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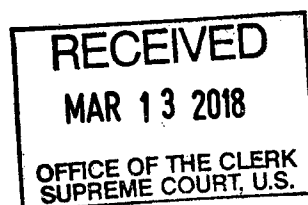
IN THE SUPREME COURT OF THE UNITED STATES

Cesar Sevilla-Acosta,
Petitioner
v.
United States of America,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

Cesar Sevilla-Acosta
Fed. Reg. 16503-041
Federal Prison Camp, Duluth
PO Box 1000
Duluth, MN 55814



QUESTIONS PRESENTED

1. Given that a valid indictment must be present before the accused can proceed to trial under the Fifth Amendment to the U.S. Constitution and Fed. R. Crim. Proc. Rule 7(c) are the "plain error" trial results valid?

2. If an indictment is not valid in a particular case due to not meeting the requirements of the Fifth Amendment to the U.S. Constitution or Fed. R. Crim. Proc. Rule 7(c), yet trial took place regardless even though the accused was unaware of said requirements in order to raise objection

a) Is this "plain error" by the Court which would invalidate the trial results under Fed. R. Crim. Proc. 52(b)?

b) Is this ineffective assistance of counsel thus violating the constitutional guaranty of effective counsel to be provided to the accused?

c) Or is this prosecutorial misconduct by the Government's prosecution team for proceeding to trial knowingly without a valid engaged certified indictment by an authorized attorney for the Government?

3 Does the known presence by the Court and the Government of "plain error" that there was not a valid indictment present when the jury trial took place against the accused along with the accused's counsel not performing "reasonable diligence" to identify the "plain error" and advise the accused accordingly create a miscarriage of justice and a violation of rights qualify the accused for a Certificate of Appealability from the Appellate Court? (see signatures page of Appendix(s) "E" and "F")

LIST OF PARTIES

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

TABLE OF AUTHORITIES CITED

CASE	PAGE #
Hatchett v. Gov. of Guam, 212 F 2d 767 (9th Cir 1954)	7, 12
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United States v. Fontenot, 483 F 2d 315 (CA5 GA - 1973)	13
United States v. Hauberg, 342 F 2d 167 (5th Cir 1965)	8

AUTHORITY / STATUTE / RULE	PAGE #
United States Constitution - Fifth Amendment	5, 7, 9
Federal Rule of Criminal Procedure, Rule 7 (c)	5, 7, 8, 9
Federal Rule of Criminal Procedure, Rule 52 (b)	5, 7, 12, 13

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT CERTIORARI

Petitioner Cesar Sevilla Acosta pro se acting as a layman on his own behalf respectfully prays that a Writ of Certiorari issue to review the judgement below

OPINIONS BELOW

From Federal Courts:

The judgement of the United States Court of Appeals Eighth Circuit appears at Appendix "A" to petition and

The judgement of the United States District Court of Minnesota appears at Appendix "C" to petition

JURISDICTION

The date the United States Court of Appeals, Eighth Circuit decided
Petitioner's case was December 18, 2017 related to case no 17-3016 (see Exhibit
"A") No petition for rehearing was filed for Minnesota decided Petitioner's
case was 2017. No petition for rehearing was filed

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Question 1 - Fifth Amendment to the United States Constitution:

"No person shall be held to answer for a capital offense, or otherwise infamous crime, unless on a presentment of "indictment" of a Grand Jury."

- Federal Rules of Criminal Procedure Rule 7(c) "The Indictment and the Information
(c) Nature and Contents: -(1) In General.

"The indictment or information must be plain, concise, and definite written statement of the essential facts constituting the offense charged and must be signed by an attorney for the Government

Question 2 - (same as Question 1 above)

Question 3 (same as Question 1 above) and Fed R. Crim Proc Rule 52(b)

"A plain error that effects substantial rights may be considered even though it was not brought to the Court s attention "

STATEMENT OF THE CASE

Background

Petitioner Acosta was convicted by a jury of conspiracy to distribute marijuana, by indictments presented against him, (labeled Appendix "E" and "F" attached), both of which were not signed by any attorney authorized by the United States District Attorney unknown to the accused. He was sentenced to 135 months in prison. This conviction was affirmed on direct appeal (see United States v. Sevilla Acosta, 746 F.3d 900, 8th Cir. 2014). Petitioner was denied relief from a 28 USC 2255 motion previously filed in 2015 and was denied an appeal and certiorari any relief on that motion.

In August 2017, Petitioner filed Motion to Vacate his conviction in the Minnesota District Court, which ruled it a subsequent 2255 motion and stated the District Court of Minnesota lacked jurisdiction on the matter and denied the motion due to the lack of Certificate of Appealability (see Appendix "D"). Petitioner made a timely Notice of Appeal to the Eighth Circuit Court of Appeals, which ruled on the matter under Case NO. 17-3016, which was denied on December 18, 2017. Petitioner now is making a timely filing of this "Petition for Writ of Certiorari" relating to the matter (see Appendix "A").

