

No. _____

24-7327

ORIGINAL

SUPREME COURT OF THE UNITED STATES

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

ARTUR GILOWSKI

Petitioner

Vs.

UNITED STATES OF AMERICA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
FROM THE FIFTH CIRCUIT COURT OF APPEALS

Artur Gilowski
Reg. No. 54577-424
FCI Allenwood Low
Po. Box 1000
White deer Pennsylvania 17887

QUESTION[S] PRESENTED

Weather defense Counsel was constitutionally ineffective for failure to request special jury instructions that would allow the jury to make a determination whether a conspiracy existed, or it was just a common buyer seller relationship for the criminal acts charged in the indictment.

LIST OF PARTY

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

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Tab 1

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

Petitioner respectfully prays that this Court will issue a writ of certiorari for the following final judgment below;

OPINION[S] BELOW

From the unpublished opinion of the United States court of appeals for the Fifth Circuit decided on February 10th 2025. (See appendix A)

From the unpublished opinion of the United States District Court for the Northern District of Texas Dallas division case number 3:24-cv-307 decided on June 10th 2024.

JURISDICTION

The date on which the United States court of appeals of the fifth circuit declined to issue a certificate of appealability in the instant case was on February 10, 2025. Case number 24-10693. The District Court denied Petitioners motion for post conviction relief pursuant to 28 USC § 2255 decided on, June 10th 2024. Case number 3:24-cv-307

Jurisdiction of this court is invoked under 28 USC § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Mr Gilowski's right to a fair trial and his right to effective assistance of counsel were both violated where his trial attorney failed to request special jury instructions pertaining to a conspiracy versus a buyer seller relationship. Both of these violations Deprived Mr. Gilowski Sixth amendment right as guaranteed by the United States Constitution.

SUMMARY OF ISSUE[S] PRESENTED

The request for a writ certiorari from the United States Supreme Court is premised on ineffective assistance of counsel where counsel's failure to request special Jury instructions. Specifically defense Counsel failed to request a buyer seller relationship versus a conspiracy jury instructions in order to allow the jury to determine whether a conspiracy actually existed. Failure to request such an instruction not only deprived the Petitioner of a fair trial which would allow the jury to consider alternate defenses. But more importantly here, it further deprived the Petitioner of effective since the counsel It's guaranteed by the Sixth Amendment right to effective assistance of counsel.

Therefore, Petitioner now Pray's that this court will grant certiorari in order to reverse the travesty of Justice he is continuing to suffer through his unlawful and

unconstitutional conviction.

STATEMENT OF CASE

Petitioner, Artur Gilowski, was found guilty through a jury trial for his involvement in a crime ring that allegedly sent groups of thieves to national retail outlet stores to steal small electronics that would then be resold by different individuals in the Chicago area or on the Internet.

Petitioner was found guilty of the following offenses;

- 1) Conspiracy to commit Interstate transportation of stolen property in violation of 18 USC § 371 and 18 USC § 2314.
- 2) Conspiracy to commit mail fraud and violation of 18 USC §1349 and 18 USC § 1341.

A.Pre- Sentence Report and Objections

On July 19th 2022 the pre-sentence report (PSR) was filed on behalf of Artur Gilowski. The PSR calculated the defendants advisory guidelines pursuant to the United States sentencing guidelines as follows;

Base offense level 2x1.1(a), and 2B1.1	+ 7
Loss Amount (\$20,135,303.22) 2B1.1(b)(1)(K)	+20
Mass Marketing 2B1.1 (b)(2)(A)(ii)	+2
Receiving Stolen Goods to Earn Income 2B1.1(b)(4)	+2
Organizer/Leader 3B1.1(a)	+4

The PSR concluded that the defendant had a total offense level of 35 and a criminal history category of I since the defendant has no prior criminal record.

B.The Sentencing Hearing and Judgment

On September 7th 2022 a sentencing hearing was held for the defendant. The District Court overruled The Defendant's objection regarding the enhancement for the role of offense for organizer/leader and for obstruction, which the PSR claims that it should not be applied because the situation didn't arise to the level of obstruction of justice. However the district court did not take the recommendation of the PSR and applied the enhancement for obstruction of justice.

