

CASE No.

24-5584

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

AUG 29 2024

PIERRE C. MARC - PETITIONER

CLERK
U.S.

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO
TO THE ELEVENTH CIRCUIT COURT OF APPEAL

PETITION FOR WRIT OF CERTIORARI

INITIAL BRIEF OF APPELLANT

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QUESTIONS PRESENTED

1- IS AN APPEAL OF A COLLATERAL ORDER THAT IS BASED ON DEFENDANT'S RIGHT NOT TO BE TRIED IS REVIEWABLE UNDER THE COLLATERAL ORDER DOCTRINE, PURSUANT TO U.S. SUPREME COURT'S AUTHORITY: "Flanagan, supra, at 265-267, 104 S. Ct. 1051, 79 L. Ed. 2d 288?"

2- CAN A DEFENDANT TAKE AN IMMEDIATE APPEAL FROM THE DENIAL OF A PRE-TRIAL MOTION WHEN THE RIGHT AT ISSUE IS PROPERLY UNDERSTOOD TO BE A RIGHT NOT TO BE TRIED, PURSUANT TO U.S. SUPREME COURT'S AUTHORITY: "Abney v. United States, 431 U.S. 651, 662, 97 S. Ct. 2034, 52 L. Ed. 2d 651 (1977)?"

3- IF THE DEFENDANT'S CLAIMS ARE "FRAUD ON THE COURT AND PROCEDURAL DUE PROCESS VIOLATION," CAN HE REASONABLY CLAIM A RIGHT NOT TO STAND TRIAL, PURSUANT TO: "Cauwenberghe v. Biard, 486 U.S. 517, 524, 108 S. Ct. 1945, 100 L. Ed. 2d 517 (1988)?"

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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

The Opinion of the United States Court of Appeal appears at "Appendix A" to the petition and is reported at:
<http://www.ca11.uscourts.gov/opinions>.

The Opinion of the United States District Court appears at "Appendix H; Appendix J" to the petition and is reported at
Pacer.gov.

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JURISDICTION

The "Original Jurisdiction" of this Court is invoked under 28 U.S.C. 1254 (1).

No publicly traded company or corporation has an interest in the outcome of this appeal. U.S. Supreme Court Rule 29.6.

The date on which the United States Court of Appeals decided my case was January 31, 2024. (Appendix A).

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 20, 2024, and a copy of the order denying rehearing appears at (Appendix C).

- 1- UNITED STATES CONSTITUTION "FIFTH AMENDMENT (DUE PROCESS CLAUSE)

STATEMENT OF THE CASE

On February 04, 2021, Petitioner Marc was arrested. The following day, February 05, 2021, a criminal complaint was filed with the District Court against Petitioner. On February 11, 2021, an arrest warrant was issued for the arrest of Petitioner. See related case No. 8:21-mj-01116-AAS (Doc. 21), and also see Criminal Case No. 8:21-cr-00071-WFJ-AAS (Doc. 21).

On March 03, 2021, a three counts indictment issued against Petitioner. (Doc. 26).

On December 07, 2021, Petitioner's Counsel forged Petitioner's signature and entered into a plea agreement on behalf of Petitioner. (Doc. 81).

On February 22, 2022, the District sentenced Petitioner to 120 months. (Doc. 91).

On July 27, 2022, Petitioner filed a "Motion to Vacate" due to fraud upon the Court. (Doc. 133).

On February 14, 2023, Judge William F. Jung conducted an evidentiary hearing and vacated Petitioner's conviction. (Doc. 170).

On August 08, 2023, Petitioner filed a new "Motion for Fraud Upon the Court & Motion of Evidentiary Hearing." (Doc. 222); (Doc. 233).

On September 05, 2023, the District denied the motion without an evidentiary hearing. (Doc. 252) Located after (Doc. 250).

On November 02, 2023, Petitioner re-filed his "Motion for Fraud Upon the Court with Request for Evidentiary Hearing." (Doc. 277).

November 06, 2023, Judge Jung issued an Order directing the Government to only answer issues that are unrelated to the fraud upon the court. (Doc. 278).

November 14, 2023, Petitioner filed a for reconsideration re:[278]. (Doc. 281).

On November 26, 2023, the District denied Petitioner's motion for reconsideration. (Doc. 294).

On December 01, 2023, Petitioner filed a "Notice of Appeal." (Doc. 301).

On January 31, 2024, the 11th Circuit dismiss the Appeal, Case No. 23-13955, (Doc. 15).

A timely "Motion for Rehearing and Rehearing En Banc" was filed and denied on June 24, 2024. (Doc. 22).

REASONS FOR GRANTING THE PETITION

The United States Supreme Court held that: "When the appeal of a collateral order is based on Appellant's right not to be tried, the order he challenges are reviewable under the "collateral order doctrine." Flanagan, supra, at 265-267, 104 S. Ct. 1051, 79 L. Ed.2d 288."

