

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN STAR — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN STAR 78102-053

(Your Name)

UNIT C4 30L

(Address)

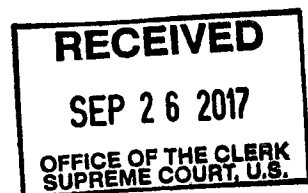
555 GEO DRIVE

PHILIPSBURG, PA 16866

(City, State, Zip Code)

N/A (NO PHONE)

(Phone Number)



QUESTIONS PRESENTED

This petition presents the following question to be answered by this Honorable Court:

1. Whether or not a mentally incompetent defendant can make a plea or participate in a plea allocation hearing.
2. Whether or not a mentally incompetent defendant is actually innocent.
3. Whether or not the sentence was procedurally flawed due to the District Court failure to properly calculate the Sentencing Guideline range.
4. Whether or not the appellate waiver provision of a plea agreement that was entered into unknowingly and involuntarily is enforceable.

No _____

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November term, 2017

JOHN STAR
(Petitioner)

v.

UNITED STATES OF AMERICA
(Respondent)

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

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RULE 28 U.S.C. 1254(1)

COME NOW Petitioner JOHN STAR respectfully prays that a
Writ of Certiorari issued to the judgement below.

OPINION BELOW

The judgement of the United States District Court of the
Eastern District of New York imposing a 120 months sentence and a
3years supervised release on petitioner on Appendix D, the dismissal
of petitioner's Appeal while affirming the judgement of the District
Court on Appendix C, The denial of petitioner's motion for
reconsideration and request for panel rehearing by the United States

Court of Appeals for the Second Circuit on Appendix A.

JURISDICTION

Petitioner was sentenced to 120 months and 3 years supervised release by the United States District Court of the Eastern District of New York on January 31, 2016 following a guilty plea that was accepted by Justice Leo Glasser of the District Court on July 1, 2015. Then Petitioner filed a timely notice of appeal on February 13, 2016. Petitioner's ppeal was dismissed by the United States Court of Appeals for the Second Circuit on April 21, 2017 without publication.

Petitioner's motion for reconsideration and panel rehearing was subsequently denied by the United States Court of Appeals for the Second Circuit on June 22, 2017 also without publication.

This Court has jurisdiction to review the decision made by the United States Court of Appeals of the Second Circuit pursuant to Rule 28. U.S.C. 1254(1) and to determine whether the decision made by the United States Court of Appeals for the Second Circuit deny petitioner's motion for reconsideration and panel re-hearing as well the decision made by the Second Circuit to dismiss petitioner's Appeal and Affirmed the District Court Judgement granting the government motion requesting the Appellate waiver on the plea to be enforeable.

Jurisdiction in the District Court was pursuant to 18 U.S.C §3231. Jurisdiction in the Court of Appeal was pursuant to 28 U.S.C §1291. The Jurisdiction to entertain petitioner John Star petition in this Court is conferred pursuant to 28 U.S.C. 1252(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner assert that his 6th amendment rights to due process and his right to counsel was violated.

STATEMENT OF THE CASE

Petitioner, John Star (Pro se) respectfully states the following:

- 1) Petitioner, John Star was arrested with nine other defendant on April 6, 2010 in Uniondale, New York. He was charged with one count of conspiracy to commit bank and mail fraud among other charges.
- 2) On the same day indicted with nine other defendant on an indictment #10-cr-258(ILG)[A-19].
- 3) The very same day, petitioner was released on bond of \$250,000 which was secured by his house in Mt Verner, New York after appearing in front of magistrate Judge Roanne Mann.
- 4) ~~Few days later, Petitioner failed to appear in a Court scheduled~~ date.
- 5) on April 28, 2010, a bond revocation hearing was held upon Star's failure to appear in court and a bench warrant was issued. [A-5, Docket Entry #60].
- 6) It was later learnt that petitioner Star had fled the jurisdiction and was in Canada.
- 7) Petitioner was arrested in Canada on May 14, 2014.
- 8) Petitioner was indicted for bail jumping charge [A-36, indictment # 14-cr-314(ILG)].
- 9) Petitioner was extradited to the United States after he surrendered to the extradition on March 27, 2015. Getting to the United States, he was arraigned on a bail jumping indictment before Magistrate Judge and was ordered detained [A-15, docket Entry #7].
- 10) There were negotiations for a plea agreement which may have produced the plea Exhibit P on Appendix H which petitioner refused to sign.

