NO. 24-6807

IN THE SUPREME COURT OF THE UNITED STATES

CARL PALLADINETTI - PETITONER

TEXT

vs.

I Criminal Case No: 13-cr-0771-3

I Appellant Case No:

UNITED STATES OF AMERICA – RESPONDENTS(S)

ON PETITON FOR A WRITE OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRITE OF CERTIORARI

Carl P. Palladinetti
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#46297-424
USP Thomson
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61285

Questions presented

A. Whether the Seventh Circuit Court of Appeals denial of Mr. Palladinetti's COA filing represents an issue of constitutional significance worthy of United States Supreme Court review based upon the following: Mr. Palladinetti's Section 2255 motion where Mr. Palladinetti adequately established that trial counsel rendered ineffective assistance of counsel prior to the start of Mr. Palladinetti's bench trial, where he both failed to assure that Mr. Palladinetti read the entirety of the Stipulation of Facts document and in his subsequent failure to advise the Court of this fact and in failing to engage the Court in any dialogue and preserve the record concerning the Stipulation of Facts being tantamount to a guilty plea requiring court admonishment.

B. Whether the Seventh Circuit Court of Appeals denial of Mr. Palladinetti's COA filing represents an issue of constitutional significance worthy of United States Supreme Court review based upon the following: Mr. Palladinetti's Section 2255 motion where Appellant Counsel was ineffective in his failure to raise the issue, on Direct Appeal, regarding the propriety of the Court's failure to admonish Mr. Palladinetti or conduct any colloquy as is required by Rule 11 of the Federal Rules of Criminal Procedure.

C. Whether the Seventh Circuit Court of Appeals denial of Mr. Palladinetti's COA filing represents an issue of constitutional significance worthy of United States Supreme Court review based upon the following: Mr. Palladinetti's Section 2255 motion where Appellant counsel for Mr. Palladinetti was ineffective in his failure to raise and address the propriety and legality of the District Court's Criminal judgement entry against Mr. Palladinetti where there was no damage evidence presented by the Government nor was there any case evidence presented revealing that Mr. Palladinetti was the proximate cause of damages resulting from the unlawful conduct of certain unindicted co-conspirators.

LIST OF PARTIES

[X] 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:

RELATED CASES

UNITED STATES V PALLADINETTI NO: 22 C 5678
(U.S. DISTRICT COURT, NORTHERN DIST. OF ILLINOIS)

PALLADINETTI V UNITED STATES NO: 23-3386
(SEVENTH CIRCUIT COURT OF APPEALS)

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STATUTES AND RULES

28 USC § 2255
28 USC § 2253

OTHER 5th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION

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

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

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

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[x] 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 JULY 9, 2024.

[ ] 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: AUGUST 9, 2024, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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. § 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

28 USC § 2255
5th AND 14th AMENDMENTS TO THE UNITED STATES CONSTITUTION
28 USC § 2253

Statement of the Case

This is a case which prays out for US Supreme Court consideration.

Not one, but three independent, structural law violations have occurred in this case where, not a single of these issues has been substantially been addressed either by the District or Circuit court to date. First, no damages were eventdentally established linking Mr. Pall's conduct thot he unlawful of other unindicted case participants. Second, Mr. Pall was unknowing ly lying represented on direct appeal by unlicensed appellant counsel.

AT no time tithe Circuit recognize this fact. Third, there was a structural constitution violation, regarding the district court to admonish Mr. Pall in violation of the circuit court's clear and unambiguous holding in Seymour While a single of these structural constitutional violation would warrant the granting of certioari hear in, Certainly, three similarly structural aggreegous constitutional violations crystal out even more loudl for United States Supreme Court review.

