

IN THE
UNITED STATES SUPREME COURT

JAMISON ROSS ELLIS,
Petitioner,

vs.

No. _____

UNITED STATES OF AMERICA,
Respondent.

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

COMES NOW, Petitioner Ellis, who hereby prays this
Honorable Court considers and grants this Pro-se Petition For
A Writ Of Certiorari on its merits as presented herein.

By Jamison Ross Ellis
Jamison Ross Ellis
Fed. Reg. No. 22757-078
United States Penitentiary
Terre Haute
P.O. Box 33
Terre Haute, Indiana 47808

QUESTIONS PRESENTED

- 1) Denial of Motion To Withdraw Plea before Court accepted the Plea Agreement
- 2) Denial of Pro-se Motion To Withdraw Plea and Appoint New Counsel
- 3) Invalid Plea Agreement
- 4) Ineffective Assistance Of Counsel reflected in the record

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OPINIONS BELOW

The opinion of the United States Court Of Appeals For The Fifth Circuit appears in Appendix B to the Petition and is reported in No. 16-40490, and was filed on March 20, 2017 in the Fifth Circuit.

The opinion of the United States Court of Appeals for the Fifth Circuit appears in Appendix A to the Petition and is reported in No. 16-40490, and was filed on May 5, 2017 in the Fifth Circuit.

JURISDICTION

This Court has jurisdiction to hear this Petition For A Writ Of Certiorari, and has denied a timely Petition For Rehearing on May 5, 2017. Appendix A. Therefore, this Court is the proper venue for this Petition For A Writ Of Certiorari.

LIST OF PARTIES

All parties appear in the caption of this case appear on the cover page of this Motion For A Writ Of Certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 5th Amendment to the United States Constitution
Miranda Rights Violation Against Self-Incrimination

- 6th Amendment to the United States Constitution
Gaurantees A Defendant The Effective Assistance Of Counsel At
All Critical Stages Of A Criminal Proceeding.

- 14th Amendment to the United States Constitution
No Person Shall Be Deprived Of Life Or Liberty Without Due
Process Of Law

STATEMENT OF THE CASE

This is a Petition For A Writ Of Certiorai. The questions presented in this petition reflect matters of the Plea Agreement and the denial of a Motion To Withdraw The Plea Hearing, also a Pro-se Motion To Withdraw Plea Hearing and Appoint New Counsel. Both Motions were filed before sentence was imposed and before the Court accepted the Plea Agreement, ROA (109), ROA (118). ROA (185), this Plea was deferred acceptance until the sentencing hearing record reflects both Motions were filed well before the District Court accepted the Plea Agreement.

The plea hearing on June 19, 2015 transcripts expose how this plea was entered under confusion and not knowingly and willingly made. ROA (158-161). My Counsel was not present and his "fill in" Counsel gave me the wrong information at this hearing. A plea was brought to me at Collin County Jail that reflected 63-78 Months, and was only valid until 4pm that same day. It was a plea for § 2113 Bank Robbery and a five (5) point enhancement for Brandishing A Firearm. It was presented to me that the stipulation to get the 63-78 Month plea was that I had to agree to close an open case for the United States Attorney. It would only add two (2) points if I agreed to that stipulation. In return for this, the government would not bring more unknown charges and punishment against me, nor my wife.

During the Plea Hearing, United States Attorney Stover was reading the Factual Statement, and he stated that the plea

didn't include Count 4 Bank of the Ozark ROA (158). When he started orally questioning me about the facts of Count 4 (OZARK), I told Mrs. Benson who was "filling in" for my Counsel that, "It is not the same thing I agreed to, and that was brought to me at Collin County Jail." Mrs. Benson assured me it was 63-78 Months, 78 Months at most. ROA (160). I was clearly confused, and I stated on record "I'm sorry is that the same one I signed with my Lawyer?" Mrs. Benson stated on record ROA (161) That I was thrown off at no time during the pleading did I knowingly assume that the plea was 462 Months.

On September 8, 2015, Mr. Arrambide had his assistant present a document to me and stated it wouldn't effect the plea. The document was a Waiver I had to sign to receive the 63-78 Months. He stated that it was Mr. Arrambide's handwriting. My defense never counseled me on or about this Waiver, and it was not done in open Court.

On September 23, 2015, the initial PSI Report was sent to me by the PSI Officer. As soon as I read the PSI Report, I was exposed to the fact that the Plea was not 63-78 Months, but was for 462 Months ROS (226). The PSI stated I wasn't getting a five (5) point enhancement for the firearm. What was a two (2) point enhancement on an open case that there was no evidence, no fingerprints, no DNA, no picture(s), not to have retaliation on my wife turned into stacked § 924(c) gun enhancements.

