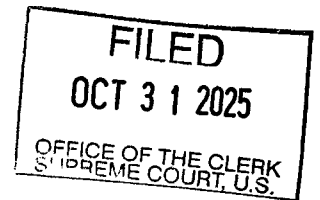


25-6343  
No. \_\_\_\_\_

25-6343

IN THE  
SUPREME COURT OF THE UNITED STATES



\_\_\_\_\_  
**SHARARD COLLIER,**

**Petitioner,**

**v.**

**UNITED STATES OF AMERICA,**

**Respondent.**

**PETITION FOR WRIT OF CERTIORARI  
FROM THE FIFTH CIRCUIT COURT OF APPEALS**

Mr. Sharard Collier # 21850-043

USP-McCreary / P.O. Box 3000

Pine Knot, KY. 42635

## **QUESTION(S) PRESENTED**

### **QUESTON NUMBER ONE:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground One pre-trial ineffective assistance of counsel claim and did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

### **QUESTION NUMBER TWO:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Two by erroneously advising Collier to enter Stipulation in which bounded him to a factual basis drug quantity that effectively resulted in a life sentence and did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

### **QUESTION NUMBER THREE:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Three as his Guilty Plea was tainted by ineffective assistance of counsel and did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of

the U.S. Constitution ?

**QUESTION NUMBER FOUR:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Four based upon his former attorney's failure to object to Rule 11 (b) (1) (G) violation in which rendered his guilty plea unknowingly and unintelligently entered and did the Fifth Circuit abuse its discretion by affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

**QUESTION NUMBER FIVE:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Five based upon his former attorney failure to request a pre-plea PSR be prepared, did the Fifth Circuit abuse its discretion by affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

**QUESTION NUMBER SIX:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Six by failing to apprise Collier of his Faretta warnings before allowing him to proceed with self-representation did the Fifth Circuit abuse its discretion by affirmation of the district court's decision, thus,

did this violate his due process of law rights of the Fifth Amendment rights of the U.S. Constitution ?

**QUESTION NUMBER SEVEN:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Seven did it constitute a Conflict of Interest by ordering Attorney Harenski to remain on as Collier's stand-by-counsel during his sentencing hearing did the Fifth Circuit abuse its discretion by affirmation of the district court's decision, thus, did this violate Collier's Sixth Amendment rights of the U.S. Constitution ?

**QUESTION NUMBER EIGHT:**

Whether Collier's statutory right to a Direct Appeal was denied in violation of due process of law rights by the Fifth Circuit Deputy Clerk rendering a decision withdrawing counsel or record and allowing Collier to proceed pro se on appeal without any Faretta Inquiry and without a waiver did the Fifth Circuit abuse its discretion by affirmation of the district court's decision, this, did this violate his Fifth and Sixth Amendment rights of the U.S. Constitution ?

**QUESTION NUMBER NINE:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Nine by his ex-lawyer failing to object to Constructive and/ or Literal Amendment

through the district court's Admonishment/ Inquiry as to a factual basis of Guilty Plea did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this this violate his Sixth Amendment rights of the U.S. Constitution ?

## **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:

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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 \_\_\_\_\_; 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

## JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 16, 2025.

☐ 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: 08/07/2025

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) in Application No. \_\_\_\_ A\_\_\_\_\_.

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

☐ For cases from **state courts**:

The date in 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**

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## **STATEMENT OF THE CASE**

On June 20, 2024, Petitioner Collier filed his 2255 Motion to Vacate and Affidavit (Doc. # 234). The Government filed their Response Brief opposing relief being granted, however, before Mr. Collier could file his 2255 Reply Brief on November 18, 2024, the district court had denied his 2255 Motion to Vacate (Doc. # 245). The district court denied Mr. Collier's 2255 Motion to Vacate without conducting a prompt Evidentiary Hearing (Doc. # 245). A timely Notice of Appeal was filed and on June 16, 2025, the Fifth Circuit Court of Appeals denied Petitioner Collier's request for a Certificate of Appealability and issued a 2-page Denial of COA Opinion in the case at bar. A timely Panel Rehearing was filed, thus, on August 7, 2025, the Fifth Circuit Court of Appeals denied Panel Rehearing.

Petitioner Collier asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One through Nine or as this Supreme Court deems warranted in the case herein.

## **REASONS FOR GRANTING THE PETITION**

Petitioner Collier, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling

reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Collier respectfully requests that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One through Nine as relevant to question # 1-9, Sharard Collier asserts that the district court abused its discretion and the Fifth Circuit's affirmance of the district court's denial decision without conducting a prompt Evidentiary Hearing to permit Mr. Collier who is serving a life sentence to fully develop his claims and even rushed to deny Collier's 2255 Motion to Vacate without even providing him the opportunity to respond to the Government's opposition certainly violated his Procedural Due Process of Law rights of the Fifth Amendment of the U.S. Constitution.

Consistent with 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in Slack and Miller-El, thus, Sharard Collier is entitled to issuance of Certificate of Appealability as to Questions 1, 2, 3, 4, 5, 6, 7, 8, and 9, in the matter herein.

#### **QUESTION NUMBER ONE:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground One pre-trial ineffective assistance of counsel claim and did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of

the U.S. Constitution ?

