

No. 18-7881

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2018:

ZONTA TAVARUS ELLISON

(Your Name) — PETITIONER

vs.
UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT:
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ZONTA TAVARUS ELLISON

(Your Name)
FCI FORT DIX P.O. BOX 2000

(Address)
JOINT BASE MDL, NEW JERSEY, 08640

(City, State, Zip Code)

609-723-1100

(Phone Number)

QUESTION(S) PRESENTED

1. DID THE APPEALS COURT INFRINGE UPON PETITIONER'S FIFTH AMENDMENT DUE PROCESS RIGHTS BY DENYING PETITIONER A FAIR NOTICE OF THE COURT'S ORDER DENYING A C.O.A., AND THUS CIRCUMVENTING PETITIONER'S RIGHTS TO FILE A TIMELY REHEARING EN BANC AND WRIT OF CERTIORARI, DESPITE PETITIONER'S TIMELY MOTION TO REOPEN TIME TO FILE APPEAL PURSUANT TO FED. R. APP. P. RULE 4(a)(6)?
2. DID THE LOWER COURTS VIOLATE THE PETITIONER'S FIFTH AMENDMENT DUE PROCESS RIGHTS BY DENYING PETITIONER'S MOTION FOR RELIEF PURSUANT TO FED. R.CIV. P. 60(b)(6) AND 10(c), WHEN THE PETITIONER ASSERTED A COLORABLE CLAIM COGNIZABLE FOR RELIEF UNDER SECTION § 2255(a), PURSUANT TO 28 U.S.C. § 2253(c)(3) AND UNITED STATES V. MCRAE, 793 F. 3d. 392 (2015 U.S. APP. LEXIS 12029)?
3. WAS IT A SUBSTANTIAL VIOLATION OF PETITIONER'S SIXTH AMENDMENT RIGHT TO HAVE COMPULSORY PROCESS FOR OBTAINING A WITNESS FAVORABLE FOR HIS DEFENSE, WHEN THE LOWER COURTS DENIED SUCH ON THE BASIS THAT THE WITNESS IS A GOVERNMENT PAIN INFORMANT IN LIGHT OF ROVIARO V. UNITED STATES, 353 U.S. 53 (1956)?
4. WAS IT A SUBSTANTIAL VIOLATION OF PETITIONER'S FIFTH AMENDMENT RIGHT TO NOT BE DEPRIVED OF LIFE, LIBERTY , OR PROPERTY, WITHOUT DUE PROCESS OF LAW, WHEN THE LOWER COURTS DENIED THE PETITIONER OF SUCH DUE TO THE CIRCUMSTANCES LEADING UP TO THE PETITIONER'S ARREST IN OF MCQUIGGIN V. PERKINS, 133 S. Ct. 1924 (2013)?
5. WAS IT A SUBSTANTIAL VIOLATION OF PETITIONER'S SIXTH AMENDMENT RIGHT TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE AT TRIAL, WHEN THE PETITIONER WAS FORCED INTO TRIAL, AND TRIAL COUNSEL WITHDREW AND WAS APPOINTED

QUESTIONS PRESENTED: (CONT.)

AS STAND BY COUNSEL IN LIGHT OF STRICKLAND V.
WASHINGTON, 466 U.S., 668 (1984)?

6. DID THE LOWER COURTS INFRINGE UPON THE DENIAL OF
PETITIONER'S SIXTH AMENDMENT RIGHT TO A TRIAL BY JURY AND
FURTHER SUBJECT PETITIONER TO COLLATERAL CONSEQUENCES IN
ACCEPTING PETITIONER'S 2010 ALFORD PLEA CONVICTION TO
ENHANCE PETITIONER'S INSTANT SENTENCE IN LIGHT OF SHEPARD
V. UNITED STATES, 544 U.S. 13 (2005)?

