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**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES  
DECEMBER TERM 2024  
D.C. NO. 4:18-CR-00072-DCN  
NO. \_\_\_\_\_

Supreme Court, U.S.  
FILED  
**DEC 18 2024**  
OFFICE OF THE CLERK

JAMES CLIFFORD GOODWIN III,  
Petitioner,  
-against-  
UNITED STATES OF AMERICA,  
Respondant.

PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

James C. Goodwin  
Reg. # 10749-023

Federal Correctional Institution, Englewood  
9595 West Quincy Avenue  
Littleton, Colorado 80123

#### **QUESTIONS PRESENTED**

Whether it is an abuse of discretion and/or an usurpation of power to impose a judgment that does not adhere to the congressional mandates and/or requirements of statutes.

Whether it is an increase of punishment, for the purposes of Ex Post Facto violations, to impose a newer, more strict version of a statute when Congress's clearly stated intent is that the previous version should apply.

Whether failure to raise challenges to constitutional issues, challenges to abuses of discretion or usurpation of power, or challenges to judgments that do not adhere to congressional mandates or requirements, especially those involving restitution and monetary penalties, on direct appeal, especially when the defendant requested multiple times that appointed counsel do so, can be waived, forfeited, or barred.

Whether a defendant's attempts to raise such challenges, through counsel on direct appeal and after, pro se, satisfy due diligence enough to exempt waiver or forfeiture.

Whether counsel's failure or refusal to raise meritorious issues and/or challenges, specifically when his client requested that such be raised, is sufficient to establish a conflict of interest and ineffective assistance to exempt forfeiture or waiver of challenges to restitution and monetary penalties

#### **Underlying Questions**

Whether a judgment is constitutional, or if it is a violation of the Ex Post Facto Clause of the Constitution, when applied to a defendant who committed his offense prior to the enactment of the modifications and amendments to a statute but was sentenced after, especially when Congress clearly stated that the previous version should apply.

Whether it is an increase of punishment, for the purposes of Ex Post Facto violations, to impose a newer, more strict version of a statute when Congress's clearly stated intent is that the previous version apply.

Whether restrained counsel at sentencing, with no determinations of who paid counsel's fees, and nothing more, is sufficient to prove non-indigency, for the purpose of imposing monetary penalties under 18 U.S.C. §3014.

Whether the a party can raise a defense of waiver of right to raise a challenge due to failure to raise that challenge on direct appeal, when that party itself waived its right to raise that defense by not raising it in response to the motion or petition, or did not argue it before the district court, or raise it in a reasonable amount of time.

Whether a restitution order, under a statute requiring payment be made directly to victim, or victim's legal representative, is valid, or void, when there is no identifiable victim seeking restitution.

Whether a mandatory minimum punishment/judgment may be imposed upon a defendant without first notifying that defendant that such exists, or is possible, at the plea hearing stage, or prior to accepting a plea of guilty.

#### **PARTIES**

The Petitioner is James Clifford Goodwin III, a prisoner at Federal Correctional Institution, Englewood in Colorado. The Respondant is the United States of America.

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## DECISIONS BELOW

A copy of the Decision of the United States Court of Appeals for the Ninth Circuit is attached as Appendix F to this petition (A-81). A copy of the Decision of the United States District Court for the District of Idaho is attached as Appendix B (A-15).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment V of the United States Constitution, as well as Amendment VII of the United States Constitution.

This case also involves Title 18, Sections 2259, 2259B, and 3014 of the United States Code.

### Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### Amendment XIV

Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Title 18 U.S.C. §2259, 2259B, and 3014 found in Appendix A (A-2 thru A-13)

## JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit was entered on June 5, 2024. An order denying a petition for rehearing en banc was entered on September 19, 2024, and a copy of the order is attached as Appendix G (A-85). A formal mandate was entered on September 27, 2024, and a copy of the mandate is attached as Appendix H (A-87). Jurisdiction is conferred by 28 U.S.C. §1254(1).