On September 26,2013, Defendant-Appellant was charged by indictment with seven counts of bank fraud in violation of 18 U.S.C. § 1344 and five counts of making false statements in violation of 18 U.S.C. § 1014 pursuant to a fraudulent real estate scheme in which he engaged with co-defendants. (R.2.) Count One of the indictment charged Defendant-Appellant with 18 U.S.C. § 1344 bank fraud as to Washington Mutual Bank for allegedly utilizing the fraud scheme to facilitate Defendant-Appellants wife's purchase of the property commonly known as 7024 N. Rockwell, Unit Chicago, Illinois on or about July 14, 2005. (Appx 1.) A Bench trial in the District Court was had solely upon Count One of the indictment pursuant to a stipulation (Appx. 356) herein Defendant-Appellant stipulated to facts supporting all elements of 18 U.S.C. § 1344 Bank Fraud except the identity of the defrauded institution and the defrauded institution's status as an FDIC insured federal banking institution.
The documents admitted at trial contradicted each other and the Indictment in Identifying and describing the defrauded Institution
At trial, the government introduced several exhibits which either contradicted identification of the defrauded institution as Washington Mutual Bank in Count One of the indictment (Appx. 1) or contradicted each other in identifying and describing the defrauded institution-in particular, the

government admitted the following exhibits:

- (i) a mortgage document related to July 14, 2005 transaction which identified the lender as "Washington Mutual Bank FA. A federal association" (Appx 319):

- (ii) Washington Mutual Inc's 2005- 10K/A Amendment No 1. Annual Report [to the Sec] for year ending December 31, 2005 (appx. 33) which identified Washington Mutual Bank, FA and Washington Mutual Bank as federal savings associations (Appx 33 at 40: 42: and 132) or as federal savings banks (Appx 33 at 71):

- (iii) A HUD document related to the July 14, 2005 transaction which identified the lender as "Washington Mutual Bank" (Appx 347):

(iv) A January 25, 2005 Letter from Washington Mutual to the Office of Thrift Supervision ("OTS") which refers to Washington Mutual as an "association" but also describes Washington Mutual Bank. FA as savings banks (Appx 353) and

(v) A July 28, 2005 Certificate from the OTS describing Washington Mutual Bank and Washington Mutual Bank. FA as savings banks (Appx 355)

The Government's Bank Witness Failed to Clarify the Contradictions in Identification and Description of the Defrauded Institution in the Various Trial Exhibits or Establish any Relevant Corporate or Subsidiary Relationship Between the Lender in the Transaction Alleged in Count One of the Indictment and Either Washington Mutual Bank or Washington Mutual Bank. FA.and either-or Washington Mutual Bank or Washington Mutual Bank, FA.

The Government called its first witness, Brett Hellstrom a former employee of Washington Mutual Bank (Appx 365 at 379). Mr. Hellstrom testified that Washington Mutual Bank. FA changed its name to Washington mutual bank in 2005 (Appx. 365 at 380;14-24) Although Mr. Hellstrom stated that the FA stands for federal association (Appx. 365 at 388:11-14). Mr. Hellstrom did not directly testify regarding either the identity of the lender in July 14, 2005 real estate transaction or the federally insured status of any entity known as "Washington Mutual Bank FA, a federal association." (Appx 365 at 379-393.)

The government did not ask Mr. Hellstrom any direct questions about the mortgage document (Appx. 319): the HUD document (Appx 347); the January 25, 2005 Letter from Washington Mutual to OTS (Appx 353); or the 10K (Appx 33);

(Appx 365at 379-393). Mr. Hellstrom testified that he was "not aware of all the entities throughout the Bank" Appx 365 at 388:17-18) and that he was not privy to management decision at Washington Mutual (Appx 365 at 387: 4-6).

