

NO. 24-5427
Writ of Certiorari

FILED
JUL 12 2024
OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

WRIT OF CERTIORARI

MICHAEL STAPLETON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MICHAEL STAPLETON
(Your Name)

P.O. BOX 1000, FCC PETERSBURG
(Address)

PETERSBURG VA 23804
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

- 1) Did the district court create a split in circuits by denying relief on charges in the indictment that violated Congressional Intent, where the D.C. and Fifth Circuits both gave other defendants relief for the identical crimes charged that had identical indictment defects?
- 2) Does it violate the Constitution under the Double Jeopardy Clause to charge Movant with the same crime, then dividing a single conspiracy between two indictments, convicting Movant on the second indictment then dropping the first indictment after Movant was convicted on the second indictment?
- 3) Does it violate the Constitution and the Supreme Courts holdings in Apprendi v. New Jersey to increase Movants sentence for an alien smuggling conspiracy charge above the statutory maximum without any explanation for the district court?
- 4) Does it violate the Constitution for the district court not to appoint counsel upon request of Movant after the government filed a second discovery with new details of this case?
- 5) Did the District Court allow the Government to violate the Supreme Courts ruling in Brady v. Maryland at trial and at sentencing?

LIST OF PARTIES

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

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

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

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

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix D-18 to the petition and is

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 is unpublished.

The opinion of the United States district court appears at Appendix C-15 to the petition and is

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

For cases from **state courts**:

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

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

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

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

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

The date on which the United States Court of Appeals decided my case was June 27th 20245.

No petition for rehearing was timely filed in my case.

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

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

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

[] For cases from state courts:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**1) The Fifth Amendment Right;**

No Person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment of an indictment of the Grand Jury; nor shall any person be subject for the same offense to be twice placed in jeopardy of life and limb; nor shall be compelled in any criminal case to be witness against himself; nor deprived of life and liberty, or property, without Due Process of law; nor shall private property be taken for public use, without just compensation.

2) The Sixth Amendment Right;

In all criminal prosecutions, the accused shall enjoy the right to have a speedy trial by 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 assistance of counsel for his defense.

TRULINCS 17627104 - STAPLETON, MICHAEL - Unit: PEM-E-S

FROM: 17627104
 TO:
 SUBJECT: Writ 1
 DATE: 08/11/2024 06:43:46 AM

STATEMENT OF THE CASE

Movant timely filed a motion to vacate or set aside his conviction under Title 28 U.S.C & 2255, Case No: 9:23-cv-81082-DMM.

The District Court sided with the Government and denied all of the claims raised by Movant and denied a Certificate of Appealability, (CV-DE-28).

Movant timely filed a motion to the United States Court of Appeals for a request for Certificate of Appealability, and a Motion to Expand the request for COA ,The Court of Appeals denied the request for Certificate of Appealability and denied the Motion to Expand the COA as moot without reaching the merits of the Constitutional claims.

Movant now files this Writ or Certiorari to this Honorable Court seeking to reverse the denial of the request for a Certificate of Appealability or to adjudicate or review any Constitutional claims of merit that the District Court and the Court of Appeals erroneously denied. The District Court gave Movant a (20) page limit to file the Motion to Vacate that included the (12) page of the & 2255 motion, this is why Movant had to file the Motion to Expand the COA, to include claims that the District Court prevented Movant from filing.

LEGAL STANDARD OF REVIEW

A) The Supreme Court has articulated that any increase in the amount of prison time imposed on a defendant that is attributed to attorney error establishes prejudice. *Glover v. United States*, 513 U.S. 198 (2001). The Eleventh Circuit has made it clear that once a person has established prejudice, this is enough to overcome the Procedural Barr. *Lynn v. United States*, 365 F.3d 1225, 1324 (11th Cir 2004).

Under the Procedural Default Rule, a defendant generally must advance an available challenge to a criminal conviction or sentence on direct appeal, or the defendant is barred from presenting the claim in an & 2255 proceeding. *McKay v. United States*, 657 F.3d 1190, 1196 (11th Cir 2011). A Procedural Default maybe excused; however, if the Movant shows 1) cause for the default and actual prejudice from the legal error, or 2) that he is actually innocent of the crimes for which he was convicted. *Id. United States v. Bane* 948 F.3d 1290, 1297 (11th Cir 2020).

Where the District Court denied a & 2255 motion, the Movant must show that reasonable jurist would debate 1) whether the motion states a valid claim alleging a denial of a Constitutional right and 2) whether the District Court's ruling was correct. *Slack v. McDaniel* 529 U.S. 573, 484 (2000).

A Certificate of Appealability (COA) is not coextensive with merits analysis. At the COA stage, the only question is whether the applicant has shown that a jurist of reason could disagree with the District Court's resolution of the Constitutional claim or that jurist of reason could conclude the issues presented are adequate to deserve encouragement to proceed further. The threshold question should be decided without full consideration of the factual or legal basis determining the merits of the appeal.

A Court of Appeals should limit it's examination at the COA stage to the threshold inquiry of the underlying merits of the claim and ask only if the District Court's decision was debatable, *Buck v. Davis*, 580 U.S. 137 (2017).

B) The Eleventh Circuit and the Supreme Court has made it clear that a defendant is entitled to an ineffective assistance of counsel claim at the time he had counsel. *Frederick Cummings v. Secretary for the Department of Corrections*, 588 F.3d 1131 (11th Cir 2009), see also *Bobby v. Van Hook*, 588 U.S. 130 (2009), quoting *Strickland v. Washington*, 466 U.S. 688 (1984).

