

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTONIO VALDEZ, JR. -PETITIONER

VS.

UNITED STATES OF AMERICA -RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

ANTONIO VALDEZ JR.
Reg. No. 53392-079
Federal Medical Center
P.O. Box 15330
Fort Worth, Texas 76119

QUESTION PRESENTED

I.

DID THE COURT OF APPEALS ERR BY HOLDING THAT PETITIONER HAD NOT DEMONSTRATED THAT, A REASONABLE JURIST WOULD FIND A COUNSEL'S ASSISTANCE INEFFECTIVE BY NOT CONSULTING PETITIONER BEFORE WITHDRAWING THE MOTION TO DISMISS UNDER THE SPEEDY TRIAL ACT, WAS DEBATABLE OR WRONG?

LIST OF PARTIES

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

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IN THE
UNITED STATES SUPREME COURT
PETITION FOR WRIT OF CERTIORARI

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

OPINION BELOW

[X] For cases from federal courts:

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

[X] is unpublished.

The opinion of the United States district court appears at Appendix "B" to the petition and is

[X] reported at: (Judgment) United States v. Valdez, 2017 U.S. Dist. Lexis 93370; and (R&R) United States v. Valdez, 2017 U.S. Dist. Lexis 94076.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals
decided my case was March 2, 2018.

[X] No petition for rehearing was timely filed in my case.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION AMENDMENT V.

The Fifth Amendment provides that no person shall be deprived of life, liberty, or property, without due process of law.

U.S. CONSTITUTION AMENDMENT VI.

In all criminal prosecutions, the accused shall enjoy the right ...to have the assistance of counsel for his defense.

18 U.S.C. § 3161

Speedy Trial Act

Under the Speedy Trial Act, a trial must commence within seventy days of the indictment or initial appearance. The statute excludes certain periods of delay from the seventy day calculation. If more than seventy non-excludable days pass between the indictment and the trial, the indictment shall be dismissed on motion of the defendant.

21 U.S.C. § 846

Attempt and Conspiracy

Any person who attempts or conspires to commit any offense defined in this title shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

28 U.S.C. § 2253(c)(2)

Appeal

A federal court may issue a certificate of appealability only when the applicant has made a substantial showing of the denial of a Constitutional right 28 U.S.C. § 2253(c)(2).

28 U.S.C. § 2255

Habeas Corpus

District Courts have broad discretion in conditioning a judgment granting habeas relief. Federal Courts are authorized under 28 U.S.C. 2243 to dispose of habeas corpus matters as law and justice require. A court may vacate and set aside the judgment, resentence the defendant, grant a new trial or correct the sentence as it sees fit.

STATEMENT OF THE CASE

Antonio Luna Valdez, Jr. ("Valdez"), federal prisoner Reg. No. 53392-079 was convicted of conspiracy to possess with intent to distribute cocaine, cocaine base, and marijuana in violation of 21 U.S.C. § 846. The district court imposed the mandatory sentence of life imprisonment under 21 U.S.C. § 841 (b)(1)(A) based on Valdez's prior felony offenses. On Appeal, Valdez challenged the procedural property of several aspects of the prosecution and trial (1) district court limited scope of cross-examination, violation of the confrontation clause; (2) pre-trial delay due to mistrial and internal investigation of government's agents violated his speedy trial rights; (3) district court erred to decide his motion to dismiss under Speedy Trial Act (18 U.S.C. § 3161; and (4) district court erred in applying the sentence enhancement because government failed to comply with pre-requisite notice under 21 U.S.C. § 851.

The court of appeals affirmed the judgment of the district court. On Habeas Corpus (28 U.S.C. § 2255), Valdez raised a ineffective assistance claim, he contended that he received ineffective assistance of counsel when his attorney failed to consult him before withdrawing a motion to dismiss indictment under the Speedy Trial Act (18 U.S.C. § 3161). The district court rejected this argument. Valdez's sentence was subsequently commuted by President Obama to 168 months of imprisonment. Valdez applied for a certificate of appealability regarding the 2255, the court of appeals rejected the claims on the merits.

REASONS FOR GRANTING THE PETITION

I.

VALDEZ'S INEFFECTIVE ASSISTANCE CLAIM IS DEBATABLE.

Slack v. McDaniel, 529 U.S. 473 (2000).

When the district court denies a habeas petition on procedural grounds without reading the prisoner's underlying constitutional claim, a COA should be issued when the prisoner shows, at least, jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that Jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack, 529 U.S. at 484.

District Court Fifth Amendment Violation.

To prove a violation of the Fifth Amendment due process clause, the defendant must demonstrate that the challenged actions are inconsistent with fundamental fairness. See generally W. Lavave & J. Israel, Criminal Procedure § 2.4 (1984). The supreme court in United States v. Lovasco, 431 U.S. 783 (1977), emphasized the constricted parameters of such an inquiry:

The Due Process Clause does not permit courts to abort criminal prosecutions simply because they disagree with a prosecutor's judgment as to when to seek an indictment. Judges are not free, in defining "due process," to impose on law enforcement officials our "personal and private notions" of fairness and to "disregard the limits that bind judges in their judicial function." Rochin v. California, 342 U.S. 165 (1952). Our task is more circumscribed. We are to determine only whether the action complained of...violates those "fundamental conceptions of Justice which lie at the base of our civil and political institution," Mooney v. Holohan, 294 U.S. 103 (1935), and which define "the community's sense of fair play and decency," Rochin v. California, supra, 342 U.S. at 173. See also Ham v. South Carolina, 409 U.S. 526 (1973); Lisenba v.