The Government's FDIC witness failed to connect FDIC Insurance to the Lender in the Transaction alleged in Count One of the Indictment.
The government's second witness was, John Lombardo, a case manager working for the FDIC. (Appx 365 at 393-394) Mr. Lombardo testified that he reviewed the FDTC's official records in regard to FDIC Certificate Number 32633 and that from 1997 through 2008, he had seen no break in deposit insurance as to the Certificate Number. (Appx 365 at 397:7-24)
Mr. Lombardo further testified that Certificate Number 32633 had been associated with American Savings Bank, F.A. (Appx 365 at 404:7-10) Washington Mutual Bank, FAX (Appx 365 at 396:1-397:5) and Washington Mutual Bank (*Id.*) The government did not ask Mr. Hellstrom any direct questions about the mortgage document, (Appx 319); the HUD document (Appx 347).
At the close of the evidence, the Court found that Palladinetti was guilty of Count One, based upon Palladinetti' stipulations to all specific intent fraud fact allegations contained in Count One as well as the Court's jurisdictional findings during his bench trial.
The Court Denied Appellant's Motion for Acquittal, Conviction and Sentence.
Appellant, then Motioned the District Court, at the close of the government's evidence. arguing that the government had not proven the federally, insured status of the, defrauded institution. (Appx 365 at 415.) The District Court denied such motion (Appx 365 at 422:20-423:3) Appellant asserted again in his closing argument that the government had not established the federal insurance. element. (Appx 465 at 431.) The District Court ruled that the Government met its burden to show the mortgage was provided by an institution insured by the FDIC (Appx 365 at 433) and entered a finding of guilt as to Count One of the indictment (Appx 365 at 434).
On August 4. 2020, a sentencing hearing was held in the District Court and Judge Kendall indicated a final written judgement of conviction would be entered at a later date. (R.379) On August 11,2020, Defendant-Appellant filed a Notice of Appeal (R.378: CR.1). On September 10, 2020 the District Court entered a written judgment of conviction as to Count One which dismissed all other counts against Defendant- Appellant. (S. Appx 1.) Defendant-Appellant's Notice of Appeal (R.378: Cr.1) is deemed filed on the date of and after the entry of the written judgement of conviction.

Reasons for Granting the Petition

A. The Seventh Circuit Court of Appeals denial of Mr. Palladinetti's COA filing represents an issue of constitutional significance worthy of United States Supreme Court review based upon the following: **Mr. Palladinetti's Section 2255 motion where Mr. Palladinetti adequately established that trial counsel rendered ineffective assistance of counsel prior to the start of Mr. Palladinetti's bench trial, where he both failed to assure that Mr. Palladinetti read the entirety of the Stipulation of Facts document and in his subsequent failure to advise the Court of this fact and in failing to engage the Court in any dialogue and preserve the record concerning the Stipulation of Facts being tantamount to a guilty plea requiring court admonishment.**

On the day of Mr. Palladinetti's Bench Trial, where the only issue left to be tried concerned Jurisdiction, Trial Counsel, Gary Ravitz (hereinafter "Ravitz"), presented Mr. Palladinetti with a proposed second Stipulation of Facts, (following presentation of a first fact stipulation document that Mr. Palladinetti never signed) which, if signed by Mr. Palladinetti, effectively prevented Mr. Palladinetti from raising ANY defense to the substantive specific intent fraud allegations advanced by the Government in its Indictment.

Without presenting Mr. Palladinetti with the entirety of the Stipulation of Facts prior to signing, Mr. Palladinetti was asked by Ravitz to sign the Stipulation simply by presenting Mr. Palladinetti with the last page of the Stipulation telling him to sign it.

Mr. Palladinetti respectfully submitted that Ravitz' failure to assure that

Mr. Palladinetti carefully read and understood to scope and the legal impact of signing the Stipulated of Facts statement constituted objectively unreasonable performance by Ravitz in several respects.

First and foremost, Ravitz' failure in this regard prevented Mr. Palladinetti from knowingly and intelligently understanding and appreciating the full consequences of his agreement to sign the facts stipulations. A proper attorney / client discussion on this issue would and should have included Ravitz advising Mr. Palladinetti that his complete and unequivocal confession as to ALL fraud count factual allegations, necessarily would lead to, if convicted, the imposition of the nearly 10 million dollars in loss and corresponding restitution, which the Court ultimately, at sentencing, entered as a monetary judgement against Mr. Palladinetti. In addition, Ravitz' failure in this regard effectively prevented Mr. Palladinetti from asking whether his factual stipulations to all substantive fraud allegations were tantamount to a guilty plea which would require a Rule 11 colloquy and a Government requirement to evidentiarily establish that Mr. Palladinetti was, in fact, guilty of committing fraud, as alleged. Mr. Palladinetti respectfully submits that the Government's revealed case discovery and evidence fell woefully short of satisfying its burden of proof beyond a reasonable doubt regarding its substantive fraud allegations

leveled against Mr. Palladinetti.