REASONS FOR GRANTING THE PETITION

(BY QUESTION)

Question 1 - Related Argument

Under the Due Process of Law clause of the Fifth Amendment to the U.S. Constitution it states: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury."

The Fifth Amendment cite above is the core of Question 1's argument which is further refined in this case by the following from Fed. R. Crim. Proc., Rule 7(c)(1) which states: "The indictment or information must be a plain, concise, and definite written statement of the essential facts constituting the offense charged and **must be signed by an attorney for the Government.**"

Please take judicial notice that in the indictment (see Appendix "E") and in the superceding indictment (see Appendix "F") that neither have the required signature by the authorized attorney for the Government. Also, note that both Appendix "E" and "F" are certified by the Clerk of the District Court of Minnesota as the indictments of record in this case.

"Provision of Rule 7(c) requiring signing of indictment by attorney for Government is recognition of the power of Government counsel to permit or not to permit bring of indictment, and if attorney refuses to sign, as he has discretionary power of doing, **there is no indictment.**" United States v. Cox (1965) 381 US 935, 14 L Ed 2d, 700, 85 S Ct. 1767.

Federal Rule of Criminal Procedure, Rule 52(b) states: "Plain error - A plain error that effects substantial rights may be considered even though it was not brought to the Court's attention."

"Rule 7(c) is intended to implement these constitutional standards." United States v. American Oil Co., 249 F Supp 799, 807 (D.N.J. 1966) Cf. Russell v. United States, 369 US 749, 760-64, 8 L Ed. 2d 240, 82 S. Ct. 1038 (1962)

"The test for sufficiency is not whether the indictment could have been better drafted, but whether it conforms to minimal constitutional standards. Haas, 583 F 2d at 219

"The requirement of the signature (by Government attorney) is for the purpose of evidencing the joinder of the attorney for the United States with a grand jury in instituting a criminal proceeding in court. **Without the signature there can be no criminal proceeding brought in the court.** Substantial compliance rather than technical exactness meets the requirement of Fed. R. Crim. Proc.

7. There seems to be no authority for the statement that the absence of a signature is not fatal."

"The signature of the Government attorney is necessary to the validity of the indictment." United States v. Hauberg, 342 F 2d 167, (5th Cir. 1965)

From the proceeding from the U.S. Constitution, Federal Rules, and supporting case cites it is apparent that the indictment(s) in this case are both invalid. (see Appendix "E" and "F" signature pages)

The argument seems very clear that the indictment against Petitioner is invalid and the court proceeding to trial without an indictment is "plain error" and the trial results should be invalidated.

Question 1 - National Importance

Petitioner feels that he has been severely prejudiced by invalid trial results resulting in conviction, sentencing and a long term incarceration.

It is known that many other convicted individuals also do not have any Government attorney signatures validating that a grand jury agreed to the indictment as presented. This number may be in the thousands nationwide and as such the Supreme Court is in a unique way able to cure numerous miscarriages of justice for the many invalid indictments in existence. It is understood, however, that all accused parties who waived a jury trial (plea deal) also acknowledged waiving the right to indictment and accepted the information presented as fact. For these parties no relief is available. In the present case over 30 parties on indictment waived this right. How many would have done so if they had knowledge of the "plain error"?

Conclusion

It is readily apparent that the indictment in this case is invalid and certainly the Petitioner should have been granted a Certificate of Appealability by the Appeals Court to obtain relief, as his constitutional rights have been violated. The same is true for all other similarly situated.

Question 2 - Related Argument

In this section related to Question 2's argument, Petitioner wishes to incorporate Question 1 argument with the finding that the indictment in this case is not valid, and nor would any other case's indictment if similarly situated.

Petitioner believes that the indictment in this case is invalidated due to the constitutional (5th Amendment-due process clause) and Federal Rules (Fed. R. Crim. Proc. Rule 7(c) not being fulfilled by the fact that no Government

attorney signed either the original indictment (Appendix "E") or the superceding indictment (Appendix "F"). In full knowledge by the Government's prosecution team of this fact, they proceeded to trial against the Petitioner. The accused was not aware of this signature requirement nor the constitutional due process rights violated by going to trial without it present.

Petitioner asks for ruling on the following as to determine for future cases similarly situated to properly proceed in the lower courts to obtain relief.

a) Is the fact that the Court also proceeded to trial without the required Government signature on the indictments in order to create the "case and controversy" to have subject matter jurisdiction in order to begin trial process; plain error?