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:

FBI TASK FORCE OFFICER M. TEMPLE
DETECTIVE D T LAFRANQUE II
FELECIA STARR-PAID INFORMANT
DETECTIVE C DAVIS
OFFICER J FRISK
LAWYER S MEIER
CEO MR. D. ORTIZ OF FCI FT. DIX

INDEX TO APPENDICES:

APPENDIX K Trial Transcript Document #67 Page 1 and 2 Page 1
noting Standby Counsel:

TABLE OF AUTHORITIES CITED:

CASES:

PAGE NUMBER:

1. HAINES V. KERNER, 404 U.S. 519 (1972)	
2. WESTERN PACIFIC RY CORP V. WESTERN PACIFIC RY CO, 345 U.S. 247, (1953).....	13,
3. AVOLIO V. COUNTY OF SUFFOLK, 29 F. #D. 50 (2d Cir. 1994)	15
4. CORDON V. GREINER, 274 F. Supp. 2d. 434 (SD NY 2003).....	14
5. ROVIARO V. UNITED STATES, 353 U.S. 53 (1956)	7,8,
6. SANABRIA V. UNITED STATES 437 U.S. 54 (1978).....	8,
7. SHERMAN V. UNITED STATES, 356 U.S. 369 (1958)	9,
8. McQUIGGIN V. PERKINS, 133 S. Ct. 1924 (2013)	15,
9. STRICKLAND V. WASHINGTON, 466 U.S. 668 91984).....	11,
10. UNITED STATES V. CRONIC, 466 U.S. 648 (1984)	11,
11. ARIZONA V. YOUNGBLOOD, 488 U.S. 51, (1988)	15,
12. Crane V. Kentucky, 476 U.S. 683 (1986).....	10,
13. SHEPARD V. UNITED STATES, 544 U.S. 13 (2005)	13,
14. UNITED STATES V. ALSTON, 611 F. 3d. 219 (4th Cir. 2010).....	13,
15. NORTH CAROLINA V. ALFORD, 400 U.S. 25 (1970)	13,
16. CUSTIS V. UNITED STATES, 511 U.S. 517 (1994)	13,

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

SEE PAGE (vi)

STATUTES AND RULES

FEDERAL RULES OF CIVIL PROCEDURE 77(d)
FEDERAL RULES CIVIL PROCEDURE 5(b)(c)
FEDERAL RULES OF CIVIL PROCEDURE 10(c)
FEDERAL RULES OF EVIDENCE 615 (c)
FEDERAL RULES OF APPELLATE PROCEDURE 35 9b)(1)(A)
FEDERAL RULES OF APPELLATE PROCEDURE 4(a)(6)
TITLE 28 UNITED STATES CODE SECTION 46 (c)
TITLE 28 UNITED STATES CODE SECTION 851(b)
TITLE 28 United States Code Section 851(c)(1)
TITLE 28 UNITED STATES CODE SECTION 2253(c)(2)
TITLE 28 UNITED STATES CODE SECTION 2253 (c)(3)
TITLE 28 UNITED STATES CODE SECTION 2513 (a)(1)(2)

OTHER

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASONS FOR GRANTING THE WRIT	15
CONCLUSION.....	17

INDEX TO APPENDICES

APPENDIX A	Decision of Court of Appeals Fourth Circuit denying COA ON JULY 24, 2018
APPENDIX B	DECISION OF TRIAL COURT DENYING Rule 60 (b)(6) Motion:
APPENDIX C	Decision of the North Carolina Supreme Court denying Writ of Certiorari Review:
APPENDIX D	Decision of the Mecklenburg County Superior Court Alford Plea Sentencing Transcript:
APPENDIX E	Decision of the Court of Appeals 4th Circuit denying COA on October 20, 2016:
APPENDIX F	Decision of Court of Appeals 4th Cir. denying Motion to recall the mandate:
APPENDIX G	UNITED STATES OF AMERICA WITNESS LIST:
APPENDIX H	Detective DT LAFRANQUE DOCUMENT ACKNOWLEDGING INFORMANT'S PARTICIPATION:
APPENDIX I	Trial transcript Document #67, Page 163 and 164 of United States Marijuana sells different from crack crack cocaine sells.
APPENDIX J	TRIAL TRANSCRIPT Document # 68 Page 21 and 22 of the trial Court referencing Roviario V. United States and Ellison informing that the confidential informant was the core of his defense.

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 A to the petition and is

☐ reported at 18-6342, US V. Zonta Ellison 7/24/18; 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 to the petition and is

☐ reported at 3:16CV40, 3:11CR404-DSC-1 2/26/18; 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 C to the petition and is

☐ reported at North Carolina V. Ellison 30p14 (2014); or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the Mecklenburg County Superior court appears at Appendix D to the petition and is

☐ reported at 07CR5204449, 08CR5220195; 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 July 24, 2018.