California, 314 U.S. 219 (1941); Hebert v. Louisiana, 272 U.S. 312 (1926); Hurtado v. California, 110 U.S. 516 (1884). Id. at 790.

While the courts retain inherent supervisory authority over the law enforcement process which culminates in the criminal proceedings brought before them, courts may not utilize their supervisory powers to fashion remedies calculated to deter perceived future misconduct where the defendant has not suffered an infringement of a constitutional right. See United States v. Payner, 447 U.S. 727 (1980). Even under circumstances where a constitutional right of the defendant has been violated, deliberately or otherwise, the defendant is entitled to the extreme sanction of dismissal of the indictment only where he can prove that he was demonstrably prejudiced by the violation. See United States v. Mechanik, 475 U.S. 66 (1985); United States v. Morrison, 449 U.S. 361 (1981). See also United States v. Loud Hawk, 474 U.S. 302 (1986) ("severe remedy of dismissing the indictment").

Mr. Richard's ineffectiveness.

The Sixth Amendment guarantees "reasonably effective" legal assistance. To show ineffective assistance, the two-prong Strickland test requires a defendant to show that (1) counsel's representation fell below an objective standard of reasonableness, and (2) such deficient performance prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687-88 (1984). The Sixth Amendment guarantees to each criminal defendant "the assistance of counsel for his defense." The defendant does not surrender control entirely to counsel, for the Sixth Amendment,

in "grant(ing) to the accused personally the right to make his defense," "speaks of the 'assistance' of counsel."

Faretta v. California, 422 U.S. 806, 819-820 (1975). See *Gunnett Co. v. Depasquale*, 443 U.S. 368, 382 n. 10 (1979) the sixth amendment "contemplate(s) a norm in which the accused, and not a lawyer, is master of his own defense"). Trial Management is the Lawyer's province: Counsel provides his or her assistance by making decisions such as "what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence." *Gonzalez v. United States*, 553 U.S. 242, 248 (2008) (internal quotation marks and citations omitted). ABA Model Rule of Professional Conduct 1.2(a) (2016) (a "lawyer shall abide by a client's decisions concerning the objective of the representation").

Presented with expressed statements of Valdez's will to maintain the speedy Trial Act motion, however, Mr. Richard steered the ship the other way. See *Gonzalez*, 553 U.S. at 254 (Action taken by counsel over his client's objection...has the effect of revoking (counsel's) agency with respect to the action in question"). Here, the violation of Valdez's protected autonomy right was complete when the court allowed counsel to usurp control of an issue within Valdez's sole prerogative. Violation of Valdez's Sixth Amendment-secured autonomy ranks as structural error. *United States v. Gonzalez-Lopez*, 548 U.S. 140, 150 (2006) (choice of counsel is structural); *Waller v. Georgia*, 467 U.S. 39, 49-50 (1984) (public trial is structural). Structural error "affect(s) the framework within which the trial proceeds," a

distinguished from lapse or flaw that is "simply an error in the trial process itself." *Arizona v. Fulminante*, 499 U.S. 279, 310 (1991). An error may be ranked structural, "if the right at issue is not designed to protect the defendant from erroneous conviction but instead protects some other interest," such as "the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty," *Weaver*, 582 U.S., ____ (slip op. at 6) citing *Faretta*, 422 U.S. at 834).

The Speedy Trial Act Motion

Valdez's counsel was intimidated by the district judge, and withdraw orally the Speedy Trial Act Motion. On the record in the first statement on the subject, the district court said:

"(b)ut I'm just asking, do you wish to withdraw (the motion) now? If you don't fine. I guess, but it just seems rather foolish-I mean, I can't speak that. I can't tell you that. If you think you should be able to do it, fine."

The court later suggested:

"the strong possibility" that pursuing the motion might be deemed frivolous, and that, and whatever consequence would flow from such a declaration by this court will flow."

Here, the district court judge indicated that the motion to dismiss might be frivolous and possible grounds for sanctions. Under duress counsel decided to withdraw petitioner's motion without his consent. After withdrawing, petitioner's counsel stated:

"I have been really cautious as to not attempt to file frivolous motions, and with that I will withdraw the motion."

Additionally, counsel stated:

I'm not going to move forward with that motion.
I don't want it to be considered frivolous, your
Honor.

The final exchange on points follows:

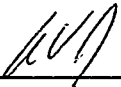
The court: "You understand you can file it if you want..."
Mr. Richard: "yes, your Honor."
The court: "And you do not wish to?"
Mr. Richard: "yes, your Honor, I do not wish to...I'll
withdraw it, your Honor."

See Appendix "C"

CONCLUSION

The merits of these claims are evident. The improper intimidation of a clearly weak counsel initiated the ineffectiveness of trying to please the court instead of providing adequate representation for his client. Both circumstances worked in sequence to tangle due process to the point of clouding fundamental fairness and demanding relief.

Respectfully Submitted,



Antonio Luna Valdez, Jr.

Date: May 29, 2018