- 11) Petitioner filed a official request to withdraw his guilty plea and to request for his then attorney Micheal Hueston to be replaced for ineffectiveness and conflict of interest. See Exhibit 4 on Appendix O line 293 on September 29, 2015.
- 12) Petitioner appeared in a sentencing hearing of which petitioner was sentenced to 120 months in prison and a 3 years supervised release by Justice Leo Glasser on Jenuary 29, 2016.
- 13) Petitioner, through his sentencing attorney filed a timely Notice of Appeal on February 13, 2016. See Exhibit 5 on Appendix O line 324.
- 14) The Appeal was later dismissed by the United States Court of Appeals for the second Circuit on April 27, 2017. See Exhibit 6 on Appendix B.
- 15) Petitioner filed a motion for recosideration of the dismissal of his appeal and requested a Panel Re-rehearin but his motion was denied by the United States Court of Appeals for the Second Circuit on June 22, 2017. See Exhibit 6 on Appendix A.

CHARACTERISTIC OF PETITIONER

Petitioner (John Star) is a mentally ill individual that have been suffering from a mental illness of Anxiety attacks (a paranoia mental condition that causes a complete nervous braekdown) for over two decade despite he had always tried to hide his illness manage it by using natural and organic treatment.

Born to the late John Edokpolo, a well known Nigerian political and civil right activist. His father was the founder of Midwest Democratic Front (MWDF) and Midwest People Congress (MWPC), a gorilla successionist group that fought for the formation of the Midwest region in Nigeria. He was a polygamist, married several wives and had 42 children including petitioner. He was a former minister

of trade and industries as well as a former minister of commerce in Nigeria. He helped to carve out the former Bendel State which later split into Edo, Delta and Bayelsa States of Nigeria. He later became a successful real estate developer that owned and managed several commercial and residential properties. He also owned several schools which included Edokpolo nursery school, Edokpolo primary school and Edokpolo grammar school in Benin City, Edo State, Nigeria.

Petitioner's dad (John Edokpolo) was killed by the Nigerian police officer when he was shot to death in the presence of his children including petitioner (John Star) during one of their family meetings because of his defiance in his political and civil rights activism, advocating for equality for all Nigerian regardless of language, sex, age and religion.

Petitioner's mother (Mercy) was a devoted Jew born to a Jewish parents. She helped petitioner's late father in the foundation and the management of his group of schools. She was a religious activist that promoted Judaism in Nigeria and advocated for freedom of religion and freedom of worship. She was killed few years after petitioner's late father's death. She died after sustaining several gunshot wounds from Nigerian police officer and member of the Nigerian army who broke into her residence while she was conducting a Jewish Shabbath service with petitioner John Star been in attendance.

John has relived the gruesome events that led to his mother and father's death over and over again, giving him post traumatic stress disorder (PTSD) and anxiety attacks (AA) because he is always paranoid, nervous and afraid expecting something bad to happen to him at any given moment. This mental illness messes with his mind and sometimes causes him to have a nervous breakdown anytime he is affected

by the illness. He get dioriented, confused and lightheaded, starts to whine, cry, shake, jerk, bite his fingers or black out, faint, collapse and become unresponsive.

Petitioner have had several set backs in his life due to his mental illness. They includes inability to practice law despite he holds a law degree because he had several nervous breakdowns in Nigeria while he was in court. He lost his music recording deal with Ranshorm/MMS/Intercord Music lable because of his mental illness of anxiety attacks which made him have several nervous breakdowns, fainting and pass out episodes while he was performing on stage or while he was inside the recording studio when he was using the artist name known as Mr. John in the mid 1990's. He was medically discharged from the United States National Gaurd Reserve after serving for few months because of his mental illness of anxiety attack that he exhibited while on duty.

Point to note, Petitioner attempted suicide by trying to hang himself in 1998 while he was in Brooklyn Detention Center in Brookyn New York. He was later treated of mental illness at a psychiatric ward at interfaith medical center formerly known as St John's medical center located at Atlantic avenue in Brooklyn , New York. Medical record have been requested. See Exhibit 7.