## STATEMENT OF THE CASE

The Petitioner alleged that, at sentencing, monetary penalties were imposed upon him in violation of the statutes, congressional intent, Ex Post Facto, and congressional mandates and requirements. Sentencing counsel filed a timely notice of appeal. Among other issues, the Petitioner requested of appointed appellate counsel to raise the issue of monetary penalties on direct appeal. Appellate counsel stated, despite numerous requests to do so, that he would not, and that the Petitioner must raise them on his own in a motion filed under 28 U.S.C. §2255. Appellate counsel then filed an Anders brief. The Petitioner filed a timely motion under §2255 listing his challenges, including the issue concerning the monetary penalties. The district court denied his §2255 motion, stating, in part without prejudice, that a motion filed under §2255 was not the proper vehicle to challenge monetary penalties. That court further informed the Petitioner that he would need to file a separate motion to challenge this issue. The Petitioner then proceeded to follow the directions of the district court. The Government filed no response. After an inordinate amount of time with no response from either the Government or the district court, the Petitioner filed for summary judgment.

With still no response from the Government, the district court denied the Petitioner's motions. As reasons for denial, the district court stated that a restitution order under 18 U.S.C. §2259 (2018) and §2259B (2018) did not increase the Petitioner's punishment and, therefore, did not violate the Ex Post Facto clause of the Constitution of the United States. The district court further said that even though it made no formal findings of indigency on record, it felt that the Petitioner having retained counsel at sentencing was sufficient to show non-indigency for the purpose of 18 U.S.C. §3014. It also noted that the Government did not respond to, or challenge, the Petitioner's motion challenging monetary penalties.

The Petitioner appealed, showing statute and case law refuting the district court's assumptions. The Government responded, stating only that it believed the Petitioner had waived his right to challenge monetary penalties because he did not raise that challenge on direct appeal. This was the first time the Government had raised this defense. It did not do so in response to the Petitioner's motion under §2255, and it made no response at all to his separate motion challenging the order for monetary penalties. The court of appeals affirmed the district court's order denying the Petitioner's motion on the

grounds provided by the Government.

#### **BASIS FOR FEDERAL JURISDICTION**

The district court had jurisdiction under 18 U.S.C. §3231 as the court of original jurisdiction.

#### **REASONS FOR GRANTING THE WRIT**

##### **A. Conflict with Decisions of Other Courts**

The holding that a defendant waives all right to challenge monetary penalties, specifically restitution, outside of direct appeal, regardless of the circumstances, especially where the defendant has diligently attempted to raise the issue, is in direct conflict with at least five federal courts. (See United States v. Smith, 2023 U.S. App. LEXIS 8702 (8th Cir. 2023); United States v. Yung, 37 F.4th 70 (3d Cir. 2022)(holding that defendant could not waive claim that restitution order exceeds the statute); United States v. Anderson, 866 F.3d 761 (7th Cir. 2017); United States v. Heslop, 694 Fed. Appx. 485 (9th Cir. 2017) (raising doubts as to whether claims such as whether a restitution order applies or whether it involved an abuse of discretion can ever be waived (citing United States v. Gordon, 393 F.3d 1044 (9th Cir 2004); United States v. Zink, 107 F.3d 716 (9th Cir. 1997))); United States v. Tsasie, 639 F.3d 1213 (9th Cir. 2011) (where restitution order was issued in violation of the procedural and evidentiary requirements of the statute, an appeal of such is not waived); Ratliff v. United States, 999 F.3d 1023 (6th Cir. 1993)(when a prisoner did not raise a restitution challenge on direct appeal, but raised it for the first time in a petition filed under 28 U.S.C. §2255, that challenge is not waived if the prisoner could show cause for the failure to raise it and prejudice); Gifford v. United States, 1993 U.S. App. LEXIS 17126 (6th Cir. 1993)).

In addition, allowing the Government to raise its defense in response to the Petitioner's appeal when it did not raise it in response to the motion before the district court, especially a defense claiming that the Petitioner waived his right to challenge for not raising the challenge on direct appeal, contradicts at least two federal courts. (See Sanchez v. Roden, 753 F.3d 279

(1st Cir. 2014); Johnson v. Gonzales, 416 F.3d 205 (3d Cir. 2008)). This is also unethical and hypocritical.