Petitioner believes that fact or finding is for this Court to answer.

b) Is the fact that Petitioner's counsel whose responsibility under "reasonable" standards in the first instance to identify any flaws or deficiencies in the indictment against the accused and address them properly in a motion to the court; ineffective assistance of counsel?

Petitioner believes that determination is for the Court to answer.

c) Does the fact that the Government's prosecution team knew that no signature was present on the indictments for whatever reasons or intent of deception or otherwise; constitute misconduct on the part of the government?

Petitioner believes that determination is for this Court to answer.

Question 2 National Importance

The Petitioner asks for answers from this Court to determine which party or if all parties (the Court accused s counsel and the Government) have culpability when such a blatant deficiency is present that is so prejudicial to the accused

If as the following scenario shows is true many accused parties may make plea deals that are seemingly a better option than risking a harsher sentence by going to trial In the present case 32 other parties who were not aware the indictment presented against them was invalid chose a plea deal to receive a lighter sentence while the Petitioner was the only party who chose trial The questions this practice raises are Did a grand jury even convene? Was this a draft to present a grand jury yet either not used or not as the grand jury found in the matter? The integrity of all grand jury findings are at stake if this constitutional violation is not addressed by this Court

Question 2 Conclusion

For the argument in Question 1 and Question 2 within Petitioner believes this Court would be providing integrity to the indictment and Grand Jury process by granting this Petition for Writ Certiorari

Question 3 Related Argument

In the case before this Court there are no Government attorney s signatures on the indictments (see Appendix "E" and "F") This fact violates the Petitioner s due process rights under the Fifth Amendment as well as the provision of Fed R Crim Proc Rule 7(c) requiring signing of indictment by attorney for the

Government which invalidates both indictments in this case (see United States v Cox (1965 CA5 Miss) 342 F 2d 167 cert (1965) 381 US 935 14 Ed 1d 700 85 S Ct 1767

Under Fed R Crim Proc Rule 52 Harmless and Plain Error it states

- a) Harmless error Any error defect irregularity or variance that does not effect substantial rights must be disregarded
- b) Plain error A plain error that effects substantial rights may be considered even though it was brought to the court s attention

It is obvious that "plain error" existed in this case Yet when presented to the district and appeals courts with this blatant plain error; Petitioner was denied Certificate of Appealability. Petitioner believes that a "plain error" of any source that prejudices the accused to the point of deprivation of constitutional rights should automatically qualify the accused person for a Certificate of Appealability In addition to plain error when "an attorney fails to raise an important obvious defense without any imaginable strategic or tactical reason for the omission his performance falls below the standard of proficient representation that the Constitution demands Prou v United States 199 F 3d 37 48 (1st Cir 1999)

Fed R Crim Proc Rule 52(b) authorizes an appellate court to notice which in its opinion are plain and which effect the substantial rights of an accused in a criminal case as it is in the present case Hatchett v Gov of Guam 212 F 2d 767 (9th Cir 1954) The Petitioner must show plain error existed affecting his substantial rights The error must be a clear deviation from an appellate legal rule to constitute an obvious error (State v Clark 2012 ND 135 818 NW 2d 739 746 47 (ND 2012)) which the Petitioner clearly has in this petition prior motions and appeals When Petitioner failed to make objections at trial due to incompetent counsel relating to the matter

presented to the lower courts and in this petition the standard of review is plain error pursuant to Rule 52(b). The only question for the court an application for a Certificate of Appealability is whether the applicant has shown that jurists of reason could disagree with the district court on his constitutional claim or should have considered the issues presented to be significant enough to proceed further by issuance of the requested Certificate of Appealability. Since the indictment is the very essence of all cases, a plain error that exists that invalidates the indictment then said error requires recognition by the Court of Appeals under the "plain error" provision of Rule 52(b) United States v. Fontenot (1973 CA5 GA) 483 F 2d 315

In criminal cases Appellate Courts can examine a critical issue affecting substantial rights suasponete under Fed R Crim Proc Rule 52(b) Under Rule 52(b), a court may grant relief where there has been (1) error (2) that is plain (3) that affects substantial rights and (4) that seriously affects the fairness integrity or public reputation of the judicial proceedings King v. United States 595 F 3d 844 (8 Cir 2010)

The Petitioners argument is straight forward and simple. Plain error exists in this case simply by the absence of any Government attorney signature on the indictments presented. Petitioner was presented at trial without the constitutionally required valid indictment present unknown to the Petitioner. This is a miscarriage of justice as well as plain error to continue the wrongful incarceration and deprivation of freedoms for the Petitioner and as such warrants overturning the conviction as soon as possible

Question 3 National Importance

Petitioner asks this court to consider the sheer number of applications to appellate courts nationwide that include a possible "plain error" element