Based upon the foregoing, Mr. Palladinetti respectfully submits that Mr. Ravitz' conduct satisfied the Strickland first prong reasonableness requirement.

Next, Mr. Palladinetti respectfully submits, he was prejudiced by Mr. Ravitz afore mentioned omissions / failures thereby satisfying the Strickland second prejudice prong requirement as well, as, "but for" this lapse by Mr. Ravitz, Mr. Palladinetti would not have been found guilty at trial regarding the Government's bank fraud specific intent allegations.

Had Mr. Ravitz both made certain that Mr. Palladinetti read the entirety of the then proposed Stipulation of Facts, and, in addition, properly and fully asserted to the court that Mr. Palladinetti' unequivocable admissions to **ALL** of the Government's fraud allegations were tantamount to a guilty plea requiring that the Court admonish, and at least minimally and follow the Rule 11 Plea Colloquy mandates, including the need for Government presentation of a sufficient factual and evidentiary basis for his guilty plea, the Court would have very likely have not have accepted his Stipulated Fact / Guilty Plea request. Palladinetti would have then proceeded to a full trial on all Indictment counts where the Government's lack of evidence to convict on the substantive fraud counts would have resulted in his acquittal.

Based upon the foregoing, and as a result of Mr. Palladinetti's satisfaction

of both prongs of the Strickland standard to establish ineffective assistance,

Mr. Palladenetti respectfully requests that this Honorable Court vacate his

conviction and sentence and enter an order granting Palladinetti'

immediate release herein.

Both the Seventh Circuit and sister Circuit court decisions support Mr. Palladinetti's contention that following the courts acceptance of stipulation of facts, which included his unequivocal specific intent admissions the court was dutibound to admonish Mr. Palladinetti the defendant as to the consequences of the stipulation, to comport with well established Seventh Circuit precedent.

The Seventh Circuit of Appeals, in Seymour v. Dobucki, 998 F. 2d 1016 (7th Cir 1993) ruled that where a criminal defendant stipulates, prior to trial, to all specific intent elements of an offense the stipulation is, in effect, a guilty plea, thereby activating the need for court admonishment to satisfy the defendant's 5th and 14th amendment safeguards.

More specifically, the Seymour Court stated as follows:

"Ordinarily a defendant's agreement to a stipulated bench trial is not tantamount to a guilty plea and does not entitle him to the full protections to defendants who plead guilty. See United States v. Schmidt, 760 F.2D. 828 (7th Cir 1985), The reason for this rule lies in the guilty plea. A stipulation admits particular facts and waives certain constitutional rights such as the right to confront witnesses. But a plea of guilty is more than a confession which admits that the accused did various acts, it is itself a conviction: nothing remains but to give judgement and determines punishment. Boykin, 395 U.S. at 242. Whereas a defendant can recognize the rights explicitly waived by stipulation, he many not understand the full scope of rights waived by a guilty plea. For that reason, only a guilty plea requires strict prophylactic rules to ensure that the defendant fully understands the consequences of his decision."

In view of this rationale for distinguishing between the treatment of stipulation and pleas, we require that a trial court invoke the safeguards for guilty pleas in the context of a stipulated bench trial where **"By stipulation or otherwise a defendant effectively admits his guilt and waives trial**

on all issues." Thus, in cases where defendant stipulates the factual as well as legal guilt, he waives all of the rights that he would waive by pleading guilty and must be given the protections of defendants who plead