The standard for reviewing an ineffective assistance of counsel claims is found in the two-prong test in *Strickland v. Washington*, 466, U.S. 688 (1984). A convicted defendant claim that counsel's assistance was so defective as to require reversal of his convictions or death sentence has two components. First, the defendant must show that counsels performance

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was deficient. This requires a showing that counsel was not functioning as the counsel guaranteed to the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudice his defense. This requires a showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose results are reliable. Unless the defendant makes both showings, it cannot be said that the convictions or death sentences resulted from a breakdown in the adversary process that renders that result unreliable. *Id.*

DISCUSSION

Movant was appointed two trial counsel, this is clear from the record and the docket sheet. Harry Solomon was the first trial counsel appointed, he was eventually discharged for using scare tactics trying to get Movant to plead guilty instead of building a defense for Movant. Allen Kaufman was then appointed as the second trial counsel. Allen Kaufman filed several pre-trial motions and two of those motions were directed at the dismissal of the 2013 and 2014 indictment for Multiplicity. (CR-DE 28-33), herein attached as exhibits. The Government told Allen Kaufman that he raised the wrong issue to dismiss both indictments, his claim should have been Double Jeopardy, the District Court sided with the Government and denied all pretrial motions filed by Allen Kaufman. (CR-DE 43, 56, 96), herein attached as exhibits. It is clear that Movant had trial counsel. Allen Kaufman was eventually discharged and appointed as standby counsel.

The District Court sided with the Government and denied all claims raised by Movant in his & 2255 Motion to Vacate. The Government said that Movant was raising a Sixth Amendment claim against standby counsel and himself under Ground Two. This claim made by the Government is unfounded and totally false because the words standby counsel does not exist in any part of Movant's Motion to Vacate or supporting Memorandum of Law. The only time Movant uses the words standby counsel was when movant replied to the Governments response to the Motion to Vacate. Movant challenges this Court to find anything in the record to supports the District Courts conclusion that Movant was raising a Sixth Amendment claim against standby counsel or himself, there is none. The District Court was wrong to deny Movants Motion to Vacate based on false claims not in the record.

The District Court responded to Grounds One, Three and Four in great details but when it came to Ground Two, the District Court went silent and failed to address any of the substantive claims raised by Movant under Ground Two. Movant filed a motion requesting a COA and a Motion to Expand the COA to the Court of Appeals. A single judge sided with the District Court and denied the request for COA, the Court of Appeals mentions the Motion to Expand the COA but denied the motion to Expand the COA as moot without reaching the merits of the Constitutional claims raised by Movant. Like the District Court, the Court of Appeals reached the merits analysis of Grounds One, Three and Four but failed to reached the merits analysis of the Constitutional claims raised by Movant under Ground Two. The Court of Appeals took the cue from the District Court and denied Ground Two for the identical reason as the District Court, stating that there was no Sixth Amendment right to standby counsel, despite the record being void of the facts to support the conclusion of the District Court.

In *Clisby v. Jones* the Enhanc Court made it clear that the District Court and the Court of Appeals "must" resolve all claims raised in a habeas corpus petition, regardless of whether relief is granted or denied. *Clisby v. Jones* 960 F.2d 925, 936 (11th Cir 1992). *Id.* The Court of Appeals says that they will vacate the District Court order denying relief and remand for consideration of the Constitutional claims should the district court fail to do so, 960 F.2d at 938; see also *Rhode v. United States* 583 F.3d 1289, 1291 (applying *Clisby* to and & 2255 motion). The District Court and the Court of Appeals went against clearly established law when they failed to address all of the Constitutional claims raised by Movant, this was also an error.

Movant admits that when he filed his first Writ of Certiorari, he was trying to circumvent the filing of the & 2255 motion to the District Court by seeking plenary review from the Supreme Court because the Judge in the District Court was overwhelmingly bias towards movant in his rulings. (22-6680). In response to the first Writ of Cert the Solicitor General told the Supreme Court that plenary review was not warranted, further that Movant could seek collateral review. Just as Movant expected the District Court denied Movant relief on valid Constitutional claims based on false claims not in the record. Movant is now back before the Supreme Court with nearly identical reasons as the claims presented in the first Writ of Cert with no solution in sight.

The situation is now even more complex because the Solicitor General in their response to Movant's first Writ of Certiorari said that Movant claim of Double Jeopardy was unfounded but the three Judge panel for the Court of Appeals said that both indictments were the "same conduct" and "part of the same common scheme or plan" when they decided Movants Direct Appeal. The single Judge denied the COA despite the Court of Appeals calling the 2013 and 2014 indictment, the same conduct.

This second Writ of Certiorari follows;

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FROM: 17627104
 TO:
 SUBJECT: Writ 2
 DATE: 08/11/2024 06:46:52 AM

REASONS FOR GRANTING THIS PETITION

Question No: (1); Did the District Court create a split in Circuits by denying relief on charges charged in the indictment that violated Congressional Intent, where the D.C. and Fifth Circuits both gave other defendants relief for the identical crimes charged that had identical indictment defects?