As soon as I was exposed to the altered Plea, I made several attempts to contact my Counsel, as reflected in the

Supplemented Transcript on record page 16.

My Counsel Mr. Arrambide never objected, as per my request to the altered plea ROA (233). December 7, 2015, a notice was sent to my stating that I was going to be sentenced on December 28, 2015. ROA (88). On December 15, 2015, ROA (95), District Court received a letter from me explaining that Mr. Arrimbide was not responding about the altered plea and my request to object to it, and that the indictment Waiver wasn't explained to me. See: Supplemented ROA January 12, 2016 hearing page 9,

I also requested adequate legal Counsel. ROA (98). ROA (101) another letter was filed by the Clerk that I was being sentenced to a plea that I didn't knowingly or willingly agree to, and that my Court appointed Federal Public Defender was unwilling to help me relive the matter(s). On January 29, 2015, ROA (108) my sentence was reset so that Magistrate Judge Bush would hear my Motion To Withdraw Guilty Plea. ROA (105).

On the record of appeal, a Motion was granted to Supplement The Record with the missing January 12, 2016 hearing on the Motion To Withdraw Guilty Plea transcript. The Supplemented Transcript January 12, 2016 hearing clearly reflects how the Court plea proceeding was done under me pleading to the wrong information ROA (118-169). The January 12, 2016 Supplemented Transcript clearly exposes how threats of retaliation were being done. On page 16, suppelmented January 12, 2016 transcript, Judge Bush states that he was hearing that the government is telling him if he signed this plea we won't put our foot down

his wife's throat. That alone shows coercion. Judge Bush denied the Motion To Withdraw Guilty Plea. I was given notice that my Motion was denied ROA (116), and I was unable to object to the ruling, or present evidence to support the withdraw of plea. A second Motion To Withdraw The Guilty Plea was filed Pro-se and a request to appoint new Counsel was filed on March 10, 2016 ROA (118). On March 18, 2016 the Court scheduled a sentencing hearing and at that time address the Motions.

On March 29, 2016, I presented evidence that I did not match eye-witness statements that were given to the Police. Also the main factor was a police interrogation video as evidence that was presented. Mr. Arrambide did to object or file the Supperssion Motion that the evidence that was used violated my Fifth and Sixth Amendment Rights because I requested Counsel and was denied that Constitutional Right by detectives. The record was supplemented with the ruling in Texas Collin County that the same evidence was suppressed by Judge Rush. Mr. Arrambide stated in the supplemented evidence of that ruling that he did not file the Suppression Motion needed in Federal Court.

When the plea was exposed, I made several attempts to explain that the plea was 400 months more than originally agreed upon, and I wasn't allowed to withdraw the plea after producing fair and just reasons. The supplemented record shows that the police interrogation video was not harmless error, and if the Motions were filed, the outcome would have been different in this case. Mr. Arrambide's failure to file the Suppression

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Motion of the main factor of evidence that was used, was a violation of my Fifth and Sixth Amendment Rights under the Constitution of the United States.

The record supports the facts that I plead guilty to a plea that never was what I had agreed to. A two (2) point enhancement on a crime that I did not commit, and that I did not match the description of the witness statements, should have allowed the grant of my Motion To Withdraw, And not to have had Judge Bush - at the hearing for the Motion To Withdraw held on January 12, 2016 - to state "not to have the government put their foot down my wife's throat", and where 63-78 Months turned out to be 462 Months, and that I showed I was denied the right to Counsel.

The sentencing hearing Judge, Judge Crone, declined fair and just reason to withdraw and stand trial. The record in this case has been supplemented with the Suppression Ruling and Dismissal of Count 4 (OZARK) in this case. If the Motions and objections were done on my behalf, as I requested, the outcome would have been different. Again, taking into account that the plea was entered in this case while unknowingly and unaware of the actual plea when it was exposed I was denied my right to withdraw it.

REASONS FOR GRANTING THE PETITION

There is a conflict with the decision of the Court of Appeals in this case. The record clearly reflects that I was given the wrong information to enter a plea by my Counsel.

U.S. Supreme Court - Jae Lee v. United States, 2017 BL 216471
U.S. No. 16-327 (6/23/2017).

When I learned of the error, a Motion was timely filed to Withdraw The Plea of guilty prior to sentencing. The Motion should be granted if the Motion is fair and just. Several facts were presented on record - two (2) attempts to Withdraw The Plea were denied after I presented physical evidence that I did not commit Count 4 (OZARK).

The record clearly reflects that I was deprived my 6th Amendment Right to be defended in a criminal case. The January 12, 2016 hearing I had expressed the conflict of interest and I was prejudiced by Counsel. Hill v. Lockhart, 474 U.S. 5259. The District Court deprived me of Due Process and the right thereof to stand trial. The decision whether to plead guilty involves assessing the respective consequences of a conviction by plea. INS v. St. Cyr, 533 U.S. 289, 322-323. The record reflects that I was clearly rejecting the plea before the Court accepted it.