The District Court subsequently sentenced the defendant to 60 months on count one and 180 months on count to both counts to run concurrently with one another.

The defendant / petitioner filed a timely notice of appeal on September 14th 2021. The Fifth Circuit Court of Appeals affirmed the Defendant's sentence and conviction on July 2nd 2023.

Within the one year time limitation from the denial of the Defenders direct appeal the Defendant filed a post-conviction motion pursuant to 28 USC § 2255 within the jurisdiction of the district court.

The defendant / petitioner 2255 motion was based on ineffective assistance of counsel for his defense counsel's failure to request special jury instructions that would add a buyer seller relationship instruction for the jury to determine whether an actual conspiracy existed. The District Court rejected this argument in its entirety and dismissed petitioner's § 2255 motion on June 10th 2024.

The defendant/petitioner submitted an application for a certificate of availability (COA) to the United States Fifth Circuit Court of Appeals. The court of appeals refused to issue a COA in the instant case claiming that the petitioner did not make the required showing pursuant to *Slack v. McDaniel* 529 US 473, 484 (2000).

Therefore, Petitioner now requests that this court grant his request for a writ of certiorari in order to correct the travesty of Justice he has continually suffered throughout this entire judicial process.

REASONS FOR GRANTING THE PETITION

There are several reasons why this court should grant certiorari on the instant case. The most prevalent reason is whether a defense counsel is constitutionally ineffective for failure to request special jury instructions regarding a buyer-seller relationship when the defendant was only charged with a conspiracy to commit the alleged criminal act.

In the case at hand, it is clear that defense counsel committed a fatal error that changed the outcome of the proceedings. Where counsel failed to request special injury constructions that would allow the jury to make a determination as an alternate defense as it relates to a buyer-seller relationship.

Moreover, anytime a defendant is charged in a criminal prosecution with conspiracy which alleges that he along with his co-defendants, engaged in a criminal agreement to commit an unlawful act. The defense counsel in the interest of Justice, and to ensure a fair trial, it would be imperative that a constitutionally effective defense counsel request a buyer-seller relationship jury instructions as an alternative defense which clearly should be presented to the jury in their instructions, as opposed to the criminal agreement needed to convict on all conspiracy cases. Failure to request such a special jury instructions would ultimately deny the jury of full appraisal of the entire fax, or how the law should be applied to each individual case.

Simply put, if the jury does not fully understand the dynamics between, or the difference in the law between the conspiracy, and an ordinary buyer-seller relationship. In other words, the jury would not have the tools needed to fulfill its obligation and return a correct, true, and accurate jury verdict.

In the instant case, the evidence induced during trial by the government clearly shows that only a buyer-seller relationship existed between the

defendant and the other actors of the charge conspiracy. Consequently, petitioner's trial Counsel failed to request special jury instructions that would have allowed the jury to make a determination of whether the government only proved a buyer-seller relationship instead of the actual conspiracy that the defendant was charged with. Therefore rendering councils representation constitutionally ineffective.

There is little doubt that any defense counsel's failure to request such special jury instructions on a buy-seller relationship, especially in the instant case constitutes ineffective assistance of counsel no matter how you slice it.

More importantly here, defense counsel's failure to request such a special jury instructions deprived the Petitioner of a fair trial in violation of the Sixth Amendment rights to United States Constitution. Therefore providing ample reason for this court to grant certiorari in order to further pursue this legal argument.

A. A Split in the Circuits on Buyer-Seller Relationships

The majority of circuit courts have found that if the evidence was such that a reasonable juror could have found that the defendant was merely a buyer, or seller from a conspiracy, the failure to give a buyer-seller jury instructions denied him a fair trial. *United States v. Meyer* 157 F.3d. 1067, 1075 (7th Cir.1998). More importantly here, it is true a defendant is entitled

to an instruction on a recognized defense for which there exists evidence significant for a reasonable jury to find in his favor. The fifth circuit however, consistently held that “an adequate instructions on the law of conspiracy precludes the necessity of giving a buyer seller instructions even where the evidence supports the defense” *United States v. Asibor* 109 F.3d. 1023,1035 (5th Cir. 1997).This is because in the Fifth Circuit reasoning, “if the evidence shows that a defendant is merely a buyer or seller the elements necessary to prove the conspiracy would be lacking and a not guilty verdict would result” *United States v. Mata* 491 F.3d. 237, 241-42 (5th Cir. 2007), (quoting *United States v. Maseratti* 1 F.3d. 330, 336 (5th Cir. 1993).