It is Congress, not the prosecution which establishes and defines offenses. Few, if any limitations are imposed on the legislative power to define offenses, *Brown v. Ohio* 432 U.S. 161 (1977). Counts 25-47 violated Congress Intent. Movants conduct did not violate the charging statutes outlined in counts 25-47 for purposes of Congressional Intent.

1) Movant first brings this Courts attention to the Jury instructions, (CR-DE 135 at 32). The instructions to the Jury outlines what must be done in order for Movant to be found guilty of the bringing offenses. The Jury instructions instructs the jury that First; The defendant knowingly brought or attempted to bring a person to the United States and Fifth; That the defendant knowingly brought or attempted to bring the aliens to the United States for the purpose of commercial advantage and private financial gain. The record in this case is void of those facts. In a challenge to the conviction under Ground Three of Movants Motion to Vacate, Movant challenged the sufficiency of the evidence telling the District Court that the convictions could not stand because counts 25-47 violated Congress Intent. the District Court denied relief on Ground Three stating that because Movant aided and abetted the crimes charged, the bringing offenses convictions can still stand. The district court resolution is contradicted by clearly established law.

2) The Fifth Circuit vacated the conviction of a defendant after he pleaded guilty to bringing aliens to the United States, where his conduct did not violate the charging statute. Movant went to trial and even at trial the government did not prove that movant brought or attempted to bring aliens into the United States. The charges outlined in counts 25-47 are not tied to the conspiracy, this implied that movant brought the aliens to the United States himself. *United States v. Garcia-Paulin* 627 F.3d 127 (5th Cir 2010). Congress Intent made it impossible for counts 25-47 to stand on its own, therefore the charges offered no supporting facts to establish bringing. This claim was also raised under Ground two of the motion to vacate that the district court denied in error.

3) In ruling on the case of *Garcia-Paulin* the Fifth Circuit rejected the governments argument by stating that the indictment does nothing more than track the statutory language of the statute. The Fifth Circuit went on to say that there was nothing connecting the bringing charges to the conspiracy. *United States v. Adams* 961 F.2d 505, 509 (5th Cir 1992), further that the offered no supporting facts to establish bringing. The Fifth Circuit said that the statutory requirements does not correct the indictment deficiencies. The Government relied on *Anaya*, the Fifth Circuit concluded that even the case the government relied upon establishes this point. The Court held that subsection (a) (1) is directed towards those who were involved in the physical ingress and subsection (a) (4) is directed those who act as accessories. The concurring opinion noted that by adding the offense of encouraging to induce an illegal alien to enter the United States, Congress completed it's statutory scheme. *United States v. Anaya* 509 F. Supp 287, 297 (S.D. FLA 1980) Enbanc.

4) In *Assaddi* the D.C. Circuit vacated the convictions of the bringing charges of another defendant after he was found guilty of bringing aliens to the United States. *United States v. Assaddi* 223 F. Supp 2nd 208 (D.C. Cir 2002), the Fifth Circuit also quoted *Assaddi* in the case of *Garcia-Paulin*. The D.C. Circuit said that the Supreme Court has held that just as the word carry must be given it's ordinary meaning, *Muscarello v. United States* 525 U.S. 125, 128 (1988), the word bring must be given it's ordinary meaning. "Bring" means to convey, carry or cause to come along from one place to another, to escort or to accompany, *Webster Third International Dictionary* 278, (1976), it does not mean to send or launch.

5) Movants case and *Assaddi* case are one in the same. Movant was convicted for placing aliens on a boat in route to the United States and *Assaddi* placed aliens on a plane in route to the United States. Movant's and *Assaddi* conduct amounted to encouraging illegal aliens to enter the United States. By adding the offense of encouraging to induce illegal entry, Congress completed it's statutory scheme, separating the bringing charges from the conspiracy making it impossible for the convictions to stand on the bringing charges. Movants conduct like *Assaddi* and *Garcia-Paulin* did not violate the charging statute outlined in counts 25-46, hence the convictions are in violation of the scope of the conduct that Congress intended to punish.

6) Has counsel challenge the indictment on the grounds that the indictment violated Congressional intent, Movant would not have been in prison today on the charges outlined in the 2014 indictment. The statute of limitations is (5) years, once the

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indictment was dismissed for a violation of Congressional Intent the government would have been barred from seeking a superseding indictment, because the five year statute of limitations had already passed.

7) Movant had established a valid claim of a denial of his Sixth Amendment right. Movant had satisfied the cause and prejudice prong outlined in the Strickland test. Movant was prejudiced by counsels deficient performance because he was convicted and sentenced to crimes under a criminal statute that his conduct did not violate, convicted and sentenced to crimes in violation of Congress Intent and convicted and sentenced on crimes in an indictment that failed to state an offense in which relief maybe granted. Jurist of reason could disagree with the District Court's resolution of this Constitutional claim or that jurist of reason could conclude the issues presented are adequate to deserve encouragement to proceed further . The district court was wrong to deny relief and the Court of Appeals was wrong not to grant the request for COA based on claims not in the record.

Question No: (2); Does it violate the Constitution under the Double Jeopardy Clause to charge Movant with the same crime, then dividing a single conspiracy between two indictments, convicting Movant on the second indictment that did not supersede the first indictment then dropping the first indictment after Movant was convicted on the second indictment?