**Question Number One Is Debatable Or Wrong Among Jurists Of Reason**

The Sixth Circuit has held that: “We have observed that a Section 2255 petitioner’s burden for establishing an entitlement to an evidentiary hearing is relatively light.” *Smith v. United States*, 348 F.3d 545, 551 (6<sup>th</sup> Cir. 2003). The district court’s decision whether to hold an evidentiary hearing on a Section 2255 motion is reviewed under the abuse of discretion standard. *Arredondo v. United States*, 178 F.3d 778, 782 (6<sup>th</sup> Cir. 1999).

The district court denied Ground One example number one by holding that Collier’s indictment contained the essential element of intentionally found in 21 U.S.C. 846 through the term “conspire.” See *Purvis*, 580 F.2d 859; *Frohwerk*, 249 U.S. at 209. The Indictment was not fatally defective because it listed the mens rea element. See Appendix D (Grand Jury Indictment). However, Mr. Collier, argues that the district court relied upon the Fifth Circuit’s Ruling in *Purvis*, 580 F.2d 853, 859 (5<sup>th</sup> Cir. 1978), in which dealt with conspiracy in violation of 18 U.S.C. 241; and *Frohwerk*, 249 U.S. 204, 209 (1919), in which dealt with a conspiracy under the Espionage Act of 1917, however, Fifth Circuit precedents and the Model Jury Instructions list the “essential elements” of a conspiracy in violation of 21 U.S.C. 846, are as follows:

The essential elements of a conspiracy in violation of 21 U.S.C 846, are: (1) the existence of a conspiracy; (2) knowledge of the conspiracy; (3) voluntary participation in the conspiracy. *United States v. Kaufman*, 858 F.2d 994, 999 (5<sup>th</sup> Cir. 1988), and *United States v. Medina*, 887 F.2d 528, 530-31 (5<sup>th</sup> Cir. 1989).

It is black-letter law that an indictment must allege “the essential elements of the offense charged,” thus, if it does not such indictment is subject to dismissal. See *Hamling v. United States*, 418 U.S. 87, 117 (1974); and *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007) (criminal indictment must set forth all elements of the charged crime) (emphasis added). Moreover, Mr. Collier, argues that consistent with *Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000), his Indictment violates his Sixth Amendment rights by failing to expressly present the mens rea element of “intentionally” of the charged offense to the grand jury, thus, there is no way to tell whether the grand jury has fully performed its uniquely protected duty. See *Williams v. Haviland*, 2005 U.S. Dist. LEXIS 13228, 2005 WL 1566762 (N.D. Ohio, 2005) (a federal judge in the Northern District of Ohio **GRANTED** Samuel L. Williams’ Petition for Writ of Habeas Corpus as the indictment violated the inmate’s rights under the Fifth and Sixth Amendment because the mens rea elements of the charged offenses were not presented to the grand jury. The failure to expressly present

every element of the offense as required by **Apprendi** made it impossible to know with confidence whether the grand jury fully performed its function of determining whether there was probable cause to believe that a crime had been committed.). It should be noted that the State appealed to the Sixth Circuit and the Sixth Circuit reversed on the ground that the Fifth Amendment grand jury right, U.S. Const. amend. V, was not incorporated by the Fourteenth Amendment, U.S. Const. amend. XIV, and thus does not apply to state proceedings under **Apprendi** holding. See *Williams v. Haviland*, 467 F.3d 527, 529 (6<sup>th</sup> Cir. 2006).

Under the U.S. Supreme Court's Ruling in **Apprendi**, thus, Sharard Collier's Count 1, Conspiracy Indictment is fatally defective in violation of his Fifth and Sixth Amendment Rights in the case herein.

Regarding Ground One example number two, however, by the Government's omission of the specific statutory penalty renders the Indictment as to Count 1, Conspiracy fatally defective consistent with the holdings of **Alleyne**, 570 U.S. 99 (2013); and *United States v. Gray*, 833 F.3d 919, 920-924 (8<sup>th</sup> Cir. 2016).

Regarding Ground One example number three the omission of the required statutory language renders the Indictment fatally defective consistent with U.S. Supreme Court precedents. See **Hamling**, 418 U.S. 87, 117 (1974).

Petitioner Collier, argues firmly that Question Number One is debatable among jurists of reason that the district court abused its discretion by failing to conduct a prompt evidentiary hearing as to Collier's colorable ineffectiveness claim in which violates his Sixth Amendment Rights of the U.S. Constitution. Consistent with the U.S. Supreme Court precedents in Slack and Miller-El, thus, a Certificate of Appealability must issue as to Question Number One in the situation herein. See Slack, 529 U.S. 473, 484 (2000).

### **QUESTION NUMBER TWO:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Two by erroneously advising Collier to enter Stipulation in which bounded him to a factual basis drug quantity that effectively resulted in a life sentence and did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

### **Question Number Two Is Debatable Or Wrong Among Jurists Of Reason**

The Sixth Circuit has held that: "We have observed that a Section 2255 petitioner's burden for establishing an entitlement to an evidentiary hearing is relatively light." *Smith v. United States*, 348 F.3d 545, 551 (6<sup>th</sup> Cir. 2003). The district court's decision whether to hold an

evidentiary hearing on a Section 2255 motion is reviewed under the abuse of discretion standard. *Arredondo v. United States*, 178 F.3d 778, 782 (6<sup>th</sup> Cir. 1999).

