

No. 21-3053 or 19-3053

21 - 6233

IN THE
SUPREME COURT OF THE UNITED STATES

Joe Rodriguez

(Your Name)

PETITIONER
ORIGINAL

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

AUG 17 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States Court of Appeals for the Eighth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Joe Rodriguez #10610-179

(Your Name)

FCI Milan, P.O. Box 1000

(Address)

Milan, MI. 48160

(City, State, Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

1. Did the courts below err when they determined that there was sufficient evidence to convict the Petitioner of Conspiracy to Distribute Methamphetamine as charged in Count One of the Indictment?
2. Was the Petitioner denied the right to an impartial jury trial due to the lack of opportunity of defense counsel to stipulate to the accuracy of the transcript and the lack of curative instruction by the district court at trial?

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:

RELATED CASES

None.

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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 984 F.3d 704; 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☐ is unpublished.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 _____; 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☒ is unpublished.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 _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; 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☐ is unpublished.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 January 8, 2021.

☐ 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: March 12, 2021, and a copy of the order denying rehearing appears at Appendix C.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including July 1, 2021 (date) on _____ (date) in Application No. 21 A 1714.

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 _____.
A copy of that decision appears at Appendix _____.

☐ 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

1. U.S. Constitution, Sixth Amendment: The accused's right to an impartial jury trial.
2. 18 U.S.C. § 2, 21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(A)(viii), 21 U.S.C. § 841(b)(1)(C).

STATEMENT OF THE CASE

On June 20, 2018, the Petitioner, Joe Rodriguez, was indicted in the U.S. District Court for the District of North Dakota alleging five counts of Distribution of a Controlled Substance, one count of Possession with Intent to Distribute Controlled Substances, and one count of Conspiracy to Possess with Intent to Distribute Controlled Substances. Mr. Rodriguez pled not guilty and proceeded to jury trial on the Indictment on May 7, 2019. Mr. Rodriguez was found guilty on all seven counts in the Indictment on May 9, 2019. Mr. Rodriguez was sentenced to serve a concurrent 144 month sentence on September 9, 2019 by Chief Judge Daniel Hovland.

The evidence at trial that is relevant to this petition consists of witness testimony by the Confidential Informant, Sergeant Andreas Alt. who worked for the Walsh County Sheriff's Office but was assigned fulltime to the Grand Forks Narcotics Task Force, and audio evidence presented in Government's Exhibit 5.

The C.I. used in this case is an addict who has struggled with substance abuse issues for the past twenty or so years. C.I. testified that she purchased quantities of methamphetamine for her personal use and also sold it to support her addiction. She was apprehended by law enforcement on August 1, 2017, for attempting to sell methamphetamine to a confidential informant. She was given the option to become a C.I. herself, and she agreed to do so in exchange for consideration on her potential charges stemming from her attempted sale. In her capacity as a C.I., she testified that she told the Task Force that Mr. Rodriguez supplied her with methamphetamine many times over the years. The C.I., under the direction of law enforcement conducted five different controlled purchases of methamphetamine from Mr. Rodriguez on August 1, August 2, August 14, August 16, and October 24, all transactions occurring in 2017. Law enforcement obtained two separate warrants during their investigation. The first search warrant was obtained in August of 2017, after the fourth controlled buy took place. The original G.P.S. tracker did not reveal any illegal activity by Mr. Rodriguez through the first sixty days.

The C.I. testified that she relayed information to law enforcement after the October 24, 2017 controlled buy that Mr. Rodriguez had told her he was driving to Laredo, Texas soon and would obtain narcotics when he visited. Law enforcement obtained a second search warrant to track his location to Texas and placed another GPS tracker on the GMC Envoy. Law enforcement organized a stop of Mr. Rodriguez in his GMC Envoy upon his return from Texas on November 9, 2017. Mr. Rodriguez was stopped when buying gas at the Flying J Truck Stop located in Grand Forks, North Dakota just prior to returning home to Walsh County.

Law enforcement did a preliminary search of the GMC Envoy but did not find controlled substances in the vehicle. Mr. Rodriguez was detained at this time due to pending charges in Walsh County. Law enforcement obtained a search warrant and completed a more thorough search of the GMC Envoy the next day and discovered three different baggies containing methamphetamine and/or cocaine. One sealed plastic bag contained 110.6 grams of cocaine, another contained 307.88 grams of methamphetamine, and the last contained 24.18 grams of cocaine. The controlled substances were found in two different plastic containers inside the back of the vehicle.

The Government did not meet its burden at trial to show the jury that Mr. Rodriguez intentionally entered into a conspiracy with any of the potential co-conspirators in this case, or that Mr. Rodriguez was even aware of a conspiracy.

Mr. Rodriguez was also not afforded an impartial jury trial due to the A.U.S.A. presenting an audio recording on a large screen with a transcription caption of the recording on the bottom of the screen that was incorrect. The errors in transcription provided by the prosecution were not favorable to Mr. Rodriguez and biased the jury to his actions during that particular controlled buy and the other controlled buys alleged by the A.U.S.A. Due to where the projector screen was placed in the court room, eight of the twelve jurors saw the incorrect and unverified transcription for the only audio recording of an alleged controlled buy involving the C.I. and Mr. Rodriguez, originally entered into evidence as Government's Exhibit 5.

REASONS FOR GRANTING THE PETITION

I believe I deserve a new trial because the prosecutor tampered with the evidence. He put a transcript on a TV for the jury to read it while he played an audio recording. There's two different stories, the story told by the actual audio recording, and the story that the prosecutor falsely told through the unverified transcription. Obviously the prosecutor wanted the jury to hear only his story, which biased them against me. Neither my lawyer or I ever agreed to the transcript or read the transcript before the jury saw it. This was inappropriate behavior by the government prosecutor and my lawyer should have told the judge that the jury had been misled with the inaccurate and unverified transcript and asked the judge for a mistrial. The judge asked the jury how many people read the transcript and 8 jury members out of 12 raised their hands. The judge should have stopped the trial. I believe that as a result, I never had a fair trial and my judgment should be vacated. Since I didn't know the law rules in court, I am now here asking you for help. The government lawyer told me he was going to make an example of me for choosing to go to trial, and my lawyer didn't help me much.

I also got convicted of conspiracy to distribute over 500 grams of methamphetamine but the evidence did not show over 500 grams. And I got sentenced as a criminal history category II because I had a case before this one, but the case was a marijuana charge and it was over the 15 year limit, and so it should not have counted towards my criminal history score. If that case hadn't counted against me, my sentence would have been less time because the judge went out of his way to give me 2 years more than the 10 year mandatory minimum (for 5 months of drug activity).

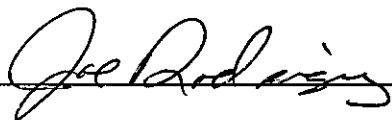
Also, there is no proof of a conspiracy because you cannot conspire with a government agent or an unknown person because I don't know the unknown person and neither does the government agent. There was a guy who worked for the government on the jury too.

I ask, where is the "justice for all?"

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10-29-2021