

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

JOSE LUIS TIZOC - Petitioner,

V.

UNITED STATES OF AMERICA - Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

Jose Luis Tizoc (PRO SE)

Reg. No. 15551-030

U.S. Penitentiary

P.O. BOX 1000

LEAVENWORTH, KS 66048

QUESTIONS PRESENTED

The petition is an opportunity for this Court to clear up issues related with Federal Rules of Evidence § 403. Thus, the questions presented herein are: (1) Was the record adequate for the Court of Appeals to determine if Counsel had committed ineffective assistance of counsel for [failing to object] to the highly inadmissible and unreliable inflammatory evidence purporting to link Mr. Tizoc to the Sinaloa Cartel and his mother to narcotics trafficking? (2) Whether the Court of Appeals erred in failing to consider Mr. Tizoc's Ineffective Assistance claim on direct appeal where no interpretation as to what an "EXCEPTIONAL CASE" is in order for the Reviewing Court to consider the claim?

LIST OF PARTIES

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

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The petitioner, Jose Luis Tizoc, through PRO SE (hereinafter "Mr. Tizoc"), respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit that was entered on March 13, 2018 in Case No. 16-4486.

Mr. Tizoc informs this Honorable Court that he is

being assisted by the Inmate Law Library Clerk of his place of confinement. The Law Library Clerk and Mr. Tizoc herein, are both layman at the Profession of Law, and would therefore ask that this Honorable Court recognize its standards set forth in HAINES v. KERNER, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), and in doing so, not hold Mr. Tizoc herein to the rigid standards of a Professional Legal Litigator.

OPINION BELOW

On March 13, 2018, a panel of the Court of Appeals affirmed Mr. Tizoc's Direct Appeal. After a six-day trial, a jury convicted Manuel Espinoza and Mr. Tizoc of conspiracy to distribute methamphetamine (21 U.S.C. §§ 841, 846), and Espinoza of being a prohibit person in possession of a firearm (18 U.S.C. §§ 922(g)(2)-(3), 924(a)(2)). The district court sentenced Espinoza to 240 months in prison and Mr. Tizoc to 300 months. Each defendant timely appealed, challenging their conviction and sentence. The Court of Appeals consolidated the appeals and affirmed both their convictions and sentence.

The opinion of the United States court of appeals appears at "Appendix A" to the petition and is published as: UNITED STATES v. ESPINOZA, 2018 U.S. App. LEXIS 6172 (8th Cir. March 13, 2018).

The opinion of the United States district court

appears at Appendix B to the petition and is published as:
UNITED STATES v. ESPINOZA, 2016 U.S. Dist. LEXIS 190845 (8th
Cir. 2016).

JURISDICTION

The United States Court of Appeals decided the case at
bar on December 28, 2017. There was no petition for rehearing
filed. The jurisdiction of this Court is invoked under 28
U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT

SIXTH AMENDMENT

[OTHER]:

Federal Rules of Evidence 403:

"Provides that a court may exclude relevant evidence
if its probative value is substantially outweighed by a danger
of one or more of the following: UNFAIR PREJUDICE, CONFUSING
the issues, MISLEADING the jury, undue delay, wasting time, or

NEEDLESSLY PRESENTING CUMULATIVE EVIDENCE.

STATEMENT OF THE CASE

On or around October 22, 2015, in the Southern District of Iowa, a ten-count indictment was filed against Mr. Tizoc and six other alleged co-defendants with conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A), from at least as early as November 2014 until and including September 2015. Moreover, a twelve-count superseding indictment was filed on November 24, 2015, charging other alleged unknown co-defendants, including an additional superseding indictment that was filed on December 21, 2015, adding three other unknown alleged co-defendants to Count One.

On June 20, 2016, after pleading not guilty, Mr. Tizoc and one other alleged co-defendant, Manuel Espinoza, proceeded to a jury trial.

During trial, the government presented evidence of the presence of a methamphetamine distribution operation from November 2014 through September 2015. This evidence was in the form of video surveillance through pole cameras, phone wiretapping and government-controlled purchases of methamphetamine regularly left a certain automotive garage in

Omaha, Nebraska (the "Z Street Garage") to meet their customers to complete their sales, which occurred at various parking lots, streets and other locations throughout Omaha and neighboring Council Bluffs, Nebraska.