☒ 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: _____, 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was March 6, 2014.
A copy of that decision appears at Appendix C.

☐ 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

AMENDMENT 1. RELIGIOUS AND POLITICAL FREEDOM:

Congress shall make no law respecting an establishment of Religion or prohibiting the freedom exercise thereof abridging the freedom of speech or the press; or the right of the people peaceably to assemble and to petition the government for redress of grievances.

AMENDMENT 4. UNREASONABLE SEARCHES AND SEIZURES:

The right of the people to be secure in their persons, house, papers and effects against unreasonable searches and seizures, shall not be violated and no warrant shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

AMENDMENT 5 CRIMINAL ACTIONS-PROVISIONS CONCERNING -DUE PROCESS OF LAW AND JUST COMPENSATION CLAUSES:

No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; Nor shall private property be taken for public use, without just compensation.

AMENDMENT 6. RIGHTS OF THE ACCUSED:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defence.

AMENDMENT 8. BAIL PUNISHMENT:

Excessive bail shall be required, nor excessive fines imposed, nor Cruel and Unusual punishment inflicted.

AMENDMENT 9. RIGHTS RETAINED BY PEOPLE:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 13.

SECTION 1 SLAVERY PROHIBITED.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONT)

SECTION SECTION 2. POWER TO ENFORCE AMENDMENT:

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT 14.

SECTION 1. CITIZENS OF THE UNITED STATES:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United states; Nor shall any state deprive any person of Life, liberty, or property, without due process of law; nor deny to any person within it's jurisdiction the Equal protection of the Laws.

TITLE 28 UNITED STATES CODE SECTION § 1254:

Cases in the Courts of Appeals maybe reviewed by the Supreme Court by the following methods:

(1) By writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of Appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

TITLE 28 UNITED STATES CODE SECTION § 1257:

(a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of Certiorari where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the constitution, traties, or laws of the United States, or where any title, right, privilege, or immunity is specially setup or claimed under the constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

TITLE 28 UNITED STATES CODE SECTION § 1331:

The district Courts shall have original jurisdiction of all civil actions arising under the constitutional laws or treaties of the Untied States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

TITLE 28 UNITED STATES CODE SECTION § 2253(c)(2)

A certificate of Appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

TITLE 28 UNITED STATES CODE SECTION § 2253(c)(3)

The certificate of appealability under paragraph (1) shall indicate which specific issues or issues satisfy the showing required by paragraph (2).

TITLE 21 UNITED STATES CODE SECTION § 851(b):

If the United States Attorney files an information under this section the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information.

TITLE 21 UNITED STATES CODE SECTION § 851(c)(1)

If the person denies an allegation of the information of prior conviction or claims that any conviction alleged is invalid, he shall file a written response to the information. The hearing shall be before the Court without a jury and either party may introduce evidence. The United States Attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact.

TITLE 28 UNITED STATES CODE SECTION § 46(c)

Cases and controversies shall be heard and determined by a court or panel of not more than three judges (except that the United States Court of appeals for the federal Circuit may sit in panels of more than three judges if its rules so provide), unless a hearing or rehearing before the court

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

En Banc is ordered by a majority of the Circuit Judges of the Circuit who are in regular active service, or such number of judges as may be prescribed in accordance with section 6 of public law 95-486 (92 stat. 1633) [28 USC Section 41 note], except that any Section 46 (c) continued; Senior Circuit Judge of the Circuit shall be eligible (1) to participate, at his election and upon designation and assignment pursuant to section § 294(c) of Title [28 USC Section §294(c)]. And the rules of the circuit, as a member of an En Banc court reviewing a decision of a panel of which such judge was a member, or (2) to continue to participate in the decision of a case or controversy that was heard or reheard by the court En Banc at a time when such judge was in regular active service.

TITLE 28 UNITED STATES CODE SECTION § 2513(a)(1)(2):

& §2513 UNJUST CONVICTION AND IMPRISONMENT:

- (1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and
- (2) he did not commit any of the facts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any state, territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

STATEMENT OF CASE:

On March 16, 2011 at approximately 1140 hours Detective DT Lafrangue II met with confidential and reliable informant CRI "Ms. Starr" to conduct a controlled drug purchase.

