

SUPREME COURT NO.
5TH CIRCUIT CASE NO. 16-51179

IN THE
SUPREME COURT OF THE UNITED STATES

LAWRENCE MADRID, PETITIONER

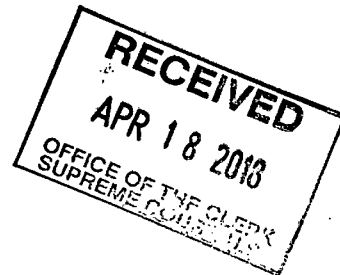
v.

UNITED STATES OF AMERICA, RESPONDENT.

On Petition for Writ of Certiorari to the
UNITED STATES COURT OF APPEALS
for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Respectfully Submitted by:
Lawrence Madrid, Pro Se
BOP Reg# 56165-380
Federal Prison Camp
P.O. Box 5000
Florence, Colorado 81226-5000



(a)

QUESTIONS PRESENTED FOR REVIEW

Question #1

As Raised by the Petitioner:

Does an incarcerated inmate have a Federal Constitutional Right to assistance of counsel on appeal. USCS Const. Amend 6 & 14.

Question #2

As Raised by the Petitioner:

Was Appellate Counsel's representation of the criminal defendant so deficient as to constitute denial of the Federal Constitutional Right to effective assistance of counsel.

Question #3

As Raised by the Petitioner:

Did the Appellate Court violate the Petitioner Constitutional Rights to counsel on Appeal by failing to evaluate properly the request to withdraw of counsel from the Appeal before the Appeal had been concluded.

Question #4

As Raised by the Petitioner:

Did the Appellate Court violate the Petitioner Constitutional Right to counsel on Appeal, where the Appellate Court failed to appoint a new counsel for an indigent accused.

(b)

PARTIES TO THE PROCEEDINGS

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

(c)
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	Appendix E Copy of Order to serve Petitioner	

(d)

TABLE OF CITED AUTHORITIES

Evitts v. Lucey (1985) 469 US 387 83 L Ed 2d 821 105 S Ct 830	2.
Smith v. Murray (1986) 477 US 527 91 LEd 2d 434 106 S Ct 2661	2.
McCoy v. Court of Appeals, Dist 1 (1988) 486 US 429 100 L Ed 2d	2.
Anders v. California (1967) 386 US 738 18 L Ed 2d 493 87 S Ct	2.
Roe v. Flores-Ortega (2000) US 145 L Ed 2d 985 120 S Ct 1029	2,4
United States v. Cronic 466 US 648 659 104 S Ct 2039 (1984)	3.
Chapman v. California (1967) 386 US 18 17 L Ed 2d 705 87 S Ct	4.
Martel v. Clair (2012) 182 LED 2d 135 565 US 648	5.
Holland v. Florida 177 LED 2d 130 US 631 (2010)	5.

(e)

OPINIONS AND ORDERS ENTERED IN THE CASE

September 22, 2016, The Court appointed counsel filed the Notice of appeal, at some point thereafter, the Court appointed Appellate counsel Patrick Adam Lara (Lara) to represent Lawrence Madrid.

May 1st, 2017, Madrid has his family contact the Court and is informed that Lara was appointed to represent Madrid. Madrid's family calls Lara's office over and over and does not get any response. Madrid writes letters to Lara , but does not receive any kind of response.

June 6, 2017, Madrid files a motion for new court appointed counsel. The Appellate Court does not respond. (See Appendix B)

October 24, 2017, Madrid files his third request for new counsel, and does not receive any kind of response from the Court. (Appendix C)

November 15, 2017, The United States Court of Appeals for the Fifth Circuit, affirms the Conviction of Madrid, based on the fact that Lara had filed a Appellate Brief based upon ineffective assistance of counsel, which the Court correctly stated was not allowed on direct appeal. The Court then notes that at some point, Lara had moved the Court to withdraw from the case, and the appointment of new counsel, which the Court denied. (Appendix D)

December 8, 2017, Appellate Court Judge Edward C. Prado, orders that a paper copy of the Court's decision be served upon Madrid in Federal Prison. This is the VERY FIRST notice of any kind concerning Madrid's appeal, received by inmate Madrid. (Appendix E).

December 15, 2017, Madrid files a motion for a panel rehearing, and request for appointment of new counsel, return of the case to the calendar due to the fact that Lara had failed to file a merits based brief, failed to contact Madrid in any way, and had moved to withdraw from the case and requested that new counsel be appointed.

February 15, 2018, the United States Court of Appeals for the Fifth Circuit issued a hand written denial of Madrid's request.
(Appendix A)

(f)

JURISDICTION

- (i) The United States Court of Appeals for the Fifth Circuit Issued an Opinion on November 15, 2017.
- (ii) Motion for Panel Rehearing was timely filed and denied by the Court on February 15, 2018, and a copy of the order denying rehearing appears at Appendix A.

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

(g)

CONSTITUTIONAL AND STATUTORY PROVISIONS

AMENDMENT VI: In all criminal prosecutions, the accused shall enjoy the right to speedy trial and public trial . . .and to have the Assistance of Counsel for his Defense.