The decisions giving rise to the underlying questions themselves are in conflict with federal courts, as well as decisions of this Court. (See Ramos v. Louisiana, 590 U.S. 83, 140 S. Ct. 1390, 206 L. Ed. 2d 583 (2020)(federal judges "should be bound down by strict rules and procedures" (*id.* at 607 (quoting The Federalist No. 78, p. 529 (J. Cooke ed. 1961)))); United States v. Barthman, 983 F.3d 318 (8th Cir 2020)(holding that the statute requires explicit findings of non-indigency and that implicit findings are not sufficient); Paroline v. United States, 572 U.S. 434, 143 S. Ct. 1710, 188 L. Ed. 2d 714 (2014)(holding that restitution is a punishment and "[i]t is the Government's burden to prove the amount of the victim's losses by a preponderance of evidence" (*id.* at U.S. 462)); Quintero v. United States, 33 F.3d 1133 (9th Cir. 1994); Lussire v. Dugger, 904 F.2d 661 (11th Cir. 1990)(where order "reached a result contrary to the intent of Congress," there is an abuse of discretion (*id.* at 668) (see also Wine Industry of Florida, Inc. v. Miller, 609 F.2d 1167, 1170 (11th Cir. 1980)(order "is arbitrary and capricious because it is inconsistent with the intent of Congress and is an abuse of discretion"))); Anderson v. City of Bessemer City, 407 U.S. 564, 105 S. Ct. 1504, 84 L. Ed. 2d 518 (1985); Denver v. Bergland, 695 F.2d 465 (10th Cir. 1982)(order was "contrary to the intent of Congress and is arbitrary, capricious, and an abuse of discretion" (*id.* at 479)); Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960 67 L.Ed. 2d 17 (1981)(holding a statute void as applied to a defendant who committed crimes prior to its enactment,under Ex Post Facto clause (*id.* at U.S. 291)); Class v. Norton, 507 F.3d 1058 (2d Cir. 1974)( "Supreme Court reversed for abuse of discretion in not giving due respect to Congress" (*id.* at 1061 (citing System Federation No. 91 v. Wright, 364 U.S. 642, 81 S. Ct. 368, 5 L. Ed. 2d 349 (1961)))); Kitchens v. Smith, 401 U.S. 847, 91 S. Ct. 1089, 28 L. Ed. 2d 514 (1971).

#### **B. Importance of Questions Presented**

This case is of great importance to the public and the federal judicial system because it presents fundamental questions with regards to the operating of court systems, of congressional and statutory interpretation, and in dealing with due process rights. It also deals with justice and giving preferential treatment to the government in criminal proceedings. Due to the large amount of litigation in which it is claimed that rights, especially those to challenge,

are waived, clarification and guidance is needed on whether, when a defendant has done all he can to raise an issue, a right to challenge is waived or forfeited; whether due diligence exempts forfeiture or waiving of the right to challenge; what constitutes due diligence in this instance; whether counsel's failure, or refusal, to raise meritorious challenges qualifies as ineffective assistance enough to create exceptional circumstances sufficient to exempt waiver of right to challenge; and whether one party can raise a defense, especially one such as waiver of right to challenge due to failure to raise the challenge on direct appeal, when that party itself waived or forfeited the right to raise such a defense due to failure to raise it in response to the other party's motion or argue it before the district court. This affects the Fourteenth Amendment's due process and guarantee of equality before the law as well as the Fifth Amendment's due process guarantee, which are essential to the operation of the federal judicial system and courts in all 50 States and territories of the United States.

The holdings from the First and Third Circuits demonstrate the importance of these issues and questions. and the need for guidance from this Court. (See Sanchez, 753 F.3d at 309 ("[a] procedural defense, such as exhaustion, is waived if not raised in response to that petition or argued before the district court" (citation omitted)); Johnson, 416 F.3d at 211 (finding the Government's argument to be waived where it was not raised in the Government's response to the motion)). It is plain that this defense can not be raised and the lower court errored in allowing it and not striking it. When one party is shown preference before the court over another there is not equality before the law and due process is violated. The First Circuit has said "'federal prosecuting attorneys ought to be mindful of the harm done when those in power ignore the rules governing their own conduct while demanding strict compliance from others.' [Arrieto-Agressot v. United States, 3 F.3d 525, 530 (1st Cir. 1993)]. The Government in criminal proceedings must follow the rules and suffer the consequences when it does not." (See United States v. Carty, 37 F.4th 775, LEXIS 43 (1st Cir. 2022)). This important standard should be held by all courts.

