No. 25-5362

ORIGINAL

Supreme Court, U.S.
FILED
JUN 26 2025
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IN THE

SUPREME COURT OF THE UNITED STATES

NATHANIEL BLANCHER — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NATHANIEL BLANCHER
(Your Name)

USP TUCSON, P.O. BOX 24550
(Address)

TUCSON, AZ 85734
(City, State, Zip Code)

N/A
(Phone Number)

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## LIST OF PARTIES

[XX] 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

## QUESTION(S) PRESENTED

Whether a guilty plea becomes knowing, intelligent, and voluntary when the plea agreement inaccurately describes the penalty provision of the statute at issue which defendant avers his counsel also misadvised him on -- inducing the guilty plea -- and whether such a claim requires a response from the government and an evidentiary hearing, when the defendant claims he would have insisted on going to trial but for counsel's misadvice and the inaccurately described penalty provision.

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## INDEX TO APPENDICES

## TABLE OF AUTHORITIES CITED

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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix F to the petition and is

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[X] is unpublished.

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

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[X] is unpublished.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[ ] is unpublished.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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was April 25, 2025.

[X] 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 _____. 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

28 U.S.C. § 2255(b):

"Unless the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto."

Rule 4(b), Rules Governing Section 2255 Proceedings

"The judge who receives the motion must promptly examine it. If it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order."

## STATEMENT OF THE CASE

Nathaniel Blancher ("Blancher") pled guilty to four counts arising from his criminal sexual activity with a minor by way of a plea agreement. Doc. 37.

"The plea agreement does not appear to accurately describe the penalty provision of 18 U.S.C. § 2260A, the offense charged in Counts Two and Four, by stating that the sentences for those counts must each be served 'consecutively to all other counts." Report and Recommendation, Doc. 52 at pp.13-14 n.4 (Appendix B).

The District Court accepted Blancher's guilty plea, and though the District Court discussed the penalty provision at issue, the "consecutive" language did not resolve the inaccurately described penalty provision. Doc. 38.

The District Court sentenced Blancher to 480 months in prison, with each count being served consecutively. Doc. 48 at 2.

Blancher then filed a pro se motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, arguing that counsel misadvised him regarding the penalty provision at issue, and the plea agreement's inaccurate description did not cure that misadvice. Blancher further asserted that the plea colloquy did not cure the misadvice, and that but for the misadvice and inaccurate penalty provision, Blancher would have insisted on going to trial. Doc. 50 at 5, 14 (Appendix A).

The Magistrate Judge recommended that the motion be denied without an evidentiary hearing and without a response from the government. Doc. 52 at 12 (Appendix B).

The District Court adopted the recommendation and denied Blancher's section 2255 claims, but issued a Certificate of Appealability on whether the dismissal without a response from the government or an evidentiary hearing was correct. Doc. 54 (Appendix C).

Blancher appealed. 11th Cir. Doc. 16 (Appendix D).

The government responded. 11th Cir. Doc. 29 (Appendix E).

The Eleventh Circuit affirmed on April 25, 2025. 11th Cir. Doc. 36-1 (Appendix F).

## REASONS FOR GRANTING THE PETITION

Rule 4 of the Rules Governing Section 2255 Proceedings requires the judge who conducted the proceedings being challenged to promptly examine a motion made under section 2255 to determine whether the moving party is, or may be, entitled to relief. "If it plainly appears from the motion, any attached exhibits, and the record of the proceedings that the moving party is not entitled to relief, the judge must dismiss the motion and direct the clerk to notify the moving party. If the motion is not dismissed, the judge must order the United States attorney to file an answer, motion, or other response within a fixed time, or to take other action the judge may order." See Rule 4(a)-(b) of the Rules Governing Section 2255 Proceedings.

In a section 2255 proceeding, the district court must accord the movant an evidentiary hearing "unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255. The operative and dispositive word here, is "conclusively." If the record is inadequate to show conclusively that the movant's contentions are without merit, the district court must conduct a hearing. See Humphrey v. United States, 888 F.2d 1546, 1550 (11th Cir. 1989) (emphasis in original).

