

24-6907

No.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

FILED
JAN 01 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

OSCAR OMAR LOBO LOPEZ — PETITIONER
(Your Name)

.VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

OSCAR OMAR LOBO LOPEZ
(Your Name)

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(Phone Number)

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SUPREME COURT, U.S.

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QUESTION(S) PRESENTED

THE SIXTH AMENDMENT RIGHT TO COUNSEL EXTENT TO ALL
CRITICAL STASHES OF A CRIMINAL PROCEEDINGS LIKE
COMPASSIONATE RELEASE, WHEN COUNSEL FAILED TO
PROPERLY ARGUE FOR THE EXTRAORDINARY AND COMPELLING
REASONS AND FAILED TO REPLY TO THE GOVERNMENT'S
OPPOSITION AND FAILS TO INVESTIGATES BOTH FACTUAL
AND LEGAL?

a) The Fourth Circuit Fails When Do Not Addressed These Points in
His Pro Se Brief? AND
Was Lobo denied Effective Assistance of Trial Counsel as Guaranteed
by Sixth Amendment, United States Constitution, When Counsel
Fails to Reply to the Government's Opposition and Fails to Investigate
Both and Factual and Legal?

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 A 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 is unpublished.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 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,
 is unpublished.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 is unpublished.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.

1.

2.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 19, 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: _____, 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. § 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

The First Step Act's Amendment of 18 U.S.C. 3582(c)(1)(A) provides in relevant part:

- (b) Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof " . . . "
- (6) Unusually Long sentence -- If a defendant received an unusually long sentence and has served at least 10-years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances. *Id.* U.S.S.G. 1B1.13, cmt. n.1 (Title 18 U.S.C. 3582).

United States Constitution, Amendment VI:

In all criminal prosecution, the accused shall enjoy the right to a Speedy and Public trial, by an 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 confronted with the witness against him; to have compulsory process for obtaining witness in his favor, and to have the ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

4.

STATEMENT OF THE CASE

Lobo is serving his sentence of Life at FCI Butner 1, with no release date. He has served over 16 years of his sentence. Lobo in support of his request for reduction of sentence alleging significant changes to federal sentencing law since Lobo's trial and Life sentence is unusually long and Sentencing disparities, Family Circumstance of the Defendant and Lobo renounce his membership to the MS-13 Gang. Neither the Court addressed these claims under his Motion for Compassionate Release the court denied the motion with the following statement:

"As an initial matter, defendant argues that "[s]ignificant legal developments" have occurred since his sentence, rendering his sentence unusually long, including that had he been sentenced today he would "not have been subjected BOTH to the 924(c) and 924(j) provisions" and that a predicate offense no longer exists for his 924 conviction. [Dkt. No. 554]at 6. Although a "gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed" may qualify as an extraordinary and compelling circumstance, U.S.S.G. 1B1.13(b)(5), here, defendant has not show any gross sentencing disparity."

"Defendant focuses on changes in law purportedly affecting his 924 conviction; however, he misses the fact that his murder in aid of racketeering conviction under 18 U.S.C. 1959(a)(1) and 2, which he does not allege has been affected by any change in law, carries a mandatory sentence of life imprisonment. Indeed, if defendant were to be sentenced today for the same offenses, he would again receive the exact same mandatory sentence of life imprisonment. See United States v. Green " ...

(ECF. No. 561 at 2).

"Even if any of his claims amounted to "extraordinary and compelling" reasons, as the government correctly argues, granting defendant's request for a reduction in sentence would be inconsistent with the sentencing factors under 18 USC 3553(a), which require the Court to consider, among other factors, the nature of the crime for which the defendant was sentenced and his criminal history. Lobo-Lopez, who had a criminal history category of III and an offense level of 43 at the time of his sentencing, was convicted of fully

intentional and violent acts of conspiracy to commit murder in aid of racketeering, murder in aid of racketeering, and use of a firearm during a crime of violence that cased a death. See [Dkt. No. 440] at 24-25(describing defendant's conduct as "very serious" and terrible").