The lower court's interpretation of United States v. Gianelli, 543 F.3d 1178 (9th Cir. 2008) is flawed and creates issues of great importance. It assumes that, as the Government presents, Gianelli provides an all inclusive ban on challenges to restitution outside of direct appeal. This view is in opposition to the findings of the Gianelli court. In Gianelli the defendant was not challenging the validity of the restitution order itself, but, rather, the

amount on a valid order. Further, that court held that conditions and circumstances exist where challenges to restitution, and monetary penalties in general, may be raised outside of a direct appeal. (See *id.* 1184-85, stating and citing: a complete miscarriage of justice (United States v. Addonizio, 442 U.S. 178, 185-87, 99 S. Ct. 2235, 60 L. Ed. 2d 805 (9179)(citing Davis v. United States, 417 U.S. 333, 94 S. Ct. 2298, 41 L. Ed. 2d 109 (1974))); constitutional sentencing errors (United States v. Schlesinger, 49 F.3d 483, 485 (9th Cir. 1994)); when restitution order is imposed when not authorized by statute (United States v. Broughton-Jones, 71 F.3d 1143, 1147 (4th Cir. 1995)); when the restitution violates the Constitutional Ex Post Facto clause (Gianelli, 543 F.3d at 1186)).

It seems clear that the underlying issues, claims, and questions are of vital importance and must be addressed and understood to resolve this case. Challenges and questions that were not addresses by the Government or the court of appeals. (See United States v. Fitzen, 80 F.3d 387, 389 (9th Cir. 1996)(where a claim is not addressed it is deemed as acceptance of the claim's validity)).

These claims concern, in part, a misinterpretation or misunderstanding of Paroline, 572 U.S. 434 and 18 U.S.C. §§2259, 2259B, and 3014; usurpation of power and authority; misconduct; abuse of discretion; and ineffective assistance of counsel. Statutory interpretation and adherence to Congressional mandates (see §2259B(d)) and requirements (see §3014(a)) are of such utmost importance that failure in these areas must be corrected.

Imposing §2259 (2018) and §2259B (2018) the district court misinterpreted the intent of Congress, as is clearly stated in §2259B, when §2259 (1996) is Congress's intended version in this case. In Paroline this Court held that restitution is punishment. The amendments to §2259, including the addition of sections 2259A and 2259B, clearly "alter the definition" and, where no identifiable victim seeks restitution, "increase[s] the punishment" of restitution orders imposed on defendants when the previous version of §2259 (requiring identifiable victims seeking restitution) applied. (See California Dept. of Corrections v. Morales, 514 U.S. 499, 514, 115 S. Ct. 1597, 131 L. Ed. 2d 588 (1995)). This is an obvious violation of Ex Post Facto and an abuse of discretion. As one court held "[a]lthough [the intent of Congress] is tucked away in 18 U.S.C. §2259B rather than section 2259 itself, it speaks to the AVAA as a collective whole, including the modifications that statute made to section 2259." (United States v. Richardson, 2023 U.S. Dist. LEXIS 1466, at \*11 (N.D. Ill. Jan. 4, 2023)).

The Eighth Circuit partially considered §2259 (2018)'s relation to Ex Post Facto. (See United States v. Evans, 48 F.4th 888, at LEXIS 14 (8th Cir. 2022)). Evans also addressed the relationship the statute had with Paroline, and held that because only one victim was seeking restitution the defendant was required to pay restitution only to that one victim. In the Petitioner's case no victim is seeking restitution. Imposing a restitution order in these circumstances affect a defendant's substantial rights. (See United States v. Azucenas, 2024 U.S. App. LEXIS 25489, at \*10-11 (9th Cir. 2024)(also addressing Ex Post Facto, §2259, and Paroline)). This constitutes a violation of Ex Post Facto, as well as an abuse of discretion.