In the instant case, Petitioner Collier, asserts that the district court denied Ground Two, without conducting an evidentiary hearing by holding that counsel's advice to stipulate the Drug Quantity was reasonable by holding as follows:

The claim fails under the deficiency prong of Strickland because Collier does not overcome the presumption that Mr. Seller's advice to stipulate the drug quantity was reasonable. See 466 U.S. at 689-90. Collier asserts that he lacked any understanding of the stipulation, Mr. Sellers failed to consult him about the stipulation or receive consent, and Mr. Sellers should have "insisted" he plead guilty without the stipulation. [236 pp. 8-9]. Collier's sworn statements in court belie these assertions. During the plea hearing, the Court asked Collier: "It is also alleged that the amount of the controlled substance involved in the conspiracy that charge to which you wish to plead guilty?" [123 p. 21]. Collier answered, "Yes sir." and affirmed that he understood that the government would have a burden to prove beyond a reasonable doubt these facts at trial. *Id.* at 21. Collier affirmed that he reviewed the indictment, charges, evidence, and possible defenses with Mr. Sellers. *Id.* at 9-11. He knew about the 500 grams of

methamphetamine. *Id.* at 26. Therefore, Collier was clearly aware of the stipulation's contents, and the only challenge left is Mr. Seller's advice to stipulate the drug quantity.

The Court "must judge the reasonableness of [Mr. Sellers'] challenged conduct on the facts of the particular case" at the time of the conduct. See Strickland, 466 U.S. at 690. An attorney has control over strategic decisions, including advising clients to stipulate certain evidence, and these choices "are virtually unchallengeable." *Id.* at 691. "[C]onscious and informed decision(s) on trial tactics and strategy cannot be the basis for constitutionally ineffective assistance of counsel unless it is so ill chosen that it permeates the entire trial with obvious unfairness." *Geiger v. Cain*, 540 U.S. 303, 309 (2008) (citation omitted).

Mr. Seller's advice to stipulate the drug amount was not so "ill chosen" because the Government had a wealth of evidence to prove the drug quantity. See *Berry v. King*, 765 F.2d 451, 454 (5<sup>th</sup> Cir. 1985). At the plea hearing, the Government was prepared to provide the following evidence to prove the quantity of methamphetamine seized: Agents used GPS phone data to identify the source of Whavers' methamphetamine as a person living in California- later identified as Collier; surveillance on Collier followed him to a truck stop, where Collier met Jones, "who was driving a tractor-trailer with the logo South Side Xpress, LLC"; Collier and Jones own the LLC; agents



observed Collier loading black bags from the semi-truck into his own vehicle; Collier returned to Whaver's residence, and agents videotaped him unloading the black bags at the residence; agents seized approximately 28 kilograms of methamphetamine from the semi-truck and 24 kilograms of methamphetamine from the residence; and a Drug Enforcement Agency ("DEA") crime lab analysis determined the methamphetamine seized was at 99-100% purity. [123 pp. 22-25].

Therefore, Mr. Seller's choices to focus on fentanyl- rather than argue against the methamphetamine quantity—and his choice to advise Collier to stipulate the drug quantity was a reasonable strategic choice. 2 (F.N.-2 Furthermore, the Court asked Collier if the above information was true and correct, and Collier, under oath, said, "Yes, sir." Id. at 25-26. Mr. Sellers only objected to the allegation that Collier knew about the 988 grams of fentanyl, which shows that Mr. Sellers had discussed the discovery with Collier, and Collier decided to only contest the fentanyl prior to the plea hearing.). Since it was a reasonable strategic choice, Mr. Sellers' conduct was not deficient under the first prong of **Strickland**.

Mr. Sellers could not "insist" Collier plead guilty because guilty pleas must "not be the product of 'actual or threatened physical harm, or ...mental coercion overbearing the will of the defendant [.]'" United States v. Urias-Marrufo, 744 F.3d 361, 366 (5<sup>th</sup> Cir. 2014)

(quoting Matthew v. Johnson, 201 F.3d 353, 365 (5<sup>th</sup> Cir. 2000)).

Therefore, Mr. Sellers did not act deficiently under Strickland for this claim.

The Rule 11 Change of Plea Transcripts accurately reflect that the Government's Factual Basis for his Guilty Plea included drug quantity 12 pounds of methamphetamine and \$5,870 cash on July 24, 2019; 12 pounds of methamphetamine on August 17, 2019; Agents seized approximately 24 kilograms of methamphetamine; Agents seized an additional 28 kilograms of methamphetamine from the tractor-trailer; and a total of 48,659.3 grams of seized methamphetamine. See Change of Plea Transcripts at Doc. # 123, Page 1, and Pages 21-25, before the Honorable Louis Guirola, Jr. conducted on December 2, 2020.

Collier's total offense level was **48**. PSR at 78, and his criminal history category was I, yielding an imprisonment for **life**.

The fact that his former attorney erroneously advised him to agree or stipulate to the factual basis of **48,659.3 grams of methamphetamine** bound him to Offense Level of **38**, in which yielded an "advisory" Guideline Range of **235-293** months of imprisonment and then all other enhancements were included raising his offense level to **48**, in which yielded an "advisory" **life** of imprisonment.

Based upon his former attorney's Affidavit of Aafram Y. Sellers regarding Ground Two, at Doc. # 242, page 3-4, both Mr. Collier and Attorney Sellers agree that they discussed drug quantity, however, discussing drug quantity with relating the impact that the Sentencing Guidelines will have by stipulating to the factual basis or agreeing to it is what rendered his former attorney's performance deficiently in the case herein (emphasis added).

See Appendix E (Affidavit of Aafram Y. Sellers filed on 09/06/24).