guilty. Upon examination of the transcripts of the proceedings of the state court, we conclude in this case, Seymour's' stipulated bench was not tantamount to a guilty plea.
Seymour's stipulation were simple narratives and largely testimonial. They stated facts to which the state's witnesses would have testified had they been called. **There was no stipulation as to the truthfulness of the testimony, and there was no stipulation as to intent. The legal inferences remain to be drawn.)**
By contrast, in the instant case, Palladinetti respectfully **submits** in that he stipulated with respect to **ALL** substantive fact and legal issues regarding count one's fraudulent conduct factual allegations, Court admonitions were necessary to comply with the sprit and the holding in Seymour. More pointedly, trial counsel's failure to both preserve the record, and insist that the court admonish Mr. Palladinetti, and, were all violative of the sprit, Court reasoning and holding in Seymour.
The court was dutibound to admonish Mr. Palladinetti with respect to that which he was 'giving up' by entering into his blanket stipulation. Trial counsel's failure to preserve the record on this issue, an issue which would likely have been successful on direct appeal had it been raised, constituted ineffective assistance of counsel by trial counsel.

Next, in United States v. Schmidt, 760 F. 2d. 828 (7th Cir 1985), the Seventh Court of Appeals dealt with the question of whether, where a criminal defendant submits his executed fact stipulation in advance of trial, does the Court have a duty to admonish.
With respect to this issue, the court stated as follows: "Rule 11 Colloquy and court admonition of the defendant is required to comply with due process requirements. In declining to adopt the defendant's contention in this regard, the court further stated as follows:
"We have difficulty accepting Folak's argument for several reasons. First, the factual predicate for Folak's argument (that is, stipulations amounted to guilty pleas)" is doubtful. The stipulations were simple narratives, and largely testimonial. They stated facts to which the government's witnesses would have testified had they been called, with no stipulation as to the truthfulness of the testimony.
There were no stipulations as to intent. The District Court was merely asked to decide the case on an agreed statement of facts: the legal inferences remained to be drawn. Defendant was, in fact, acquitted of 11 of the accounts against him. The defendant contends, that in agreeing to submission of the case on the basis of stipulations, he waivered several

constitutional rights, and he contends that we should not accept such a waiver on the basis of a silent record. Folax admits, as he must, that the record is not entirely silent. Folax acknowledged, in open court, his s ignature on a jury wavier form. The following colloquy ensued":
The Court: so, you are giving up your constitutional right to a trial by jury by submitting this case by stipulation, is that correct?
Defendant Folax: Yes, sir.
The Court: are you satisfied with your attorney's recommendation and representation of you in this case?
Defendant Folax: Yes, sir.
The Court: so, all of you defendants have now decided to let the case be decided without a jury on the basis of the stipulation that has been entered into, is that correct?
Defendant Folax: Yes.
In contrast to Schmidt, in the instant case, Mr. Palladinetti respectfully submits that he, in fact, did stipulate to the entirety of the substantive specific intent fraud count factual allegations.
Unlike in Schmidt, where the court, at least engaged in a minimal colloquy and admonition to Folax which was deemed to be constitutionally permissible, **No Admonition** or colloquy occurred between the court and Mr. Palladinetti as is required by the Seventh Circuit in Seymour.
Moreover, the Sixth Circuit Court of Appeals, in Julian v. United States. 2 36 F.2d (6th Cir. 1956), also dealt with a very similar question to the instant case, and, ruled in favor of the defendant.
More, specifically, the court framed 'the principal question', on appeal as to whether the defendant was denied a fair trial under the federal constitution where the trial court found defendant guilty in accordance with a stipulation made by his attorney that the defendant had willfully refused for national service as ordered by a local selective service board without the court first interrogating the defendant personally as to the truth of the facts stipulated.
In reversing the judgement of the District Court, the Sixth Circuit stated as follows:" The element of felonious intent essential to conviction could not be stipulated to by counsel. The admission on this point was a statement as to defendant's mental attitude and purpose. It constituted the controlling issue in the case and counsel' stipulation thereon could not form the basis of a valid conviction. The conclusion to the existence or nonexistence of criminal intent was to be drawn by the trier of the fact. Moreover, the Judge should have determined the person's admitted felonious intent. Since he considered the stipulations amounted to a plea of guilty, he should have inquired if the defendant understood the charge and voluntarily acquiesced

in the stipulations. Such actions would have complied with Rule 11. Based upon the error of the District Court in basing its conviction on the stipulation of criminal intent by defendant's attorney, and for failure to give the defendant the protection of Rule 11 of the criminal rules of civil procedure, the court reversed the case and remanded for further proceedings."