During the early stages of this proceedings, Petitioner contempulated suicide after he had a mental illness of anxiety attack that caused him to have a nervous braekdown and passed out and became unresponsive inside Paterson New Jersey court house elevator and was rushed to St Joseph Medical center in Paterson new Jersey in April 2010. Medical record have been requested. See Exhibit 8. Petitioner then ran to seek asylum in Canada because he was afraid he was going

to be deported to Nigeria a land that he feared if his id deported he might meet the same faith as his parent and be killed.

After petitioner was arrested in Canada and through the period he was incarcerated both in Canada and the United States, Petitioner experienced several health issues consequence of poor health care triggering him to have difficulties in breathing, seizures, blackouts, fainting and several nervous breakdown episode that rendered him uresponsive on near to death situations 6 times (3 times in Toronto Canada and 3 times inside Brooklyn Metropolitan Detention Center (MDC)).

Petitioner appeared in the District Court of the Eastern District of New York on July 1, 2015 with a plea agreement he had refused signing See Exhibit 9 on Appendix K despite he has mental illness and had other dissease which included seizure, Tinnitus, sleep apmere and was hevily medicated after taken LEVETIRACETAM, LISONOPRIL, ASPIRIN AND PROVENTIL F. which side effect affected him during the plea allocation hearing. The court accepted hi incomplete plea with several questions left unanswered, See Exhibit 10 on AppendiX G.

REASONS FOR GRANTING THE PETITION

The following reason will show why this Honorable Court should grant Certiorari to Petitioner. John Star assert that his constitutional rights to due process and his sixth amendment rights to effective assistance of counsel was violated and that his claims of violations are not frivolous, that petitioner has a meritorious defense to his calims which is supported by evidence. Therefore, the United States Court of Appeal for the Second Circuit erred in denying his motion for reconsideration and request for panel re-hearing for the dismissal of his Appeal.

Question 1. Whether or not a mentally incompetent defendant can make a plea or participate in a plea allocation hearing:

It is well established that the Due Process Clause prohibits the criminal prosecution of a defendant who is not competent to stand trial. The Due Process right spans the duration of a criminal proceeding, including sentencing 18 U.S.C.S §4241 requires a District Court, on its own motion, to conduct a competency hearing if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceeding against him or to assist properly in his defense 18 U.S.C.S. §4241(a). The appellate court reviews for abuse of discretion the district court determination that such "reasonable cause" warranting a competency hearing is absent. The district court has abused its discretion if it based its ruling in an erroneous view of the law or on a clearly erroneous assessment of the evidence. Or rendered a decision that can not be located within the range of permissible decision. "Abuse of discretion" is a no pejorative "term of art".

At any time after the commencement of an offense and prior to the sentencing of the defendant, the defendant may file a motion of hearing to determine the mental competency of the defendant 18 U.S.C.S. §4241(a). The district court shall grant the motion if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceeding against him or to assist properly in his defense 18 U.S.C.S §4241(a).

Neither the federal statute governing competency determination

18 U.S.C.S. §4241 nor the Due Process Clause requires a hearing in every instance. A hearing is required only if the court has reasonable cause to believe that the defendant has a mental defect rendering him incompetent. In deciding that an evidentiary hearing is necessary, a court may rely on many factors including reports from psychologist and the court observations.

In Petitioner's case we can see that petitioner was mentally incompetent during the plea allocation through the sentencing phase of his criminal proceeding. That his mental health even deteriorated consequence of medication he was taken for seizure, COPD, Asthma, sleep apnea, hyperthetion, high blood pressure and tinnitus. See Cara v. Calderon 165 F. 3d 1223 (9th Cir. 1999) "defense counsel failure to investigate defendant' organic brain damage or other mental impairment and failure to seek expert opinion on defendant extraordinary exposure to neurotoxicants, neurological impairment and personal background required evidentiary hearing to resolve claim of ineffectiveness of counsel. See Also Deutsher v. Whitley, 884 F.2d 1152 (9th Cir. 1989), Bean v. Calderon, 163 F.3d 1073 (9th Cir. 1998). "Counsel failure to investigate, present mitigating evidence, and prepare for their testimony during penalty phase of trial constitute ineffective assistance".