Rule 11 (C) (1) (A) (5) (B). I was not given the opportunity to withdraw the plea (D) (1) before the Court Accepts the plea for any or no reason. United States v. Badger, 925 F.2d

101 (5th Cir. 1991). Allowed guilty plea to be withdrawn. Since the plea was not accepted by the Court and was altered, the plea would be considered invalid. I ask the Supreme Court to vacate the conviction on the grounds that the plea was invalid and never existed, and the fact I had ineffective Counsel throughout the presentencing proceedings and that I was prejudiced by it.

The Grand Jury never indicted me with the Count 4 (OZARK) Firearm Brandishing. In the plea stage, Counsel gave me the wrong information in order to except the plea at the hearing done under confusion on record. Note: The Sixth Amendment guarantees a Defendant the effective assistance of Counsel at all critical stages of a criminal proceeding, including when a guilty plea is entered. Lafler v. Cooper, 566 U.S. 156, 165 (2012). Hill 474 U.S. at 58. To demonstrate that Counsel was constitutionally ineffective a defendant must show that Counsel's representation fell below an objective standard by failing to raise a objection or present an argument on Appeal. Roe v. Flores-Ortega, 528 U.S. 470, 481 (2000). There was reasonable probability that for Counsel's unprofessional errors the result of the proceeding would have been different.

The evidence that was the center of the U.S. attorney was a police interrigation video that was sucessfully suppressed under Miranda v. Arizona, 384 U.S. 436 86 S. Ct. 1602, 16 L.Ed 2d 694 (1966). Collin County Texas Judge Rush, suppressed the exact same police interrigation video ruled 5th, 6th, and 14th

Amendment protection against self incrimination were violated. the record was supplemented with the ruling suppression and dismissal of the charge. My Court appointed attorney failed to object to, or ask to suppress this evidence, and ineffective Counsel is on record.

Fifth Amendment commanding that no person shall be compelled in any criminal proceeding to be a witness against himself. Brown v. Mississippi, 297 U.S. 278, 80 L.Ed 682, 56 S. Ct. 461 (1936). Reversing criminal conviction under Due Process Clause because it was obtained by a confession by coercion self incriminating, as constructed in Miranda. Where a defendant claims that lawyer should have but did not seek to suppress an improperly obtained confession. Premo v. Moore, 562 U.S. 115, 118 (2011). There is adequate showing on the record of ineffective assistance of Counsel and prejudice under Hill 474 U.S. at 59, that the plea never would have been excepted. Nor that the ruling by Collin County proves the outcome would have been different if the evidence would have been successfully suppressed.

This was not done by my Federal Public Defender Mr. Arramibede on my behalf and ineffective assistance of Counsel was met under Strickland v. Washington, 466 U.S. 668 80 L.Ed 2d 674 104 S. Ct. 2052 (1984). Misconduct by the United States Attorney was on record in the January 12, 2016 Withdraw Plea hearing inducing threats about the plea.

Before deciding whether to plead guilty a defendant is entitled to "The effective assistance of competent Counsel."

McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 25 L.Ed 2d 763 (1970).

Under Strickland it is determined whether Counsel's representation "fell below an objective standard of reasonableness." Then whether there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different.

Attorney failed to provide effective assistance and this plea does not meet reasonable professional standards. At the Jan. 12, 2016 Motion To Withdraw Plea hearing incompetent advice distorted decision making process at the plea hearing and calls the fairness and integrity of the criminal proceeding itself into question when a defendnat bases the decision to plead guilty on Counsel's express misrepresentation the voluntary and intelligent decision to plea comes into question. United States v. Toothman, 137, F.3d 1393 (9th Cir. 1998).

The denial of Due Process, a 14th Amendment Right, has as its definition, "A conviction obtained by means of a coerced confession deprives the defendnat of liberty without Due Process. A confession is involuntary where induced by psychological coercion." At sentencing, the interrigration police video was not harmless error. A conviction was obtained by denial of Due Process. The police interrigration video was the only evidence in the case.

Additional supporting case law: United States Ex Rel Henderson v. Brierly, 300 F. Supp. 638 (E.D. Pa. 1969). Trial Counsel failure to move to suppress evidence and failed to object

to the admission of evidence siezed illegally amounted to ineffectiveness of Counsel. And Cite: Williams v. Arn, 654 F. Supp. 226 (No D. Ohio 1986), Trial Counsel's failure to file Motion To Suppress defendant's statements constitutes performance below an objective standard of reasonableness.

CONCLUSION

As the facts are presented herein infra, this Petition For A Writ Of Certiorari should be granted on its merits at this time.