

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER JAMES WITHROW — PETITIONER
(Your Name)

vs.

UNITES STATES OF AMERICA — RESPONDENT(S)

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)

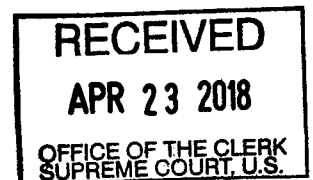
PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER JAMES WITHROW
REG. NO. 13874-091
FCI ENGLEWOOD-SATELLITE CAMP

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(Address)

LITTLETON, CO 80123-1159
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1. Did the District Court deny Petitioner the Constitutional Right to Habeas Corpus by adjudicating his §2255 Motion on the District Court's interpretation of Petitioner's §2255 claim which Petitioner stated was not his claim in the Motion to Amend that the District Court construed as a Successive §2255 Motion?
2. Was the District Court's failure to give Petitioner notice that it would construe the Motion to Amend as a §2255 Motion, such that Petitioner could withdraw the Motion and make necessary corrections, a denial of his Constitutional Right to Petition the Government for a Redress of Grievances?

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:

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

28 U.S.C. §2255

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OTHER

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 D to the petition and is

☐ reported at _____; 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☒ is unpublished.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 B&C to the petition and is

☐ reported at _____; 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 _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: NOVEMBER 7, 2017, and a copy of the order denying rehearing appears at Appendix 6D.

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

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

☐ For cases from **state courts**:

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

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- A) Article I, Section 9, Clause 2. Habeas Corpus
- B) Amendment 1 - No prohibition of the Right to Petition the Government for a redress of grievances.
- C) Amendment 5 - No person shall be compelled in a criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law...
- D) Amendment 6 - In all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defence.

28 U.S.C. 2255 Et.Seg

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STATEMENT OF THE CASE

I

Course of Proceedings in the §2255 Case now Before this Court

At sentencing, Mr. Tom Fleener, representing Petitioner, spoke at length about his frustration with the proffers and plea being done before Mr. Melinkovich (Prior Counsel) saw a "lick of discovery". Appx E. pgs. 12-19. Petitioner, to date, has yet to see any discovery. Letters to the U.S. Attorney were rebuffed, and, neither defense attorney had discovery in the Client File when it was turned over. Tom Fleener was permitted to review the discovery days prior to sentencing. Appx E. pg. 16. Counsel's advice to waive the indictment, proffer, waive trial and plea, and his objections to the Pre-Sentence Investigation Report (PSIR) were made without any investigation of the case. Incredulously, AUSA Healy suggested to the District Court ("D. Court") that reading the Complaint is the equivalent of reviewing discovery. Appx. E. pg.22

On June 23, 2016, Petitioner filed his §2255 Petition. Petitioner made the error of focusing most of his argument on one of the sub claims of his §2255 Claim of Ineffective Assistance of Counsel ("IOC") for failing to conduct an investigation of the case before inducing Petitioner to waive indictment, waive protection from self incrimination, and waive right to trial. Petitioner recognized the error in the manner in which his §2255 claim was presented. Petitioner sought the assistance of a legal person in the law library to prepare a Motion to Correct the §2255 IOC Claim so it could not be misconstrued as a Johnson claim. (Johnson vs. U.S., 135 S. Ct. 2551 (2015)) Petitioner then prepared the Motion to Amend clarifying that his claim was IOC. 4-5 weeks later the Gov't filed it's Response to the §2255 which also included a response to the Motion to Amend. Petitioner then filed his Reply brief.

The District Court did not rule on the Motion to Amend instead it incorporated its opinion on the Motion to Amend in the Order denying the §2255 Motion. Appx. B. Six Months later Petitioner filed a 60(b) Motion which the District Court denied. Appx. C. Petitioner appealed.

II

Course of Proceedings in the Tenth Circuit Court of Appeals now Before this Court.

Petitioner filed his Appellate Brief where the 4 issues centered around 1 issue: The District Court, being told by Motion before the Gov't responded that the §2255 claim was presented in a way the claim could be misinterpreted, yet issuing its ruling on the §2255 claim that Petitioner said in his Motion to Amend was not his §2255 claim. The Appeals court did not address how Petitioner's Constitutional Right to Habeas Corpus was not denied by the District Court.

Petitioner's Appendices were accepted for filing. In the Appendices are documentary evidence demonstrating that had the District Court granted the Motion to Amend the Ineffective Assistance of Counsel claim had merit. The Appeals Court ruling was issued on 11-7-2018. Appx. D. Petitioner reviewed the ruling and recognized the Appeals Court did not apply the Law of the Case when considering the District Court's rejection of Petitioner's Motion to Amend. During the criminal proceeding Petitioner was held to have made truthful statements to the District Court and Gov't. Appx. E, pgs. 6-10, 15 & 23. Petitioner made verified statements in his Motion to Amend, Reply Brief, and 60(b) Motion but the District Court did not give Petitioner's statements the presumption of truthfulness according to the Law of the Case in his Motion for Reconsideration filed on 12-22-2017 but that Motion was also denied. Appx. D. This Petition for a Writ of Certiorari ensued.

