

NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

DANIEL J. TAYLOR

Petitioner

vs.

UNITED STATES OF AMERICA

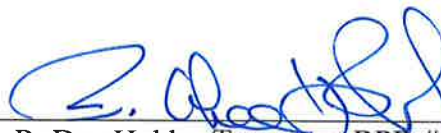
Respondent

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

BELL & HOBBS

By: _____



R. Dee Hobbs, Tennessee BPR #10482
Appointed Counsel for Daniel J. Taylor
P.O. Box 11308
Chattanooga, TN 37401
Email: bell.hobbslaw@gmail.com
(423) 266-6461/ Fax 756-8521

QUESTION PRESENTED FOR REVIEW

Whether a violation of due process results from the denial of a motion to withdraw a guilty plea without making any meaningful inquiry into the factual basis supporting the motion or creating a record to support the denial.

LIST OF PARTIES

All parties 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:

Daniel J. Taylor, Petitioner

United States of America, Respondent

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW.....	ii
LIST OF PARTIES.....	ii
TABLE OF CONTENTS.....	iii
INDEX TO APPENDICES.....	iii
TABLE OF AUTHORITIES.....	iv
PRAYER.....	1
OPINION BELOW.....	2
JURISDICTION.....	3
CONSTITUTIONAL PROVISIONS INVOLVED.....	4
STATEMENT OF THE CASE.....	4
REASONS FOR GRANTING THE PETITION.....	7

Review is necessary because a due process deprivation occurs when a trial court fails to hold an evidentiary hearing, or at least make meaningful inquiry, regarding a motion to withdraw a guilty plea. This is an important question of federal law, invoking both Fifth and Sixth Amendment protections, which requires instruction from this Court to district judges handling such motions.

CONCLUSION.....	11
-----------------	----

INDEX TO APPENDICES

DECISION OF SIXTH CIRCUIT COURT OF APPEALS.....	13
---	----

TABLE OF AUTHORITIES

Cases

<i>United States v. Alexander</i> , 948 F.2d 1002, 1004 (6th Cir. 1991).....	9
<i>United States v. Bashara</i> , 27 F.3d 1174, 1181 (6th Cir. 1994).....	8, 10
<i>United States v. Bazzi</i> , 94 F.3d 1025, 1027 (6th Cir. 1996).....	8
<i>United States v. City of Warren</i> , 138 F.3d 1083, 1085 (6th Cir. 1998).....	7
<i>United States v. Culp</i> , 608 Fed.Appx. 390 (6th Cir. 2015).....	8
<i>United States v. Fofana</i> , 50 Fed. App'x. 725, 728 (6th Cir. 2002)	10
<i>United States v. Haygood</i> , 549 F.3d 1049, 1052 (6th Cir. 2008).....	8, 10
<i>United States v. Hunt</i> , 205 F.3d 931, 936 (6th Cir. 2000).....	7
<i>United States v. Joslin</i> , 434 F.2d 526, 531 (D.C.Cir. 1970).....	10
<i>United States v. McCoy</i> , 155 Fed. Appx. 199, 203 (6th Cir. 2005).....	11
<i>United States v. Spencer</i> , 836 F.2d 236, 238 (6th Cir. 1987).....	9
<i>United States v. Triplett</i> , 828 F.2d 1195, 1198 (6th Cir. 1987).....	10

Constitution and Statutes

U.S. CONST. amend. V.....	4
U.S. CONST. amend. VI	4
18 U.S.C. § 2119.....	4
28 U.S.C. § 1254(1).....	3

Rules

Supreme Court Rule 29	12
Federal Rule of Criminal Procedure 11	9
Federal Rule of Criminal Procedure 11(d)(2)(B)	8

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Daniel J. Taylor respectfully prays that a writ of certiorari issue to review the judgment below.

OPINION BELOW

A copy of the opinion of the United States Court of Appeals for the Sixth Circuit is attached as Appendix A to this Petition and is styled *United States v. Daniel Taylor*, No. 17-5302 (6th Cir. January 3, 2018).

JURISDICTION

On January 3, 2018, the Court of Appeals for the Sixth Circuit entered its ruling affirming the district court. *United States v. Daniel Taylor*, No. 17-5302 (6th Cir. January 3, 2018). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST. amend. V, which states in pertinent part:

No person shall...be deprived of life, liberty, or property, without due process of law.