First, petitioner assert that he has mental illness of anxiety attacks (a mental illness that make one have a nervous break down due to fear that something negative will happen to him) coupled with other physical illnesses which includes Tinnitus (a hearing difficulty, temporary hearing loose or buzzing sounds in ears or external noise that distract and make one loose attention), Sleep apnea (difficulties in breathing), Seizure (a neurological disease

that paralyzes an individual and make them become unresponsive), Hypertension, and high blood fever. That he was mentally incompetent during the plea allocation hearing and as well as the sentencing hearing and that he did not understand the nature and consequence of the proceedings against him or was unable to assist properly in his defense 18 U.S.C.S. §4241(a).

Second, Petitioner asserts that he was medically impaired by the side effect of medication during the plea hearing. See plea colloquy and that he was mentally deficient during the plea hearing due to the influence of the medications and it rendered him to become incoherent, inattentive and uncontrollable due to the sedative effects of the medication taken and their side effects. That if not but the medication consumed by petitioner and or the side effect of the medications, Petitioner would have not undergone the plea allocation hearing. Hence the medications and the side effects affected the plea allocation hearing. See Hull v. Freeman, 932 F.2d 159 (3d Cir. 1991). "An evidentiary hearing is required to determine whether defendant was prejudiced because of counsel's failure to contest defendant's competence."

Third, Petitioner asserts that the court made a procedural error for not filing a motion for competency as required by 18 U.S.C.S §4241(a). That the district court was aware of evidence of incompetency in petitioner and that he informed the court of his mental and physical illness several times. See petitioner's letters to the district court judge and that the district court had independent evidence of his incompetency through the medical report from the hospital and petitioner's detention center (Metropolitan Detention Center and Toronto East Detention Center Canada). But the court did not make a good faith effort to get a competency test to ascertain petitioner's competency. Hence petitioner

is of the believe that the court procedural error was projudice to him and that he was incompetent to make a plea, undergo the plea hearing colloque and the sentencing hearing. And is asking this Honorable Court to order for an evidentiary hearing as regard to his competency.

Question 2. Whether or not a mentally incompetent defendant is actually innocent:

Is innocent irrelevant?. There are prosecutors and jurists who have and continue to argue Yes. To a man in prison, that argument is ridiculous. But, the history of the courts has established a boundary around the finality of a decision that determines , whatever else it is, habeas corpus is not a means of curing erroneous convictions. See. e.g....S.pRep. No 1526. 80th Cong.2d sese.22d sese.22(1984) (as coidified in current status, "hebeas corpus..... is not a determination of guilt or innocence of the charge upon which petition was sentenced. Where a prisoner sustain his rights to discharge in habeas corpus. It is usually because, some rights... has been denied which reflects no dtermination of his guilty or innocence but affects solely the fairness of his earlier criminal trail"). According to Supreme Court Justice Holme in his opinion. "What we have to deal with is not the petitioner's innocence or guilt but solely the question whether their constitutional rights have been preserved". Moore v. Dempsey, 261 U.S. 86, 87-88 (1929).

But, still the correct answer to the question (Is innocence irrelevant) is: NO. The fear that a innocent person's liberty or, worse, his life may be forfeited becuase of unfair proceedings make issuaces of the Writ most felicitous. See e.g...., Schriro v. Summerlin, 124 S.ct 2519,(2004) ("great writ's basic objective") include "protecting the innocent against erroneous convictions". This is not an argument

that the court should find constitutional violation in cases involving more obviously innocent defendants, when no violation would be found where the defendants were more obviously guilty. The court properly ought to take the fact that a innocent person has been convicted of an offense other than the one for which he is blamed as one, among other, indicators that an unconstitutional breakdown in the process has occurred, See e.g. Dretke v. Haley, 541 U.S. 386, 399-400 (2004) ("the law must serve the cause of justice.... Perhaps would miss the point. In a society devoted to the rule of law, the difference between violating or not violating a criminal statute can not be shrugged aside as a minor detail.") Accordingly, as a matter of fact and law, the defendant- petitioner's possible innocence is clearly relevant and as in a case such as this where a colorable claim as regards the accurate ascertainment of guilt the Pro-se defendant is obligated to make these facts plain to the habeas corpus court.

