is necessary to uphold the integrity

of the judicial process and protect defendants' fundamental rights across the nation.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

The second primary issue in this case concerns the ineffective assistance of counsel, specifically the failure to adequately challenge the speculative basis for the upward variance in sentencing. This failure undermined the integrity of the sentencing process and contributed to a sentence based on unreliable and unsupported evidence, violating Mr. Peterson's *Sixth Amendment* rights.

The *Sixth Amendment* guarantees the right to effective assistance of counsel, which includes the duty of defense attorneys to conduct a thorough investigation of the facts, object to improper evidence, and vigorously challenge the prosecution's case. In *Strickland v. Washington*, 466 U.S. 668, 687 (1984), this Court established a two-prong test to determine whether counsel's performance was ineffective: first, that counsel's performance was deficient, and second, that the deficient performance prejudiced the defense.

A. Deficient Performance of Counsel

In Mr. Peterson's case, counsel's performance was deficient in several critical respects:

**1. Failure to Object to
Speculative Evidence**

The district court's upward variance was significantly influenced by its conclusion that Mr. Peterson's drug distribution likely resulted in the death of Ms. Rosie and possibly others, despite the lack of direct evidence to substantiate these conclusions. Counsel failed to object to this speculative basis for the sentencing enhancement. As this Court has noted in *United States v. Tucker*, 404 U.S. 443, 447 (1972), "a sentence founded at least in part upon misinformation of constitutional magnitude is invalid." The speculative nature of the evidence in Mr. Peterson's case fits this criterion, and counsel's failure to challenge it constitutes deficient performance.

**2. Inadequate Investigation and
Presentation of Mitigating
Evidence**

Counsel did not adequately investigate or present mitigating evidence that could have countered the district

court's speculative conclusions. Effective assistance of counsel requires a thorough investigation and presentation of all relevant mitigating factors, as emphasized in *Wiggins v. Smith*, 539 U.S. 510, 521 (2003). The absence of such a robust investigation deprived Mr. Peterson of the opportunity to present a full and fair defense.

3. Lack of Strategic Objections and Advocacy

Counsel's overall lack of strategic objections and failure to vigorously advocate for Mr. Peterson during sentencing also contributed to the ineffective assistance. The absence of robust advocacy is particularly troubling given the district court's reliance on speculative evidence, which required a strong and strategic defense to counteract.

B. Prejudice to the Defense

The prejudice prong of the *Strickland* test is satisfied if there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. In Mr. Peterson's case, the failure to challenge the speculative basis for the

upward variance directly impacted the sentence imposed. The district court's reliance on unsubstantiated conclusions about additional deaths led to a sentence of 240 months, significantly above the guideline range of 84 to 105 months.

1. Impact on Sentencing Outcome

The speculative basis for the upward variance directly influenced the district court's decision to impose a sentence more than twice the guideline range. Had counsel effectively challenged this evidence, there is a reasonable probability that the court would not have imposed such a severe sentence. This constitutes clear prejudice under the *Strickland* standard.

2. Violation of Constitutional Protections

The reliance on speculative evidence impacted the sentencing outcome and violated Mr. Peterson's constitutional protections under the Sixth Amendment. This Court has consistently held that sentencing must be based on reliable evidence, as established in *Gall v. United States*, 552 U.S. 38, 50 (2007), and *United States v. Maclin*, 915 F.3d 440, 444 (7th Cir. 2019). Counsel's

failure to ensure that Mr. Peterson's sentence met this standard further underscores the prejudicial impact.

The ineffective assistance of counsel in Mr. Peterson's case, particularly the failure to challenge the speculative basis for the upward variance, resulted in a severe and unjust sentence. This Court's intervention is necessary to correct this constitutional violation and provide guidance to lower courts on properly applying the Sixth Amendment in sentencing practices.

Granting certiorari in this case will help ensure that all defendants receive fair and constitutionally sound sentencing proceedings. The significant constitutional issues raised by counsel's ineffective assistance in this case demand a Supreme Court review to ensure uniformity and adherence to *Sixth Amendment* protections in sentencing practices. Lower courts must be reminded of their duty to base sentencing decisions on reliable evidence and to ensure that defense counsel provides effective assistance at all stages of the proceedings.

III. SPECULATIVE BASIS FOR UPWARD VARIANCE

The third critical issue in this case concerns the district court's reliance on speculative conclusions to impose an upward variance in sentencing. The speculative basis for Mr. Peterson's enhanced sentence is contrary to established legal principles that require sentences to be based on reliable and accurate information.

**A. Reliance on Speculative
Conclusions**

The district court imposed an upward variance based on the conclusion that Mr. Peterson's drug distribution likely resulted in the death of Ms. Rosie and possibly others. However, this conclusion was speculative and not supported by direct evidence. The court's assertion that Mr. Peterson's actions "quite likely" resulted in additional overdoses or deaths lacked the evidentiary foundation necessary to justify such a significant increase in sentencing.

