

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

TERRANCE STANTON — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Terrance Gerard Stanton
(Your Name)

Fed. Reg. # 17790-021
FCI Edgefield P.O. Box 725

(Address)

Edgefield, South Carolina 29824
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I: Did the lower courts err by not finding that Defense Counsel provided objectively unreasonable advice to the Petitioner, when he advised Petitioner the completely sentencing exposure range he was facing under U.S.S.G. § 4B1.1 and in reliance upon the given advice, Petitioner elected to procede to trial?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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<u>HALBERT V. MICHIGAN</u> , 545 U.S. 605, 125 S. Ct. 2582, 162 L. Ed. 2d 604	9
<u>KIMMELSON V. MORRISON</u> , 477 U.S. 365, 379, 106 S. Ct. 2574, 91 L. Ed. 2d. 305	9
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<u>STRICKLAND V. WASHINGTON</u> , 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)	4, 8, 10
<u>SLACK V. MCDANIEL</u> , 529 U.S. 473, 483-84, 120 S.Ct. 1595, 146 L. Ed. 2d. 542 (2000).	
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<u>21 U.S.C. § 841(b)(1)(C)</u>	4, 5, 6, 7, 9
<u>21 U.S.C. § 843(b)</u>	4, 5, 6, 7, 9
<u>U.S.S.G. § 4B1.1</u>	9, 10
<u>U.S.S.G. § 4B1.1(a)</u>	9, 10
<u>U.S.S.G. § 4B1.1(c)(2)</u>	9, 10
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APPENDIX F

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ 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).

28 U.S.C. § 1254(1)

COURT OF APPEALS; CERTIORARI; CERTIFIED QUESTIONS

Case in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Sixth Amendment violation of the United States Constitution.

STATEMENT OF THE CASE

Petitioner, Terrance Gerard Stanton, was tried over the course of a three-day trial by jury. The jury found Petitioner guilty of one [1] Count of Conspiracy with Intent to Distribute Controlled Substances, in violation of 21 U.S.C. § 846, one [1] Count of Distributing Cocaine, in violation of 21 U.S.C. § 841, and seven [7] Counts of The Use of a Communication Facility, in violation of 21 U.S.C. § 843(b). After the District Court imposed its sentence, Petitioner timely appealed.

On appeal, Petitioner raised the following issues:

- (1) Whether the District Court abused its discretion by admitting recorded conversations into evidence at trial without first laying the proper foundation for the identity of the speakers.
- (2) Whether the District Court abused its discretion by admitting the Government's charts into evidence without first requiring the Government to lay a proper foundation.
- (3) Whether the District Court abused its discretion by admitting evidence of Petitioner's prior convictions under Federal Rule of Evidence 404(b).
- (4) Whether the District Court committed plain error by admitting into evidence of Petitioner's codefendant, Rodney Scott's, prior convictions as substantive evidence of his participation in the conspiracy, and thereby prejudice also the Petitioner.
- (5) Whether the District Court abused its discretion by limiting inquiry into Matthew Hawkins's (a Government Witness) prior criminal conduct to conduct that resulted in a conviction.
- (6) Whether the District Court committed clear error when calculating Petitioner's sentence by considering prior convictions as part of Petitioner's criminal history, rather than considering those as part of the instant conspiracy.

S T A T E M E N T O F T H E C A S E P a r t I I

- (7) Whether the District Court committed reversible error by failing to consider prior state court sentences as separate cases for recidivist purposes and pursuant to 21 U.S.C. § 841(b)(1)(A).
- (8) Whether the District Court committed clear error when estimating the drug quantity attributable to the Petitioner's offense.
- (9) Whether the District Court committed clear error when it applied a two-level enhancement for Petitioner's use of a firearm during the commission of the offense.
- (10) Whether the District Court committed clear error when it applied a three-level enhancement for Petitioner's role as a supervisor during the commission of the offense.
- (11) Whether the District Court committed reversible error when it found Petitioner permanently ineligible for federal benefits as a result of his prior state court convictions involving the distribution of controlled substances.

After a review of Petitioner's brief and having the benefit of an oral argument, the Eleventh Circuit Court of Appeals concluded that all of the Petitioner's issues lacked merit, and therefore, affirmed the Petitioner's conviction on December 16, 2014.

Petitioner filed a timely 28 U.S.C. § 2255 motion, and the Honorable G.R. Smith, United States Magistrate Judge issued a Report and Recommendation concluding Petitioner's § 2255 should be DENIED on January 9, 2017.

The District Court ultimately adopted the Magistrate Judge's R & R, and the Honorable J. Randall Hall, United States District Judge

issued an Order ADOPTING the R & R, and DISMISSING the Petitioner's § 2255 motion with prejudice on March 13, 2017.