REASONS FOR GRANTING THE PETITION

Petitioner filed his §2255 making one claim; Counsel Melinkovich was ineffective for failing to investigate the case. Melinkovich saw no discovery and made no investigation other than reading the complaint yet counseled Petitioner to waive the indictment, proffer without protections, plea without caveats, and filed objections to the PSIR leaving Mr. Fleener, (who replaced Melinkovich) in a compromised position at sentencing. Appx. E pgs. 12-19. Petitioner, Pro Se with no legal experience, focuses his §2255 argument on one of the effects of Melinkovich's failure to investigate the case. 2½ months later Petitioner makes the attempt to clarify that the §2255 claim is Ineffective Assistance of Counsel For Failing to investigate the case by citing other effects of that failure to investigate through filing a Motion to Amend 3 weeks before the Gov't's Response was due. The District Court treats the Motion to Amend as a belated attempt to add new claims and denies the Motion. The §2255 is adjudicated on the District Court's interpretation or Petitioner's claim that Petitioner told the District Court was not his claim. Appx. B

The Supreme Court of the United States ("SCOTUS") has given the lower court latitude to interpret a Pro Se litigants filings for the purpose of seeing that justice is done for the unrepresented as equally as the represented litigants. We are now in a time when an Appeals Court affirms a denial of a Habeas Corpus Petition on claims the Pro Se Prisoner Litigant stated were not what his Habeas Claims were. SCOTUS should feel compelled to grant Certiorari to define when a District Court has stripped a Habeas Petitioner of his voice by construing a Habeas Petitioner's claim liberally yet incorrectly and adjudicating that Habeas Petition on the Court's version not Petitioner's version of the claim(s).

In Haines vs. Kerner, 404 U.S. 519, 520-21 (1972) SCOTUS opened the door for Courts to liberally construe a Pro Se litigants filing to do substantial justice. The District Court in this case went too far and enforced its interpretation of Petitioner's claim(s) such that Petitioner never actually had his claim adjudicated. The Appeals Court, in its affirmance by denying the application for a COA, set a precedent for a Habeas Petition to be denied on the Court's version of Petitioner's claim(s) over the Petitioner's objections that those were not his claims. The Lower Courts, under the guise of Haines vs. Kerner liberal construction, suspended Petitioner's Constitutional Right to Habeas Corpus by replacing Petitioner's claims with the Court's version of the claim(s) thereby stripping Petitioner of his Constitutional Right to Petition the Government for a Redress of Grievances. (U.S. Constitution Amendment 1)

In this case, Petitioner took steps to correct or clarify his Habeas claim because he didn't want the District Court to misconstrue the claim. Petitioner filed a Motion to Amend (A well seasoned attorney would have titled it a "Motion to Correct") almost a month before the Gov't's Response was due, so, it was timely filed. Petitioner's goal, in the Motion to Amend, was to make it clear the \$2255 claim was Ineffective Assistance of Counsel for failure to investigate the case. Failure to investigate the case, pursuant to U.S. vs. Medlock, 645 Fed. Appx. 810, 814-817 (10th Cir. 2016), means counsel's advice to waive the indictment, proffer without protection from self incrimination, plea without protections or caveats, and object to the PSIR were uncounseled. The District Court focused on the subclaims - the harms - of counsel's failure to do any investigation of the case other than read the Complaint. Appx. E pg.23. The fact that Counsel never saw "a lick of discovery" Appx E pg.19 before the waivers, proffer, plea, or PSIR is unrefuted and on record. Appx. E pgs.12-20. Petitioner implores this Court to grant Certiorari to define whether the District Court should first determine if there is cause then prejudice

according to Strickland vs. Washington, 466 U.S. 668, 687 (1984). Prejudice is not a claim but rather an outcome of cause. Cause is the Habeas Claim but in this case Petitioner's citation of prejudices arising from the cause were held by the District Court to be additional "claims" whereby the Motion to Amend was denied as a belated attempt to add "new claims" hence, a Successive §2255. Without the Motion to Amend being granted the §2255 Motion was going to fail making the denial of the Motion to Amend a denial of the §2255 Motion.

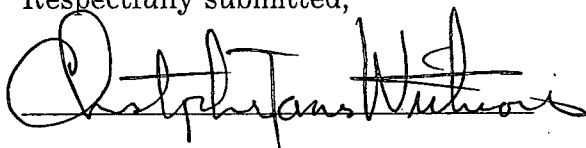
SCOTUS held in Castro vs. U.S., 540 U.S. 375, 383 (2003) that a District Court should give notice to a Pro Se Litigant of its intent to treat their otherwise labeled Motion as a §2255 Motion so the Pro Se Litigant has the opportunity to withdraw the Motion and make the necessary corrections. The Court's reasonings in Castro appear to be limited to a pre-§2255 filing yet in this case Petitioner was prejudiced by the District Court not giving Petitioner notice that the Motion to Amend was going to be treated as a Successive §2255 then denied. Petitioner could have made the necessary corrections and resubmitted the Motion to Amend so it was not treated as a Successive §2255 Motion. The result would have been Petitioner's §2255 being adjudicated on his claim not the District Court's misconstrued version of his claim. SCOTUS has an excellent opportunity, here in this case, to clarify whether or not Castro applies in circumstances like Petitioner's. Court procedures such as Motion classification or reclassification acting as a bar to a Petitioner's Constitutional Right to Habeas Corpus is in itself unconstitutional.

Petitioner's §2255 Motion was adjudicated on the District Court's interpretation of the claim not the Petitioner's actual claim. By granting this Petition for a Writ of Certiorari this Court can take the opportunity to require the Lower Courts adjudicate the Pro Se Litigant's claims squarely on the merits and refrain from substituting a Court version of the claim for the Petitioner's claim. In addition the Court may grant Certiorari to expand its holding in Castro so that a Petitioner's substantive rights are not foreclosed upon simply because he's not an experienced Motion writer.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ralph J. Williams". The signature is fluid and cursive, with a large initial "R" and "J".

Date: April 5, 2018