Similarly, in the instant case, the Court utterly failed to provide any colloquy or admonition following the submission of Mr. Palladenetti' stipulated facts prior to his bench trial. This failure, in Mr. Palladinetti's view, constituted structural constitutional error herein, requiring Mr. Palladinetti's immediate release at this time.

The Honorable Judge James F. Holderman, in Dansberry v. Pfister, no. 11 C 8719 (N.D. ILL Nov 8,2013) was faced with a very similar issue and a due process claim violation arising for an alleged failure to admonish. The Dansberry Court, in considering the propriety of the due process claim, first addressed Dansberry's claims regarding his rights to due process, at the change -n-plea-hearing. Because a guilty plea involves the waiver "of several constitutional rights, due process requires trial judges to make sure the defendant has a full understanding of what the plea connotes and of its consequences", so that defendant can be said" voluntarily and understandingly entered his pleas of guilty." Boykin v. Alabama, 395 U.S. 238, 243-44 "1969" a plea is voluntary when defendant is fully aware of the direct consequences of the plea." Chaidez v. The United States, 655 F.3D. 684 691" 7th Cir. 2011" (Brady v. United States).

The Dansberry Court provided the "Ground Work" for a due process claim in the context of a change in plea hearing. While not specifically dealing with the question of whether a stipulated fact statement qualifies as a guilty plea, and assuming, arguendo that Mr. Palladinetti's stipulation of facts is deemed to be a guilty plea by this Honorable Court, Judge Holdeman's recitation of what is required to establish a due process violation consistent with the holdings of Boykin and Chaidez are both instructive and compelling, Mr. Palladinetti submits in establishing that his due process in the instance case. constitutional rights were violated in the instant case but the Courts failure to admonish Palladinetti and trial counsel's failure to preserve the record on this issue constituted ineffective assistance of counsel.

Next, the Northern District of Illinois, Eastern Division, in Potts v. Chrans 700 F. Supp 15-05 (N.D. Ill 1988) dealt with a case nearly identical to the facts and in the issues in the instant case. In its analysis, the Court stated as follows:

"Once it is established that petitioner's stipulations amounted to a guilty plea, the defect in the trial courts procedures for accepting the pleas becomes evident. In Boykin, the Supreme Court ruled that a valid guilty plea requires in" an affirmative showing that it was intelligent was voluntary to satisfy this requirement "the defendant must possess an understanding of the law". Further, in McCarthy v. United States, 394 U.S. 459, (1969), the Supreme Court explained: equally voluntary and knowing, it has been obtained in violation of due process, and is therefore void. Moreover, because a guilty plea is an admission of all elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relations to the facts. Requiring an examination of the relation between the law and facts the defendant admits having committed is designed to protect the defendant who is the position to pleading voluntary with an understating of the nature of the charge but without realizing his conduct does not fall in the charge."

Similarly, to Potts, the instant case presents the identical situation where Mr. Palladinetti stipulated to all substantive fraud facts and to evidence that the parties would have presented at a jury or bench trial had the entirety of the case proceeded to trial. Because Mr. Palladinetti elected to stipulate to all of the substantive fraud elements in count one of his indictment, that stipulated fact statements constituted a guilty plea for Rule 11 purposes.

Finally, The Ninth Circuit Court of Appeals, in United States v. Miller, 588 F.2nd 1256 (9th Circuit 1979) dealt specifically with the question of whether a stipulation of facts constitutes a guilty plea for purposes of Rule 11 of the Federal Rules of Criminal Procedure. In determining that Ninth Circuit precedent as to the intent requirements of Rule 11 are applicable (only to guilty pleas or pleas of nolo contendre and not the stipulations), and while Miller invited the Court to rule that stipulations similarly required full Rule 11 admonishment and colloquy, critically, the Miller Court in dicta, supported the position advanced by Palladinetti herein. More specifically, the **Miller** Court stated as follows, "The dissent would include stipulations within the rule of ambit". Rule 11 specially applies to pleas of guilty and no low contendre and to trials. These are areas with clear division between them. They are either black or white. This does not mean that defendants who wish to proceed to trial thru stipulation of facts or waivers in order to preserve and issue for appeal are left unprotected. **It is the responsibly of the Trial Judge when accepting a stipulation or waiver to assure that it is voluntarily made.**