Petitioner requested of the District Court a Certificate of Appealability, and the District Court took a careful de novo review of the case, and again the Honorable J. Randall Hall, United States District Judge, concurred with the Magistrate Judge's R & R, and Petitioner was denied a Certificate of Appealability on April 11, 2017.

Petitioner filed a timely Fed. R. Civ. P. 59(e) motion and a motion to proceed in forma pauperis, and the District Court issued an Order through the Honorable J. Randall Hall, Chief United States District Judge, DENIED Petitioner's 59(e) motion, dated May 25, 2017.

Petitioner filed a Motion for Reconsideration Pursuant to 11th Cir. R. 22-1(c) and 27-2, and the United States Court of Appeals for the Eleventh Circuit DENIED through the Honorable Wilson and Julie Carnes, Circuit Judges, stating that Petitioner offered no new evidence or arguments of merit to warrant relief.

R E A S O N S F O R G R A N T I N G R E L I E F

Petitioner contends that the lower courts -- both the Eleventh Circuit Court of Appeals and the United States District Court for the Southern District of Georgia, Statesboro Division -- have erred in applying ineffective assistance of counsel under STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); and LAFLER V. COOPER, 566 U.S. 156, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012).

Petitioner was indicted for narcotics related charges under 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 841(b)(1)(C), and 846, along with use of a communication facility in furtherance of drug trafficking crimes, in violation of 21 U.S.C. § 843(b).

Petitioner retained as counsel for his defense, Jacques D. Hawk of The Hawk Firm, Augusta, Georgia, and he examined the discovery in Petitioner's case and immediately thereafter began negotiations with the Government for a plea.

The Government responded by offering to allow Petitioner to plea to 1-Count of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Counsel for the Defense reviewed facets of the discovery with Petitioner and informed him that, if he were to be found guilty of all the Counts of the indictment naming him, he would be subjected to a Guideline Range Sentence, and that due to him having two qualifying prior convictions, he **would most definitely** be assessed as a Career Offender under U.S.S.G. § 4B1.1.

Under the Sentencing Guidelines, in order to find a defendant is a career offender under § 4B1.1(c)(2), the Court has to find that the defendant's offense was a crime of violence and that two of the defendant's prior felony convictions were either crimes of violence or controlled substance offenses. See U.S.S.G. § 4B1.1(a).

Defense Counsel Jacque D. Hawk further advised Petitioner **he more than qualified as a base** career offender under the strictures of the Guidelines, and had "no" mitigating factors, he would be facing a sentencing exposure of 168-210 months. In the continuation of his advise, Counsel informed Petitioner that **prudence dictated that he would receive a sentence of 210-** months

The standard of the U.S.S.G. § 4B1.1(a) says in specific:

- (a) A defendant is a career offender if
 - (1) the defendant was at least eighteen years at the time the defendant committed the instant offense of conviction;
 - (2) the instant offense of conviction is a ~~felony that is either~~ a crime of violence or a controlled substance offense; and
 - (3) the defendant has at least two prior convictions of either a crime of violence or a controlled substance offense.

With specific understanding of this criteria, Petitioner contended that his Counsel, **Mr.** Jacque D. Hawk, was mistaken

and misapplying the Guidelines, thus, misleading Petitioner as to the amount of time he was facing. Petitioner further contends that his Defense Counsel failed to inform him that a plea under § 841(b)(1)(C) would not lessen his sentence, but it would have excluded the life sentence under §§ 841(a)(1) and 841(b)(1)(A).

The advice of Petitioner's Defense Counsel, based on erroneous legal advice, caused the Petitioner to reject a plea bargain and subsequently incur a life sentence. Based upon Counsel's errors, there is a strong likelihood of a different outcome, as the life sentence was based on Counsel's failure to correctly convey the legal standard and was the only reason Petitioner rejected the plea bargain offered by the Government and **proceeded to trial.**

Even the Government has conceded that Petitioner's Defense Counsel misadvised him. They, however, conjecture that such misadvice did not in any way prejudice Petitioner. The advice, however, was directly tied to Defense Counsel Jacque D. Hawk's failure to investigate, independently, the standard of the law. Instead, Defense Counsel relied strictly upon the assurances and insistences of the A.U.S.A. and U.S. Probation Officer that Petitioner was a career offender. The premise was that the Petitioner's plea with the correct criminal history category would have to be higher than the plea as a career criminal. This thinking is faulty, as it assumes it is unlikely Petitioner

would have accepted such a plea, but that is speculative, while Petitioner's contentions are based on facts, and separates itself from soothsaying by simplicity. Petitioner has a right to effective assistance of counsel, and such assistance must include, that counsel both correctly knows the law and correctly advise Petitioner of it.