Although there was evidence of a methamphetamine distribution operation, the question at trial was determining whether, and to what extent, Mr. Tizoc was involved in this operation. For this, the prosecution relied primarily upon the testimony of witnesses who were [COOPERATING UNDER PLEA-AGREEMENTS] with the government (providing that the government file a motion for a reduced sentence for substantial cooperation in the case), granted immunity from prosecution from the government, or paid government informants.

FOR EXAMPLE: Richard Hull testified while awaiting sentence for the prosecution after having already pled guilty to Count One (conspiring to distribute methamphetamine), and Count Nine (possession of a firearm by a prohibited person), under a cooperation agreement. During cross-examination, Mr. Hull [admitted] that he would have LIED in court in this case for FINANCIAL GAIN, and would "DO WHATEVER [HE HAS] TO DO TO MAKE THIS [CRIMINAL CHARGE] GO AWAY."

Moreover, after his arrest, at one point, Mr. Hull told the government that there were "TWO JUNIORS" and that "THEY HAD ARRESTED THE [W]RONG JUNIOR" in arresting Mr. Tizoc. The truth was that the government had mistakenly arrested Mr. Tizoc thinking that he was his Cousin (the other "Junior" whom

they were looking for). Nevertheless, the federal agent questioning Mr. Hull responded that she didn't believe him, and told him that he better "go and talk to [his] attorney" and "figure out the truth," because he was "looking at incarceration for the rest of [his] life if they didn't believe him." Shortly afterwards, Mr. Hull RECANTED his statement and therefore identified Mr. Tizoc as the "Junior" whom the government had been investigating and wanted to arrest.

Furthermore, Jessica Moreno, another government witness, and the live-in girlfriend of Mr. Hull, who assisted him in his methamphetamine sales, also entered into a plea cooperation agreement with the government, and corroborated Mr. Hull's testimony, BUT ONLY in stating that after Nunez was incarcerated, "Junior" had become Mr. Hull's principal supplier of methamphetamine. Mr. Moreno [WAS NOT] ABLE TO IDENTIFY Mr. Tizoc as "Junior" because she had NEVER MET HIM.

The truth was that Mr. Tizoc was egregiously misidentified as one of his family members, and was therefore prosecuted through cooperating witness[es] who were only trying to reduce their sentences at the mercy of the misidentification of Mr. Tizoc. Several discrepancies and inconsistent statements were made during Mr. Tizoc investigation and trial. For example:

[1] On or around September 23, 2015, when the agents made their arrests, Government's Witness Mr. Hull, who was

under the influence of methamphetamine, [INCORRECTLY] identified Mr. Tizoc (who in fact looked just like his cousin, Jose Leon Jr.) in a picture as the "Junior," who was the HEAD of the operations.

[2] On another occasion, during a wiretapped phone call on August 31, 2015, the callers in that recording were arranging a meeting in Omaha to sell methamphetamine, and one asked the other if he knew where the location was, and the other replied "JUNIOR IS WITH ME; he knows where it's at." However, plane tickets and federal border crossing records substantiated and showed Mr. Tizoc's presence [in] Mexico from August 3 to September 14, 2015, where he attended his sister's quincenera (a celebration of a girl's transition into adulthood on her fifteenth birthday), visited family and celebrated his own birthday.

When the Government was confronted with those records, the government then reasoned that the "runners" must have been operating while Mr. Tizoc was in Mexico, despite the fact that no government witnesses had ever testified or given statement that Mr. Tizoc had runners doing dirty work for him.

HENCE, Mr. Tizoc was egregiously prosecuted with the use of cooperating witness[es] who were trying to reduce their sentences at the mercy of the misidentification of Mr. Tizoc, and by the violations of Federal Rules of Evidence Rule 403 that egregiously linked him to the Sinaloa Drug Cartels.