Whereas, by itself, actual innocence is not a constitutional claim, Herrera v. Collins, 506 U.S. 390 (1993). But, the Herrera court expressly left open the possibility that a truly persuasive demonstration of "actual innocent" made after the trial would render the conviction unconstitutional and warrant habeas corpus relief. The court has restricted its concern for "actual innocence" primarily in situations in which a petitioner seek relief on a potentially meritorious constitutional claim faces an otherwise dispositive procedural bar to review or relief and the petitioner proffers a colorable claim of innocence in order to defeat the bar:

This is not to say that our habeas jurisprudence cast a blind eye toward innocence.....[w]e have held that a petitioner otherwise subject to defense of abusive or successive use of the writ may have his federal constitutional claim considered on the merits if he make a proper showing

makes a proper showing of actual innocence. This rule, or fundamental miscarriage of justice exception, is ground in the "equitable discretion" of habeas court to see that federal constitutional errors do not result in the incarceration of innocent persons... But this body of our habeas jurisprudence makes clear that a claim of "actual innocence" is not itself a constitutional claim [of the sort needed to establish habeas corpus jurisdiction], but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits. Harrera Supra, 506 U.S. at 404.

Therein, the court recognizes "Actual innocence" as a gateway through defense to the right to habeas corpus review and relief.

Also note that actual innocent if proven serves as a gateway through what a petition may pass whether the impediment is procedurally bar as it was in Schlup v. Delo, 513 U.S. 208 115 S.Ct 851 130 L.Ed. 2d 808. also See Mc Quiggin v. Perkin citing Murray v. Corner, 477 U.S. 478. 496, 106 S.Ct 2639. 91L. Ed. 2d 397 (1986) where the court said "We think that in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court (185 L.Ed. 2d 1031) may grant the writ in the absence of a showing of cause for the procedural default. In otherword, a credible violation showing of actual innocence may allow a petitioner to pursue his constitutional claims (here ineffective assistance of counsel) on the merit notwithstanding the existence of a procedural bar of relief. The rule, or fundamental miscarriage of justice exception, is ground in the "equitable discretion" of habeas court to see that federal constitutional error do not result in the incarceration of innocent person. Hanera, 506 U.S. at 404, 113 S.Ct 853 122L.Ed. 2d 203.

In petitioner's case, there is several evidence that tend to indicate innocence in the side of the petitioner and that was convicted wrongly because he was an innocent person and should have not be

convicted if not but the procedural errors of the court. See Herrara Supra, 506 U.S. at 404. And because of the ineffectiveness of his plea attorney and his sentencing attorney. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct 2052, 80L Ed. 2d 644 (1984). Where the Supreme Court held that "Counsel's assistance can be deemed so defective as to require reversal of conviction".

First, petitioner asserts that he is innocent, that he is and has maintained that he is innocent from the beginning of the case till today. At his proffer with the United States attorney and at the meeting with the FBI agent Morriati and FDIC agent Demicco at his residence in Uniondale New York just before he was arrested. He pleaded NOT GUILTY at his arraignment and maintained his innocence all through the incomplete plea hearing, the sentencing and till date. See the sentencing colloquy of January 31, 2016 and look at the remarks made by Judge Leo Glasser when he said that defendant/ petitioner have always maintained his innocence till that point he was sentencing the defendant/petitioner. Also See letter from petitioner to the court where he indicated that he did not commit the offense he was charged with KNOWINGLY AND VOLUNTARILLY, but that he was misled by his then attorney, mentor, friend, financial and the godfather of his children.

Second, That petitioner was himself A VICTIM OF THE CRIME in that he was used as a straw buyer to buy several properties on his individual name and social security number. That his corporations were straw corporations that were used by Akin Ayorinde who was the head of the indictment, the actual owner who indeed controlled all his companies. NOTE that Akin Ayorinde was a licensed attorney called to bar in New York and that petitioner relied on his advice and trusted his judgement during the time he participated in those illegal transactions. It should

also be noted that records indicate that Akin Ayorinde and his colleague Anthony Onua stole all the proceeds of the transactions. See the indictment and PSI report.

