

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

EDWARD JEFFERSON
(PETITIONER)

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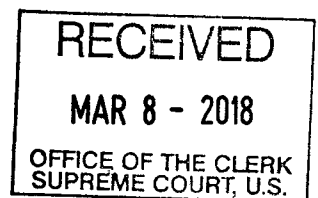
v.

United States
(Respondent)

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES

COURT OF APPEALS FOR THE EIGHTH CIRCUIT

(PRO SE)



QUESTIONS PRESENTED FOR REVIEW

1) Did The Eighth Circuit Court of Appeals Exceed The Limited Scope of the COA Analysis In Violation of Buck v. Davis ?

2) Did The Eighth Circuit Court of Appeals Err By Denying The Petitioner's Claim That Counsel Was Constitutionally Ineffective For Failing To Properly Subpoena A Favorable Defense Witness By Filing The Wrong Paperwork With the Trial Court?

3) Did The Eighth Circuit Court of Appeals Err By Denying The Petitioner's Claim That Counsel Was Constitutionally Ineffective For Failing To Properly Prepare Him For Entry of His Guilty Plea?

List of Parties and Corporate Disclosure Statement

Under Rule 29.6, the Petitioner discloses that:(a) He is not an affiliate of a publicly - owned corporation, and (b) No publicly - owned corporation, not a party on appeal, has a financial interest in the outcome.

by: Edward Jefferson

Edward Jefferson, Pro Se

REG. No. 20644-045

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ARGUMENT

- 1) The Eighth Circuit exceeded the limited scope of the COA Analysis in violation of **Buck v. Davis**. 6
- 2) The Eighth Circuit Court of Appeals erred by denying the Petitioner's claim that reasonable jurists could debate whether the District Court committed reversible error by denying Petitioner's claim that counsel was constitutionally ineffective for failing to properly subpoena a favorable defense witness by filing the wrong paperwork with the Trial Court. 7

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Jefferson v. United States, 2017, U.S. App. LEXIS 24810

JURISDICTIONAL STATEMENT

The judgement of the United States Court of Appeals for the Eighth Circuit was entered on October 3, 2017. (See Exhibit #1) Rehearing en banc and rehearing by the panel were denied on December 7, 2017 (See Exhibit #2)

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

CONSTITUTION, STATUTES, REGULATIONS, AND RULES

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STATEMENT OF RELEVANT FACTS OF THE CASE

I, the Petitioner, Mr. Edward Jefferson, filed a timely § 2255 Motion on March 17, 2015. I raised 22 claims for relief.

On November 25, 2015, the district Court denied my § 2255 Motion, including my request for an evidentiary hearing and certificate of appealability.

Although I did not receive the District Court's Order denying the § 2255 Motion. I thus timely filed a Notice of Appeal with the Appeal's Court on January 25, 2016, after being notified by a friend who checked my docket sheet, that my § 2255 Motion had been previously denied on November 25, 2015.

The Appeal's Court denied my Notice of Appeal on May 9, 2016, stating that my NOA was untimely, and therefore they lacked jurisdiction.

I then filed a Petition for rehearing on June 15, 2016.

The Appeal's Court denied my Petition for rehearing on July 13, 2016.

Following, I filed a Rule 60(b) Motion for relief with the District Court on July 26, 2016.

The District Court denied the 60(b) Motion on November 29, 2016.

On the 29th of December, 2016, I filed an appeal with the Appeal's Court.

On May 23, 2017, the Appeal's Court recalled the mandate and vacated the judgement.

On July 14, 2017, I filed an Application for a Certificate of Appealability with the Appeal's Court.

The Appeal's Court denied my application for Certificate of Appealability on October 3, 2017.

On November 6, 2017, I filed a Petition for Rehearing with the Appeal's Court.

On December 7, 2017, the Appeal's Court denied the Petition for Rehearing.

This Petition seeks review of the District Court's denial of the 2255 Motion; and the Appeal's Court subsequent denial of the Application for Certificate of Appealability.