AMENDMENT XIV: . . . nor shall any state (or the United States) deprive any person of life, liberty or property without the due process of law, nor deny any person within its jurisdiction the equal protection of the law.

(h)

STATEMENT OF THE CASE

Lawrence Madrid is an incarcerated inmate in a Federal Prison, without the ability to obtain any of his legal records and without access to the Court's docket.

Madrid's District Court Defense Counsel filed his notice of appeal on September 22, 2016, at which point Madrid was already incarcerated. At some point thereafter, the Court appointed Appellate Counsel Patrick Adam Lara (Lara) to represent Madrid in the Appeal.

AT NO TIME EVER, did Lara contact Madrid, send Madrid notice of representation, send any kind of letter or questions concerning the appeal, send copies of the Appellate Brief for Madrid to review, send copies of the Government's response, or send a copy of the Reply Brief (if a Reply Brief was even filed in this case). Madrid had NO CONTACT EVER FROM LARA.

Madrid and his family tried time and time again to contact Lara, without a single reply from Lara.

Madrid filed three motions with the Fifth Circuit requesting new counsel due to Lara's failure to communicate. The Fifth Circuit NEVER heard his motions and NEVER even replied to any of his requests.

Lara filed a request to be removed from the case, and requested new counsel be appointed. This motion was also not served upon Madrid. The Court proceeded to issue its Order on the Appeal without any kind of review of Lara's request.

On November 15, 2017, the Appellate Court denied the Appeal.

Madrid filed a timely request for a panel rehearing, due to the many errors of Appellate Counsel and the fact that the Appellate Court had failed to hear Madrid's and Lara's Request. The Appellate Court denied Madrid's and Lara's requests.

(i)

ARGUMENT / REASONS FOR GRANTING THE WRIT

Question #1: Does an incarcerated inmate have a Federal Constitutional Right to assistance of counsel on Appeal?

The following decisions of the Supreme Court support the rule that an accused's right to counsel on an initial appeal as of right, under various provisions of the Federal Constitution, includes the right to the effective assistance of counsel: *Evitts v. Lucey*, (1985) 469 U.S. 387, 83 L Ed 2d 821, 105 S Ct 830 (due process and equal protection clauses of the Fourteenth Amendment); *Smith v. Murray* (1986) 477 U.S. 527 91 L Ed 2d 434, 106 S Ct 2661 (Sixth Amendment) and *McCoy v. Court of Appeals, Dist 1* (1988) 486 US 429 100 L Ed 2d 440, 108 S Ct 1895 (Sixth Amendment). See *Anders v. California* (1967) 386 US 738, 18 L Ed 2d 493, 87 S Ct 1396, a case involving an accused's claim that he had been denied the right to counsel on appeal in violation of the Sixth and Fourteenth Amendments, in which case the Court stated that counsel's role as advocate requires that counsel support his client's appeal to the best of his ability. In *Evitts v. Lucey*, the Court held that the due process clause of the Fourteenth Amendment guarantees an accused the right to the effective assistance of counsel on a first appeal as a right. The Court, noting that a party whose counsel is unable to provide effective representation is in no better position than one who has no counsel at all, and said that nominal representation of an accused on an appeal does not suffice to render the appellate proceedings constitutionally adequate. The promise that an accused has a right to counsel on appeal would be a futile gesture unless it comprehended the right to the effective assistance of counsel. See *Roe v Flores-Ortega* (2000) US 145 L Ed 2d 985, 120 S Ct 1029.

Counsel's representation fell below objective standard of reasonableness.

Counsel Lara had a duty to inform Madrid that he was appointed to represent Madrid. Lara had a duty to investigate the facts and review the record. Lara had a duty to communicate with Madrid. Lara had a duty to provide Madrid a copy of the Appellate Brief before it was submitted to the court for Madrid's review. Lara had a duty to

provide Madrid with a copy of the Government's Appellee Brief. Lara had a duty to prepare and provide Madrid with a copy of the Reply Brief. Lara had a duty to communicate with Madrid and inform Madrid that Lara was requesting to be removed from the case. It is reasonable for Madrid to expect these basic duties be performed by Appellate counsel, and failure to perform these basic duties, falls below the objective standard of reasonableness.

Counsel's deficient performance prejudiced Madrid.

Madrid had a Constitutional Right to have a Merit Based Brief filed in his appeal. Lara's failure to communicate with Madrid, and failure to prepare a Merit Based Brief so undermined the proper function of the Appellate process that the outcome cannot be relied on as having produced a just result. It is clear to assume that if counsel would put forth any allowed issue other than "ineffective assistance of counsel", the results of the Appeal would have been different. When in effect, Madrid was denied counsel altogether, which a showing of prejudiced is unnecessary. In *Cronic*, the Court held that courts may presume that a defendant has suffered unconstitutional prejudice if he "is denied counsel at a critical stage of his trial". This Court has also held that the first direct appeal is a critical stage of the trial.

Question # 2: Was Appellate Counsel's representation of the criminal defendant so deficient as to constitute denial of the Federal Constitutional Right to effective assistance of counsel?