Detective Lafrangue searched the CRI and found that she had no money or contraband on her person. The CRI was then provided twenty (20) dollars in City interest funds money and directed to make a drug purchase from a subject by the name of Zanta Ellison Aka "Black" at his residence of 2428 Pitts Drive. The CRI was then able to make contact with Mr. Ellison at his residence and purchase twenty (20) dollars worth of Marijuana (3.6 grams).

The CRI returned to the detective and handed him the Marijuana purchased Detective Lafrangue then conducted a second search of the CRI and she was not in possession of any money nor controlled substances. Officer Frisk was present. ROYAL V. UNITED STATES, 353 U.S. 53 (1956).

Ms. Starr was in fact the government's paid informant which the government only documented twenty (20) dollars of the forty dollars (40) that she spent on Marijuana. Through Ms. Starr inducement working under detective C. Davis who was the undercover Officer working under detective C. Davis who was the undercover officer working with TFO M. Temple and DT Lafrangue, after frequent persistence from Ms. Starr and Ellison informing Ms. Starr that he did not sell crack cocaine, After some persuasion from Ms. Starr, Ellison finally got Ms. Starr some crack cocaine. Ms. Starr had purchased Marijuana from Ellison twice before; after Ellison got Ms. Starr Twenty (20) dollars of crack cocaine and twenty (20) dollars of Marijuana Ms. Starr in

informs Ellison that she told her cousin who was played by detective C. Davis about Ellison product and how good it was and that he was looking for a plug and wanted to meet Ellison. Ellison declined to meet Ms. Starr Cousin informing Ms. Starr that he did not sell crack cocaine but only obliged MS. Starr because she kept on persisting that he get her some crack.

After Ms. Starr continued insisting that it's not like that and that she nor her cousin detective C. Davis wasn't the police Ellison finally gave in. Ms. Starr then introduced Ellison to detective C. Davis after purchasing twenty (20) dollars of Marijuana and twenty (20) dollars of crack. Detective C. Davis then requests to obtain Ellison number from Ms. Starr for future drug purchase.

As the United States set back and allowed Ms. Starr to partake in crime to induce Ellison to commit another crime so that the government could arrest Ellison for federal prosecution, in fact created and brought about Ellison's possession of crack cocaine and persuasion into the trade from the lesser offense of selling Marijuana.

At trial Ellison attempted to subpoena Ms. Starr as a witness to testify citing that he was as a matter of law entrapped into committing the alleged offense, through the acts of Ms. Starr. The United States withheld Ms. Starr as a witness due to her role constituting more than the alleged introduction, which prejudice Ellison of his fundamental due process right to a fair proceeding. (SEE: **APPENDIX C UNITED STATES WITNESS LIST**) To rebut the government's stance Ms. Starr's attendance was in fact needed pursuant to federal rules of evidence 615 (c) and the Sixth Amendment

of the United States Constitution right to the compulsory process for obtaining a witness favorable to presenting Ellison theory of the entrapment defense. Ellison has met the criteria of *Roviaro V. United States*, 353 U.S. 53 (1956). In *Roviaro V. United States* this court held it was pointed out that the informer had taken a material part in bringing about the possession of the heroin by the petitioner, was the sole participant, together with the petitioner, in the transaction charged, might be a material witness as to whether the petitioner, in the transaction charged, might be a material witness as to whether the petitioner knowingly transported the drugs as charged and was the only witness in a position to amplify or contradict the testimony of the government's witnesses.

The government's privilege to withhold disclosure of an informer's identity must give way, where the disclosure of his identity, or the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause; in these situations the trial court may require disclosure and, if the government withholds the information, dismiss the action. *SANABRIA V. UNITED STATES*, 437 U.S. 54 (1978). Ms Starr had in fact taken a material part in bringing about Ellison possession of cocaine base which was the basis of an indictment charging Ellison with a violation of Title 21 U.S.C. § 841(a)(1), was in fact the sole participant in the governments investigation and was the only witness in a position to contradict the testimony of government witness.