A) In my § 2255 Motion, I, Mr. Jefferson, argued that my Sixth Amendment constitutional right to have the assistance of counsel for my defense was denied when my attorney failed to properly subpoena a favorable defense witness by filing the wrong paperwork. (Exhibits 3-6)

At trial, prior to my counsel putting on evidence for my defense, I noticed the absence of my defense witness, Lindsey Parks. After alerting my attorney of her absence, counsel informed the court that he had sent the absent witness a subpoena, stating: "We filed an order for a subpoena for Mr. Proctor and Ms. Parks. I guess they never received the subpoenas, so my client wants to speak with you about that." (Exhibit 7) Upon it's investigation, the court discovered that defense counsel "didn't provide the right paperwork" to subpoena Ms. Parks. Further, the court stated to counsel that it did not intend to issue a subpoena because counsel "didn't do what was required to get those subpoenas issued." (Exhibit 8)

As a result, Ms. Parks was not subpoenaed.

In trial, the government presented to the jury pictures of me, Mr. Jefferson, handing it's primary witness and leader of the alleged cocaine conspiracy, Alejandro Corredor, a box. The government's witnesses, Agent Mark King, and Mr. Corredor both testified that the exchange was a drug-related transaction. (Exhibits 9 -18)

I testified in my own defense that the series of photographs were not pictures of a drug transaction, but instead, pictures of me handing Corredor a box of concert flyers Ms. Parks had previously created and delivered to me for a joint concert being held by both, me and Corredor. (Exhibits 19 - 21)

Further, I attached an Affidavit to my § 2255 Motion from Ms. Lindsey Parks. Ms. Parks stated that she was notified by my counsel, James Brady, prior to trial, and Mr. Brady asked if she would be willing to testify in regards to the concert flyers she had created, and delivered to me. Ms. Parks agreed to do so with the understanding that she would be sent a subpoena at the request of her employer at the time. My attorney then asked Ms. Parks for her address, then informed her that she would be receiving a subpoena, and was therefore unable to testify on my behalf. (Exhibit 22)

The district Court denied my claim. (Exhibit 23) The District Court stated, "This claim does not entitle Jefferson to relief because, even assuming Brady's failure to properly subpoena Parks, constitutes deficient performance, Jefferson has not shown prejudice." Further, the Court states that I argued that Parks would have testified that the box contained the

concert flyers. But Parks affidavit does not suggest this testimony. In addition, "Parks was not present at the time of the meeting, so she cannot testify about the contents of the box at exchange. At most, she might have testified that the box, at some point, contained concert flyers. Because her testimony would not have changed the relevant facts at trial, Jefferson has failed to show prejudice."

I then filed an Application for Certificate of Appealability requesting for the Appeal's Court to grant the Application on both the procedural question concerning whether I was entitled to a hearing and on the substantive question of whether counsel's failure to correctly subpoena the witness was constitutionally ineffective assistance. (Exhibits 24 - 27)

B) The Appeal's Court denied the motion stating, "The Court has carefully reviewed the original file of the District Court, and the application for a Certificate of Appealability is denied." (Exhibit 1)

I proceeded to file a Petition for Rehearing En Banc. In the Petition, I argued that the Appeal's Court Panel exceeded the limited scope of the COA analysis pursuant to Buck v. Davis. (Exhibit 28)

The Appeal's Court denied the Petition. (Exhibit 2)

C) In my § 2255 Motion, I, Mr. Jefferson, argued that my Sixth Amendment constitutional right to have the assistance of counsel for my defense was denied when my attorney failed to properly prepare me for entry of my guilty plea. (Exhibits 29 - 32)

Prior to the 2010 conspiracy charge, I was arrested and charged in February, 2008, with possession with the intent to distribute 418 grams of powder cocaine. My then attorney, (Patrick Peters) explained that if I would plead guilty, I would received a guideline sentence of 37 - 46 months based off of being in Criminal History Category I, and Base Offense Level 21.

Counsel also informed me that the maximum sentence I could received was five (5) years.