The First Circuit logic here is flawed, and is based entirely on speculation, that a jury would understand that they would have the right to acquit if the government failed to prove the agreement element of the conspiracy. In *United States v. Meyer* 157 F.3d. at 1075 The Seventh Circuit held that the failure to give the buyer seller instructions denied Myers a fair trial. This is because courts have no way of knowing whether the jury understood the distinction between a conspiracy and a buyer-seller relationship. Failure to understand these critical elements the jury would still have convicted the defendant of the conspiracy.Thus depriving the defendant of a fair trial.

This stands true in the instant case. To be precise, there is no way knowing whether the defendant would have been convicted had the jury been given the proper instructions on the difference between a buyer-seller relationship that existed between him and his co-defendants, or the actual conspiracy that he was charged with.

Furthermore, the majority of Courts have held (other than the Fifth Circuit) that if the evidence shows only that two people are in a buyer or seller relationship then there is insignificant evidence for the conspiracy. *United States v. Cruse* 508 F3d.795, 816 (7th Cir. 2015). Simply put, in a situation when the evidence is essentially and equipoise and the plausibility of each inference is about the same, the jury necessarily would have to entertain a reasonable doubt on a conspiracy charge see *United States v. Johnson* 592 F.3d.749, 755 (7th Cir. 2010).

Therefore this Court has ample reasons to grant a written certiorari in the instant case, in order to decided the splits within the circuit, as to whether it is warranted to provide the jury with a buyer-seller relationship instructions when the facts of the case could determine whether a conspiracy existed, or whether it is a mere transaction between two or more Co- Defendant's. More importantly, This court should further determine whether a defense attorney is constitutionally ineffective for

failure to request buyer seller jury instructions when it is unclear whether a conspiracy existed or whether it was just transactions between several people in the conspiracy.

Therefore for the reasons given above petitioner now pray's that this court will grant certiorari in the instant case.

INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment guarantees a criminal defendant the right to effective counsel *Strickland v. Washington* 466 US 668, 686 (1994) See also *Buck v. Davis* 137 S.Ct. 759, 755 (2017). Ineffective assistance of counsel is a well recognized basis for relief under § 2255 motions. See *Missouri v. Frye* 566 US 133(2012) *LaFer v. Cooper* 566 US 156 (2012);

To mount a successful challenge under 28 USC § 2285 based on a Sixth Amendment claim of ineffective assistance of counsel a petitioner must satisfy the two-prong test set forth in *Strickland v. Washington* 468 US at 687.

A. Performance Prong

The first prong, known as the "performance prong" relates to professional competency. The petitioner must demonstrate that his attorney's performance fell way below the objective standard of reasonableness. As measured by the prevailing professional norms *Strickland* 466 US at 488, *Harrington v. Richter*

562 US 68, 104 (2011). The central question is whether “an attorney’s representation amounts to incompetence under the prevailing professional norms, not whether it deviates from the best practice or most common customs.” *Richter*, 562 US at 88 (quoting *Strickland* 466 at 690).