Ellison did not know Ms. Starr personally or if her name was actually Ms. Starr he relied on defendant's exhibit 1 presented on

the first day of trial.

As the government throws a rock then hides it's hand, the omission of Ms. Starr's conduct in March of 2011 was intentionally done to conceal the government's scheme to entrap Ellison. (SEE: Appendix H). Furthermore, the government alleges that Ellison sold crack cocaine on three different occasions in June of 2011 to undercover detective C. Davis. These alleged sells would have had to transpire after March of 2011 which was the time of Ms. Starr's role. (SEE APPENDIX I). This would put Ellison in position to meet the criteria of Sherman V. United States. 356 U.S. 369 (1958). In Sherman V. United States, this court held where in a prosecution for unlawful sales of narcotics the defense of entrapment has been established as to the first sales made by the defendant to a government informer, it makes no difference that the sales with which the defendant is charged occurred thereafter where these sales were not independent acts subsequent to the inducement. The sales made by the defendant Ellison to Ms. Starr in March 2011 for Marijuana then Marijuana and crack were the first sales made by the defendant. the sales made to the undercover detective C. Davis in June 2011 with which Ellison is charged are in fact the sales which occurred thereafter.

The government admitted to the sells of Marijuana in March of 2011 being different from the crack cocaine sells yet withheld the fact that the paid informant Ms. Starr in fact partook in the government's scheme to entrap Ellison for federal prosecution. (SEE APPENDIX I). The trial court referenced Roviato V. United States, aware of the fact that Ms. Starr was favorable to Ellison presenting his theory of entrapment, but, denied his right to subpoena Ms. Starr as a witness. (SEE: Appendix D). (Crane V. Kentucky. 476 U.S. 683 (1986)).

The trial court forced Ellison into trial after allowing defense counsel Meier to aid the government in a surprise attack. withdrawing on the first day of trial. forcing Ellison to represent himself Mr. Meier was then appointed as Ellison standby Counsel. (SEE: Appendix K). Ellison meets the criteria of Strickland V. Washington. 466 U.S. 668 (1984). In Strickland V. Washington. this court held that a person who happens to be a lawyer is present at trial alongside the accused is not enough to satisfy the Sixth Amendment. an accused is entitled to be assisted by an attorney whether retained or appointed. who plays the role necessary to insure that the trial is fair. (UNITED STATES V. CRONIG. 466 U.S. 648 (1984)).

On January 27. 2007 the petitioner was arrested on a warrant for probation violation by officer JE Frisk and MW Blaich. Upon such arrest Ellison was framed by officers Frisk and Blaich alleging that he placed drugs that officer Blaich found in the back seat of his police vehicle. While Ellison was in the back seat with his hands cuffed behind his back and the police car door swung open with his legs hanging out after being searched on three different occasions by three different officers. officer Blaich walks up with something in his hands and says to ellison look what I found.

The petitioner then responds to officer Blaich "vou know that ain't mine." Officer Frisk then says to Ellison "oh well you know how it goes you got to prove it in a court of law. Ellison responds to officer Frisk. stating I have no problem with that. Officer Frisk then states to his fellow officers. the Mother Fucker needs to be locked up for 30 years."

Ellison was arrested and charged with possession of cocaine. resisting a public officer. two counts of assault on a government official and probation violation. Trial by jury was set thereafter. Subsequently Ellison was sent to the North carolina Department of Corrections divisions of prisons for six months for probation violation and released on August 1. 2007. While out on bond awaiting trial by jury after entering a plea of not guilty in February 2008 Ellison was arrested and charged with the Career criminal. and released 12 days later. On April 25. 2008 Ellison was arrested again by officers B. Tisdale and S. Greene alleging that on such date Ellison sold crack cocaine to officer Tisdale. Ellison was charged with possession with intent to sell and deliver cocaine. possession of cocaine. sell cocaine. deliver cocaine. possession of Marijuana and habitual felon status.

Ellison posted bail in September 2008. On March 9. 2009 Ellison was rearrested and charged for the cited cases. pending trial on Januaryv 2007. possession of cocaine case involving Officer Frisk.

