

No. 17-6319

IN THE
SUPREME COURT OF THE UNITED STATES

KEVIN LOWE - PETITIONER

VS.

UNITED STATES - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

KEVIN LOWE - 69885-054

FBOP PO BOX 200
WAYMART, PA 18472

TEL: 570-488-8000 Ext. 8200

Honorable Justice Sotomayor,

Please accept my prayer for rehearing of my petition for a writ of certiorari. In my brief I raised two central matters of concern:

- (1) That a conscious avoidance charge was given without legal justification, resulting in a due process violation.
- (2) That the court's response to the jury's inquiry concerning the elements of conspiracy and the doctrine of conscious avoidance was erroneous, again causing a due process violation.

The Second Circuit Court of Appeals dealt with the first matter by claiming that through not raising an objection, my lawyer had waived the right to even a plain error review. This, the court held was further aggravated, when my lawyer agreed that the challenged instruction was satisfactory. I have however explained in my brief that the inclusion of the conscious avoidance charge not only may have constituted a due process violation, but, in this particular case, in itself may have been unconstitutional. The high degree of discord, among and within the different circuits, regarding the appropriate standard of review and the application of the conscious avoidance doctrine, makes it clear that this is a matter begging to be resolved by the Supreme Court. This disharmony, in no small way, had a profound impact on the outcome of my trial.

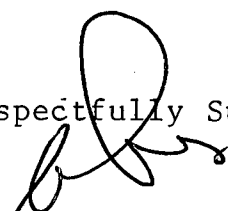
With regard to my second point, my lawyer once again failed to preserve the objection. The Circuit Court consequently reviewed for plain error. It concluded that, " the principal thrust of the district court's response to the jury note was to direct the jury back to the written instruction on the elements of conspiracy and conscious avoidance." This, I assume, meant that the harmful statements made by the court in

its supplemental charge, were negated by referral back to the original written instruction. That is unreasonable. As I pointed out in my brief, it is unreasonable to expect that the selfsame instruction for which clarification was sought, would itself render clarification to the complicated questions of law facing the jury. I was thus not afforded due process of law, in accordance with the Fifth and Fourteenth Amendments of the Constitution.

The Supreme Court is apt to grant certiorari to resolve matters that create disagreement among the circuits and in matters of due process violation. This observation is based on an abundance of cases supporting this view, among them: *Brecht v. Abrahamson*, 123 LED 2D 353, 507 U.S. 619 - certiorari granted to resolve conflict between the courts of appeals; *Judulang v. Holder* 181 LED 2D 449, 565 U.S. 42 - certiorari granted to resolve a split among the courts of appeals; *Cherokee Basin Operating Company LLC v. Owens* - certiorari granted to resolve a diversion among circuits on the question presented; *Willner v. Committee on Character and Fitness*, 10 LED 2D 224, 337 U.S. 96 - certiorari granted, appellant contended that he was denied due process of law in violation of the constitutional rights under the Fifth and Fourteenth Amendments of the Constitution; *Estelle v. Mc Guire*, 116 LED 2D 385 - certiorari granted, " the evidence's admission in conjunction with the instructions rendered the accused's trial arbitrary and fundamentally unfair, in violation of the due process clause of the Federal Constitution's Fourteenth Amendment; *White v. Texas*, 84 LED 1342, 310 U.S. 530, "State had utilized an alleged confession in violation of the due process clause of the Fourteenth Amendment. Certiorari was granted.

I pray that the Supreme Court will give my plea for certiorari a second look and deliver a decision that it holds just. I ask only for equal consideration under the law and that I be given a fair trial.

Respectfully Submitted,


Kevin Lowe - 69885-054

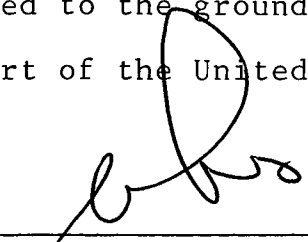
Dated: November 28, 2017

Federal Prison Camp
PO BOX 200
Waymart, Pennsylvania 18472

CERTIFICATION

I hereby certify that this petition is presented in good faith and not for delay. This petition is restricted to the grounds specified in Rule 44.2 of the Rules of the Supreme Court of the United States.

Dated: November 29, 2017

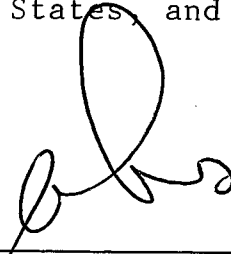


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CERTIFICATE OF COMPLIANCE

This petition complies with the specifications of Rule 33.2 of the Rules of the Supreme Court of the United States, and is less than 5 pages long.



Kevin Lowe - 69885-054

Dated: November 29, 2017

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