

No. _____

25-5387

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

DEC 26 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ROBERT NARVETT -PRO SE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

ROBERT NARVETT -PRO SE §3181509
(Your Name)

SPC-HAZELTON PO BOX 2000
(Address)

BRUCETON MILLS, WV 25625
(City, State, Zip Code)

304-379-5000
(Phone Number)

QUESTION(S) PRESENTED

Did the Appeals Court error by claiming Movants substantial rights were not affected after conceding that the District Court accepted the Movants plea agreement with no definitive proof that there was a constitutionally required determination that the Movant understood his appeal waiver rights or any rights as there was no recording or transcript of the Rule 11 hearing nor any other substitute record verifying Movant understood his rights within his plea agreement, from the Court.

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

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OTHER

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 _____; 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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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 October 10, 2024.

☒ 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

Federal Rules of Criminal Procedure

Rule 11. Pleas

(b) Considering and Accepting a Guilty or Nolo Contendere Plea

(1) Advising and Questioning the Defendant.

Before the court accepts a plea of guilty or nolo contendere, the defendant may be placed under oath, and the court must address the defendant personally in open court. During this address, the court must inform the defendant of, and determine that the defendant understands, the following:

(N) the terms of any plea-agreement provision waiving the right to appeal or to collaterally attack the sentence.

(g) The proceedings during which the defendant enters a plea must be recorded by a court reporter or suitable recording device.

STATEMENT OF THE CASE

This Appeal comes before this Court in a request for a decision making rule for Circuit Court consistency regarding a Rule 11 hearing violation. Unlike almost every waiver of rights appeal, the Appeals Court in this case did not have the opportunity to review a plea hearing transcript. It was not recorded in error. Federal Rules of Criminal Procedures 11, governs the District Courts acceptance of a guilty plea. Rule 11 obliges the trial court to engage the defendant in a colloquy at the time of the plea is entered for the purpose of establishing a complete record of the constitutionally required determinations.

In the Appeals Courts affirmation, it appears they conclude that the Judges obligation to determine the movants understanding of his rights was not necessary as the outcome of a guilty plea would not have changed. Movant vehemently disagrees.

The miscarriage of justice cannot be overlooked in this case and certainly does not comply with the fairness, integrity, or public reputation of the court proceeding. The Appeals Court issues brought forth in their opinion were addressed in the public defenders government reply brief. It appears that brief went ignored.

The central theme in the Appeals Court ruling was that the Movant was intelligent enough to comprehend his plea agreement without Court determination of understanding and that given the evidence against Movant, any Judge admonishment of rights would not have changed Movants plea. So in effect, no substantial rights were

affected. Again movant vehemently disagrees.

Movant understands and respects the Appeals Court view on post hoc assertions from a defendant on how they would have plead after receiving a longer-than-expected sentence, of which the Supreme Court disfavors. What is key, it is not the sentence per se the issue but the appeal issue of which the movant did not have full understanding of the consequences of. The waiver was not just applicable to the prosecutions recommendation but for any sentence length the Judge gave, a length movant was aware could happen. The Appeals Court claims movant should have known the difference and even claim the Judge gave the waiver admonishment at sentencing and it should be sufficient. What the Judge said was "You have a right to appeal your conviction or your sentence. I know there is a waiver here in the plea agreement, but that has exceptions so keep in mind you have the right to appeal any conviction." There was no acknowledgement from the movant on this. How could movant not understand that as anything but a right to appeal.