Because his former attorney failed to explain that by pleading guilty and agreeing or stipulating to the Government's Factual Basis he would be bound to an "advisory" Guideline Range of **235-293** months of imprisonment, thus, constituted 'deficient performance' in which satisfies the first prong of the Hill test. Hill, 474 U.S. at 58-59 (1985).

Actual prejudice exists as there is a reasonable probability that absent his former attorney's 'deficient performance,' thus, Sharard Collier would not have plead guilty, however, insisted on going to jury trial in violation of his Sixth Amendment Rights of the U.S. Constitution. See Hill, 474 U.S. at 59 (1985); Lee, 137 S. Ct. 1958 (2017); and United States v. Scott, 625 F.2d 623 (5<sup>th</sup> Cir. 1980) (A conviction on a guilty plea that is entered solely as a result of faulty legal advice is a miscarriage of justice.). The PSR notes that the oral

plea agreement had no impact on his Sentencing Guidelines Range and the life of imprisonment Mr. Collier received had his former attorney explained to him prior to the erroneous advisement to plead guilty and agree or stipulate to the Factual Basis he would have simply took his chances at Jury Trial as he had nothing to lose by proceeding to Jury Trial versus pleading guilty as prejudice certainly exist in the situation herein.

A prompt Evidentiary Hearing was warranted, see *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007), as to his colorable claim of ineffectiveness, thus, an abuse of discretion occurred when the district court failed to conduct an evidentiary hearing in the case at bar. See *United States v. Rivas-Lopez*, 678 F.3d 353, 358-59 (5<sup>th</sup> Cir. 2012) (summary dismissal improper and evidentiary hearing warranted because record insufficient to rule on petitioner's claim of ineffective assistance).

Sharard Collier, is in fact entitled to a Certificate of Appealability being **GRANTED** as to Question Number Two as he was deprived of his Sixth Amendment Rights of the U.S. Constitution by his former Attorney's ineffectiveness in which is adequate to deserve to encouragement to proceed further, see Slack, 120 S. Ct. at 1603-04 (2000).

### **QUESTION NUMBER THREE:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Three as his Guilty Plea was tainted by ineffective assistance of counsel and did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

**Question Number Three Is Debatable Or Wrong Among Jurists Of Reason**

In the instant case, Petitioner Collier states that the district court addressed Ground Three, example number two-failure to permit review of all Discovery before advising him to plead guilty; example number three, failure to explain Special Jury Verdict Form to determine drug quantity; and attempted to address the merits of example number four but merely addresses failing to explain the elements necessary for the government to secure a conviction. However, the district court failed to address the merits of **example number one-(1) Failed to adequately explain the sentencing consequences and/ or sentencing exposure of pleading guilty and the disparity in sentencing of pleading guilty versus proceeding to Jury Trial and (4) Failed to explain discuss the evidence as it bears on those elements.** See 2255 Petition, at Doc. # 234, at page 13-14. See Rhode v. United States, 583 F.3d 1289, 1291-92 (11<sup>th</sup> Cir. 2009) ("A claim for relief for purposes of

[Clisby] is any allegation of a constitutional violation.” Clisby, 960 F.2d at 936. When a district court does not address all the constitutional claims in a habeas petition, we “will vacate the district court’s judgment without prejudice and remand the case for consideration of all remaining claims.” *Id.* at 938.).

Mr. Collier, argues that this Fifth Circuit should vacate and remand with instructions to address upon the merits Ground Three, example number one and example number four as it relates failing to discuss the evidence as it bears on those elements. See *Rose v. Lundy*, 455 U.S. 509, 520 (1982); and *Galtieri v. Wainwright*, 582 F.2d 348, 356 (5<sup>th</sup> Cir. 1978) (en banc).

Regarding Ground Three, example number two failed to permit Collier to review **all Discovery** material before advising him to plead guilty, however, denies this ineffectiveness claim by holding that Mr. Collier’s sworn statements under oath, affirmed that Mr. Sellers shared the government’s evidence with him. In fact, what was said upon the Change of Plea Record relevant to the discovery is as follows:

**THE COURT:** Did he also discuss with you and go over with you the government’s evidence, that is, the materials that the government had in support of this case and that they would have brought to trial in the event the case had gone to trial ? Did he share that with you ?

**THE DEFENDANT:** I didn't see all of that. I don't even know what all of it is. I have seen what I was shown, but I don't know—there's no list to say we have 30 items, and I've checked off 30 items. So I wouldn't know what they have or not. What was shown to me is what I've seen.

**THE COURT:** All right. But did Mr. Sellers share with you what he had looked at and what was contained within the government's file ?

**THE DEFENDANT:** Yes, those few things that was in the presentence report, I've seen those, and the tapes, yeah.

See Change of Plea Trans. at Doc. # 123, at Page 10, line 17-25, and Page 11, line 1 -6.

Based upon Mr. Collier's sworn statements he did not actually review **all** of the Discovery material within the government's file and Collier had no way of knowing what existed within the government's file. Furthermore, within his former attorney's Affidavit he relies more upon the record than actually discussing what attorney-client privileged communications occurred regarding exactly what discovery material he went over with Mr. Collier.