Here, Miller stipulated that he knowing willfully and defiantly committed the illegal acts for transportation for which he was convicted. **He also stipulated, among other things, that he understand, the range of**

punishment for the contempt for which he was charged was solely within the discretion the Trial Judge. At the hearing, the District Judge ascertained from both Miller and his counsel that the matters in the stipulation were understood and were voluntarily submitted. This inquiry was adequate."

The stipulated stated, inter alia:

"The defendant further acknowledges, and agrees and understands that the possible penalties which may be imposed in this action, of the defendant is convicted of any one or more of the charges, will not be limited to penalties applicable to minor crimes. The defendant further understands that the range of punish, in the event he is convicted of any or more contempt's charged in the Information is not prescribed by statue and is solely within the discretion of the Court and that said punishment may involve a monetary fine or imprisonment which respect to each offense which he is convicted."

In contrast to Miller, in the instant case, Mr. Palladinetti's was not admonished by the Court in **ANY** fashion in any time prior to his commencement of his bench trial. Though it was the responsibility of the Court in accepting Mr. Palladinetti's fact stipulation to ensure that the stipulations were voluntarily and intelligently made, consistent with the holding in Miller, the Court failed to do so. This, Mr. Palladinetti's respectfully submitted, established reversible error requiring vacation and his immediate release. In its Section 2255 denial order, the District Court indicated that because the Bank Fraud Count contained an additional jurisdictional element, **Seymour** was distinguishable and not controlling. The District Court erred in its conclusion regarding Seymour accordingly, Mr. Palladinetti's COA application request should be granted at this time.

B.The Seventh Circuit Court of Appeals denial of Mr. Palladinetti's COA filing represents an issue of constitutional significance worthy of United States Supreme Court review based upon the following: Mr. Palladinetti's Section 2255 motion where Appellant Counsel was ineffective in his failure to raise the issue, on Direct Appeal, regarding the propriety of the Court's failure to admonish Mr. Palladinetti or conduct any colloquy as is required by Rule 11 of the Federal Rules of Criminal Procedure.

In his Section 2255 motion, Mr. Palladinetti next asserted that Appellate

Counsels were ineffective in their failure to raise or address the

issue of the Court's failure, prior to trial, to ask Mr. Palladinetti whether he intended to enter his guilty plea by way of his stipulated fact statement and whether that failure and subsequent failure to admonish Mr. Palladinetti in accordance with the plea colloquy mandates of Federal Rule 11 was contrary to the holding of Seymour and its progeny and was violative of Mr. Palladinetti's Fourth Amendment Due Process and Sixth Amendment Constitutional right to counsel. These failures of Appellate Counsels were, Mr. Palladinetti respectfully submits, objectively unreasonable and materially prejudiced Mr. Palladinetti who, but for the objectively unreasonable omissions, would have prevailed on Direct Appeal, thereby securing a vacation of his conviction and sentence in the instant case.

In Evitts v Lucey, 469 U.S. 387 (1984), the United States Supreme Court outlined the general scope of the due process right to effective assistance of counsel on direct appeal:

"This right to Counsel is limited to the first appeal as a right and the attorney need not advance every argument, regardless of merit, urged by the appellant. But the attorney must be available to assist in preparing and submitting a brief to the Appellant Court and must play the role of an active advocate, rather than a mere friend of the Court assisting in a detached evaluation of the Appellant's claim."

While the selection of issues is clearly strategic, that consideration is not completely insulated from review. As in Strickland," informed decisions

based on reasonable professional judgements will not support a claim of ineffectiveness. In determining whether a reasonable professional judgement is involved in the selection of issues in appeal, the standard is whether the neglected issue has sufficient merit, in light of the other available issues, that reasonable competent counsel would have pursued it Sufficient merit should be determined in light of the strength of authority the facts, the standard of review, and the scope of review.