REASONS FOR GRANTING THE WRIT

[1] THE FIRST QUESTION IS WHETHER THE RECORD WAS ADEQUATE FOR THE COURT OF APPEALS TO DETERMINE IF TRIAL COUNSEL HAD COMMITTED INEFFECTIVE ASSISTANCE OF COUNSEL FOR [FAILING TO OBJECT] TO THE HIGHLY INADMISSIBLE AND UNRELIABLE INFLAMMATORY EVIDENCE PURPORTING TO LINK MR. TIZOC TO THE SINALOA CARTEL AND HIS MOTHER TO NARCOTICS TRAFFICKING?

In his Appeal, Mr. Tizoc argued that he received ineffective assistance of counsel in that his trial counsel REPEATEDLY FAILED TO OBJECT to highly prejudicial evidence insinuating an unfounded link between him and the notorious "SINALOA CARTEL," and his immediate family to local narcotics trafficking operations. As his Trial Counsel's cumulative errors were reasonably likely to result in his conviction, Mr. Tizoc requested that his conviction be reversed.

Nevertheless, the Honorable Eighth Circuit held that because ineffective assistance claims are usually best litigated in collateral proceedings, they consider a claim on direct appeal ONLY "where the record has been fully developed, where not to act would amount to a plain miscarriage of justice, or where counsel's error is readily apparent." Citing UNITED STATES v. THOMPSON, 690 F.3d 977, 992 (8th Cir. 2012).

In the case at bar, Trial Counsel's error WERE READILY APPARENT. Thus, the Record was adequate for the Eighth Circuit to determine Mr. Tizoc's argument under a Sixth Amendment Violation. See, UNITED STATES v. VILLALPANDO, 259 F.3d 934, 938 (8th Cir. 2001) (noting that, although the district court did not conduct a hearing, the court WAS ABLE to observe trial counsel's "POOR" representation at trial). Thus, References to the Sinaloa Cartel and to the State of Sinaloa itself were unfairly [prejudicial] and [misleading] to the jury.

Under federal rules of evidence, a court should exclude relevant evidence, a court should exclude relevant evidence if its probative value is substantially outweighed by DANGER OF UNFAIR PREJUDICE, confusing the issues, MISLEADING THE JURY, undue delay, wasting time, OR NEEDLESSLY PRESENTING CUMULATIVE EVIDENCE. See, Fed. R. Evid. 403.

To better understand the highly prejudicial effect of the reference to the SINALOA CARTEL and SINALOA, an explanation of the cartel is instructive:

The Sinaloa Cartel...is an international drug trafficking, money laundering, and organized crime syndicate. Established during the mid-1980s, the Sinaloa Cartel is based primarily in the city of Culiacan, Sinaloa. The United States Intelligence Community considers the Sinaloa Cartel "the most powerful drug trafficking organization in the world" and in 2011, the Los Angeles Times called it "Mexico's most powerful

organized crime responsible for importing into the United States and distributing nearly 200 tons of cocaine and large amounts of heroin between 1990 and 2008... As of 2015, the Sinaloa Cartel is the most active drug cartel involved in smuggling illicitly drugs into the United States and trafficking them throughout the United States. WIKIPEDIA, <http://wikipedia.org> (follow "Sinaloa Cartel") (last visited May 20, 2017).

Not only is the Sinaloa Cartel considered to be one of the most powerful drug trafficking organizations worldwide, but it is widely associated with bloody turf wars, corruption, ruthlessness, and rampant violence:

Some of Mexico's leading drug traffickers have been killed or captured in recent months, including the head of the powerful Sinaloa Cartel. But inside the secretive world of this feared criminal organization it's clear that it remains as active as ever... The Sinaloa Cartel --its tide of dirty cash and its pitiless violence-- reaches into the police, business, and politics. The arrest in February of the cartel leader, El Chapo "Shorty" Guzman, made little difference to the organization --there is too much money to be made... the blood flowed when, several years ago, the trafficking of crystal meth began to overtake that of the "noble" drugs of marijuana and cocaine,... The profits and the drug itself were corrupting... The drug war is conducted by the sicarios or "blades" --cartel hitmen. They guard the shipments and the money, protect the cartel's turf from rivals, and kill to order... The cartel has even killed and put on display the

bodies of criminals accused of kidnapping for ransom. Paul Wood, INSIDE MEXICO'S FEARED SINALOA DRUGS CARTEL, BBC News (16 May 2014), <http://www.bbc.com/news/magazine-27427123>.