In this instance, Mr. Collier has stated within his 2255 Petition and Affidavit that his former attorney did not review **all** Discovery material with him before advising him to plead guilty, however, on the other hand his former attorney's Affidavit states that he reviewed

all Discovery with him. A factual dispute exists in which requires that an Evidentiary Hearing is conducted, thus, the district court abused its discretion by failing to conduct a prompt evidentiary hearing as to discovery ineffectiveness claim. See *Turner v. United States*, 183 F.3d 474, 477 (6<sup>th</sup> Cir. 1999) (citing *Paprocki v. Foltz*, 869 F.2d 281, 287 (6<sup>th</sup> Cir. 1989) (“where there is a factual dispute, the habeas court must hold an evidentiary hearing to determine the truth of the petitioner’s claims.”)).

Regarding Ground Three, example number four the district court held that it listed the elements necessary for a conviction and points to the Change of Plea Transcripts at Id. at 21, however, the only thing the district court does recite the Indictment in open court. See Change of Plea Transcripts at Doc. # 123, Page 1 and Page 21, before the Honorable Louis Guirola, Jr. on December 2, 2020. There is nothing in the Change of Plea Record to support specifically that Collier’s former attorney explained the elements necessary for the government to secure a conviction as it relates to Count 1, Conspiracy. Therefore, there is a factual dispute between Mr. Collier’s 2255 Petition and Affidavit in which he specifically states that his former attorney failed to explain the elements necessary for the government to secure a conviction and his former attorney’s statements that he did in fact explain the elements to Collier. It appears that Collier had no idea of



the “essential elements” of Count 1, Conspiracy as demonstrated by the Change of Plea Transcripts.

**THE COURT:** All right. And did you voluntarily enter into this agreement with the other individuals to transport these drugs ?

**THE DEFENDANT:** No, sir.

**THE COURT:** You didn’t do that voluntarily ?

**THE DEFENDANT:** What you mean, like—

**THE COURT:** I mean of your own free will.

**THE DEFENDANT:** Oh, yes, yes, yes. Okay.

See Change of Plea Transcripts at Doc. # 123, Page 26 of 30, line 9-16.

A prompt Evidentiary Hearing should have been conducted to resolve the merits of Ground Three, example number four and the district court’s failure to do constitutes an abuse of discretion. See *Turner v. United States*, 183 F.3d 474, 477 (6<sup>th</sup> Cir. 1999) (citing *Paprocki v. Foltz*, 869 F.2d 281, 287 (6<sup>th</sup> Cir. 1989) (“where there is a factual dispute, the habeas court must hold an evidentiary hearing to determine the truth of the petitioner’s claims.”)).

Regarding Ground Three, example number three, failure of his former attorney to explain that at Jury Trial that Collier would have the right to a Special Jury Verdict Form to determine drug quantity, however, the district court denied such ineffectiveness claim by holding as follows:

Additionally, Collier's argument for IAC due to Mr. Sellers' alleged failure to explain the special jury form is irrelevant to the guilty phase. The district court went on to hold that: "Even if Mr. Sellers did not inform Collier of the special jury form for drug quantity, it did not prejudice his decision to plead guilty under Strickland."

However, a decision to plead guilty and proceeded to Jury Trial where the drug quantity whether pleading guilty or proceeding to a Jury Trial amounted to a life sentence would have gave Mr. Collier a sound reason to proceed to Jury Trial then a jury of twelve individuals could have assessed the Government's witnesses and the evidence to decide the drug quantity, thus, this impacted his decision-making on rendering a rational decision on whether to plead guilty versus proceeding to Jury Trial in violation of his Sixth Amendment Rights of the U.S. Constitution. The district court abused its discretion by failing to conduct an Evidentiary Hearing as to this colorable ineffectiveness claim in the case herein. See *Schiro v. Landrigan*, 550 U.S. 465, 474 (2007).

Thus, Sharard Collier, argues that the district court abused its discretion by failing to conduct a prompt Evidentiary Hearing was required to permit Mr. Collier to fully develop his colorable claim that his Guilty Plea was tainted by ineffective assistance of counsel by his former attorney in which violated his Sixth Amendment Rights of the

U.S. Constitution in the case at bar. See *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) (“In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition allegations, which, if true would entitle the applicant to federal habeas relief.”).

Petitioner Collier, asserts that this Honorable Fifth Circuit should **GRANT** a Certificate of Appealability as to Question Number Three, as the question of whether he was deprived of his Sixth Amendment Rights of the U.S. Constitution as his Guilty Plea was tainted by ineffective assistance of counsel are adequate to deserve encouragement to proceed further, see **Slack**, 120 S. Ct. at 1603-04 (2000) (emphasis added).

#### **QUESTION NUMBER FOUR:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Four based upon his former attorney’s failure to object to Rule 11 (b) (1) (G) violation in which rendered his guilty plea unknowingly and unintelligently entered and did the Fifth Circuit abuse its discretion by affirmation of the district court’s decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

#### **Reasons To Justify Granting A C.O.A. As To Question Number Four:**

Regarding Ground Four, the district court admits that it did not

actually discussed and explain the “essential elements” to Mr. Collier, however, Rule 11 (b) (1) (G) requires that the district court ensure that defendant understands the “essential” elements of the offense to which he pleads guilty and the U.S. Supreme Court so requires the same. See **Bousley**, 523 U.S. 614, 618-19 (1998) (“At a minimum, Rule 11 (b) (1) (G) requires that a district court ensure the defendant understands the “essential” elements of the offense to which he pleads guilty.”).

The fact that his former attorney did not object to the Rule 11 (b) (1) (G) violation constitutes ‘deficient performance’ in which satisfies prong number one of the **Hill** test. **Hill**, 474 U.S. at 58 (1985).