1)The District Court denied relief on the Double Jeopardy issue under Ground Two based on claims not in the record. The Government asserted that Movant was making a Sixth Amendment claim against standby counsel and himself. As proof that it was the Governments deliberate attempt to distort the facts, Movant ask this Court to take a look at the Governments response to Movants motion to vacate, (CV-DE-25 at 18). The Government made it clear that Movant was raising a Sixth Amendment claim against Allen Kaufman "prior" to being appointed as standby counsel. The Government goes on to quote the docket entry of the failed pretrial motion filed by Allen Kaufman, (CR-DE-33). Even though the Government missates the facts that Allen Kaufman filed a motion to dismiss the indictment based on Double Jeopardy, the Governments statements on page (18) made it abundantly clear that the Government was fully aware that Movant was not raising a Sixth Amendment claim against Allen Kaufman as standby counsel, but against Allen Kaufman as appointed trial counsel.

2) Movant was charged under an indictment in case No: 13-80201-CR-Ungaro, on October, 17th 2013, The Government then charged Movant in a 2014 indictment in case No: 14-80151-CR-DMM, see the 2014 indictment herein attached as exhibits.

3) The Double Jeopardy Clause provides that no person should be subject for the same offense to be twice placed in jeopardy of life or limb. U.S. Cont. Amend V. The Double Jeopardy Clause is not such a fragile guarantee that it's limitations can be avoided by the simple expedient of dividing a single crime into a series of temporal or spiral units. *Sanabria v. United States* 437, U.S. 54 (1978).

4) Movant contends as he did in his Motion to Vacate under Ground Two that the 2014 indictment violates the Double Jeopardy Clause to the 2013 indictment. The Government did not have probable cause to charge Movant in the 2014 indictment because the 2014 indictment was not a separate conduct to the 2013 indictment. Judging both indictments on it's face, it is clear that both indictments charged the same crime.

5) Please find attached as exhibits the response of the Solicitor General that was made in Movants first Writ of Certiorari. (22-6680). On page ten of the Solicitor Generals response, the Solicitor General made it clear that Movant was raising a new Double Jeopardy theory, premised on another indictment in another case. The Solicitor General also made it clear that the Double Jeopardy claim was never advanced on Direct appeal. The Solicitor General further claims that the 2013 indictment never proceeded to trial so Jeopardy never attached because the 2013 indictment was dismissed at the Governments request, see Order of Dismissal herein attached as exhibits. The Solicitor General also claimed that the 2013 indictment was a separate conduct, quoting the Supreme Court ruling in *Martinez v. Illinois*, 572 U.S. 833, 840 (2014).

6) The Solicitor Generals past response to Movants first Writ of Certiorari has a few problems. The Solicitor General did not tell the Supreme Court that the Government filed a motion to dismiss the 2013 indictment "after" Movant was convicted on the 2014 indictment. The Solicitor Generals assessment of the facts are at odds with clearly established Eleventh Circuit and Supreme Court Laws. The Eleventh Circuit has held, when they vacated the convictions of a defendant for the identical reasons Movant is complaining about, that Jeopardy attaches when the jury is empaneled and sworn or the Court begins to hear evidence. *United States v. James Leray McIntosh* 580 F.3d 1222, (11th Cir 2009), quoting the Supreme Court, *Serfass v. United States* 420 U.S. 377, 388, 95 (1975). In vacating the convictions of McIntosh the Court of Appeals ordered that the second indictment be dismissed, Jeopardy attached when the Jury was empaneled and sworn in at the trial of the 2014 indictment. The Solicitor General also claimed that the second indictment was a separate crime, this claim is also at odds with the Court of Appeals, see the Opinion of the Court of Appeals herein attached as exhibits. A three Judge panel of the Court of Appeals held, when they decided Movants Direct Appeal that the 2013 and 2014 indictment was the "same conduct" because of the use of the 2013 indictment that was used to enhanced Movants sentence.

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 DATE: 08/11/2024 06:47:36 AM

The Court of Appeals stated that the enhancement was proper under the common scheme or plan . The Court of Appeals said that the 2013 crossings were part of the "common scheme or plan" to smuggle migrants to the United States as the December 2012 and October 2013 crossings, (crimes charged in the 2014 indictment) because these (3) operations (both indictments) shared at the very least, a similar modus operandi and common purpose, quoting United States v. Siegelman 786, F.3d 1322, 1332-33 (11th Cir 2015). Id. The Court went on to say that "for two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar modus operandi." quoting U.S.S.G. and 1B1.3, cmt n.9 (A). (CR-DE 323 at 21-22). The Government sided with the Court of Appeals in their response to the claims raised by Movant in Ground Four of his motion to vacate, (CV-DE -25 at 22). The District Court follow suit calling the 2013 indictment relevant conduct, (CV-DE-28 at 18-19). The Solicitor General was wrong to conclude that the 2013 and 2014 indictment were separate conducts, the Supreme Courts ruling in Martinez does not apply.

7) The 2013 and the 2014 indictment both charged (3) separate conspiracies premised on the same conduct of encouraging to induce an alien to enter the United States illegally. All of the charges are charged under the same statute. All of the locations charged in both indictments are the same, which terminated in Palm Beach County, in the Southern District of Florida. Movant sentence was enhanced (4) levels as being the leader of both indictments. There is a substantial overlap in time of (17) days between the crimes charged in both indictments. The record in the case conclusively shows that all of the crimes originated in the Bahamas. In the absent view of the 2013 indictment the crimes charged in the 2014 indictment appears to charge (2) separate crimes because of the substantial overlap in time of (10) months. The 2013 indictment took away the substantial overlap, making the crimes charged in both indictments, (1) crime. Once the Government achieved their goal of convicting Movant on the 2014 indictment with increased penalties, the Government filed a motion to dismiss the 2013 indictment. Movant has been exposed to the most harsh penalty ever handed down in the history of the United States for a run of the mill case of alien smuggling that did not have any grievous or aggravating factors.