I was never shown my plea agreement. On October 26, 2009, prior to me signing the plea agreement, I asked counsel if I could read the plea agreement, but he declined my request, stating: "We don't have enough time before the judge arrives, simply sign your name and date and answer 'yes' to all the judge's questions."

Prior to me signing the plea agreement, counsel informed that the government was going to file a separate indictment against me (2010 conspiracy charge) but failed to explain the consequences of the guilty plea relative to applicable sentencing enhancements.

Attorney Peters disputed these events in an affidavit submitted by the government. (Exhibits 33 - 34) Counsel stated that: He and I had received and discussed the plea agreement over a long period of time; He has never told any client to answer "yes" to all the judge's questions; He did not discuss a sentence of 240 months, since my criminal history was low. "I would have told him to expect a guideline sentence, although the ultimate sentence is up to the judge."

The District Court rejected the claim, stating: "This argument is belied by the record and the District Court's colloquy at the plea hearing. For example, Jefferson acknowledged in the plea agreement that 'counsel has fully advised him of his rights and obligations in connection with the plea agreement.' Based on such statements, Jefferson fails to show deficient

performance." (Exhibit 35)

In my Application for Certificate of Appealability I requested for the Appeal's Court to grant the COA on both the procedural question concerning whether I was entitled to a hearing and on the substantive question of whether failure to properly prepare me for entry of the guilty plea was constitutionally ineffective assistance. (Exhibits 36 - 41)

The Appeal's Court denied the Motion stating, "The Court has carefully reviewed the original file of the District Court, and the application for a Certificate of Appealability is denied." (Exhibit 1)

I then re-addressed the claim in my Petition for Rehearing. The Appeal's Court denied the Petition. (Exhibit 2)

The District Court sentenced me to 240 months for possession case 08 - 70 with no explanation. (Exhibit 42)

ARGUMENT

1) The Eighth Circuit exceeded the limited scope of the COA Analysis in violation of Buck v. Davis.

The COA statute sets forth a two step process: an initial determination whether a claim is reasonably debatable, and if so an appeal in the normal course. 28 U.S.C. § 2253. At the first stage, the only question is whether the applicant has shown that "jurists of reason could disagree with the District Court's resolution of his constitutional claims or... could conclude the issues presented are adequate to deserve encouragement to proceed further. "Miller - El. Cockrell, 537 U.S. 322, 327.

Here, the panel reached its conclusion only after it "carefully reviewed the original file of the District Court. "The question for the Court of Appeals was not whether it had carefully reviewed the original file of the District Court; it was whether jurists of reason could debate the issues." Buck v. Davis, U.S. No. 15-8049, 2017. The panel did not phrase its determination in proper terms.

Therefore, the Appeals Court panel decision is erroneous because it exceeded the limited scope of the COA analysis. On these grounds, the Petitioner prays that this Court grants my Writ of Certiorari.

2) The Eighth Circuit Court of Appeals erred by denying the Petitioner's claim that reasonable Jurists could debate whether the District Court Committed reversible error by denying Petitioner's claim that counsel was constitutionally ineffective for failing to properly subpoena a favorable defense witness by filing the wrong paperwork with the Trial Court.

The Supreme Court pronounced that an attorney's failure to research and learn an established point of law constitutes the quintessential example of deficient performance. Hinton V. Alabama, 134 S.Ct. 1081 (2014).

A key component of a fair trial is the right to compel testimony to support the defense's case. U.S. Constitution Amendment VI: Crane v. Kentucky, 476 U.S. 683, 690-91 (1986); Taylor v. Illinois, 484 U.S. 400, 409 (1988). Criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt." Pennsylvania v. Ritchie, 480 US 39, 56, 94, L. Ed 2d 40, 107 S.Ct. 989 (1987). Few rights are more fundamental than that of