Petitioner strongly contends that had his Defense Counsel, Jacque D. Hawk, correctly investigated his priors, independently, it would have been noted that Petitioner was not a career offender, moreover, and more importantly, he would have been assessed with the correct Criminal History Category, which was **determined at sentencing** to be category (2), and respectively, after the receipt of a 3-level reduction for acceptance of responsibility, Petitioner's Guideline Range would have been 97-121 months and he would have accept a plea within such a range.

Defense Counsel Hawk failed to meet a valid legal standard and through reliance on the A.U.S.A. and U.S. Probation Officer, Counsel Hawk rather applied an incorrect legal principle. Lack of prejudice cannot be based on the reliability of the trial, since it was the reliability of the pretrial bargaining which foreclosed the benefits of a Plea Bargain, and such is the issue at hand. See LAFLER V. COOPER, 182 L. Ed. 2d 398, 566 U.S. 156. Faced with consequences as grave as Petitioner incurred the advice of the counsel Petitioner enlisted to prepare his defense, even to seek his best interest in submitting what is on the table as an offer.

During plea negotiations, defendants are entitled to effective assistance of counsel. Id. Where a defendant rejects a plea bargain upon erroneous advice of counsel and is convicted at trial, the defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.

In LAFLER, as in this case, the Government has conceded that the advice given by counsel was deficient. In that context, the STRICKLAND V. WASHINGTON prejudice test requires a defendant to show a reasonable possibility that the outcome of the plea process would have been different with competent advice.

When Counsel Hawk provided the deficient advice, it caused the Petitioner to forego the plea with the prejudice being a life sentence.

The Sixth Amendment's sole purpose is to protect the right to a fair trial, but the Amendment actually requires effective assistance of counsel at critical stages of a criminal proceeding, including the pretrial stages. This is consistent with the

right to effective assistance on appeal. See, e.g. HALBERT V. MICHIGAN, 545 U.S. 605, 125 S. Ct. 2582, 162 L. Ed. 2d 552. It also includes the right to effective counsel during sentencing. See, e.g. GLOVER V. UNITED STATES, 531 U.S. 198, 203-204, 121 S. Ct. 696, 148 L. Ed. 2d 604.

Futhermore, even though the Petitioner had a reliable trial, it should not foreclose relief when counsel has failed to assert rights that have altered the outcome. See KIMMELMAN V. MORRISON, 477 U.S. 365, 379, 106 S. Ct. 2574, 91 L. Ed. 2d 305.

Petitioner's position is simple:

- (1) His Counsel provided deficient and ineffective legal advice.
- (2) Operating under this advice, Petitioner elected to go to trial, rather than enter into a plea.
- (3) The prejudice is, as further result of the advice, Petitioner received a life sentence.

As earlier stated, even the Government concedes that the advice Petitioner's counsel gave was erroneous, but deny to concede that it prejudiced Petitioner, but even absent any details, it is illogical to entertain that the Government was offering life as an equitable trade to a guilty plea and any, if any, deposition to further resolve the case without having the death penalty as the other end of the spectrum. Petitioner

relied completely upon his Defense Counsel, Mr. Jacque D. Hawk's advice in his evaluation of whether or not to accept the formal offer for a plea that the Government not only made, but was most willfully enthused in making. Defense Counsel, Mr. Jacque D. Hawk's demeanor was also one of enthusiasm, sufficiently reinforced by the fact that he was Petitioner's counsel, and "had his best interest at heart." Conclusively, it was interest that was faulty, erroneous, deficient, and most ineffective, and without a doubt surely has subjected Petitioner to prejudice.

The Eleventh Circuit Court of Appeals' ruling in this matter flies bodily in the face of the Supreme Court's decision in LAFLER V. COOPER, that the STRICKLAND framework applies to advice in regards to whether or not to plead guilty.

To obtain a COA, Petitioner must make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2); see also SLACK V. MCDANIEL, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d. 542 (2000). Where the district court has denied relief on the basis of procedural grounds, Petitioner must demonstrate that reasonable jurists would find it debatable whether the motion states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. See SLACK, 529 U.S. at 484.

Petitioner contends that he has more than met the challenge that is presented by this bar.

SUMMARY

The District Court and the Government, both, concede that the advice provided to Petitioner by his counsel was erroneous and based, whether willfully in intent or mistakenly in confusion, upon faulty information, yet they both insist that there was no prejudice that resulted from this error.

Simply put, the life sentence Petitioner received as a result of actions directly linked to this erroneous advice is prejudice in and of itself. Without such advice, Petitioner would have elected to accept the Plea Agreement the Government offered [although flawed] at the tendered 210-months.

There can therefore be no other remedy than to set aside the Judgment of Petitioner's trial in this case and allow the Petitioner to accept the plea that was offered.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Dec 4th 2017