HENCE, any reference to the Sinaloa Cartel, and even references to the Mexican State of Sinaloa, would be highly prejudicial in that A JURY WOULD CONSIDER CONNECTIONS to such a large and dangerous cartel to be demonstrative of the size, scope and nature of the methamphetamine distribution which the co-defendants were allegedly operating in Omaha and Council Bluffs, Nebraska. Similarly, such references would mislead the jury into believing there was a connection between the methamphetamine distribution operations at issue and the Sinaloa Cartel, when NO SUCH CONNECTION WAS PROVEN and it was NOT RELEVANT to this case.

FURTHERMORE, during the trial, the prosecution also introduced egregious testimony, without Trial Counsel's objection, of UNSUBSTANTIAL RUMORS that Mr. Tizoc's mother, Hilda Ibarra ("Ms. Ibarra"), was involved in the methamphetamine distribution operations and had come to Omaha for the purpose of running those operations after her son's arrest, despite scant evidence that she in fact was NOT involved.

Thus, by having permitted the jury to hear that Mr. Tizoc's mother had started to run the same methamphetamine distribution operations after her son's arrest, the jury was likely to believe that Mr. Tizoc was both involved in the

operations and had been running the operations himself before his arrest.

Hence, there is no doubt whatsoever that the Record was adequate for the Eighth Circuit to determine Mr. Tizoc's Sixth Amendment Violation, since Trial Counsel's ERROR in [not objecting] to the introduction of the "Sinaloa Cartel" and that his Mother had come to run her Son's operations egregiously confused and mislead the jury and was unfair prejudice. Trial Counsel's ERROR was readily apparent, and his failure to move to exclude the egregious evidence under Federal Rule of Evidence 403, fell outside the wide range of competent professional assistance. This type of improper evidence greatly prejudice Mr. Tizoc because it makes it a likely possibility that he was convicted of the crimes charged for an improper purpose. Therefore, Mr. Tizoc did not receive a fair trial because of the lack of effective assistance of counsel.

For this above reasons, this Honorable Court should grant Mr. Tizoc's Writ of Certiorari to answer these important questions.

[2] THE SECOND QUESTION IS, WHETHER THE COURT OF APPEALS ERRED IN FAILING TO CONSIDER MR. TIZOC'S INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM ON DIRECT APPEAL WHERE NO [INTERPRETATION] AS TO WHAT AN "EXCEPTIONAL CASE" IS, IN ORDER FOR THE REVIEWING COURT TO CONSIDER THE CLAIM?

In the case at bar, the Eighth Circuit held that it could not consider Mr. Tizoc's claim of Ineffective Assistance of Counsel on Direct Appeal, because they had "no showing of WHY Tizoc's trial counsel HAD NOT made the objections in question." This was not ample support to state that the record was inadequate. As held in UNITED STATES v. THOMPSON, 690 F.3d 977, 922 (8th Cir. 2012), "where the record has been fully developed, where not to act would amount to a plain miscarriage of justice, OR WHERE COUNSEL'S ERROR IS READILY APPARENT," a Court can consider such claim on Direct Appeal.

For the reasons mentioned in the First Argument, this Honorable Court should Grant this Petition and [interpret] the true meaning of what an "EXCEPTIONAL CASE" is, in order for a Reviewing Court to consider a Sixth Amendment violation (ineffective assistance of counsel) on Direct Appeal.

For this reasons, this Honorable Court should GRANT Mr. Tizoc's Writ of Certiorari to answer the important questions above.

CONCLUSION

WHEREFORE, this petition for writ of certiorari should
be Granted.

Respectfully submitted,

Jose Luis Tizoc

JOSE LUIS TIZOC (PRO SE)

Reg. No. 15551-030

U.S. Penitentiary

P.O. BOX 1000

LEAVENWORTH, KS 66048

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