

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUAN GERALDO ARREDONDO, also known as Bobby,
Defendant - Appellant,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL
FOR THE FIFTH CIRCUIT

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JUAN GERALDO ARREDONDO

QUESTION PRESENTED FOR REVIEW

I. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE A CONFLICT AMONG THE COURTS ABOUT WHETHER RULE 11 F.R.CRIM.P. REQUIRES THE TRIAL JUDGE TO PERSONALLY ADVISE A DEFENDANT OF THE TERMS OF AN APPELLATE WAIVER.

LIST OF INTERESTED PERSONS

1. Hector Miguel Diaz-Osuna, Ricardo Gonzalez-Porras, Jesus Beltran-Rodriguez, Ernesto Granados, Codefendants;
2. Drew McLemore Martin, attorney for Arredondo in district court;
3. Julie Ann Epps, attorney for Arredondo on appeal;
4. Patrick A. Lemon, Gregory L. Kennedy, Jerry L. Rushing & Gaines Cleveland, Assistant United States Attorneys for the Southern District of Mississippi;
5. Honorable David C. Bramlette, III., Trial Judge.

SJULIE ANN EPPS
ATTORNEY FOR PETITIONER

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OPINIONS BELOW

Juan Geraldo Arredondo entered a plea of guilty in the district court for the Southern District of Mississippi to an indictment charging him with one count of conspiring to cause or with aiding and abetting in causing a mutiny at the Adams County Mississippi Correctional Center, a federal correctional institution. ROA.117-21. Prior to his plea, he signed a plea agreement containing an appellate waiver. ROA.276-81.

After the district court accepted his plea and sentenced him,¹ he nevertheless appealed, and the government moved to dismiss or for summary affirmance based on the appellate waiver. Notwithstanding that the trial court failed to personally address Mr. Arredondo and inform him of the waiver as required by *F.R.Crim.P.*, Rule 11(b)(1)(N), a panel of the Fifth Circuit in an unpublished order granted the government's motion to dismiss on November 17, 2017. *See*, Exhibit A. Arredondo's timely petition for rehearing was denied on January 2, 2018. A copy of that order is attached as Exhibit C.

JURISDICTION

This Court has jurisdiction under 28 U.S.C., §1254(1), which provides that this Court may grant a petition for writ of certiorari by any party to a

¹ *See*, copy of district court judgment attached as Exhibit B.

criminal case after rendition of judgment by a Court of Appeals. This petition is timely, the order of the Fifth Circuit denying rehearing being entered on January 2, 2018. *See*, Exhibit C.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Const., Amendment V (in part):

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

2. *Fed.R.Crim.P.*, Rule 11(b)(1)(N) (in part):

Before the court accepts a plea of guilty . . . the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following . . . the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

3. *USSG*, Amendment 775 (in part):

The government should not withhold such a motion [for the third point for acceptance] based on interests not identified in §3E1.1, such as whether the defendant agrees to waive his or her right to appeal.

STATEMENT OF THE CASE

Mr. Arredondo was charged in one count of a multi-count indictment alleging that he participated in a riot over conditions at a federal detention center used primarily to house persons convicted of federal crimes who would ultimately face deportation. Throughout, Mr. Arredondo maintained

that he had not intentionally participated in a riot but rather had tried to help officers who were trying to quell the uprising.

Despite hundreds of hours of video of the events, there is no recorded evidence that Mr. Arredondo intentionally rioted to encouraged or aided anyone else to do so. The evidence against him consisted of arguably ambiguous statements of a limited number of other inmates who presumably received consideration from the government for incriminating others.

On appeal, Mr. Arredondo unsuccessfully argued that the appellate waiver was involuntary and, therefore, unenforceable because the trial judge failed to comply with Rule 11(b)(1)(N) by personally addressing him and advising him of the terms of the waiver to ensure he understood the waivers.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE A CONFLICT AMONG COURTS FROM THE CIRCUITS ABOUT WHETHER RULE 11(b)(1)(N), *F.R.CRIM.P.* REQUIRES THE TRIAL JUDGE TO PERSONALLY ADDRESS THE DEFENDANT AND INFORM HIM AND ENSURE HE UNDERSTANDS THE TERMS OF ANY APPELLATE WAIVER OR WHETHER ALLOWING THE PROSECUTOR TO SUBSTITUTE IS SUFFICIENT.

On appeal, after the government moved to dismiss or for summary affirmance citing the appellate waiver, Mr. Arredondo responded that the waiver was involuntary pointing to the trial court's failure to personally

address him and inform him of the plea agreement as required by *F.R.Crim.P.*, Rule 11(b)(1)(N). That rule expressly requires that

[b]efore the court accepts a plea of guilty . . . the **court must address the defendant personally in open court**. During this address, the **court must inform the defendant of, and determine that the defendant understands**, the following: *** the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence [emphasis added].

At Mr. Arredondo's guilty plea hearing, the trial court failed to do so, instead relying on the prosecutor who informed Arredondo that as part of the plea agreement, "the defendant has agreed to waive the following rights: The right to appeal the conviction and sentence or the manner in which the sentence was imposed on any ground whatsoever. . . ." ROA.205. Because Mr. Arredondo's command of English is limited, the Court then asked the English/Spanish translator to "ask this defendant if he understands what the United States Attorney has said and if he agrees with it." ROA.208. In short, the trial court gave no explanation to Mr. Arredondo about what waiving his right to appeal actually meant.