1- Petitioner filed an interlocutory appeal raising multiple Constitutional violations and issues of "Fraud Upon the Court," claims that entitled Petitioner the right not to be tried. Petitioner rose an issue of forgery (i.e.: the magistrate Judge Armanda Arnold Sasone's signature was forged on the "Criminal Complaint and Arrest Warrant." (Appendix E; Appendix F; and Appendix G). Petitioner requested an "Evidentiary Hearing" to authenticate the fraudulent material evidence in comparison with the original signature. (Appendix B; Appendix D, (Magistrate's original signature)). The District denied the motion and evidentiary hearing without explanation ("Due Process Violation" Fifth Amendment of the U.S. Constitution). Judge William F. Jung also issued and Order "directing the Government NOT to answer on the issue related to the forged signature. (Appendix H); (Appendix J).

2- Petitioner was indicted with a co-defendant for possession with intent to distribute "40 Grams" or more of Fentanyl. After Petitioner had a reversal of his conviction based on prior fraud upon the court, the Government offered him a plea agreement which Petitioner declined opting to go to trial. The Government first threat Petitioner that he would be punished if he doesn't plea guilty. Subsequently, the Government "selected" Petitioner to be superseded without his co-defendant with a totally different set of facts unrelated to the original indictment. The Government added 5 kilograms or more of Cocaine, and change the 40 gr to 400 Grams or more of Fentanyl. Hence, Petitioner was selected to be superseded vindictively. As a result Petitioner filed a "Motion to Dismiss Vindictive Indictment." The District Court simply denied the motion without giving a reason.

3- The Fact of the forgery in the criminal complaint and arrest warrant, and the illogical superseding indictment where drugs were created and introduced out of thin air. It became evident that no "Grand Jury" was involve in the process. Petitioner filed a "Motion for Government To Provide the Grand Jury Transcript," pursuant to US Supreme Court authority: "Dennis v. United States, 384 U.S. 855, 86 S. Ct. 1840, 16 L. Ed. 2d 973 (1966)." The Government replied by conceding that: "[there were no testimony nor evidence presented to the Grand Jury]." (Appendix I). The District proceeded to deny Petitioner's motion to provide grand jury transcript without an explanation, in contradiction to Supreme Court authorities.

4- Hence, pursuant to United States Supreme Court's authority, "if any of Petitioner's issue in a pre-trial motion is properly understood to be a right not to be tried, a defendant in a criminal case is allowed to have an immediate appeal (Flanagan, supra, at 265-267, 104 S. Ct. 1051, 79 L. Ed. 2d 288)." Petitioner filed his appeal for a review under the "collateral order doctrine." (USCA 11th Circuit "Marc v. USA, Case No. 23-13955). Petitioner's claim on appeal was meritorious and supported by undeniable evidence for dismissal of his criminal case. The US Supreme Court held that: "All litigants who have a meritorious pre-trial claim for dismissal can reasonably claim a right not to stand trial." "Van Cauwenberghe v. Biard, 486 U.S. 517, 524, 108 S. Ct. 1945, 100 L. Ed. 2d 517 (1988)." "We have allowed defendants in federal criminal cases to take an immediate appeal from the denial of a pretrial motion when the right at issue is properly understood to be a right not to be tried." "Also see Abney v. United States, 431 U.S. 651, 662, 97 S. Ct. 2034, 52 L. Ed. 2d 651 (1977)." "Allowing an interlocutory {138 S. Ct. 812} appeal in that situation protects against all the harms that flow from the prolongation of a case that should have never been brought." See Id., at 661, 97 S. Ct. 2034, 52 L. Ed. 2d 651. (2018 LEXIS 30).

5- The 11th Circuit Court of Appeal denied Petitioner appeal in contradiction with the United States Supreme Court authorities, articulating that: "... because his case has not proceed to judgment; he has not been convicted or sentenced ... the order he challenges are not now reviewable under the collateral order doctrine." See Appeal's Court Order (Doc. 15)(Appendix A). The US Supreme Court has long settled this question: "if defendant's right is not to be tried, does he have to first be convicted and sentenced before he can raise the issue that he wasn't supposed to be tried?" "Allowing an interlocutory {138 S. Ct. 812} appeal in that situation protects against all the harms that flow from the prolongation of a case that should have never been brought." See Id., at 661, 97 S. Ct. 2034, 52 L. Ed. 2d 651. (2018 LEXIS 30). Petitioner filed for a "Rehearing and Rehearing En Banc" raising the contradiction of the Circuit's order which departs from established law, and uniformity of the Courts. The 11th Cir. declined to re-visit the erroneous decision. (Appendix C). The United States Supreme Court's supervisory power is warranted to certify the 11th Circuit's decision, pursuant to Supreme Court's authorities.

Petitioner Marc respectfully request the United States Supreme Court intervene in upholding its own authorities.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

PIERRE C MARC
PIERRE C. MARC

Date 08-29-24