In addition, §3014 mandates that this statute only be applies to "non-indigent" defendants, and requires that a finding of non-indigency be made by the court. Five federal courts have held that this finding must be made on record and prior to any special assessment under §3014 being imposed. (See United States v. Bhaskar, 2022 U.S. App. LEXIS 17030, at \*9-10 (2d Cir. 2022); United States v. Kibble, 2021 U.S. App. LEXIS 33825, at \*8 (4th Cir. 2021); United States v. Baker, 8 Fed. Appx. 655, 657 (9th Cir. 2001); United States v. Fowler, 956 F.3d 431, 439-40 (6th Cir. 2019); United States v. Avalos, 743 Fed. Appx. 210, 214 (10th Cir. 2018)). Although the district court noted it made no formal finding of indigency on record, it held, on challenge, that it believed the fact of retained counsel at sentencing, without further findings, was sufficient to show non-indigency. This is contrary to this Court's decision in Anderson, 470 U.S. at 573-74, where this Court held that the district court's conclusion of non-indigency was not "plausible in light of the record viewed in its entirety." Because a defendant has retained counsel does not definitively show non-indigency. (See Chipres-Rodriguez v. United States, 2016 U.S. Dist. LEXIS 87539, at \*2 (E.D. Cal. July 6, 2016)). The Ninth Circuit has warned trial judges "to determine whether or not third parties are paying the fees of retained counsel when the defendant is indigent." (See Quintero, 33 F.3d 1133). Generally, when the collateral attacker alleges and testifies that he was indigent at the time of the contested prosecution and the state offers no controverting evidence, he should be deemed to have carried his burden of proof. (See Kitchens, 401 U.S. 847; see also United States v. Gilbreath, 9 F.3d 85, 87 (10th Cir. 1993)(where a defendant proceeded in forma pauperis and with appointed counsel, restitution order frustrates the goals set by Congress and is an abuse of discretion)).

Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) set the framework used to determine ineffective assistance of counsel. As ineffective assistance of counsel is one of the conditions that exempts waiver of challenges to restitution and monetary penalties (see Arnaiz v. Warden, 594 F.3d 1326, 1330 n.2 (11th Cir. 2010) (where "exceptional circumstances" existed as proved by ineffective assistance of counsel, challenge was not waived)), it is important to clarify whether failure to raise meritorious issues, especially when counsel's client requested they be raised, creating a conflict of interest (see Christenson v. Roper, 574 U.S. 373, 135 S. Ct. 891, 190 L. Ed. 2d 763 (2015) (where counsel abandoned his client by not filing meritorious issues, creating a conflict of interest)), is sufficient to establish ineffective assistance of counsel. This Court's guidance is important and needed.

Using the Petitioner's case as example, it is clear that the challenges he raises are meritorious. Neither the appellate court nor the Government disputed them. Both stated, by citing Gianelli, that these challenges should have been raised on direct appeal by counsel, not that they had no merit. However, despite several requests by the Petitioner, counsel did not, filing an Anders brief instead. This clearly prejudiced the Petitioner and affected the outcome of the proceedings, meeting the Strickland criteria. One court held specifically that appellate counsel was ineffective by not raising or addressing meritorious issues and filing an Anders brief. (See Epps v. Bodison, 2009 U.S. Dist. LEXIS 141188 (D. S.C. Mar. 12, 2009)).

The conduct of the judicial system is under intense scrutiny in this current climate of political and national turmoil and tribulation. The entirety of the judicial system hangs on the honorable conduct of the courts. "The Justice Department's mission is not to merely win cases, but to seek justice." (United States v. Ruiz-Castelo, 835 Fed. Appx. 187, 191 (9th Cir. 2020)). To do otherwise would affect the fairness, integrity, and public opinion of judicial proceedings. Rosales-Mireles, 585 U.S. 129, 138 S. Ct. 1897, 201 L. Ed. 2d 376 (2018)).

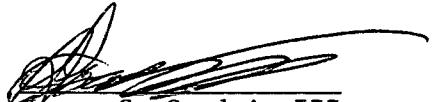
These issues and questions are of great importance and clarification and guidance by this Court is needed.

#### CONCLUSION

For the foregoing reasons, among others, certiorari should be granted in

this case, and this Court should resolve these unsettled questions.

Respectfully submitted,

  
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December 18, 2024  
Date