The crux of the Appeals Court view is that nothing would have changed with a plea, given the evidence and concessions given, therefore a trial would gain the movant nothing. This simply is a crucial error in judgement. First, the 6th amendment does not require one to prove innocence before they exercise their trial rights. Movant was looking at a plea that carried a 20 year maximum sentence, restitution and supervised release of 3 years. At almost 58, this could be looked at as a death sentence. Movant clung to the hope of a guideline sentence but understood

as the Judge confirmed at sentencing, movant could appeal if he went over guidelines. He did and made moot any concessions as the sentence was almost double the prosecutions recommendation and guidelines. Movant thought he could appeal. Movant was well aware of the disdain the Judge had for him, that the Appeals Court left out when they said in their opinion that the movant was previously found liable in a civil proceeding brought by the SEC. Movant was ruled on by the same Judge who was going to sentence him in a criminal case. In the civil case, movant was given hefty disgorgement and a crushing 300k fine. Of course movant would think he had an appeal right over the guidelines. Absent that right, movant would go to trial. He would be able to fight the charges, cross examine witnesses that could shed light on issues that would be mitigating enough for the Judge to consider in sentencing if found guilty. Most important the right to appeal any shockingly high sentence. All these considerations are rejected by the Appeals Court as they expected movant to accept a death sentence type risk, which is about what movant received.

The question at hand, was a substantial right affected based on the error committed by the Court. It is evident that the movant did not have the intelligence and legal acuity the Appeals Court claims he had and it was certain he would have withdrew his plea and went to trial based on the Courts error of determining movants appeals understanding. The reasonality of a substantial rights

harm is that the outcome of the proceeding would have been different.

The Appeals Court does an admirable job presenting cases to solidify their affirmation in denying a substantial right harm. They refer to cases of United States v. Vonn; v. Dominquez Benitez; v. Polak; v. Stoller; v. Noble. Each unique with one common thread, the reviewing court for each case had the opportunity to review their plea hearing transcripts and use them in their whole record analysis to make their decisions. A right movant did not get to have.

Movant brings to this Courts attention United States v. Lopez, (9th Circuit, 2013). Similar case situation in that an absence of the plea hearing transcript occurred because of an error. That Court recognized the sanctity and spirit of the Judge/Defendant dialogue and importance of a determination of understanding of all the elements of the Rule 11 hearing. That Court says "Absent a verbatim recording of the plea proceedings, it is not possible to assess whether the requirements of the Rule 11 were met."

Rule 11 is a main part of the whole part of the record. They vacate and remand back to the District Court. A complete contrast to movants case. Movant fully understanding his waiver rights from a Judges admonishment at the plea hearing changes the trajectory of the criminal proceeding.

The Appeals Court in movants case makes clear regarding the values of fairness, integrity, or public reputation of the judicial proceedings is an important element of the 7th Circuit. What they seem to not adhere to in a previous decision verbiage

applicable here is "Safeguarding these values may require that we reverse a conviction independent of the defendants innocence."

United States v. Olson, (7th Cir. 2018)

Movant recognizes the high hurdle one has to achieve for a reversal of a court decision and even higher one to have an esteemed law clerk recognize a case worthy to be viewed by the Highest Court. There appears to be a substantial amount of speculation and assumptions from the Appeals Court in their reasoning to affirm the District Courts case and less weight given to facts and procedural error.

Movant not bringing this case to this Court in one regard would be considered selfish and unapologetic by not trying to make amends to victims by efforts of restitution eventually from a case review and reversal.

The consideration of case review is all movant can ask.

REASONS FOR GRANTING THE PETITION

When two different Appeal Court Circuits make opposite decisions from the same type case issue, this difference needs to be settled by the Supreme Court.

The significance of the District Courts Judge authority and obligatory responsibility to engage with a defendant verbally, to admonish and receive acknowledgement of understanding from the defendant on the established elements within a Rule 11 hearing, is paramount to consistency within the Courts. Not having a transcript leads to the inconsistency we are seeing in this case review.

The Federal Rules of Criminal Procedures are a necessary element in the criminal proceedings that prevent misunderstanding and bring clarity to court decisions.

If the Appeals Court is sending a message in their opinion contrary to this subject, it would seem reasonable for the Supreme Court to lead the way and shed light on Criminal Procedures importance.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Robert N. Smith

Date: June 12, 2025