The court's statements, such as "the drugs that [Mr. Peterson] provided to the people in Caroline County result[ed] in the death of [Ms. Rosie]" and "quite likely resulted in the overdose or death of others," were based on

conjecture rather than concrete evidence. This reliance on speculative assertions violated Mr. Peterson's due process rights by introducing unfounded factors into the sentencing decision.

B. Legal Standards for Sentencing

The Supreme Court and various appellate courts have consistently held that sentencing must be based on reliable and accurate information. In *United States v. Tucker*, 404 U.S. 443, 447 (1972), this Court stated that "a sentence founded at least in part upon misinformation of constitutional magnitude is invalid." This principle underscores the necessity for sentencing decisions to be grounded in factual and verifiable evidence.

Furthermore, in *Gall v. United States*, 552 U.S. 38, 50 (2007), the Supreme Court emphasized that while district courts have the discretion to vary from the Guidelines, any upward or downward variance must be supported by the 18 U.S.C. § 3553(a) factors and justified by sufficiently compelling reasons. The Court made it clear that sentencing decisions must be reasonable and cannot rely on speculative or unsupported facts.

Appellate courts have reinforced this principle. In *United States v. Maclin*, 915 F.3d 440, 444 (7th Cir. 2019), the Seventh Circuit vacated a sentence where the district court's upward variance was based on speculative conclusions about the defendant's future dangerousness. Similarly, in *United States v. Rigas*, 583 F.3d 108, 123 (2d Cir. 2009), the Second Circuit held that an upward variance was improper where the district court based its decision on speculative assessments. These cases demonstrate the judiciary's insistence on grounding sentencing decisions in reliable evidence rather than conjecture.

C. Failure to Meet USSG § 5K2.1 Criteria

The district court's upward variance also failed to properly apply the criteria set forth in USSG § 5K2.1, which allows for an increased sentence if death resulted from the defendant's conduct. This policy statement requires courts to consider factors such as the defendant's state of mind, the degree of planning or preparation, and the dangerousness of the conduct. In Mr. Peterson's case, there was no evidence indicating that he intended or knowingly risked the death of Ms. Rosie or others, nor

was there evidence of significant planning or preparation that would justify an increased sentence.

The district court's failure to appropriately consider these factors, as required by USSG § 5K2.1, and its reliance instead on speculative conclusions, rendered the upward variance unreasonable and improper. This reasoning aligns with rulings such as *United States v. Terry*, 142 F.3d 702, 708–09 (4th Cir. 1998), where the court held that district courts must consider the specific factors outlined in USSG § 5K2.1 when deciding on departures based on resulting deaths.

The reliance on speculative conclusions to impose an upward variance in Mr. Peterson's sentencing violated established legal principles and constitutional rights. This Court's intervention is necessary to ensure that sentencing practices are based on reliable and accurate information, thereby upholding the integrity of the judicial process, and protecting defendants' due process rights. Granting certiorari in this case will help establish uniformity in the application of sentencing standards and reinforce the necessity of basing sentencing decisions on factual evidence.

Given the significant constitutional issues raised by the reliance on speculative conclusions in this case, a Supreme Court review is necessary to ensure uniformity and adherence to constitutional protections in sentencing practices. The use of speculative evidence in sentencing decisions undermines the integrity of the judicial process and violates defendants' due process rights

IV. DENIAL OF EVIDENTIARY HEARING

The fourth critical issue in this case concerns the district court's refusal to grant an evidentiary hearing on Mr. Peterson's 28 U.S.C. § 2255 motion. This denial prevented Mr. Peterson from having a meaningful opportunity to present his claims and resolve factual disputes central to his motion. The refusal to hold an evidentiary hearing contradicts established legal principles that mandate such hearings when factual disputes arise.

A. Necessity of an Evidentiary Hearing

In *Machibroda v. United States*, 368 U.S. 487, 494 (1962), the Supreme Court held that a district court must hold an evidentiary hearing when a 28 U.S.C. § 2255 motion presents factual disputes that, if resolved in the

petitioner's favor, would entitle him to relief. The Court emphasized that a hearing is required unless the motion, files, and records of the case "conclusively show that the prisoner is entitled to no relief." This principle underscores the necessity for courts to allow petitioners to substantiate their claims through a hearing when there are contested factual issues.

In Mr. Peterson's case, his § 2255 motion presented several factual disputes, including the speculative basis for the upward variance in sentencing and the ineffective assistance of counsel in failing to challenge this basis. These disputes were central to his claims and required resolution through an evidentiary hearing. By denying the hearing, the district court deprived Mr. Peterson of the opportunity to fully present his case and demonstrate the validity of his claims.