an accused to present witnesses in his own defense, see, e.g., Chambers v. Mississippi, 410 US 284, 302, 35 L. Ed 2d 297, 93, S.Ct. 1038 (1973). "The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, with the frame work of the rules of evidence. To ensure that justice is done, it is imperative to the function of courts, that compulsory process be available for the production of evidence needed either by the prosecution or by the defense." UNITED STATES V. NIXON, 418 US 683, 709, 41 L. Ed 2d 1039, 94 S.Ct. 3090 (1974). "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law." Washington v. Texas, 388 US 14, 19, 18 L. Ed 2d 1019, 87 S.Ct. 1920 (1967). "When reviewing compulsory process claims, we are guided by the Supreme Court's opinion in Taylor v. Illinois, 484 U.S. 400, 108 S.Ct. 646, 98 L. Ed. 2d 798 (1988). Taylor established that a defendant does not have an absolute right to compel the testimony of witnesses in his favor. Id. at 414. Rather, the defendant's right to compel testimony must be weighed against "countervailing public interests," including the "integrity of the adversary process, which depends both on the presentation of reliable evidence and the rejection of unreliable evidence, the interest in the fair and efficient administration of justice, and the potential prejudice to the truth determining function of the trial process. Id. at 414-15." United States v. Sparkman, 500 F. 3d 678 (8th Cir. 2007).

The threshold for relevance is quite minimal. All relevant evidence is admissible, except as otherwise provided by the United States Constitution, legislation, or applicable, evidentiary rules, and conversely, all irrelevant evidence is inadmissible. Evidence is relevant so long as it has any tendency, however, slight, to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. United States v. Holmes, 413 F. 3d 770 (8th Cir. 2005); Fed. R. Evid. 401; Fed. R. Evid. 402.

My trial counsel, (James Brady) failed to either comprehend or follow the District Court's rule issuing a subpoena. As a direct result of my counsel's deficient performance, I was denied my right to due process and compulsory process by the District Court as it refused to compel testimony from Lindsey Parks. The Court stated to counsel that it did not intend to issue a subpoena because counsel didn't do what was required to get those subpoenas issued. Counsel attempted to present the testimony of Ms. Parks to the jury, but failed to secure her attendance.

I was denied my right to put before the jury Ms. Parks testimony which might have influenced their determination of guilt. Ms. Parks absence caused prejudice to the truth - determining function of the trial process. Had Ms. Parks testified, her testimony would have made my explanation of the photographed exchange "somewhat more plausible", i.e., that Corredor and I were exchanging a box of flyers for an upcoming concert we had jointly financed. Ms. Parks testimony would have aided the jury in assessing the the relative credibility of Agent King, Corredor, and my testimony. Further, the witness testimony would have been utilized to "create a reasonable doubt in the jurors minds" that the photographed exchange was a drug transaction, and been utilized to challenge the government's theory of the case. (Corredor and Jefferson jointly conspired

to distribute cocaine) Id. United States v. Holmes, 413 F. 3d 770 (8th Cir. 2005).

Ms. Parks excluded testimony would have been relevant, material, and favorable to my defense. As in Holmes case, Ms. Parks did not have to be present at the time of the meeting. Her testimony would have been relevant in accordance to Fed. R. Evid. 401 and 402. Ms. Parks testimony would have given the jury evidence to bolster my defense that the photographed transaction was an exchange of a box of concert flyers; and not a drug transaction as the government's witnesses testified.

The evidence against me at trial was marginal, at best. The government relied heavily, if not solely, on the testimony of Alejandro Corredor, the prosecution's primary witness and leader of the alleged cocaine conspiracy. Corredor's credibility was highly suspect. For instance, he gave two different explanations of the photographed meeting. At trial, Agent King testified that he suspected it was a drug transaction but had no proof, until Mr. Corredor said it was a narcotics transaction during a proffer interview. However, Corredor later testified at trial that he came to my house to pick up some money.

Had Ms. Parks testified, there is a reasonable probability the outcome of the trial would have been different.

The fact that Ms. Parks was not present at the photographed exchange is an improper basis for excluding her testimony.

Reasonable jurists could debate whether counsel was constitutionally ineffective for failing to properly subpoena the favorable defense witness by filing the wrong paperwork with the trial court.

At minimum, the Appeal's Court should have granted my request for an evidentiary hearing.

On these grounds, the Petitioner prays that this Court grants my Writ of Certiorari.