8) Herein attached as exhibits is the Governments motion to have the District Court join the indictments for the purposes of one trial, (CR-DE-99). The motion was filed days after the District Court agreed with the Government that the two indictments charged separate conspiracies. The Government goes on to outline all of the principles that proves that both indictments charged (1) crime in a bid to get both indictments joined. The Government stated that both cases overlap in time and involve very similar crimes, stating that the offenses maybe joined in a single trial if they are based on "two or more transaction connected together or constituting part of a common scheme or plan". The Government continued by stating that the charges could have been brought in a single indictment because they are based on "two or more transaction" connected together, to wit the defendants "continued operations" of illegal smuggling operations from the Bahamas to the United States, specifically to Palm Beach County coastline, between December 2012 and October 2013. The Government seems to want to bite the apple on both sides by claiming that the charges are separate crimes but then seek for the District Court to join both indictments for the purposes of one trial.

9) The Government made no mistakes when they agreed with the Court of Appeals when they said that both indictments were part of the "same conduct" and "common scheme or plan." The Supreme Court made it clear that the second indictment that charged the same crime as the first indictment, violated the Double Jeopardy Clause, even if a conviction on the first indictment was not had, Broce v. United States Supra, 488, U.S. 563 (1989); quoting Menna v. New York 423 U.S. 61 (1975), Blacklege v. Perry 417 U.S. 21 (1974). The convictions on the second indictment must fall.

10) It is clear from the evidence presented at trial and the P.S.R, that this was a hub and spoke conspiracy. The core conspirator was Movant. Other co-conspirators was task with finding more captains each time a captain was arrested on failed trips, see P.S.R. for supporting details. In order to prove separate conspiracies the Government must show an interdependence among the alleged co-conspirators. Separate transactions are not separate conspiracies, so long as the conspirators act in concert to achieve one common goal. In this case, the goal was to smuggle the illegal aliens to Palm Beach County, South Florida. There was an over all agreement among the varies parties to preform different functions in order to carry out the objectives of the conspiracy. If the defendants actions facilitates the endeavors of other co-conspirers or facilitate the venture as a whole, then a single conspiracy is shown, United States v. Chandler 388 F.3d 796 (11th Cir 2004).

11) In a large scale operation to smuggle aliens, there are several components, all supported by the evidence at trial. 1) There are multiple stash houses to house the influx of migrants waiting to be smuggled to the United States; 2) There were feeders

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who's job is to shop for food and personal items for the migrants; 3) There are drivers whose job is to pick up and drop off migrants to varies locations; 4) There are captains who are hired to transport the migrants by boat to the United States. Each time a captain was arrested on failed trips another captain would join into an existing hub and spoke conspiracy. Each person had a different function but the common scheme or plan was the same. The goal was to smuggle the migrants to South Florida.

12) A separate conspiracy is not formed each time a drug lord sends a boat to the United States. A separate conspiracy is not formed when a drug lord sends a boat of drugs over a period of time to the same location. When the drug lord is arrested he with charged in (1) conspiracy for his conduct. A separate conspiracy is not formed each time Movant sent a boat of migrants to the same location over a period of time, nor is a separate conspiracy formed each time a new captain is sent to take new migrants. The 2014 indictment is not a separate conduct and should have not been charged in a separate indictment. The Court of Appeals spoke and made it clear that the 2013 indictment was part of the same conduct and part of a common scheme or plan to smuggle migrants to the United States.

13) Movant has made a non frivolous prima facie showing of Double Jeopardy. The (3) conspiracies charged are in fact a single conspiracy and is therefore a single offense. The burden of persuasion shifts and the Government must show by a preponderance of evidence that Movant was correctly charged with separate conspiracies, United States v. Rabhan 628 F.3d 200 (5th Cir 2010). The Government failed to rebut Movants prima facie showing of Double Jeopardy before the lower Courts, apposed to addressing Movants prima facie showing of Double Jeopardy the Government went another route and made false claims that is not supported by the record that Movant is raising a claim of ineffective assistance of counsel against standby counsel and himself. The Fifth Circuit vacated the convictions of Rabhan because the Government failed to rebut Rabhan's prima facie showing of Double Jeopardy, the same should apply in this case.

14) The District Court and the Government went through great lengths to show how Grounds One, Three and Four lacked merit but when it came to Ground Two the District Court and the Government went silent, only expressing views to support their false claims not supported by the record. It is also important to note that the Supreme Court vacated the convictions of a defendant for the identical reason about to be stated, the cases were different but the situation is the same. Counts 25-47 also violates the Double Jeopardy Clause because of the special assessment of \$100.00 imposed on each count of conviction, Rutledge v. United States, 517 U.S. 292 (1996). The Supreme Court held that the special assessment is an adverse collateral consequence in violation of Double Jeopardy. Movant received a special assessment of \$100.00 dollars on each count of conviction. All of these claims were made by Movant and clearly supported by Movants Motion to Vacate, but Movant got no relief.