Third, That petitioner can not recall ever signing the plea agreement because he refused signing the plea agreement. See letter from his plea counsel Michael Hueston, also See the Plea agreement and the pro se motion for withdrawal of plea the court docket sheet where petitioner request his plea to be withdrawn and that his plea attorney be excused because of ineffectiveness.

Fourth, The petitioner was incompetent because he is mentally ill. That he was mentally and physically unfit to undergo the plea allocation hearing, coupled with the fact that he was medically impaired consequence of the sedative effect of the medication he took before the plea colloquy hearing. See plea colloquy as per medications taken before the plea and the medical condition as well as illness of defendant. And that his mental and physical condition worsen consequence of the side effect of the medications taken before the plea colloquy hearing. See side effect of medications.

Fifth, That petitioner did not completely answer all the questions that was asked of him during the Plea allocation hearing, in that he did NOT RESPOND OR GIVE A YES OR NO RESPOND to several questions as expected of a complete plea colloquy hearing. See the entire plea allocation hearing colloquy. There were several questions unanswered.

Hence, Petitioner believe he has been able to established his innocence as it was in Herrera v. Collins, 506 U.S. 390 (1993). And is asking this Honorable Court to reverse conviction and remand the matter back to the Court of Appeals for further deliberations or to the District Court for evidentiary hearing to that regards.

Question 3. Whether or not the sentence was procedurally flawed due to the District Court failure to properly calculate the Sentencing Guideline Range:

Appellate Court begin analysis with review of sentence procedural reasonableness. A District Court should normally begin all sentencing proceeding by calculating, with the assistance of the presentence report, the applicable U.S. Sentencing Guideline Range." United States v. Cavera, 550 F.3d 180 (2d Cir, 2008) (en banc). After correctly calculating the applicable Guideline range, the District Court will then consider the factors listed in 18 U.S.C. §3553(a) before imposing a final sentence. United States v. Dorves, 616 F.3d 174 (2d Cir 2010; United States v. Dorsey, 723 F.3d 366, 368 (2d Cir, 2003).

First, The District Court failed to calculate the Guideline in that the District Court did not articulate a calculation of the Guideline as required. The record is devoid of a guideline calculation by the District Court, except for the perfunctory comment that the parties has agreed to an offense level, as noted above [A-100]. See Sentencing hearing colloquy. The Court did not explain how it had arrived at the guideline offense level. The presentence report did calculate the guidelines, which the government and the defense counsel accepted without challenge, but the Court did not perform an independent analysis. This failure to calculate the guideline is procedural error. See Gall v. United States, 553 U.S. 38 (2007). Similarly, the District Court failed to analyze the application of the 3553(a) factors to the defendant, other than in the most cursory fashion. While the judge said that he "Considered all the factors" [A-86], he did not articulate them, except to note that was sentencing Star for the seriousness of his offense. The District Court

failed to articulate the factual finding made to support the conclusion that Star was deserving of a ten year sentence. Each of these failure constitute procedural error. See Gall supra and this court should remand the case and remit the matter to the District Court.

Only after he imposed sentence did the District Judge find that the sentence imposed was "Sufficient, but not greater than necessary" to reflect the objective of sentencing as set forth in the statute, [A-87] of sentencing hearing colloquy. His reasoning should have been spread upon the record prior to the imposition of sentence. He did not explain his reasoning in detail, but simply noted the words of the statute. He did not give the parties the opportunity to be heard with regards thereto if they so desired to make an argument or any recommendations.

Second, The District court failed to explain its sentence. Appellate Court review of the District Court's sentence" encompasses two components: procedural review and substantive review. "United States v. Cavera, 550 F.3d 180, 189 (2d Cir, 2008) (en banc). Appellate Court will review for procedural issues first, typically engaging in substantive review only if the sentence is found to be procedurally reasonable. Gall, 552 U.S. at 49-51. A District Court "Commits procedural error where it fails to calculate the Guideline range..... make a mistake in the Guideline calculation. [] treats the Guidelines as mandatory[].... does not consider the 3553(a) factors..... rests its sentence on a clearly erroneous finding of fact[,]..... [or] fails adequately to explain its chosen sentence....."Cavera, 550 F.3d at 190 (internal citations omitted); See also Gall, 552 U.S. at 51.