U.S. CONST. amend. VI, which states in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Procedural background. On April 26, 2016, a federal grand jury in the Eastern District of Tennessee returned an indictment charging the Petitioner, Daniel J. Taylor (“Mr. Taylor” or “Petitioner”) with one count of carjacking in violation of Title 18 U.S.C. § 2119. Several weeks later, Mr. Taylor executed the written plea agreement at issue in this case. He proceeded to enter a guilty plea on October 24, 2016. Very soon afterward, however, he moved the trial court to allow him to withdraw his guilty plea and proceed to trial based on a not guilty plea. In particular, the Petitioner contended that his attorney had not provided adequate representation and had misstated to Mr. Taylor important aspects of both the plea agreement itself and its impact.

A hearing on Mr. Taylor’s motion to withdraw his plea took place on January 19, 2017. Mr. Taylor was represented by the same counsel about whom he had complained. He was not given a chance to testify. The District Court ruled that the motion should be denied; however, there is literally no order in the record which incorporates that ruling. After the hearing, Mr.

Taylor's appointed counsel moved to withdraw. Finding good cause to substitute counsel, the district judge entered an order appointing the undersigned on February 3, 2017.

A sentencing hearing was subsequently held on March 10, 2017. At the outset of the hearing, the Petitioner renewed his motion to withdraw the guilty plea, contending among other things that the earlier hearing was deficient; however, the District Court denied the renewed motion. Mr. Taylor was then sentenced to a term of imprisonment of 156 months followed by a term of supervised release of three years.

Mr. Taylor filed a Notice of Appeal on March 14, 2017. On January 3, 2018, the Sixth Circuit issued its opinion which affirmed the holdings of the District Court. Mr. Taylor now seeks relief from this Court.

Factual background. Although the Petitioner had been indicted in April of 2016, the plea agreement in issue was not executed until October 24, 2016. Throughout this time, and as acknowledged by his appointed counsel, Mr. Taylor had maintained his innocence. Very soon after the execution of the plea agreement, Mr. Taylor stated his desire for his counsel to move to withdraw the plea agreement, but the motion to withdraw the guilty plea was not filed by his attorney until some forty-six days after the agreement was executed.

As evidence of Mr. Taylor's desire to withdraw from the plea agreement, he refused to meet with his counsel and a probation official for a presentence meeting just a matter of days after the execution of the plea agreement. The record makes it clear that he expressed dissatisfaction at this time with both the plea agreement and his counsel.

As referenced above, a hearing on the motion to withdraw the guilty plea was held on January 19, 2017, and during the hearing Mr. Taylor's counsel acknowledged to the trial court that his client believed his attorney had not provided adequate representation and had induced

him to plead guilty. Despite this revelation, however, and despite the request for an evidentiary hearing, the lower court conducted no inquiry at this time into either the adequacy of counsel's representation of Mr. Taylor, the relationship between the client and his attorney, or the circumstances behind the execution of the plea agreement. Instead, the trial court simply denied the motion, but no order to this effect, stating either the denial of the motion or the reasons for such denial, was ever entered.

Soon thereafter the Appellant's appointed counsel moved to withdraw and was in fact replaced by the undersigned after a hearing on the Motion to Substitute Attorney was held on January 31, 2017. During this hearing, Mr. Taylor's then-counsel stated that part of the basis for the motion to withdraw the guilty pleas was an ineffective assistance claim. He added the following:

So it was kind of odd arguing for the motion to withdraw, being that Mr. Taylor believed that I was part of the reason for the fact that he pled guilty when he was saying that now he wishes not to plead guilty and the reason that he did plead guilty is because he feels that I was ineffective in representing him. So then I was arguing that motion, so – and certainly I tried to argue the motion to the best of my abilities, but I could see where Mr. Taylor would be confused, in the light of the fact that he was making the claim that I was ineffective – and then I was arguing to have the plea withdrawn.

Although the trial court had denied the motion to withdraw the plea agreement, it then determined that cause existed to substitute counsel and entered an order to that effect on February 3, 2017.