In this case, the record does not conclusively show that Blancher's contentions are without merit. Mr. Blancher alleged that he was assured by counsel, regardless of any routine language

in the plea agreement (Doc. 37) and any subsequent procedure, that:

> "by agreeing to enter into a plea agreement - his sentence would not exceed 30-years. Both the AUSA and the Mobile County (State of Alabama) prosecutor agreed that 30-years was a reasonable sentence; with the State agreeing to match the 30-years to run concurrent with a 30-year federal sentence. Mr. Blancher, however, was ultimately sentenced to 40-years respectively. The additional 10-years at issue here stems from Count 4 in violation of 18 U.S.C. § 2260A. Count 4 mirrors Count 2, which counsel for Mr. Blancher had explained could 'not be doubled' in Mr. Blancher's actual sentence; rather, that it would only be counted 'toward the total offense level.' This made sense to Mr. Blancher, since he understood that multiple punishments for being a registered sex offender was contrary to the Constitution's Fifth Amendment. Notably, there was nothing extraordinary about the plea colloquy that cured counsel's misadvice regarding stacked penalty statute, and that it would be added twice to the 20-year sentence on Counts 1 and 3."
>
> Doc. 50 - PageID. 207, 216 (emphasis in original).

The record does not refute this allegation; in fact, the information in the record relied upon by the Magistrate resulted in an extensive one and a half page footnote being included in the R&R. Doc. 52 - Pag 13-14, footnote n.4. In the footnote, the Magistrate acknowledges that "[t]he plea agreement does not appear to accurately describe the penalty provision of 18 U.S.C. § 2260A," because it states "the penalty" "must each be served 'consecutively to all other counts.'" Id. (emphasis added) (referencing Doc. 37 -

PageID. 65-67); but see also, and cf. with footnote n.2, supra (discussing the Magistrate's misuse of the word "each"; Count Two and Four's lacking reference to any predicate count or statute triggering 18 U.S.C. § 2260A in the plea agreement, and; the Magistrate's use of the singular ("the offense"), as opposed to the plural when discussing Counts Two and Four).

In that light -- at least to any layman untrained in contractual and criminal law, when coupled with counsel's misadvice and false assurances along the same lines -- "the penalty" for violating 18 U.S.C. § 2260A, without reference to any predicate count or statute triggering its violation appears not to be doubled; but rather, to be counted toward the total offense level as alleged by Blancher, and would be served "consecutively to all other counts."

As Blancher alleged, "Count 4 mirrors Count 2, which counsel for Mr. Blancher had explained could 'not be doubled' in Mr. Blancher's actual sentence; rather, that it would only be counted 'toward the total offense level.'" Doc. 50 - PageID. 207 (emphasis added). Blancher then went on to explain how and why, at the time, this made sense to him. Id.

Blancher's allegation regarding there being "nothing extraordinary about the plea colloquy that cured counsel's misadvice" (Id.) was not addressed or resolved by the Magistrate or District Court. See Clisby v. Jones, 960 F.2d 925, 935-36, 938 (11th Cir. 1992) (en banc) (holding that district courts must

resolve all claims for relief that a habeas petitioner raises).

Blancher concludes his Ground One claim by asserting that "[b]ut for counsel's misadvice, Mr. Blancher would have either, e.g., sought a binding plea; entered a plea of nolo contendere to preserve the matter for appellate reveiw; or insisted on going to trial given that any sentence over 30-years (which all parties agreed to - including the State) would have (and did) effectively become a death-by-incarceration sentence, or near thereto." Doc. 50 - PageID. 207, 216. When considering the undeniable consequences between a sentence that projects Blancher's release in his mid-70s, versus his mid-80s, Blancher's assertion that he would have pursued or attempted to pursue one of the foregoing options but for counsel's misadvice and false assurances, is by no means incredible or unavailing.

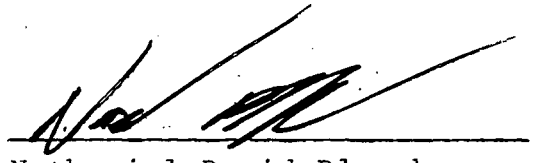
Because Blancher's allegation is not conclusively refuted by the record, this matter should be remanded for evidentiary hearing on whether counsel rendered ineffective assistance by assuring Blancher that he would not be sentenced to more than 30 years imprisonment if he pled guilty to all counts of the indictment by way of an open plea agreement.

## CONCLUSION

Statutory provisions, Rules Governing Section 2255 Proceedings, and well-established case law conclusively show that Blancher's substantive and procedural rights have been violated. Applying the plain error standard, Blancher has shown that the District Court's failure to hold an evidentiary hearing was error, that the error is clear, and that the error affected his substantial rights.

This case should be remanded with instructions to hold an evidentiary hearing on whether counsel rendered ineffective assistance by assuring Blancher that he would not be sentenced to more than 30 years imprisonment if he pled guilty to all counts of the indictment. The petition for a writ of certiorari should be granted.

Respectfully submitted,



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