On appeal, Mr. Arredondo argued that the trial court's failure to personally address him and inform him of the effect and meaning of the waiver as required by Rule 11, coupled with his limited command of English, rendered the waiver involuntary and without effect. Mr. Arredondo

is a Mexican citizen. Because it is not clear that he would have entered a guilty plea if he had understood that he was waiving his right to appeal errors at sentencing, Arredondo argued that the appellate court should hear his appeal on the merits because the failure of the trial court to personally address him violated his substantial rights.

Mr. Arredondo was only charged with one count, and it carried a maximum of ten years. Because it was clear prior to his plea that because of potential enhancements to his base offense level, his guideline sentence was above the ten-year maximum, he had little to gain by entering a plea that waived his right to appeal the trial court's imposition of those enhancements. Consequently, he had almost nothing to lose by going to trial. This is particularly true because despite hundreds of hours of video of the riot, there is no video evidence showing that Mr. Arredondo intentionally rioted or encouraged anyone to do so.

Mr. Arredondo has consistently claimed that, although he was part of a group lawfully negotiating prior to the riot for better conditions at the prison, once other inmates became angry and rioted, he tried to calm rioting inmates. At great personal peril, he actually helped to rescue a guard who was under siege. That officer confirmed at the sentencing hearing that two inmates did provide him such assistance; however, because of his injuries at

the time, he was unable to say whether one of them was Mr. Arredondo. ROA.256.

In other words, had Mr. Arredondo gone to trial, although the testimony of government informants if believed by the jury might have been sufficient to support a verdict, he could have mounted a credible defense that although he took certain actions during the riot, he lacked intent to aid rioters or conspired to do so. He could have impeached any informant testimony by showing they stood to gain sentencing reductions for their testimony. He might well have been able to convince one or more jurors that his attempts prior to the riot to secure better conditions did not extend to encouraging a violent prison riot to obtain them.

In summary then, Mr. Arredondo has shown that he would not have entered a plea agreement containing an appellate waiver if he had understood he could not appeal sentencing errors. That is so because such an agreement provided little, if any, benefit to him with the waiver attached. Any benefit from acceptance of responsibility would not have brought his guideline range below the ten-year maximum if the other enhancements were imposed. Mr. Arredondo could have obtained the reduction for acceptance simply by entering a timely open plea. In other words, there was

no benefit to him from entering into a plea agreement with an appellate waiver.

On appeal, the Fifth Circuit rejected Mr. Arredondo's argument that his waiver was involuntary. In support of that finding, the Court cited *United States v. Higgins*, 739 F.3d 733 (5th Cir. 2014). *See*, Exhibit A, p. 2. In that case, the Court found that the Fifth Circuit would "enforce a waiver on appeal regardless of whether the district court addressed it directly where the record indicates the defendant has read and understood his plea agreement and has raised no questions about the waiver [citations omitted]." *Id.* at 736.

There are several problems with the Fifth Circuit's reliance on *Higgins*. First of all, it is factually distinct from Arredondo's situation. One significant difference is that there is no indication that Higgins had difficulty reading or understanding English. Therefore, although it may be reasonable to infer in Higgins' case that he read the agreement and therefore understood its terms, it is not reasonable to infer reading the agreement was sufficient for a Mexican citizen whose command of English, particularly written English, might be limited.

Another significant factual difference is, as Mr. Arredondo has shown, he did not benefit from the plea agreement. He would have received the same acceptance reduction by simply entering a timely plea without the

agreement. Amendment 775 to the Sentencing Guidelines, which became effective in November 2013, states that “[t]he government should not withhold such a motion [for the third point for acceptance] based on interests not identified in §3E1.1, such as whether the defendant agrees to waive his or her right to appeal.”

Next, the decision in *Higgins* does not specifically address Rule 11’s requirement that the Court personally address the defendant in open court and inform him of the terms of the plea agreement and any appellate waiver. Moreover, it places the burden to ask questions about the waiver rather than on the court to explain the waiver.

Other courts that have addressed the rule’s requirement that the judge personally provide explanation and have found that a trial court commits clear and obvious error where the judge relies on the prosecutor to recite the terms of the appellate waiver rather than personally informing the defendant. *See, United States v. Goodson*, 544 F.3d 529 (3rd Cir. 2008); *Hopson v. United States*, 2010 WL 1409659 (W.D. Pa, decided 04/01/2010) [unreported].

Had the drafters of the Rule believed that the written plea agreement or having the prosecution address the waiver was sufficient, it would not have included a specific requirement that the judge address the defendant

and inform him of the waiver. *Higgins* and other Fifth Circuit decisions fail to take the Rule's intent into account.

Because the Fifth Circuit's decisions, including the one in this case, conflict with the clear mandate of the rule and with decisions from other courts, this Court should grant certiorari because even though the opinion in this case is unreported, it is clear the Fifth Circuit's rule has been and will continue to be applied to other defendants because of its reported decisions.

CONCLUSION

This Court should grant certiorari and reverse because the Fifth Circuit in this and in past cases, as detailed in its order dismissing Mr. Arredondo's appeal, has decided an important question that has not been definitely decided by this Court but which should be decided because it has an impact on the standard to be used in applying Rule 11 and the due process rights of numerous federal defendants in the Fifth Circuit.

Respectfully submitted,

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