15) The Solicitor General claims that the (2) indictments correctly charged separate conspiracies, the Court of Appeals said that the (2) indictments were the same conduct when they affirmed Movants conviction that was enhanced because of the use of the 2013 indictment. If the Solicitor General is correct and the Court of Appeals was wrong then the affirming of the convictions for the enhancements of the 2013 indictment was wrong. If the Court of Appeals was right in their ruling and the Solicitor General was wrong, then the convictions on the 2014 indictment is wrong, either way there is a Constitutional violation.

16) If it was not for counsels deficient performance by not raising the Double Jeopardy claim pre-trial, Movant would not be in prison today on charges in violation of the Double Jeopardy Clause. Movant has established both cause and prejudice under the Strickland test. Movant was prejudice by counsels deficient performance. Jurist of reason could disagree with the District Court's resolution of the Constitutional claims or that jurist of reason could conclude that the issues presented are adequate encouragement to proceed further. The District Court was wrong to deny relief and the Court of Appeals was wrong not to grant the COA.

Question N0: (3); Does it violate the Constitution and the Supreme Court holding in Apprendi to increase Movants sentence for an alien smuggling conspiracy charge above the statutory maximum without any reasons from the District Court?

- 1) The District Court violated the Supreme Courts holdings in Apprendi v. New Jersey 530. U.S. 466 (2000), by increasing Movants sentence above the statutory maximum by impermissibly using charges that violated Congress Intent to enhance Movants sentence.
- 2) The statutory maximum penalty for an alien smuggling conspiracy without a financial gain enhancement or any grievous or aggravating factors warranting an increase in sentence is (5) years, unless the crime was committed for the purpose of commercial advantage and private financial gain, the sentence is increased to (10) years. The Judge increased Movants sentence above the statutory maximum penalty to (10) years, without reason. The entire sentencing transcripts is totally void of any information on how, why or what the Judge used to increase Movants sentence to (10) years, see attached sentencing transcripts as exhibits.

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3) Movant filed the Request to Expand the C.O.A. after he learned that the Supreme Court made a ruling in United States v. Hansen 216 L. Ed. 2d 692 (2023). Hansen was sentenced to the maximum sentence of (10) years because Hansen had a financial gain charge in his indictment that warranted such enhancement. Counts (1-24) of Movants indictment did not have a financial gain enhancement but Movant was sentenced to the same time in prison as Hansen. Counts 25-46 charges a financial gain enhancement, counts 25-46 are not tied to the conspiracy and also violated Congressional Intent therefore the financial gain enhancement cannot be transferred to the conspiracy counts.

4) & 1324 Criminal Penalties specifically states that;

(v) (I) engages in any conspiracy to commit any of the proceeding acts, or (II) aids and abets the commission of any of the preceding acts, shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such violation occurs.

(i) In the case of a violation of subparagraph (A) (i) (v) (I) or in the case of a violation of subparagraph (A) (ii), (iii) or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, United States Code, imprisoned not more than (10) years or both;

(ii) In the case of a violation of subparagraph (A) (ii), (iii), (iv) or (v) (II), be fined under title 18 United states Code, imprisoned not more than 5 years or both.

It is important to note that the only time the bringing statute is referred to under subparagraph (B) is when it is connected to the conspiracy; e.g. (A) (i) or (v) (I). At no other time is the bringing statute referred to. This made it clear that the financial gain statute charged in counts 25-46 cannot be transferred to the conspiracy counts, unless it is connected to the conspiracy. In the case of the 2014 indictment. In the absence of the financial gain enhancement (A) (ii), (iii), (iv) or (v) (II), be fined under title 18 United States Code, imprisoned not more than 5 years or both.

5) Congress has defined a Unit of Prosecution and it has been made abundantly clear that in order to increase the conspiracy counts to (10) years, the financial gain statute must be charged in the indictment and attached to the conspiracy. In this case, counts (1-24) has no financial gain statute charges. The District Court increase of the sentence on counts (1) and (2) is not authorized by Congress. There were no preponderance of evidence exceptions because Movant has no prior convictions, there was nothing charged in the indictment to warrant the enhancement and nothing presented to the jury to warrant the enhancements above the statutory maximum. The District Court was wrong to increase the sentence on counts (1) and (2) above the statutory maximum without reason. This act by the District Court violated the Supreme Courts holding in Apprendi.

6) Jurist of reason could disagree with the Court of Appeals resolution of the Constitutional claim or jurist of reason could conclude that the issues presented are adequate encouragement to proceed further. The Court of Appeals was wrong to deny the Request to Expand the COA as moot without reaching a merits analysis.

Question No: (4); Does it violates the Constitution for the District Court not to appoint counsel upon request of Movant after the Government filed a second discovery with new details of this case?

1) Movant was granted a Ferretta Hearing after Movant made a decision to represent himself at trial. Allen Kaufman was then removed as appointed trial counsel and placed as standby counsel. The Government then filed a second discovery at the last minute adding additional information that was very complex for Movant to address, (CR-DE-100-101). Realizing that Movant made the wrong decision and lacked the financial resources or skill to represent himself, Movant filed a motion "after" the second discovery was filed, asking the District Court to reappoint counsel, (CR-DE-127). Seven days later the District Court held a status conference, (CR-DE-110), the transcripts of the status conference are herein attached as exhibits. Movant also filed a Motion to reassert his Public Authority Defense based on the second discovery, (CR-DE-120). Before the District Court adjudicated the Motions, the District Court held Movant under duress for about 25 minutes pressuring Movant to withdraw his Public Authority Defense, (CR-DE-287 at pages 1-22).

