

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Gabriel Mirabal — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)
District of New Mexico
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Tenth Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gabriel Mirabal
(Your Name)

USP P.O. Box 3900
(Address)

Adelanto, CA 92301-0710
(City, State, Zip Code)

None
(Phone Number)

QUESTION(S) PRESENTED

How can a defendant protect themselves against prosecutorial misconduct? The defendant can prove vindictiveness from a U.S.D.A. after the defendant filed a motion to remove the prosecutor after the defendant learned the prosecutor lied to a police officer and concerned he would not receive a fair trial. The prosecutor used tactics that imposed disadvantages throughout proceedings, abused judicial process, produced and elicited perjured testimony to ensure a conviction. These were concerns that were in the defendant's motion.

How does a defendant protect his right to appeal and have effective counsel represent him? A defendant filing a motion to withdraw his counsel based on breakdown of communication and grounds pursued on appeal. The indigent defendant should not be forced into appeal briefs filed on his behalf without his consent.

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** 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: *N/A*

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CASES

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The Prosecutor may not prosecute a defendant for vindictive reasons.¹⁸⁴²
In addition, the prosecutor may not knowingly present false testimony and has a duty to correct testimony that he or she knows to be false.¹⁸⁴³ (38 Ge O.L.J. Ann. Rev. Crim Proc. (2009)).

Baer V. Neal, 2018 BL 9731, 7th circuit No. 15-1933, 1/11/18

STATUTES AND RULES

Rule 26 (A) (1) (2) (iii) Pretrial disclosures

Rule 26 (b) Discovery Scope and Limits

Rule 26 (C) (i) Previous Statement

Rule 26 (g) (1) (Signing disclosures and discovery request, responses and objections) Signature required; Effect of Signature Every disclosure under Rule 26 (a) (1) or (a) (3) and every discovery request, response or objection must be signed by one attorney of record. (A) with respect to a disclosure it is complete and correct as of the time it is made. (B) with respect to a discovery request, response or objection it is: (i) consistent with rules and warranted by existing laws. (ii) Not interposed for any improper purpose, such as to harass, cause unnecessary delay. (iii) neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, the amount of controversy, and the importance of the issues at stake in the action.

OTHER

Rule 26 (3) Sanction for improper certification (Discovery abuse) imposed disadvantages at pretrial and appeals Rule 37, 28 U.S.C. § 1927 abuse of judicial process

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at United States Court of Appeals Tenth Circuit; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix N/A to the petition and is

☐ reported at United States District Court of New Mexico; or,
☒ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or, N/A
☐ is unpublished. N/A

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or, N/A
☐ is unpublished. N/A

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 29 2017.

☐ No petition for rehearing was timely filed in my case. N/A

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: December 13, 2017, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1). N/A

☐ For cases from **state courts**: N/A

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A A N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a). N/A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

violation of the 7th Amendment right to a fair trial
and right to appeal

STATEMENT OF THE CASE

I Gabriel Mirabal filed a Motion in the United States District Court of New Mexico to Remove U.S.D.A. Nicolas Ganjie. Ganjie had been pulled over and arrested on a D.W.I. During the stop the officer asked Ganjie if he had been drinking Ganjie then lied to the officer. The incident was video taped and played on the news and the story in numerous newspapers. The only way that I Mirabal would have a fair trial and other proceedings was to have another U.S.D.A. address the court.

In the Motion I stated if Ganjie can lie to a police officer than he would be willing to lie to the court, jury and or present perjured testimony.

Honorable William P. Johnson Denied my motion. My first Attorney Devon Fooks filed numerous request and Motions for discovery. Ganjie stated there is no outstanding discovery at that time the motion denied. Devon Fooks filed pre-trial motions with what limited discovery he had received they were denied. I had dismissed Fooks for asking the court to seal the proceedings to protect the disclosure of the C.I. Robert Romero to the public and failing to use investigators. Ganjie could not ask the court to be sealed so he asked Fook to do so. I then got Ryan J Villa appointed during the hearing for a full discovery that Fook said he had never received. Ganjie again stated there was no outstanding discovery. Honorable William P. Johnson ordered a reissued discovery. Upon review of the new discovery I noticed were D.E.A reports had been doctored to incriminate Mirabal with alleged S.O.S with new information from a cooperating co-defendant Anaya. During the trial however more discovery was produced by Ganjie that would have been favorable to the defense during pretrial motions. I was not even aware of this evidence until shown during trial.

The exhibits were photos of Anayas red infinity that were limited by Ganjie, videos of Mirabal being stopped on March 21, 12, Video of Mirabal on February 14, 13 and destruction of evidence of alleged narcotics from 3-21-12 and 4-19-12.

All of this evidence could've been favorable to defendant during pre-trial motions for attacking search warrants and suppression of wire taps and attacking CI in motions. Mirabal didn't even have the knowledge of this evidence to discuss objections or defenses with his lawyer. All of the photos of Anaya's infinity were never disclosed by Ganjie. The United States Court of Appeals for the Tenth Circuit could not make a determination based on the pictures provided. If the court could not make determination based on the pictures how would a jury. Also during pre-trial Deputy Barker stated under oath that he found the alleged narcotics during search on 2-14-13. In trial Deputy Barker testified that a Deputy Young found them and handed them to him. There was two police reports of both officers finding the package. Ganjie never questioned any of the Deputies as to the facts of the search or produced them as witnesses to be cross examined by defense. Mirabal argues Deputy Barker committed perjury about the search, stop and seizure.