The Supreme Court has said that the first prong sets a high bar *Buck* S.Ct. at 775. In *Padilla v. Kentucky* 599 US 356, 371 (2010) this Court held, surmounting *Strickland*’s High bar is never an easy task. Notably, a lawyer has discharged his constitutional responsibilities so long as his decisions fall within a wide range of professional confident assistance. *Buck*, 137 US at 775 (citations omitted). Consequently, the performance problem is difficult to establish. *Lawrence v. Branker* 517 F.3d: 700, 709 (4th Cir. 2008). To satisfy the high bar, the burden is on the petitioner to establish “that Council made errors so seriously that his counsel was not functioning as a console guaranteed by the Sixth Amendment.” *Richter* 562 US at 88 (quoting *Strickland* 466 US at 687). Notably, “the *Strickland* standard must be applied with scrupulous care.” *Richter* 562 US at 105, and the standard of judging counsel’s representation is the most differential one *Id.* Indeed, [k]eenly aware of the difficulties inherited in evaluating counsel’s performance, the Supreme Court has admonished that courts must indulge in strong presumption that counsel’s conduct fell within a wide range of reasonable professional assistance. *Strickland*, 466 US at 689: *Cullen v. Pinholster* 563 US 170, 189 (2012) *Richter* 562 US at 204; *Lee v. Clark* 781 F.3d. 114, 122 (4th Cir.

2015).

Notably, claims lodged under the performance prong are evaluated in light of the available authority at the time of counsel's allegedly deficient performance *United States v. Morris* 917 F.3d. 818,823 (4th Cir. 2019). Although counsel are obligated to make arguments that are significantly foreshadowed in existing case law, counsel's are not deficient for failing to predict changes in the law. *Id* at 824.(Alteration in Morris; internal quotation marks omitted). A claim of ineffective assistance is evaluated in light of the strength of the case as it exists at the time of the alleged deficient representation. *United States v. Carthorne* 878 F.3d. 458,466 (4th Cir.2017).

In the instant case, defense counsel's failure to request a buyer-seller jury instructions could essentially clarify the defendant's intent. If the accused was merely engaging in a business transaction without knowledge of intent to participate in a conspiracy, a special instruction could help the jury distinguish between legal business activities and unlawful conspiratorial conduct.

More importantly, failure to instruct a jury on a buyer-seller relationship could result in a misrepresentation of the evidence. Without adequate jury instructions, jurors might conflate legitimate transactions with unlawful conspiracy, potentially leading to an unjust verdict. That certainly falls within the performance prong of the *Strickland* analogy.

Therefore, counsel's failure to request special jury instructions clearly prove that the defense performance fell way below the standard of normal reasonableness. The only question remains, did counsel's professional errors Prejudice to defendant to wear the outcome of the proceedings would have been different?

B. Prejudice Prong

The Prejudice prong, a practitioner must show that his attorney's deficient performance Prejudice his defense *Strickland* 466 at 687. To satisfy the "Prejudice Prong" a petitioner must show that there is a reasonable probability that but for counsel's unprofessional errors the result of the proceedings would have been different. *Id* at 694 also see *Buck* 137 S.Ct. at 776; *Lafter* 566 US at 163; *Lockhart v. Fertwell* 505 US 364, 369-70 (1993). A reasonable probability is a probability significant enough to undermine the confidence of the outcome of the proceedings *Strickland* 466 US at 687. However, "a petitioner is not entitled to post conviction-relief based on a prejudice where the record established that it is not reasonably likely that the alleged error would have made a difference in light of all the other evidence of guilt." *Berghuis v. Thompkins* 560 US 70, 390 (2010).

Here the Prejudice prong is certainly in effect where the defendant may have

been convicted of a crime he did not commit,¹ or one that he was not indicted for. If the jury would have had the proper instructions on a buyer seller relationship that could have provided an alternative defense that petitioners trial attorney failed tremendously to inform the jury of.

Therefore, Petitioner has clearly proven the “prejudice prong” as provided in the Supreme Court in lower Court’s ruling pursuant to *Strickland v. Washington*, which would provide further grounds for this Court granting Petitioner’s requested writ of certiorari.

CONCLUSION

Therefore, for the reason set forth above this honorable Court should grant Petitioners request for a writ of certiorari in order to resolve the split in the circuits on whether a defense counsel is constitutionally ineffective for failing to request special jury instructions on a buyer-seller relationship.

Respectfully Submitted



Artur Gilowski

Acting pro se

¹ On Direct appeal petitioner’s appellate Counsel relied heavily on establishing a clear distinction between an everyday buyer-seller relationship and the alleged conspiracy. However, because the trial Counsel failed to request buyer- seller jury instructions the court of appeals refused to actually hear this argument on petitioners direct appeal.