3) The Eighth Circuit Court of Appeals erred by denying the Petitioner's claim that reasonable jurists could debate whether the District Court committed reversible error by denying Petitioner's claim that counsel was constitutionally ineffective for failing to properly prepare him for entry of his guilty plea.

Supreme Court precedent holds both that a guilty plea may be set aside due to the ineffective assistance of counsel, Hill v. Lockhart, 474 U.S. 52, 58 (1985), and that "the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to effective assistance of counsel." Padilla v. Kentucky, 559 U.S. 356, 373 (2010); see also Missouri v. Frye, 132 S.Ct. 1399, 1407-08 (2012); Kimmelman v. Morrison, 477 U.S. 356, 374 (1986) (identifying that a habeas petitioner often will not be aware of an attorney's deficient performance until after the direct appeal concludes). Brady v. United States, 397 U.S. 742, 748, 25 L. Ed. 2d 747, 90 S.Ct. 1463 (1970). The defendant must be aware of the "relevant circumstances and likely consequences" surrounding the plea. A guilty plea is invalid if it is not entered knowingly, voluntarily, and intelligently by the defendant; Boykin v. Alabama, 395 U.S. 238, 242-43, 23 L. Ed. 2d 274, 89 S.Ct. 1709 (1969). A movant must show that "there is a reasonable probability that, but for counsel's errors, [the movant] would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 58-59 (1985).

Inaccurate advice of counsel about the sentencing guidelines or likely punishment does not render involuntary a defendant's decision to plead guilty, so long as the defendant is informed of the maximum possible sentence permitted by statute and the Court's ability to sentence within that range.

United States v. Quiroga, 554 F. 3d 1150 (8th Cir. 2009); see also Pitts v. United States, 763 F. 2d, 201 (6th Cir. 1985)(reciting numerous cases finding that withdrawal of defendant's plea was appropriate in light of counsel's misadvice concerning sentence exposure, both when counsel overstated and under stated defendant's possible sentence).

Grady v. United States, 269 F. 3d 913, 919 (8th Cir. 2001) (Evidentiary hearings on 28 U.S.C. § 2255 motions are preferred, and the general rule is that a hearing is necessary prior to the motion's disposition if a factual dispute exists.).

To obtain relief for ineffective assistance of trial counsel under Strickland v. Washington, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984), a petitioner must show that "counsel's representation fell below an objective standard of reasonableness" and that this "deficient performance prejudiced the defense." Id. at 687-88.

Fed. R. Civ. P. 11 (c)(1) "the Court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances...."

A) Counsel misinformed me that the maximum sentence I could receive for the 2008 possession case was five years. Further, he failed to advised me of the District Court's ability to sentence me within a 20 year range, as required in Quiroga. Counsel Peters Affidavit corroborates my claim as he stated; "I did not discuss a sentence of 240 months (beyond the range of punishment in the plea agreement), since Jefferson's criminal history was low. I would have told him to expect a guideline sentence, although the ultimate sentence is up to the judge. "Counsel Peters informed me that my guideline range was 37 - 46 months, but failed to inform me that the judge could sentence me to a maximum of 20 years, instead of 5 years.

Had I properly been informed by counsel that I faced a 20 year maximum sentence, and the Court's ability to sentence me within that range, I most certainly would have pled not guilty and exercised my right to go to trial.

Moreover, during the presentencing process, there was no recommended guideline range of 20 years for the 2008 possession charge within the PSR. Therefore, I was unaware and unable to object. At sentencing, I was blindsided by the Court's sentencing of 240 months, 194 months above the high-end guideline range of 46 months, that I was told by counsel I could possibly receive. (I tried to obtain a copy of my PSR to attach as an exhibit but my case manager informed me B.O.P. policy prohibits inmates from having copies).