The Supreme Court has recognized that the actual or constructive denial of counsel on appeal can never be considered "harmless error" within the meaning of *Chapman v. California* (1967) 386 US 18, 17 L Ed 2d 705, 87 S Ct 824, and thus that an appellate court judgement subsequent to such denial is always subject to automatic reversal.

In this case, Lara's deficient performance arguably led not to a judicial proceeding of disputed reliability, but rather to the forfeiture of the Appellate proceeding itself. (*Flores-Ortega*, 528 US at 483.) Lara put forth an Appellate's Brief with only one issue, "ineffective assistance of Counsel" which is not allowed on direct appeal, which in effect forfeited the Appellate process of Madrid. The Court ordinarily applies a strong presumption of reliability to the appellate judicial proceedings, but in this case, you cannot accord any such presumption to the judicial proceeding that never took place.

The Court then must consider whether Madrid was prejudiced by the denial of the entire judicial proceeding, to which he had a right? For purposes of deciding a criminal defendant's claim, under the Federal Constitution's Sixth Amendment, of ineffective assistance of counsel, the complete denial of counsel during a critical stage of a judicial proceeding-which includes appeal-mandates a presumption of prejudice because the adversary process itself has been rendered presumptively unreliable; moreover, the denial of the entire judicial proceeding, which a defendant wants and to which the defendant has a right, demands a presumption of prejudice because no presumption of reliability can be accorded to judicial proceedings that never took place. See *Roe v. Flores-Ortega* at 989.

Question # 3: Did the Appellate Court violate the Petitioner Constitutional Rights to counsel on Appeal by failing to evaluate properly the request to withdraw of counsel from the Appeal before the Appeal had been concluded?

In order to uphold the right to counsel as protected by the Federal Constitution's Sixth and Fourteenth Amendments, an appellate court, in ruling on a motion by an indigent criminal defendant's court-appointed appellate counsel for leave to withdraw from the case, and the appointment of new appellate counsel, MUST PERFORM a review of the record, documents filed into the case, statements provided from the defendant and reasons stated by the counsel for his reasons for withdraw and appointment of new appellate counsel.

Courts cannot properly resolve a substitution of counsel motion without probing why a appellate counsel wants to withdraw. Moreover, an on-the-record inquiry into the matter permits a meaningful review of the Court's thinking. This was not done in this case.

The "Interests of Justice" standard as applied to requests to substitute counsel under 18 U.S.C.S. §3006A contemplates a peculiarly context-specific inquiry. This was not done in this case. The Court may replace an appointed lawyer only when the defendant has suffered an "actual or constructive" denial of counsel. That denial occurs, when the lawyer lacks the qualifications necessary for appointment, when the lawyer has "completely abandoned" the client, (as in this case), or upon the request of the Court appointed lawyer, (as in this case). *Martel V. Clair*, 182 LED 2d 135, 565 US 648 (2012).

Common sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word. *Holland v. Florida*, 177 LED 2d 130, US 631 (2010) (As in this case). In this case, counsel Lara had abandoned Madrid, and then moved to withdraw from the case and requested that the Court appoint new counsel. The Court in every way failed to properly resolve this issue.

Question # 4: Did the Appellate Court violate the Petitioner Constitutional Right to Counsel on Appeal, where the Appellate Court failed to appoint a new counsel for an indigent accused?

Not only did the Court appointed counsel Lara, move the Court to withdraw and for the appointment of new counsel, but the Petitioner also moved the Court 3 times for the appointment of new counsel, all of which the Court failed to consider.

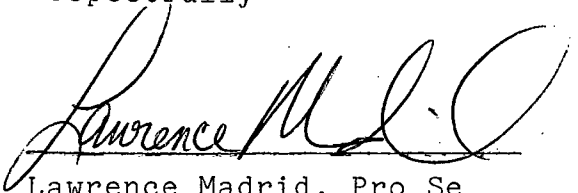
§3006A "the Court, may, in the "interest of Justice", substitute one appointed counsel for another at any stage of the proceedings."

The "interest of justice" standard applies to requests to substitute counsel under 18 U.S.C.S. §3006A contemplates a peculiarly context-specific inquiry. The Court's decision on substitution is required to be "fact-specific". In this case, no inquiry was done, and no fact specific details were provided. It is clear from the record in this case, and the complete lack of a record, that the court appointed counsel Lara had completely abandoned his client Madrid, and if the Appellate Court would have done any kind of inquiry they would have receive testimony from Lara to that point.

(j)
CONCLUSION

The Petitioner respectfully requests that this petition for a writ of certiorari be granted, and respectfully requests that this Court return this case to the Fifth Circuit Court of Appeals, and the case placed back onto the calendar of the Court, Counsel appointed to represent the Petitioner, and an Appellate Brief filed after the Court Appointed Counsel has reviewed the record and met with the petitioner.

Respectfully



Lawrence Madrid, Pro Se
Petitioner
BOP Reg# 56165-380
Federal Prison Camp
P.O. Box 5000
Florence Colorado, 81226-5000