Actual prejudice exists as the result of Sharard Collier’s guilty plea was entered unknowingly and unintelligently as there is a reasonable probability that he would not have plead guilty, however, insisted on proceeding to Jury Trial absent his former attorney’s ‘deficient performance’ in which constitutes ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution. See **Hill**, 474 U.S. at 59 (1985); and **Lee**, 137 S. Ct. 1958, 198 L. Ed. 2d 476 (2017).

The district court abused its discretion by failing to conduct a prompt Evidentiary Hearing as to his colorable Ground Four claim in the case herein.

Petitioner Collier, argues firmly that a Certificate of Appealability should be **GRANTED** as to Question Number Four as his former attorney's failure to object to Rule 11 (b) (1) (G) violation constituted to ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution in which is debatable among jurists of reason of a denial of a constitutional right. Slack, 120 S. Ct. at 1603-04 (2000) (emphasis added).

#### **QUESTION NUMBER FIVE:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Five based upon his former attorney failure to request a pre-plea PSR be prepared, did the Fifth Circuit abuse its discretion by affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

#### **Reasons To Justify Granting A C.O.A. As To Question Number Five:**

The district court held that regarding Ground Five, ineffectiveness claim for failing to request pre-plea PSR be prepared by holding in relevant part as follows: "Given the unusual nature of a PPSR and the "substantial potential for unfairness to the defendant and government [,]" Mr. Sellers did not act deficiently by failing to seek a PPSR. See Anderson, 2019 WL 4979919, at \*2.

However, Mr. Collier, argues that the district court failed to

recognize that the U.S. Supreme Court has recognized that Rule 32 clearly permits the preparation of a presentence report before guilty plea or conviction. See *Gregg v. United States*, 394 U.S. 489, 491 (1969). Due to his reluctance to plead guilty after rejecting all prior Plea Agreements offered by the Government and as the result of the lack of experience with the federal judicial system, thus, his former attorney should have requested a pre-plea PSR to be prepared by moving the district court to order such pre-plea PSR be prepared as other defense lawyers have done over the years. See Rodriguez, 2007 U.S. Dist. LEXIS 73884 (D. Mass., Oct. 8, 2007) (The court held it has the authority to order a pre-plea PSR). Thus, his former attorney provided him with 'deficient performance' by failing to request a pre-plea PSR in which satisfies the first prong of the Hill test. Hill, 474 U.S. at 58-59 (1985).

Actual prejudice exists as there is a reasonable probability that absent his former attorney's 'deficient performance' Sharard Collier would not have plead guilty, however, insisted on proceeding to Jury Trial in which violates his Sixth Amendment Rights of the U.S. Constitution. Hill, 474 U.S. at 59 (1985); and Lee, 137 S. Ct. 1958, 198 L. Ed. 2d 476 (2017).

It follows that the district court abused its discretion when it failed to conduct a prompt Evidentiary Hearing as to Question Number

Five, see *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) (“In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition’s factual allegations, which, if true, would entitle the applicant to federal habeas relief.”).

Petitioner Collier, argues that this Honorable Fifth Circuit should **GRANT** a Certificate of Appealability as to Question Number Five as to whether he suffers from ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution were violated, thus, it is adequate to deserve encouragement to proceed further, see **Slack**, 120 S. Ct. at 1603-04 (2000).

#### **QUESTION NUMBER SIX:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Six by failing to apprise Collier of his Faretta warnings before allowing him to proceed with self-representation did the Fifth Circuit abuse its discretion by affirmation of the district court’s decision, thus, did this violate his due process of law rights of the Fifth Amendment rights of the U.S. Constitution ?

#### **Reasons To Justify Granting A C.O.A. As To Question Number Six:**

The Sixth Circuit has held that: “We have observed that a Section 2255 petitioner’s burden for establishing an entitlement to an

evidentiary hearing is relatively light.” *Smith v. United States*, 348 F.3d 545, 551 (6<sup>th</sup> Cir. 2003). The district court’s decision whether to hold an evidentiary hearing on a Section 2255 motion is reviewed under the abuse of discretion standard. *Arredondo v. United States*, 178 F.3d 778, 782 (6<sup>th</sup> Cir. 1999).

In the instant case, Ground Six, argues that the district court violated his due process of law rights by failing to apprise him of his *Faretta* warnings before allowing him to proceed with self-representation during his Sentencing Hearing, thus, rendering his sentencing hearing **VOID** in the matter herein.

The district court when it denied Ground Six, as to failure to provide **Faretta** warnings admitted that Collier never affirmatively told the Court he wished to represent himself, see Denial Op. at Doc. # 245, Page 20 of 26. Mr. Collier, asserts that a **Faretta** violation occurred in the instant case and his life of imprisonment federal sentence must be **VACATED** as the result of the record clearly reflects that at no time did Collier render a “clear and unequivocal” written or oral invocation of the right to self-representation as without such is simply insufficient to invoke the right to self-representation. See *Marshall v. Dugger*, 925 F.2d 374, 377 (11<sup>th</sup> Cir. 1991) (“It is necessary ... that the defendant clearly and affirmatively express a desire to represent himself in the proceedings.”); and *Stano v. Dugger*, 921



F.2d 1125, 1143 (11<sup>th</sup> Cir. 1991) (“The right to self-representation must be manifested to the trial court by a oral or written request in order to be recognized and to trigger the requisite examination by the court.”).