The sentencing hearing followed on March 10, 2017. At the outset of the hearing, the undersigned renewed Mr. Taylor's motion to withdraw the guilty plea. Mr. Taylor again raised the issue of the effectiveness of the very same counsel who had not only moved the trial court to withdraw the plea due in part to ineffectiveness but also argued this same motion. The Petitioner again raised the irregularity of allowing that counsel to handle the proceeding and asked for an

evidentiary hearing, but the trial court declined to hear any evidence on the matter or make any further findings regarding this issue. Instead, the lower court summarily denied the renewed motion without explanation and proceeded to sentence Mr. Taylor.

REASONS FOR GRANTING THE PETITION

The denial by the district court of Mr. Taylor's motion to withdraw his plea was an abuse of discretion which has resulted in violations of both Fifth and Sixth Amendment protections. While the Petitioner acknowledges that the district court conducted a facial hearing on his written motion to withdraw his plea and proceed to trial, this record establishes that the trial judge did not conduct an evidentiary hearing, or otherwise make a meaningful inquiry about his claims, and thus could not properly consider the established factors relevant to such a motion before rejecting his complaints.

Accordingly, this Petition addresses the issue of whether due process is violated by the failure of a trial court to conduct an evidentiary hearing or meaningful inquiry on a motion to withdraw a guilty plea when the motion, at least on its face, states a basis for such relief. The present case gave the Sixth Circuit an opportunity to provide direction and guidance in such situations. Unfortunately, the Sixth Circuit simply concluded that the trial court had not abused its discretion in deciding not to allow the withdrawal of the guilty plea. Should the Court grant this Petition, an important due process right can be adequately protected.

It is acknowledged that the Sixth Circuit properly determined that the denial of a motion to withdraw a plea is reviewed under an abuse of discretion standard. *United States v. Hunt*, 205 F.3d 931, 936 (6th Cir. 2000). Of course, an abuse of discretion exists when a reviewing court has "a definite and firm conviction that the trial court committed a clear error of judgment". *United States v. City of Warren*, 138 F.3d 1083, 1085 (6th Cir. 1998).

With respect to a request to withdraw a guilty plea, Rule 11(d)(2)(B) of the Federal Rules of Criminal Procedure states:

*A defendant may withdraw a plea of guilty or nolo contendere: ...
(2) after the court accepts the plea, but before it imposes sentence if:
(B) the defendant can show a fair and just reason for requesting the withdrawal...*

There is ample Sixth Circuit precedent regarding the circumstances under which a defendant has a “fair and just reason” for withdrawing his guilty plea. For instance, this Court of Appeals identified in *United States v. Bashara*, 27 F.3d 1174, 1181 (6th Cir. 1994), and again in *United States v. Haygood*, 549 F.3d 1049, 1052 (6th Cir. 2008), certain factors for a trial judge to consider in deciding whether a voluntary plea may be withdrawn prior to sentencing:

- (1) the amount of time between the plea and the motion to withdraw it;
- (2) *the presence or absence of a valid reason for the failure to move to withdraw the plea earlier in the proceedings;*
- (3) whether the defendant has asserted or maintained his innocence;
- (4) *the circumstances of the entry of the plea;*
- (5) the defendant's nature and background;
- (6) the defendant's prior experiences with the criminal justice system; and
- (7) *any potential prejudice to the Government if the motion to withdraw is granted.*

See also United States v. Culp, 608 Fed.Appx. 390 (6th Cir. 2015).

It has long been recognized that these factors are non-exclusive, that no single factor is controlling, and that it is not necessary for a majority of these factors to militate in favor of the defendant seeking to withdraw a plea. *United States v. Bazzi*, 94 F.3d 1025, 1027 (6th Cir. 1996). Simply put, by not conducting any evidentiary hearing regarding the facts behind Mr. Taylor's

motion to withdraw his plea agreement, or at least some studied inquiry as to his allegations, the district court failed to make a sufficient and meaningful inquiry into several of the factors mentioned above. How, then, could it be appropriately decided whether he had a fair and just reason to withdraw his plea? What discussion can be found in the record of any prejudice to the Government had the motion been granted? Was there a reason he did not seek to withdraw the agreement sooner? The record contains no discussion regarding these or other factors, and the refusal by the trial court to make a meaningful inquiry in this matter through an evidentiary hearing was an abuse of discretion. Should the Court grant this Petition, important guidance can be offered trial courts dealing with this type of situation.