On May 20. 2009 Ellison pled not guilty to the April 2008 sell cocaine case and once again to the Januaryv 2007 possession of cocaine case as the cases were consolidated together and trial by jury was scheduled for July 27. 2009. in Mecklenburg County Superior Court in Charlotte North Carolina. In December 2009 Ellison filed two motions to dismiss the charges against him citing Fifth Amendment and Sixth Amendment due process violations.

The state of North Carolina never answered the motions nor did the court rule on the motions. On June 11 2010 the state of North Carolina's remedy for denying Ellison his Sixth Amendment right to trial by jury. the state forced Ellison to take an Alford plea for

time served. (SEE: Appendix D). Ellison was prejudice because he was denied of his Fifth Amendment due process of law right. Ellison meets the criteria of North carolina V. Alford. 400 U.S. 25 (1970).

When such conviction became the subject of enhancing Ellison's federal sentence pursuant to 21 U.S.C. SECTION § 851 and further exposed Ellison to collateral consequences. Ellison challenged the validity of the conviction citing that it was invalid pursuant to 21 U.S.C. § 851(c)(1). and the lower court overruled Ellison's contention denying him the Equal Protection of the law. This put Ellison in position to meet the criteria of Custis V. United States. 511 U.S. 517 (1984). in Custis V. United States. this court held that every federal court of appeals allows a petitioner to challenge a conviction whose sentence has expired. if he or she is currently incarcerated as a result of that conviction. or if that conviction is used to enhance a sentence presently being served. (United states V. Morgan 346 U.S. 502. (1954). (Shepard V. United States. 544 U.S. 13. (2005)(United States V. Alston. 611 F. 3d. 219 (4th Cir. 2010).

The declining of the lower court to issue Ellison a certificate of Appealability on July 24, 2018. when in fact Ellison has pursuant to Title 28 U.S.C. §§ 2253(c)(2) and § 2253(c)(3) showed to the courts a substantial violation of his constitutional rights. Also denying Ellison of his constitutional right to an En Banc hearing pursuant to federal rules of appellate procedure § 35(b)(1)(A). Title 28 U.S.C. § 46(c). due to Ellison being denied a timely formal notice of the 4th Circuit Court of appeals judgment entered on October 20. 2016 denying a COA. pursuant to federal rules of civil procedure 77 (d). 5(b)(c) federal rules of Appellate Procedure 4(a)(6). Western Pacific ry Corp V. Western Pacific Ry Co.. 345 U.S. 247. (1953). Avolio V. County of

Suffolk. 29 F. 3d. 50 (2d Cir. 1994) and Cordon V. Greiner 274 F.
Supp. 2d, 434 (SD NY 2003)

REASONS FOR GRANTING THE PETITION

The granting of this petition is applicable to the petitioner Ellison because the petitioner was deprived of his First Amendment right to the freedom of speech, and to petition the government for redress of grievances. Fourth Amendment right to be secure in his persons, houses, papers, and effects against unreasonable searches and seizures. Fifth Amendment right to not be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty without due process of law. Sixth Amendment right to be informed of the cause of the accusation, to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense. Eighth Amendment right to be protected from cruel and unusual punishment inflicted and Fourteenth Amendment right to the Equal Protection of the law as guaranteed by the United States Constitution were violated by the United States Government and lower courts because Ellison was denied the aforementioned rights which deprived him to defend against the United States prosecution and thus denied him to a fair proceeding.

Ellison relied on Federal Rules of Civil Procedure § 10(c) adoption by reference; Exhibits presenting documents to support his claims of defense. (*Arizona V. Youngblood*, 488 U.S. 51 (1988)). Ellison claims that he is actually innocent because the core of Ellison arguments are the fundamental unfairness "of imposing judgment without going through the process of litigation which the Rules prescribe. (*McOuiggin V. Perkins*, 133 S. Ct. 1924 (2013)). The appellant brings this Writ as a Pro se litigate. A Pro Se Pleading is held to a less stringent standard than more formal documents prepared


by lawyers. (Haines V. Kerner. 404 U.S. 519 (1972)).

Ellison asks this honorable Court to issue a Certificate of innocence pursuant to Title 28 UNITED STATES CODE SECTIUON § 2513(a)(1)(2) as he has proved and can prove his actual innocence. overturn the conviction and sentence and remand with instruction to immediate release and discharge Ellison from custody.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: October 12, 2018