These convictions only add to his established pattern of dangerous conduct starting in 2001, including convictions for possession of a controlled substance, driving under the influence, and possession of marijuana. [Dkt. No. 552] ...

(ECF No. 561 at 3-4)

Lobo appeals that decision as to the Court's reliance in GREEN, 2021 WL 3044158, at *4, since GREEN is not consistent with this Court's precedent in United States v. High, 997 F. 3d 181, 185-86 (4th Cir. 2021) and McCoy, 981 F. 3d at 287, that when deciding a compassionate release motion a district court may consider any extraordinary and compelling reason raised by the defendant, including the length and disparateness of the sentence. Once a defendant successfully shows extraordinary and compelling circumstance, then the court may consider intervening change in law in the compassionate release motion. United States v. DAVIS, 99 F. 4th 647, 656 (4th Cir. 2024); CONCEPCION v. United States, 597 U.S. 481 (2022).

STATEMENT OF FACTS

On April 21, 2009, a jury convicted Lobo of offenses he committed while a member of the notorious gang MS-13, including one count of conspiracy to commit murder in aid of racketeering activity (RICO) in violation of 18 USC 1959(a)(5); one count of murder in aid of racketeering in violation of 18 USC 1959(a)(1) and 2; and one count of use of a firearm during a crime of violence, resulting in death, in violation of 18 USC 924(c)(1)(A), (j) and 2. (ECF. No. 331). On September 18, 2009, the Court sentenced LOBO to LIFE Imprisonment plus an additional, consecutive 10-years' imprisonment, five years of supervised release. (ECF No. 387).

On February 5, 2024, Lobo filed his motion requesting a reduction of sentence in light of United States v. SOLOMON and Change in the law following DAVIS and LORA (Supreme Court Case) and SIMMONS and GILL (4th Cir. Case), and the imposition of an unusually long sentence and his post-conviction rehabilitation. (ECF NO. 554). The government opposes the motion, but LOBO never receive a copy of the government opposes motion. On June 4, 2024, the Court denying Lobo motion for compassionate release. Lobo filed Motion for Reconsideration. On June 26, 2024, the Court entered an Order

Granted Lobo's Motion for reconsideration, ONLY to the extent that the Court considered Lobo's arguments that he denied effective assistance of counsel as Guaranteed by Sixth Amendment under STRICKLAND v. WASHINGTON, 104 S. Ct. 2052, (1984) and denied to the extent that he sought a sentence reduction. See: (Appendix B Pg. 3 and Appendix C).

Lobo challenges the Court's decision based on its reference to Strickland v. Washington, 104 S. Ct. 2052 (1984). He argued in his Pro Se Brief that Strickland, in line with this Supreme Court's earlies ruling in WILLIAMS v. TAYLOR, 120 S. Ct. 1495(2000), supports the approval rather than the denial of his Motion for Reconsider. In WILLIAMS, when evaluating Counsel's performance under Strickland make clear that one critical element of Constitutionally reasonable performance is an adequate investigation of relevant facts and law. Id. at 690-91. "An Attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under STRICKLAND.

REASONS FOR GRANTING THE PETITION

THE SIXTH AMENDMENT RIGHT TO COUNSEL EXTENDS TO ALL CRITICAL STAGES OF A CRIMINAL PROCEEDING, LIKE COMPASSIONATE RELEASE, WHEN COUNSEL FAILED TO PROPERLY ARGUE FOR THE EXTRAORDINARY AND COMPELLING REASONS AND FAILED TO REPLY TO THE GOVERNMENT'S OPOSITION AND FAILS TO INVESTIGATE BOTH FACTUAL AND LEGAL?