If the reviewing Court determines that the omitted issues are of sufficient merit that a reasonably competent lawyer would have raised them either in addition to or rather than the issues raised, the presumptions of counsel should be overcome.

The Seventh Circuit Court of Appeals, in Gray v Greer, 800-F.2D 644, 656 (7th Cir. 1986) explained as follows:

"When a claim of ineffective assistance of counsel is based on failure to raise viable issues, the District Court must exam the trial Court record to determine whether Appellant Counsel failed to present significant and obvious on appeal. Significant issues which could have been raised should than be compared to those which were raised. Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance be overcome."

In the instant case, Mr. Palladinetti respectfully submits that Appellant Counsel's failure to raise the fact stipulation / admonition requirement on Direct Appeal was violative of the Seventh Circuit's holding in Gray. This failure to raise was objectively unreasonable and materially prejudiced

Mr. Palladinetti, thereby satisfying Strickland and its progeny. Vacation and

Mr. Palladinetti' immediate release are required herein.

C. The Seventh Circuit Court of Appeals denial of Mr. Palladinetti's COA filing represents an issue of constitutional significance worthy of United States Supreme Court review based upon the following: Mr. Palladinetti's Section 2255 motion where Appellant counsel for Mr. Palladinetti was ineffective in his failure to raise and address the propriety and legality of the District Court's Criminal judgement entry against Mr. Palladinetti where there was no damage evidence presented by the Government nor was there any case evidence presented revealing that Mr. Palladinetti was the proximate cause of damages resulting from the unlawful conduct of certain unindicted co-conspirators.

The District Court's reliance, in its Section 2255 motion denial order,

On the Seventh Circuit's decision in Banickel is misplaced and its

misguided reliance on Banicke, is, in itself, worthy of granting Mr.

Palladinetti's COA request at this time. Unlike in Banicke, where the

ineffective of Counsel challenge centered on Counsel's purported failure, to

challenge order calculation amount / methodology, here, by contrast, Mr.

Palladinetti's ineffective assistance of Counsel focus, is based upon the

complete failure of Counsels to argue that there is a complete absence of

damage evidence that could lead to a criminal judgement entry against Mr.

Palladinetti as that which occurred.

In Paoline v United States (No 12-8561, April 23th, 2014), the United

States Supreme Court held that restitution is proper only to the extent that

defendant's offense proximately caused a victim's losses.

To say one event approximately caused another, first, that the former event caused the latter, i.e., actual cause or cause in fact and second, that it is a proximate cause, i.e. it has a sufficient connection to the result. The concept of proximate causation, according to the Supreme Court, in Paoline is applicate in both criminal and tort law and the analysis is parallel in many instances.

Applying the statue's causation requirements in this case, the Supreme Court went on to say that "victims should be compensated and defendants should be held to account for the impact of their conduct on those victims, but defendants should only be liable for the consequences and gravity of their own conduct, not the conduct of others."

In the instant case, Appellant Counsel's failure to contest, direct appeal, the propriety and legality of the District Court's restitution calculation and judgement entered against Mr. Palladinetti on direct appeal constituted ineffective of counsel, specific intent factual stipulations as a guilty plea, and is in violation of Strickland, and Cronic and its progeny.

Mr. Palladinetti submits that Appellant counsel's failures in this regard constituted objectively unreasonable conduct thereby satisfying Strickland's first prong of ineffective assistance. Further, Mr. Palladinetti submits, he was materially prejudiced by this failure to raise this issue on direct appeal,

in that there was significant probability that had Appellant counsel raised the issue, the case would have been remanded for further proceedings to determine appropriate restitution findings applicable to only Mr. Palladinetti' conduct.

Accordingly, Appellant Counsel's failure to contest the propriety of the Court's restitution findings on direct appeal constituted ineffective assistance of counsel thereby requiring vacation and Mr. Palladinetti' immediate release herein.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: FEBRUARY 28, 2025