B. Legal Standards for Evidentiary Hearings

The legal standards for granting evidentiary hearings in § 2255 cases are well-established. According to *Townsend v. Sain*, 372 U.S. 293, 312 (1963), an evidentiary hearing is required if: (1) the petitioner's

allegations, if true, would entitle him to relief; and (2) the petitioner's claims involve disputed facts that cannot be resolved solely based on the existing record. This standard highlights the importance of hearings in ensuring petitioners have a fair opportunity to prove their claims.

The Fourth Circuit has similarly recognized the necessity of evidentiary hearings in § 2255 cases involving factual disputes. In *United States v. White*, 366 F.3d 291, 297 (4th Cir. 2004), the court held that a hearing is warranted when the petitioner presents a colorable claim and the existing record does not conclusively negate the petitioner's entitlement to relief. This aligns with the broader principle that petitioners should be able to present evidence and resolve factual disputes when the record does not conclusively refute their claims.

C. Factual Disputes in Mr. Peterson's Case

Mr. Peterson's 28 U.S.C. § 2255 motion raised significant factual disputes that required resolution through an evidentiary hearing. These disputes included:

1. Speculative Basis for Upward Variance

The district court's reliance on speculative conclusions about additional deaths and overdoses was a central issue in Mr. Peterson's motion. Resolving this issue required a hearing to determine the factual basis for the court's conclusions and whether they were supported by reliable evidence.

2. Ineffective Assistance of Counsel:

Mr. Peterson claimed that his counsel failed to challenge the speculative basis for the upward variance. This claim involved factual disputes about counsel's performance and its impact on the sentencing outcome. An evidentiary hearing was necessary to assess these disputes and determine whether counsel's actions constituted ineffective assistance.

3. Advisement on Appellate Waiver

Mr. Peterson asserted that his counsel failed to properly advise him about the scope of the appellate waiver in his plea agreement. This claim also involved factual disputes about the nature and extent of counsel's advice, which required resolution through a hearing.

Moreover, the affidavit from defense counsel, filed with the Court of Appeals, further illustrates the necessity of an evidentiary hearing. The affidavit, which was not available when the district court made its decision, could have provided crucial insights into the factual disputes at issue. The Court of Appeals' apparent disregard for this affidavit underscores the importance of an evidentiary hearing at the district court level, where such evidence could be fully considered.

The denial of an evidentiary hearing in Mr. Peterson's 28 U.S.C. § 2255 motion violated established legal standards and deprived him of a meaningful opportunity to present his claims. Supreme Court intervention is necessary to correct this error and ensure that petitioners are afforded the procedural protections required by law. Granting certiorari in this case will help ensure that lower courts provide evidentiary hearings when required and uphold petitioners' constitutional rights in 28 U.S.C. § 2255 proceedings.

CONCLUSION

The writ of certiorari should be granted in this case to address critical constitutional violations and ensure the

integrity of the judicial process. The four issues raised in Mr. Peterson's case present substantial grounds for the Supreme Court's review: (1) the district court's reliance on speculative conclusions to impose an upward variance in sentencing conflated Mr. Peterson's Fifth Amendment right to due process with his Sixth Amendment right to effective assistance of counsel. This conflation undermined the fairness of the sentencing process and compromised Mr. Peterson's constitutional protections, necessitating this Court's intervention to prevent further erosion of these fundamental rights.; (2) Mr. Peterson's Sixth Amendment right to effective assistance of counsel was violated when his attorney failed to adequately challenge the speculative basis for the upward variance in sentencing. This deficiency directly impacted the outcome of the sentencing, resulting in a severe and unjust sentence. Supreme Court review is essential to correct this constitutional violation and to clarify the standards for effective legal representation in sentencing practices; (3) the district court's upward variance was founded on speculative and unsupported conclusions, contrary to established legal principles requiring sentences to be

based on reliable and accurate information. The reliance on such conjecture to impose a harsher sentence violated Mr. Peterson's due process rights and undermined the integrity of the judicial process. The Court's review is needed to reinforce the requirement that sentencing decisions be grounded in factual evidence; (4) the district court's refusal to grant an evidentiary hearing on Mr. Peterson's 28 U.S.C. § 2255 motion deprived him of a meaningful opportunity to present his claims and resolve key factual disputes. This denial contravened established legal standards and prevented Mr. Peterson from substantiating his claims, particularly in light of the affidavit from defense counsel that was not considered by the Court of Appeals. Granting certiorari will ensure that lower courts adhere to the procedural requirements necessary to protect petitioners' rights under § 2255.

Each of these issues individually presents significant constitutional concerns. Collectively, they demonstrate a pattern of judicial errors that have profoundly affected Mr. Peterson's case. The Supreme Court's intervention is necessary to correct these errors, provide guidance on the proper application of

constitutional protections in sentencing, and ensure uniformity in the administration of justice. For these reasons, the writ of certiorari should be granted.

Respectfully submitted,

Leonus Peterson
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The names and addresses of those served are as follows:

Solicitor General of the United States, Room 5614
Department of Justice,
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001.

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

Executed on August 10, 2024.

(Signature)