Over 40 years ago, the Supreme Court in its seminal *Strickland v. Washington* decision provided the framework for handling claims of ineffective assistance of counsel. Since then, its familiar two-part test requiring a showing of: (1) deficient performance and (2) a reasonable probability that but for counsel's errors the result of the proceeding would have been different. *Strickland*, 466 U.S. 668, 80 L. Ed. 2d 674 (1984) ("counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."); *Wiggins v. Smith*, 539 U.S. 510, 522, 156 L. Ed. 2d 471 (2003) (American Bar Association standards used as guide in assessing whether attorney's failure to investigate was reasonable); *Bobby v. Van Hooks*, 558 U. S. ___, 175 L. Ed. 2d 255, 259 (2009); *United States v. Mooney*, 497 F. 3d 397, 404 (4th Cir. 2007) (counsel in criminal cases are charged with the responsibility of conducting appropriate investigation, both factual and legal, to determine if matters of defense can be developed).

a) The Fourth Circuit Fails when Do Not Addressed These Points in His Pro Se Brief?
AND

Was Lobo Denied Effective Assistance of Trial Counsel as Guaranteed by Sixth Amendment, United States Constitution, When Counsel failed to Reply to the Government's Opposition And Fails to Investigate Both Factual and Legal?

The District Court in his Order (ECF No. 563 at 1) Motion for Reconsideration, held that: "Given that defendant's Court-appointed counsel neither responded to the government's opposition nor provided defendant with a copy of the government's Opposition, defendant's Motion for Reconsideration will be granted only to the extent that the Court will consider defendant's new arguments regarding compassionate release. But denied to the extent that he sought a sentence reduction.

Lobo's presented to the district court Exhibits A and B, where Lobo never receive a copy of the government's opposition and his Counsel (Lana Maritta) never presented a Reply to government motion. Lobo notes that his counsel told him that

"the prosecutor became ill and asked for an extension to this Friday and I agreed." We then have until April 5, 2024 to Reply to their opposition." See (ECF No. 562 at 2).

Counsel was ineffective in failing to reply to government motion and argue direct comparison sentencing arguments to support a sentence that was not disparity with other similar cases. On June 13, and June 21, 2024, Lobo Sending Two Email asking Ms. Lana Manitta that:

"Good day to you. I would like to know if you were notified that the government presented an opposition [docket no. 560] and if you were notified because I didn't receive any copy by the government and you didn't informed me either. Also because you didn't present a reply?"

"My family and I have been calling you but only my sister Karla has talked to you. But you told her that you are representing me and that my motion was denied. Also that in the State of Virginia does not give compassionate release to know one that has the same charges that I have 18 USC 1959(a)."

"For this reason I will present a motion under Rule 59(e), for reconsideration for reasons that nightery the government or you provided me with any copy of any motion presented in court."

See: (Appendix F - June 13, 2024).

"Ms. Lana I would like to ask you the following questions. 1) I send you an email last week and I still don't get a response from you? 2) I just want to know if the government gave you and answer or they gave an opposition? 3) If they did answer you did you answer back and what is it you answered? That is all the questions I have if you could please answer me back thank you and have a great day."

See: (Appendix F - June 21, 2024).

On June 21, 2024, Ms Lana Manitta respond that:

"I did respond to your email, I'm not sure why you didn't receive it. I did not file a reply because there was no basis for a reply. You conveyed the argument in your motion and the only reply would have been to repeat what you stated, which is not what you are supposed to do with a reply. I didn't charge anything for work on your case, although I did review the pleadings, because I didn't wind up filing anything. If you are filing a Motion for Reconsider you should do so immediately and then if/when it is denied you can file a notice of appeal, but I would not be able to work on that for you because I would have to file an Andres brief and that's obviously not what you want."

See: (Appendix F - Responds On June 21, 2024).

Was Lobo Counsel ineffective in failing to address the disparity sentence with other similar cases. This argument relates forward to the above Issue 1 to 3, Supra, (See: Pro Se Brief In the Fourth Circuit - Case No. 24-6702) in the comparative Sentencing is part of any question of Unusually Long Sentence 1B1.13(b)(6), in conjunction with the Sentencing Statute at 18 USC 3553(a). Both require comparative sentencing considerations and require avoidance of disparity in similar or worse cases.