Ganjie had the information of the possibility that another Deputy found the drugs and failed to investigate and correct to make sure Barker did not falsify a police report and commit perjury. Ganjie knowingly put Anaya on the stand to testify to lie produced in his debriefment.

Ganjie had 3 years to investigate the truthfulness of Anaya's debriefment with the knowledge Anaya lied in past cooperation. Anaya stated Mirabal received kilos with the word Chapo stamped on them.

The package of cocaine taken from Anaya's car had no such stamp as well as any packaging material found in Mirabal's home. Officers testified they never seen such a thing. Anaya also testified to unobserved drug and gun deal on 2-14-13. (stating Mirabal was at Mathew Richardsons house). Scott Godier also testified to this based on Anaya's debriefment not on any observation by him or any officers.

• Ganjie produces an unknown substance during trial as a drug cut only to bolster his case not to prove facts therefore produced and elicited perjured testimony.

^{Money} Ganjie produced this in tampered discovery after pre-trial motions and knowingly produced questions about Mirabal's whereabouts to the jury and case in chief through Anaya and Goddeer without facts of Mirabal's alleged location. Anaya was in prison, the DEA and Sheriffs lost Mirabal for 30 minutes with no visual on Mirabal or GPS at any location or residence. This speculation and hearsay as well as the lies presented by Anaya should have never been introduced at trial. Any evidence produced from that residence should have never been presented to the jury. Anaya also testified to a meeting between Mirabal and his cousin on 2.14.13 again Anaya is in prison and can't state facts. The only facts he knows is what is in the discovery he uses this information to his advantage to get out of prison.

Ganjie also withheld Brady Material concerning Anaya's Drug use, illegal activity and violence while incarcerated, but produced pieces of it during Mirabal's sentencing. Ganjie and Anaya stated there was no agreement for Anaya's benefit for testifying, but days later Anaya is released from prison after testifying. Ganjie also used Anaya's debriefment of alleged cocaine suppliers (Joe Flores) but again Anaya lied on the stand. Ganjie produces a statement to the court from Anaya's lawyer Michael Alarid that Anaya told him Mirabal sold 250 ounces of crack cocaine as a favor for Ganjie to enhance Mirabal's sentence. These are just a few of the injustices Mirabal endured during his proceedings and still enduring in his lengthy conviction sentence. Ganjie vindictively abused the judicial process imposing disadvantages throughout the case to insure a conviction and lengthy sentence because Mirabal filed a motion to remove Ganjie from his case and insure a fair trial and court proceedings. Ganjie knowingly misinterprets phone discussions during his appeal reply.

State Ment of the Case Ground Two:

Mirabal met with Counsel Mark T Baker in Santa Fe, N.M North Facility. During this meeting Miribal explained the issues that he wanted brought up in appeal and requested to review a draft of appeal brief before it was filed. Mirabal did not want an appeal brief filed that was not in his best interest. Mark Barker agreed to Mirabals request understanding Mirabals reluctance due to motions and arguments made totally disregarding the facts in the case and Mirabals input. Mirabal was transported but upon arrival in Victorville Mirabal called Barker giving him all contact information. Mirabal had to call Barker and Carter Harrison since they never set up legal calls. Mirabal never recived a copy of the brief until it was due to the courts. After reading the brief it did not have any issues agreed upon. Mirabal imeaditly got ahold of barker dismissing him. Mirabal than wrote the court and explained the situation and briefly discribed issues that were important to his case and Mirabal needed counsel to argue them in court. Mirabal's Motion was denied and issues set aside based on not showing faults. Mirabal was not aware of full extent of how or what to file due to his ignorance of the law. Barkers Brief was denied but expected from Mirabal. Mirabal belived barkers Brief lacked merit and rushed. Because Mirabal is indigent should not bar him from having effective counsel. Mirabal filed his appeal argument and Motion in a timely manner and made a showing to amend his appeal brief with additional issues. The United States Court of Appeals in the Tenth Circuit was errornous denying Mirabals Motion for New counsel.

REASONS FOR GRANTING THE PETITION

Mirabal comes before the court now seeking relief from these injustices he endured. Mirabal asks the court to consider the importance of this issue and the public interest of being protected from prosecutorial misconduct. A Prosecutor should be held to a higher standard to uphold the law. Gargie should have removed himself from the case to not cause issues during proceedings, to protect the Governments case, and insure that all the transcripts, discovery and facts were passed to the next prosecutor. The Judges should not be manipulated and should have a full scope of the case to keep them from making erroneous decisions that might be later reviewed or overturned. A prosecutor under investigation or arrested for a crime should not be able to prosecute a defendant charged with a crime.

The District Court of New Mexico was erroneous to not grant Mirabals Motion and remove gargie from the case.

Mirabal comes before the court for the relief of a vacated sentence and his conviction be overturned

Reasons for Granting on Ground Two.

Reason for granting on withdrawal of Counsel at a Appellate level is to have case law protecting clients issues and cases on appeal. Setting a Guideline for the Defendants best interest and giving the defendant an opportunity to review appeal briefs, That way a defendant has a chance to correct a Brief filed on his behalf. An Attorneys Client should not be forced to accept any argument that the attorney provides.

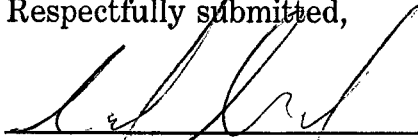
A defendant should also be held to a standard of filing his motion to withdraw counsel in a timely fashion stating reasons for the request, and make a showing to pursue grounds on appeal that were not yet raised and are not frivolous.

CONCLUSION

Mirabal's conviction should be vacated
and conviction overturned

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: February 8th 18