Sharard Collier states that a COA must issue as to Question Number Six in light of the Eleventh Circuit’s Ruling in Marshall v. Dugger, in which falls squarely with Mr. Collier’s case. See Marshall v. Dugger, 925

F.2d 374, 375-77 (11<sup>th</sup> Cir. 1991) (In that case, a criminal defendant asked to fire his **lawyer** on the eve of trial, contending his counsel, Thomas Osteen, was ineffective. *Marshall*, 925 F.2d at 375. Finding no good cause to discharge counsel,

the [trial] court explained to Marshall that he had three choices: (1) Mr. Osteen could continue to represent him; (2) he could proceed pro se; or (3) he could represent himself with the aid of Mr. Osteen as standby counsel.

\* \* \* \*

Rather than choose any of the options offered, [\*\*23] Marshall simply insisted that he did not feel that Osteen was qualified to represent him. At no point in the colloquy did Marshall ever state that he wished to represent himself. He simply repeated his opinion that Osteen was unqualified.

*Id.* at 376. Interpreting Marshall's rejection of his **lawyer** as a decision to proceed pro se, the district court discharged counsel. At trial, Marshall represented himself and was convicted. On appeal, a panel of this Court reversed, concluding "Marshall's actions were insufficient to invoke the [S]ixth [A]mendment right of self-representation" because Marshall had made no written or oral request to represent himself. *Id.* at 377.) (emphasis added).

Furthermore, Mr. Collier, argues that the district court gave Mr. Collier an ultimatum either proceed with Mr. Harenski or represent yourself. However, by doing so, Collier’s Sixth Amendment was violated that being Collier’s Sixth Amendment Right to counsel of choice as he wanted to borrow money from his family members (who was willing to assist him) and retain a sentencing phase counsel but was not given

such a choice by the district court. See *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006) (the U.S. Supreme Court held that: “Where it was conceded that defendant was erroneously denied his right to counsel of his choice, the constitutional violation was complete, and the error was reversible since defendant was not required to show prejudice from his actual representation or that the error was not harmless.”). See Appendix F. Moreover, as the result there was simply no knowing and intelligently waiver of right to counsel, however, the appointment of standby counsel is not sufficient to satisfy the Sixth Amendment right to counsel. See *United States v. Davis*, 269 F.3d 514, 520 (5<sup>th</sup> Cir. 2001) (appointment of standby counsel failed to cure deprivation of counsel); and *United States v. Sandles*, 23 F.3d 1121, 1127 (7<sup>th</sup> Cir. 1994) (defendant did not properly waive right to counsel because appointment of standby counsel “cannot function as a substitute for a detailed inquiry into a defendant’s decision to waive his constitutional right to counsel.”) (emphasis added).

The district court abused its discretion by failing to conduct a prompt Evidentiary Hearing as to his colorable Question Number Six, thus, a Certificate of Appealability should issue as such claim is debatable amongst jurists of reasons whether his Fifth and Sixth Amendment Rights were violated in the case herein. **Slack**, 529 U.S. 473, 484 (2000).

### **QUESTION NUMBER SEVEN:**

Whether the district court abused its discretion by failing to conduct an Evidentiary Hearing regarding Ground Seven did it constitute a Conflict of Interest by ordering Attorney Harenski to remain on as Collier's stand-by-counsel during his sentencing hearing did that violate Collier's Sixth Amendment Rights of the U.S. Constitution ?

### **Reasons To Justify Granting A C.O.A. As To Question Number Seven:**

The district court held that as it relates to Ground Seven that no Conflict of Interest occurred and denied relief as to this ground in the case herein. However, Mr. Collier, argues that once the district court disqualified Mr. Harenski as counsel of record but then ordered him to stay on the criminal cause of action as stand-by-counsel this created a non-waivable Conflict of Interest in violation of his Sixth Amendment Rights of the U.S. Constitution. See Cuyler, 446 U.S. 335, 348-50 (1980); and United States v. Shorter, 54 F.3d 1248, 1252 (7<sup>th</sup> Cir. 1995) (emphasis added).

Petitioner Collier, asserts that Question Number Seven is debatable amongst jurists of reason and a Certificate of Appealability should issue as to his colorable Conflict of Interest in violation of his Sixth Amendment Rights of the U.S. Constitution. Slack, 529 U.S. 473, 484 (2000).

### **QUESTION NUMBER EIGHT:**

Whether Collier's statutory right to a Direct Appeal was denied in violation of due process of law rights by the Fifth Circuit Deputy Clerk rendering a decision withdrawing counsel of record and allowing Collier to proceed pro se on appeal without any Faretta Inquiry and without a signed waiver did the Fifth Circuit abuse its discretion by affirmation of the district court's decision, this, did this violate his Fifth and Sixth Amendment rights of the U.S. Constitution ?

### **Reasons To Justify Granting A C.O.A. As To Question Number Eight:**

On August 10, 2022, Deputy Clerk Kim B. Tyner for the Fifth Circuit Court of Appeals issued an ORDER allowing Mr. Collier to proceed pro se on his Direct Appeal proceedings. See Appendix G. However, Mr. Collier, argues that there is no federal constitutional right to self-representation on direct appeal from a criminal conviction. See *Martinez v. Court of Appeals*, 528 U.S. 152, 160 (2000); and *United States v. James*, 328 F.3d 953, 955 (7<sup>th</sup> Cir. 2003) (defendant's right to self-representation does not extend to appeal) (emphasis added). As the result of the U.S. Supreme Court recognizing that Mr. Collier did not have no federal constitutional right to self-representation on direct appeal from a criminal conviction and in all reality there is no way that Collier could comply with the Appellate Rules and prepare

Opening Briefs to meet the standard required within a timely manner especially in the prison setting being housed a United States Penitentiary that is on lockdown 7 to 8 months out of a year and the lack of skill and knowledge to prepare the necessary motions and Opening Brief as he failed when he tried to do so in which resulted in his Direct Appeal being dismissed for failure to prosecute for a man serving a life sentence this clearly constitutes a miscarriage of justice in the case herein.