Was Lobo Counsel ineffective in failing to provide the district court with cases to so that it could accurately form a resentence under 18 USC 3582(c)(1)(A). For example, in United States v. Floyd, the district court sentence to 360 months a defendant who was convicted of conspiring to commit murder in furtherance of a racketeering conspiracy. See United States v. Barrimette, 46 F. 4th 177, 189, 204 (4th Cir. 2022). Similarly in United States v. Hunter, CHIEF Judge BREDAR sentenced to 321-months a defendant who admitted to distributing a mandatory-minimum quantity of drug and to shooting and killing a rival gang member in a retaliatory strike. See Judgement HUNTER, JKB-16-0363 (D. Md. June 15, 2018) (ECF No. 288). Likewise, in United States v. Weaver, Judge BENNETT sentenced 360 months a defendant who pled guilty to the execution-style murder of another drug dealer. See Sentencing, Tr. 49: 14-50:2, 52: 16-20, WEAVER, RDB-19-0144

(D. Md. Aug. 15, 2022)(ECF No. 214).

Lobo presented to the district court these example in the context of post-conviction relief as well. For instance, United States v. Gray, the Judge CATHERINE BLAKE granted a motion compassionate release and resentenced to the equivalent of 31-years a defendant who was convicted of murder in aid of racketeering. GRAY, CCB-65-364, 2021 WL 1856649, at *1, *6.

Was Lobo Counsel ineffective in failing to present a motion for reconsideration, and fails to investigate law as well as facts: As CHIEF Judge BREDAR has explained a mandatory LIFE sentence, however imposed, constitutes a significant sentencing disparity when considering how the modern criminal justice process operates on defendant like FEREBE and LOBO. See Memorandum and Order at 8, United States v. Linton, JKB-98-0258 (D. Md. Sept. 27, 2021)(ECF 471). Also, the same district court the Judge BLAKE held in United States v. FEREBE, No. CCB-96-0401, 2023 US Dist. LEXIS 185047 (D. Md. Oct. 16, 2023); Sentencing FEREBE in the 30-years-range would remain guideline range for the defendant sentence in FLORD, HUNTER and WEAVER each contemplate LIFE imprisonment.

The defendant in FLOYD faced like FEREBE, a guideline sentence of life, and, like FEREBE [LIKE LOBO too] exercised his right to take his case to trial. See BARRONETTE, 46 F. 4th at 187, 211 (Plea Agreement at 2). Yet after taking all the relevant factor into account, the Court imposed a 30-years sentence notwithstanding the guideline calculation. See *Id.* at 211." The Court concludes that, were FEREBE convicted today, he would likely receive a sentence "within the thirty-years range." See WILLIAMS, 201 US Dist. LEXIS 158818, 2021 WL 3725435, at *3. Thus, a 30-year-range sentence represents a "GROSS DISPARITY" within the life term Lobo is currently serving. See United States v. McCoy, 981 F. 3d at 285 (quoting REED, 44 F. Supp. 3d at 723).

Accordingly, the disparity between Lobo's sentence and the sentence he would face today, the Counsel fails in presents to the district court the context of his particular circumstances and intervening legal developments, which creates an extraordinary and compelling circumstances that may warrant a reduced sentence. Before the district court's ruling, the Fourth Circuit decided United States v. Davis, 99 F. 4th 647, 656 (4th Cir. 2024). Which held that a change in sentencing

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law can constitute an extraordinary, and compelling reason for compassionate release. Thus, the Counsel was ineffective.

Disparity outcomes are to be avoided pursuant to 18 USC 3553(a) however, without a discussion of them the Court was not aware of possible sentencing options that would be closer to other similar or worse cases. Here even (30-years) of imprisonment would have been more in line with other similar cases, though still higher than those referenced. The court did not have the opportunity to address this specific aspect of 18 USC 3553(a) without it being raised specifically by counsel in conjunction with other mitigating factors raised or independent of them.