B) I was never shown my plea agreement by counsel Peters prior to, or after my signing at the change of plea hearing. Therefore, I did not know that I faced a 20 year maximum sentence and that the judge, could sentence me with that 20 year range. Further, I signed the plea agreement after being instructed to do so by counsel Peters. At the time of the signing, directly prior to the colloquy, I had no reason to believe counsel Peters misadvised me of my rights and obligations in connection with the plea agreement. I believed that I faced a 5 year maximum sentence and would likely be sentenced within my guideline range of 37 - 46 months as I was told by counsel Peters. Not until almost 3 years later, June 2012, when I was sentenced to 240 months for the 2008 possession case, did I realize that counsel Peters misadvised me of my rights and obligations in connection with the plea agreement.

As a result of counsel's failure to show me my plea agreement, my guilty plea was entered unknowingly, involuntarily, and unintelligently. Had I known that the plea agreement stated that I faced a maximum sentence of 20 years and that the judge could sentence me within that 20 year range,

I most certainly would have pled not guilty and exercised my right to go to trial.

C C) Counsel failed to explain the consequence of the guilty plea relative to applicable sentencing enhancements. Counsel Peters acknowledged in his Affidavit that he informed me the government was filing a separate indictment for the 2010 conspiracy charge, but neither he nor the court dispute the fact that he failed to explain the possible consequences of the guilty plea relative to the applicable sentencing enhancements. I was not advised, as required by Federal Rule of Criminal Procedure II, "that the court is required to consider any applicable sentencing guidelines but may depart from those guidelines under some circumstances.... "See Fed. R. Civ. P. 11 (c)(1)(2005). As previously explained, counsel Peters advised me that my guideline range would be 37 - 46 months, and the maximum sentence I could possibly receive was 5 years. Mr. Peters did not advise me that the court could depart from 37 - 46 months to 240 months under some circumstances. Although the court failed to specify why I was sentenced to 240 months for the possession charge, counsel Peters neglected his duty to advise me that the court could depart from the guidelines under some circumstances.

As a result of counsel's failure to explain the consequence of the guilty plea relative to applicable sentencing enhancements, my guilty plea was entered unknowingly, involuntarily, and unintelligently. Had I known that the court could depart from the guidelines up to a maximum of 240 months, I would not have signed the plea agreement, pled not guilty, and exercised my right to go to trial.

D) At the colloquy, I did not answer "yes" to the judges questions knowingly, or voluntarily. I only did so because I was instructed by my counsel to do so. I was troubled by the fact that counsel Peters had denied my request to read the plea agreement prior to signing. When the judge asked if I had an opportunity to discuss the plea agreement with my attorney and have him explain any part I didn't understand, I initially hesitated, as my natural true reaction was to reply "no". That's when counsel Peters pulled me to the side and instructed me to answer "yes" to the judges questions. As I previously stated, I had no reason to believe my attorney misadvised me of my rights and obligations in connection with the plea agreement. Had I known that answering "yes" was more than a formality and that the court could possibly depart from the guideline range of 37 - 46 months upward to 240 months, I would not have answered "yes" to the judges questions; I would have explained to the court that I had not read my plea agreement; and that counsel Peters verbally misinformed me that the maximum sentence I could receive for the possession charge was five years.

My guilty plea was entered unknowingly, involuntarily, and unintelligently as a result of counsel's misinforming me to answer "yes" to the judges questions at the change of plea hearing. Had I been aware of the relevant circumstances and likely consequences surrounding the plea, I would have pled not guilty and exercised my right to go to trial.

CONCLUSION

Reasonable jurists could debate whether counsel was constitutionally ineffective for failing to properly prepare me for entry of the guilty plea.

At minimum, the Appeal's Court should have granted my request for an evidentiary hearing to determine whether my allegations regarding my attorney's misinformation and misadvice are true, and if so, whether I would not have pleaded guilty but for the misinformation and misadvice.

On these grounds, the Petitioner prays that this Court grants my Writ of Certiorari.

APPLICATION OF THE LIBERAL CONSTRUCTION DOCTRINE

As a pro se petitioner incarcerated in federal prison and without the benefit of formal training as an attorney, Petitioner is entitled to, and contemporaneously invokes, the full measure of the liberal pleading and construance doctrine first expressed in Estelle v. Gamble, 429 U.S. 97 (1976).