Mr. Taylor, of course, recognizes that a defendant does not have an absolute right to withdraw a guilty plea. *United States v. Spencer*, 836 F.2d 236, 238 (6th Cir. 1987). On the other hand, if such relief could never be appropriate, Rule 11 would not exist. The reason behind the Rule 11 provisions for the withdrawal of a guilty plea is to allow a “hastily entered plea made with an unsure heart and a confused mind to be undone”. *United States v. Alexander*, 948 F.2d 1002, 1004 (6th Cir. 1991).

It is noteworthy that Mr. Taylor’s former counsel acknowledged his client had maintained his innocence both before and after executing the plea agreement. The Petitioner raised issue with his relationship with his counsel, complained of the effectiveness of his attorney’s representation, and stated, as stated by the attorney himself, that his lawyer had induced him to plead guilty. Meanwhile, Mr. Taylor’s counsel at the time admitted that it “was kind of odd arguing for the motion to withdraw, being that Mr. Taylor believed that I was part of the reason for the fact that he pled guilty...” Further, there was determined in the hearing to substitute counsel to be a sufficient basis for the attorney to withdraw in light of these particular

circumstances, yet even then the trial court declined to hear proof on the circumstances behind the withdrawal of counsel.

This record, then, confirms that the trial court made no meaningful inquiry into the claims Mr. Taylor had raised regarding his attorney and the effectiveness of his lawyer's representation relative to the plea agreement. In light of what clearly should be a concern for any trial court in circumstances similar to this case, a defendant certainly has a due process right to have these factors addressed in an evidentiary hearing, or in some other sort of meaningful inquiry, before a request to withdraw a plea agreement is ruled upon.

The Sixth Circuit has determined that a defendant is not entitled to an evidentiary hearing on a motion to withdraw his guilty plea if the motion "merely contradicts the record, (is) inherently incredible, or (is) simply conclusory." *United States v. Fofana*, 50 Fed. App'x. 725, 728 (6th Cir. 2002). The record in this case, however, does not reflect that the trial court made any determination to that effect. Meanwhile, a defendant may be entitled to an evidentiary hearing when there are "factual matters at issue which bear directly on the controversy." *United States v. Triplett*, 828 F.2d 1195, 1198 (6th Cir. 1987); *United States v. Joslin*, 434 F.2d 526, 531 (D.C.Cir. 1970). This record simply does not go as far as to reflect why the trial court ruled as it did. The factual matters at issue, which involved among other things a fundamental constitutional right, namely the representation Mr. Taylor was receiving, were relevant to the controversy but were brushed aside by the district court. What resulted was an abuse of discretion, which in this matter amounted to a denial of due process.

In addition, certain elements of the Sixth Circuit *Bashara/Haygood* standards mentioned above were either ignored or at least misapplied by the trial court. For instance, the government conceded that no potential prejudice existed by allowing the withdrawal of the plea agreement.

Also, the amount of time elapsing between the plea and the Petitioner's stated desire to withdraw his guilty plea did not constitute significant delay. While time alone does not provide an adequate basis for denying a motion to withdraw a plea, *United States v. McCoy*, 155 Fed. Appx. 199, 203 (6th Cir. 2005), Mr. Taylor had in fact directed his counsel much earlier to move the trial judge to set the plea aside and move forward with a trial.

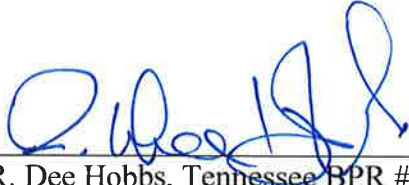
Under all of the circumstances that are reflected in this record, it is evident that the district court abused its discretion in denying the motion to withdraw the guilty plea without making a meaningful inquiry into the Petitioner's claims, especially his contention regarding the effectiveness of his counsel. In its subsequent ruling, the Sixth Circuit missed an opportunity to provide guidance for the protection of a most important constitutional requirement – the right to trial by jury on a not guilty plea. This Court can remedy these omissions by granting the Petition of Mr. Taylor.

CONCLUSION

For the foregoing reasons, Petitioner Daniel J. Taylor respectfully prays that this Court grant certiorari to review the judgment of the Sixth Circuit in this case.

This 29th day of March, 2018.

BELL & HOBBS

By: 

R. Dee Hobbs, Tennessee BPR #10482
Appointed Counsel for Daniel J. Taylor
P.O. Box 11308
Chattanooga, TN 37401
Email: bell.hobbslaw@gmail.com
(423) 266-6461/ Fax 756-8521