In all of the above cases the specific descriptions of what the conduct of these defendants involved was no better than LOBO. Disparity issues are a prime directive of the sentencing statute. In Lobo's case there was no comparison in or out of the Circuit to similar or worse cases of similar conduct in comparison to Lobo's background and the totality of what punishment should entail.

Was Lobo Counsel ineffective because she did not adequately Investigate the information about Lobo's parents. (ECF No. 554 at 11). Counsel never investigate nor call or have contact with Lobo's Grandmother, who suffers from diabetic, hypertensive and have very poor eye sight.

Counsel was ineffective in failing to give the court the information it need, which prove that Lobo is his grandmother's only available caregiver, especially given that his grandmother has four children who Lobo claim are incapable of acting as adequate caregivers. At the same time, however, STRICKLAND makes clear that one critical element of constitutionally reasonable performance is an adequate investigation of relevant facts and law, *Id.* at 690-91 (discussing counsel's duty to make "reasonable investigation"). "[P]revailing professional norms," that is, "include the duty to investigate and to research a client's case in a manner sufficient to support informed legal judgments." *CARTHORNE*, 878 F. 3d at 466; see e.g., *Williams v. Taylor*, 529 U.S. 362, 395, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000)(finding counsel's performance deficient for unreasonable failure to investigate mitigating evidence). And that duty includes, as it must, a duty to investigate law as well as facts: "An attorney's ignorance of a point of law that is fundamental to his case combined with

his failure to perform basic research on that point is a quintessential example of unreasonable performance under STRICKLANS." Hinton, 571 U. S. at 274.

In the present case Lobo counsel was ineffective in failing to present that Lobo's release does not pose a danger to public safety. Further, Immigration and Customs Enforcement has placed a detainer on Lobo, because he is subject to mandatory removal from the United States. Thus, Lobo will be transferred to immigration detention and deported. This lessens any potential danger he may pose. See United States v. Barriga-Beltran, No. 19-cr-00116(JS), 2021 U.S. Dist. LEXIS 67786, 2021 WL 1299437, at *3(E.D.N.Y. Apr. 7, 2021)(finding a defendant posed no danger because of immigration detainer); United States v. RIOS, 2020 US Dist. LEXIS 230074, 2020 WL 72464440, at *5(Collection cases where district court modified LIFE Sentence for defendants who were set to be deported if released); United States v. Francis, No. 06-CR-0080, 2021 US Dist. LEXIS 13272, 2021 WL 242461, at *2 (S.D.N.Y. Jan. 22, 2021)(“The Court is likewise satisfied that defendant will no pose a danger to any persons or to the community, as the government informs us that defendant is subject to an active ICE detainer and that ICE intends to effectuate the defendant’s removal to his release); See also United States v. Hernandez-Frometa, No. 18-CR-0660, 2020 US Dist. LEXIS 193073, 2020 WL 6132296, at *4 (S.D.N.Y. Oct. 19, 2020); United States v. Qadar, No. 00-CR-603(ARR), 2021 US Dist. LEXIS 136980 (E.D.N.Y. July 22, 2021)(same).

Lobo's sentence is disproportionately severe compared with the sentence received by other defendants with similar crimes all of who were released under a motion for compassionate release. For Example, in United States v. Perez, 2021 US Dist. LEXIS 41040, 2021 WL 837425, at *5 (finding 3553(a) factors supported reducing mandatory life sentence for murder-for-hire to time served)(D. Conn. Mar. 4, 2021). In the present case Lobo Counsel was ineffective in failing to present that argument.

Consequently, this Court ought to grant the Writ of Certiorari and remand this case back to the district Court to assess whether Lobo's application meets extraordinary and compelling criteria, and as interpreted by this Court in line with the STRICKLAND decision.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the Fourth Circuit.

Submitted December 31, 2024.

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