In petitioner's case, The District Court offered absolutely no explanation for its Guideline calculation or conclusion that a sentence of 120 months was appropriate. As such, the sentence is

procedurally unreasonable and must be vacated.

Title 18, United States Code, section 3553(c) provides, in relevant part, that:

[t]he court, at the time of sentence, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence -(1) is of the kind, and within the range, described in subsection (a)(4) and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range[.].

18 U.S.C. §3553(c)(1). Those reasons given by the District Court "Must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the preception of fair sentencing" Gall, 552 U.S. at 50 (citation omitted). In general, "Sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' argument and has a reasoned basis for exercising his own legal decision making authority." Rita v. United States, 551 U.S. 338 (2007).

While sentencing court is not required to specifically mention every argument presented,

re "[W]here the defendant or prosecutor present nonfrivolous reason for imposing a DIFFERNT SENTENCE.... THE JUDGE will normally go further and explain why he has rejected those arguments. Sometimes the circumstance will call for a brief explanation;....by articulating reasons, even if brief, the sentencing Judge not only assures reviewing court (and the public) that the sentencing process is a reasoned process but also help that process elvove" Rita v. United States, supra;

See also United States v. Wallace, 597 F.3d 794, 803(6th Cir, 2010) ("When a defendant raises nonfrivolous argument for a lower sentence, the record must reflect both that the District judge considered the defendant's argument and explained the basis of rejecting it"), (citations omitted); United States v. Carty, 520 F.3d 984, 992-93 (9th Cir, 2008) (en banc) ('[W]hen a party raise a specific nonfrivolous argument tethered to a relevant §3553(a) factor in support of a requested sentence, then the Judge should normally explain why he

accept or rejects the party's position.").

Third, The District Court did not address the defense argument. The District Court judge failed to address Star's well reasoned argument concerning proportionality of sentence between defendants, except to note that he had considered it. No further discussion was entertained, and this de minimis discussion itself came after sentence had been imposed;

"Mr. SOROKA; first, I ask whether or not the Court considered the argument of proportionality as between defendants. THE COURT: I have I indicted I have considered all of the 3553 factors and that is one of them." [A-116-117] of the sentencing hearing colloque.

Recently, the United States Court of Appeals of the Second Circuit held that it was inadequate for a district court to state merely it had "looked at §3553(a), [and] taken into consideration [that] argument and submission of counsel" before pronouncing sentence, United States v. Echeverri, 460 Fed. Appx. 54 (2d Cir, 2012) (Summary order); See also United States v. Richardson, 521 F.3d 149, 158 (2d Cir, 2008) (Insufficient explanation where court stated only that it considered "all the pertinent information including but not limited to the presentence investigation report, submission by counsel, the factors outlined in 18 U.S.C. §3553 and the Sentencing Guideline.").

Hence, petitioner believe that he has proven that the District Court erred in the judgement and that the procedural errors made by the District Court of not calculating the Sentencing Guideline or explaining it completely to Mr. John Star and by not addressing defendant/petitioner is a significant procedural error that requires a reversal of conviction to resolve for the interest of justice.

Question 4. Whether or not the appellate waiver provision of an involuntary plea agreement is enforceable:

The plea agreement is construed narrowly and in accordance

with applicable contract law principle. United States v. Ready, 82 F.3d 551,556 (2d, 1996); See also United States v. Yemiltan, 70 F.3d 746 (2d Cir, 1995). Because the government is the party who draft the agreement and it has "certain awesome advantages in bargaining power." Ready, 82 F.3d at 558-59. Further, "Because ple agreement are unique contracts, [this court will] temper the application or ordinary contract principles with special due process concern for fairness and the adequacy of procedural safeguards." United States v. Riggi, 649 F.3d 143,147 (2d Cir, 2011).