It follows that to avoid a clear miscarriage of justice this Honorable U.S. Supreme Court consistent with this Court's precedents should **GRANT** a Certificate of Appealability as to Question Number Eight in which violated his Fifth and Sixth Amendment Rights as he was deprived a full and fair opportunity to a Direct Appeal proceedings. See *Evitts v. Lucey*, 469 U.S. 387, 397 (1985) ("A first appeal as of right therefore is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.") (emphasis added).

Mr. Collier, argues that a Certificate of Appealability should issue as to Question Number Eight in the case herein. **Slack**, 529 U.S. 473, 484 (2000) (adequate to deserve encouragement to proceed further).

#### **QUESTION NUMBER NINE:**

Whether the district court abused its discretion by failing to

conduct an Evidentiary Hearing regarding Ground Nine by his ex-lawyer failing to object to Constructive and/ or Literal Amendment through the district court's Admonishment/ Inquiry as to a factual basis of Guilty Plea did the Fifth Circuit abuse its discretion by the affirmation of the district court's decision, thus, did this violate his Sixth Amendment rights of the U.S. Constitution ?

**Reasons To Justify Granting A C.O.A. As To Question Number Nine:**

The district court denied Ground Nine by holding as follows: "Collier asserts that the Court asking during the Plea Colloquy if he voluntarily entered the conspiracy's agreement amounted to a constructive and/ or literal amendment of the Indictment. The Court asked Collier during the Colloquy if he voluntarily entered into the agreement, of his own free will. [123 p. 26]. Collier said, "Oh, yes, yes." Id. The Court asked this question pursuant to Rule 11's requirement that the Court determine Collier understood the nature of the charge. Fed. R. Crim. P. 11 (b) (1) (G). A court may rephrase the Indictment's language to ensure the defendant understands the charge he is pleading to. See *Dayton*, 604 F.2d at 937-38; *United States v. Coronado*, 554 F.2d 166, 173 (5<sup>th</sup> Cir. 1977) (A district court "must explain the meaning of the charge and what basic facts must be proven to establish guilt.") (citation omitted). The Court's explanation did not alter the Indictment. Mr. Sellers did not act

deficiently by “failing to make a meritless objection.” See Lopez, 749 Fed. Appx. at 276; Garza, 340 Fed. Appx. at 245.

In sum, the Court finds that Mr. Seller’s performance satisfies the Strickland requirements, and so Mr. Sellers did not violate Collier’s Sixth Amendment right to effective assistance of counsel.

Petitioner Collier, argues that a Certificate of Appealability should issue as to Question Number Nine, thus, it is debatable among jurists of reason as to whether the district court abused its discretion by failing to conduct an evidentiary hearing and denial relief to Collier as to his colorable Ground Nine claim of ineffectiveness in which violated his Sixth Amendment rights of the U.S. Constitution. United States v. Daniels, 252 F.3d 411, 413 (5<sup>th</sup> Cir. 2001) (“A criminal defendant has a Fifth Amendment right to be tried only on charges presented in a grand jury and may not amend an indictment once it has been issued.”); United States v. Diaz, 941 F.3d 729, 736 (5<sup>th</sup> Cir. 2019) (“A constructive amendment occurs... when the Government is allowed to prove an essential element of the crime on an alternative basis permitted by the statute but not charged in the indictment.”); and Patterson v. New York, 432 U.S. 197, 210 (1977) (Government bears burden of proving all elements of charged offense).

A constructive amendments are variances occurring when an indictment’s terms are effectively altered by the presentation of

evidence and jury instructions that “so modify essential elements of the offense charged that there is a substantial likelihood the defendant [was] convicted of an offense other than that charged in the indictment.” **Hathaway**, 798 F.2d at 910. See also, *United States v. Beeler*, 587 F.2d 340 (6<sup>th</sup> Cir. 1978). The Sixth Circuit has reversed convictions and remanded for further proceedings when an Indictment was impermissibly amended in similar situations. See *United States v. Williams*, 475 Fed. Appx. 36, 40 (6<sup>th</sup> Cir. 2012) (The Sixth Circuit held that the district court improperly amended the superseding information when it “literally altered” the superseding information and sentenced Williams for nonexistent crime. This amendment is per se prejudicial to Williams and constitutes plain error.); and *United States v. Combs*, 369 F.3d 925, 936-37 (6<sup>th</sup> Cir. 2004) (The Sixth Circuit held that an impermissible amendment occurred because the jury instructions facilitated the amendment by providing a supplemental explanation aligned with the unindicted “use” offense, thus, the Appellate court held that Combs was convicted of an offense that was not the subject of his indictment, his conviction on Count IV must be reversed.) (emphasis added).

Mr. Collier, argues that a Certificate of Appealability should issue as to Question Number Nine in the case herein. **Slack**, 529 U.S. 473,



484 (2000) (adequate to deserve encouragement to proceed further).

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

*\* Howard Collier*

Date: *10/3/2025*