2) During the status conference the Judge continually said that Movant did not have enough time to build his defense. Movant

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continually ask the Judge for more time. Movant then asked the Judge to reappoint counsel, see pages 18, at the bottom of the status conference transcripts that continues onto page 19, (CR-DE 287). Some of Movants words were removed when Movant asked the Judge to appoint counsel. Even though some of Movants words were removed, the Judge then replied to Movant telling Movant that you made a choice to represent yourself and then ignores Movant request to appoint counsel. The Judge then threatens Movant with the consolidation of the two indictments if Movant seek to have an extension of time for any reason. Knowing that Movant would be exposed to a greater sentence if convicted, Movant agreed with the Judge and withdrew his Public Authority Defense. Three days later without an attorney the Judge locked Movant in a Courtroom where members of the public were not allowed to enter and took Movant to trial, once Movant was convicted, the public was allowed to enter the Courtroom. The Judge made a ruling, saying that he denied the Governments motion to join the trial because he wanted to give Movant more time to prepare, (CR-DE-133), herein attached as exhibits. However the case, the Judge never gave Movant more time to prepare his defense and never appointed counsel.

3) Days prior, the Judge agreed with the Government that the two indictments did in fact charge separate conspiracies, yet the Judge still threatens Movant with the joinder of the two indictments in order to get Movant not to build a proper defense, or appoint counsel. All of these claims are properly documented in the transcripts of the status conference and were properly before the Court of Appeals in the Motion to Expand the request for C.O.A.

4) Jurist of reason could disagree with the Court of Appeals resolution of the Constitutional claim or jurist of reason could conclude that the issues presented are adequate encouragement to proceed further. The Court of Appeals was wrong to deny the Request to Expand the COA as moot without reaching a merits analysis.

Question No: (5); Did the District court allow the Government to violate the Supreme Courts ruling in Brady v. Maryland at trial and at sentencing?

1) The Supreme Court has held that suppression of evidence by the prosecution favorable to the accused, violates Due Process where the evidence is material either to guilt or punishment. To show a violation, a defendant must establish; 1) the Government possessed favorable evidence to the defendant; 2) the defendant did not possess the evidence and could not obtain the the evidence with reasonable due diligence; 3) the prosecution suppressed the favorable evidence; 4) had the evidence been disclosed to the defendant, there is a reasonable probability that the out come would have been different, Brady v. Maryland 373 U.S. 83 (1963).

2) Movant contended that the prosecution violated Brady at trial and at sentencing. The Court of Appeals denied the request for C.O.A. on this issue stating that Movant forfeited this claim by not raising it at trial or on Direct Appeal. The Eleventh Circuit is not honoring their own case laws because the Eleventh Circuit has said that a person can over come the procedural bar if he establishes prejudice, Lynn v. United States, 657 F.3d 1190, 1196 (11th Cir 2011). Movant contends that his Due process rights was violated at trial and at sentencing because of the Brady violation. The sole source of Movants conviction on the 2013 events charged in the 2014 indictment, came from the only two first persons witnesses that testified at trial about being sexually assaulted by Movant. Both Geicy Souza and Michelle Pacheco testified at trial, saying that Movant abused them, inferring that Movant raped them both at the same time. No other evidence was presented at trial to secure Movants conviction on those counts outlined above. Attached as exhibits is the Governments Motion in Limine filed in (CR-DE-114). see also the sworn declaration of Geicy Souza and Michelle Pacheco attached as exhibits. Both declarations were given under the penalty of perjury. When you compare the sworn declaration to the Governments motion in Limine it is clear from the face of the documents that the allegations of the rapes were false, further that the government solicited the use of perjured testimony at trial in order to secure and unjust conviction and inflame the jury's passion about a rape that never existed. The Government never gave the sworn declarations to Movant until the trial was over.

3) The Government then doubles down on the Brady violation by withholding the sworn declarations from the Jury to consider, the Governments admitted trial exhibits is herein attached as exhibits, (CR-DE-152). The sworn declaration of Geicy Souza is labeled as Governments exhibit 24.3 but is not listed anywhere in the Governments admitted trial exhibits. In the absence of the perjured trial testimony of Geicy Souza and Michelle Pacheco, there would be no convictions on the 2013 crimes charged in the 2014 indictment. There is a strong possibility that if the evidence was disclosed, the results of the proceedings would have been different. Geicy Souza made it clear in her declaration that she was raped "two times by a man named Marvin." The same way Geicy Souza told investigators that she was raped by Marvin she could have easily told investigators that she was raped by Movant, Geicy Souza did not tell investigators that she was raped by Movant because she was never raped by Movant, the trial testimony about the rapes were false. Geicy Souza never mentions in her declaration that Michelle Pacheco was raped along with her or that Michelle Pacheco was even present.