Waiver of appellate rights contained within a plea agreement is generally enforceable as long as the record clearly shows that the defendant knowingly and voluntarily waived his right to appeal. See United States v. Granik, 386 F.3d 404,411 (2d Cir, 2004) (holding that although defendant had reservations regarding calculation of his sentence, he willfully and knowingly waived his right to appeal); See also United States v. Morgan, 386 F.3d 376 (2d Cir, 2004). However, Appeal Court and this Supreme Court has declined to hold that a "waiver of appellate rights forecloses appeal in every circumstance" or that [a] defendant who waives his rights to appeal... subject[s] himself to being sentenced entirely at the whim of the District Court. United States v. Yemitan, Supra at 748.

The key, of course, is konowingly and voluntary waiver of rights. In Petitioner (Star) case, petitioner assert that:

First. he can not recall ever signing the said plea because records indicate that he refused signing the plea agreement even up to a day before the plea allocation hearing.. See Letter from his plea attorney where Mr. Michael Hueston indicated petitioner's refussal to sign the plea agreement. See also the plea agreement and the modifications. NOTE that it does not bear pertitioner's signature/

initials as expected of a legal and binding plea agreement(contract) in accordance to contract law. See United States v. Ready, 82 F.3d 551, 556 (2d, 1996); See also United States v. Riggi, 649 F.3d 143, 147 (2d Cir, 2011) as regard contract principle with special due process concern for fairness and the adequacy of preceudural safegaurds.

Second, petitioner was mentally incompetent and unfit to make a plea. He was suffering from mental illness of anxiety attacks, physical illness of seizure, sleep apmere, tinnitus and high blood pressure. He was also medically impaired by the medications he took before and during the plea allocation hearings. So petitioner lacked the requisite for a competency as require by 18 U.S.C.S. §4241.

Third, During petitioner's plea allocation, when the court reached the discussion of the waiver of the rights to appeal, petitioner (Star) was equivocal. He and his counsel the sought a break for a private consultation after Star told the court he did not understand the waiver:

"THE COURT: One of the things I want to make sure that you understand is that you waived your right to appeal the sentence, if the sentence is not going to be higher than 210 months. Did you understand that you waived that right to appeal a sentence if it's not higher than 120 months?. Do you understand that?.

THE DEFENDANT: I don't----

MR. HUESTON:(defense Counsel): Excuse me, your Honor.
(Pause)

Mr. HUESTON: Your Honor, could we just take a quick break just for Mr. Star and I just to talk?" [A-63-64] See the Plea allocation hearing colloque.

Immediatelely after the break, record indicates that Star said he understood the waiver, but there is still a lingering question, especially given Star's constant whining during the plea allocation, virtually begging the court for mercy and at times responding to the Court with irrelevant or tangential statements couple with the fact record indicate that Star expressed that he have a mental illeness

of anxiety attacks along with physical illness of seizure, sleep apnea, high blood pressure and that he was on several medication that have sedative effects. So, while it may be true that Star spoke the words, there is doubt as to his comprehension of the concept.

To Compound the problem, during the sentencing hearing, The District Court completely eviscerated the waiver by unequivocally advising Star that he indeed retained the right to appeal.

THE COURT: At the time Mr. Star pled guilty, I asked him whether he understood what it means that he waived his rights to appeal. He said he did. In any event, Mr. Star, I am advising you that you have the right to appeal your sentence. I am sure Mr. Soroka will advise you of all that as well. If you cannot afford to pay for the cost of an appeal, you can make an application to have the cost waived." [A-116].

Therefore, since the Appellate waiver was not the product of knowing, intelligent and voluntary decision by petitioner (Star), and because the District Court in effect told Star he still retained his right to appeal, the appellate waiver is not enforceable. See United State v. Gomez-Perez, 215 F.3d 315 (2d Cir, 2000) ("[appellate] waivers must always be knowingly, voluntarily and competently provided by the defendant.

CONCLUSION

Wherefore, For the above stated reasons, and evidence attached, petitioner prays that this Honorable Court grant his writ of Certiorari and remand his matter back to the United States Court of Appeals for the second Circuit for further deliberations.

Respectfully submitted,

John Star (Pro se petitioner).

Sworn to and subscribed before me
this 13 day of Dec 2019.

Commonwealth of Pennsylvania
County of Clearfield