4) Michelle Pacheco claimed that she was raped a total of (6 to 7) times by Movant along with Geicy Souza during sentencing. (CR-DE 278 at 16). During the asylum process Michelle Pacheco never mentions that she was raped by anyone,

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nor does her sworn declaration make any mention about being raped. The only time the allegations of raped came up was on the morning of the trial. Because of the sentencing testimony of Michelle Pacheco, Movants sentence was enhanced (4) levels for serious bodily harm, adding years to Movant's sentence. The District Court and the Court of Appeals said that Movant could not establish cause or prejudice, these claims are unfounded. The Government then triples down on the Brady violation at sentencing by withholding the sworn declaration of Geicy Souza from attorney Mr. Della Fera who was the attorney that represented Movant at Sentencing and on Direct Appeal. Mr. Della Fera sent Movant a letter which made it clear that the Government withheld the sworn declaration of Geicy Souza from him, the letter from Mr. Della Fera is herein attached as exhibits. Had the Government disclosed the sworn declaration of Geicy Souza to Mr. Della Fera, Mr. Della Fera could have called Geicy Souza to testify at sentencing and impeached Geicy Souza and show the District Court that the sentencing testimony of Michelle Pacheco about being raped by Movant along with Geicy Souza were false. Movant would have not had his sentence enhanced (4) levels for serious bodily harm for a rape that never existed.

Jurist of reason could disagree with the District Court resolution of this claim. Jurist of reason could conclude that this issue is adequate to deserve encouragement to proceed further. The District Court was wrong not to grant relief and the Court of Appeals was wrong not to grant COA.

Movant humbly moves this Honorable Court to take a look at the Opinion of the Court of Appeals that was handed down in Movants Direct Appeal. In no way, shape or form is Movant trying to relitigate issues of the past, Movant only seeks to show this Court the extent of the injustice that has taken place in Movants case.

On page (14) of the Opinion of the Court of Appeals the Courts specifically said that the 2014 indictment charged Movant with bringing aliens into the United States because he personally brought the aliens to the United States himself. These allegations were in error and is not supported by the record in this case. Movant moves this Court to take a look at the Grand Jury transcripts, herein attached as exhibits. (CR-DE-239). The Grand Jury transcripts made it clear that other people was arrested for bringing the aliens into the United States, not Movant. The Court of Appeals affirmed Movants conviction on this issue based on facts not supported by the record, the record in this case is void of any facts to support the conviction. Movant now moves this Court to turn to page (17) of the Opinion of the Court of Appeals. The Court of Appeals said that the 404 (b) evidence of the 2013 indictment was properly admitted at the trial of the 2014 indictment, calling the 2013 indictment a prior conviction. The Order of Dismissal of the 2013 indictment is also herein attached as exhibits. The Court of Appeals again affirmed Movants conviction based on facts not in the record.

Movant now moves this Court to take a look at Movants & 2255 Motion to Vacate under Ground Three. Movant challenged the sufficiency of the evidence to convict on counts 25-46, specifically stating that counts 25-46 violated Congressional Intent and that Movants conduct did not violate the charging statute because Movant never brought any of the aliens to the United States. The District Court denied relief saying that the evidence was sufficient because Movant aided and abetted the crimes charged in counts 25-46. In essence the District Court said that the aiding and abetting statute takes precedent over Congress Intent, when it was Congress who enacted the aiding and abetting statute.

Movant also timely filed motions under Fed Rule of Crim P. 12 (b) (2) to dismiss both indictments for Multiplicity which invokes the Double Jeopardy Clause. The District Court denied the motion calling the crimes charged in both indictments separate crimes. If the crimes are indeed separate crimes; 1) how can the 2013 indictment be used in the trial of the 2014 indictment as 404 (b) evidence?; 2) How can the 2013 indictment be used to enhance Movants sentence (12) levels in total when Movant was never convicted of the crimes charged in the 2013 indictment? Justice has definitely escaped Movant in this case.

In 2023 Movant filed his first Writ of Certiorari, Movant is now comes back to this Court with nearly identical issues asking this Court once again to reverse Movants conviction under Rule 52 (b) because the lower Courts refuses to admit error. This Court has repeatedly reversed judgements for plain error on the basis of inadvertent or unintentional errors on the Court. Clyatt v. United States 197 U.S. 207 (1905). Brasfield v. United States 272 U.S. 448 (1926), see also Silber v. United States 370 U.S. 717 (1962).

The same should apply in this case, the errors are clear and obvious, that even a lay person can see. In order to prevent a Fundamental Miscarriage of Justice and protect the Fairness and Integrity of the Judicial Proceedings, Movant prays that this Court grant this Writ of Certiorari and review the decisions of the lower Courts for all of the above listed reasons.

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This Court requested that the Solicitor General respond to the first Writ of Certiorari, this Court should request that the Solicitor General respond to this second Writ of Certiorari in order to resolve the conflict between the Solicitor General, and the lower Courts on the Double Jeopardy claims. The Double Jeopardy claims were not resolved by the lower Courts, The Solicitor General says that there is no Double Jeopardy issue, the Court of Appeals and the Government said that both indictments are the "same conduct" and part of the "common scheme or plan."

Movant also moves this Court to appoint counsel because Movant lacks experience in briefing his arguments and wants to ensure that his claims are properly presented to this Court. Movant has exhausted all remedies available to him, this is the final phase of appeals to Movants conviction. If this Court denies this Writ of Certiorari, Movant will have to serve a (262) months sentence that was handed down in violation of the Constitution, all because of the fatally defective indictment. All of Movants co-conspirators received (84) months and below. If convicted and sentenced on the 2013 indictment as a first time offender at category one, the sentence would be (10-16) months that began at level (12).

Respectfully Submitted.

Michael Stapleton



17627104

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Daburon", is written over a horizontal line.

Date: August 10th 2024