

No. 25 - 6886

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IN THE
SUPREME COURT OF THE UNITED STATES

Justin A. Wadsworth — 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

JUSTIN A. WADSWORTH, pro se
(Your Name)

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(City, State, Zip Code)

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QUESTION(S) PRESENTED

1) Does the ordinary rules of credibility determinations apply to claims of structural error?

2) Is an attorney's uncorroborated testimony categorically sufficient to overcome a defendant's contrary testimony?

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

- Justin A. Wadsworth v. United States, No.24-2632
(7th Cir. Jan.17, 2025)
- Justin A. Wadsworth v. United States, No.4:23-CV-04023
(S.D.IL June 17, 2024)
- United States v. Justin A. Wadsworth, No.4:20CR-40045-JPG
(S.D.IL Jan.10, 2023)

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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 C to the petition and is

reported at 2025 U.S. App. LEXIS 1144; 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 is unpublished.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 2024 U.S. Dist. LEXIS 107406; 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 is unpublished.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 is unpublished.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 is unpublished.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 17, 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: February 11, 2025, 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 _____ (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

United States Constitution, Amendment V:

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 offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be 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.

United States Constitution, Amendment VI:

In all criminal prosecution, 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 committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

This case involves whether Petitioner failed to show that he directed his attorney to file a notice of appeal. Petitioner seeks to argue that when there is no documentary support one way or another — when the court faces a bare he-said, she-said dispute — the tie must go to the individual whose liberty is at stake.

Petitioner raised a claim in a 28 U.S.C. §2255 motion that his attorney provided the ineffective assistance of counsel for failing to file a notice of appeal. Petitioner was granted an evidentiary hearing to resolve that claim. The district court credited the testimony of Petitioner's attorney, but Petitioner was granted a Certificate of Appealability. The Seventh Circuit Court of Appeals subsequently denied Petitioner's appeal, without briefing by the parties, due to a defect in the granting of the C.O.A. This petition has been timely filed.

REASONS FOR GRANTING THE PETITION

This case involves whether Petitioner failed to show that he directed his attorney to file a notice of appeal. Petitioner seeks to argue that when there is no documentary support one way or another — when the court faces a bare he-said, she-said dispute — the tie must go to the individual whose liberty is at stake.

This case is about Petitioner, Mr. Wadsworth ("Wadsworth"), attempting to appeal his sentence and conviction. In June 2022, Wadsworth pled guilty to one count of attempted enticement of a minor, 18 U.S.C. §2422(b), and one count of attempted commercial sex trafficking of a child, 18 U.S.C. §§ 1591(a)(1), (b)(1), & 1594(a). In January 2023, the district court sentenced Wadsworth to 180 months' imprisonment on each count, to run concurrently.

Wadsworth swears that in the hallway outside the courtroom, immediately after the sentencing hearing, he told his attorney to file an appeal because "something did not feel right." See Appendix A . But a notice of appeal was never filed.

I. Procedural Background

a) The §2255 Motion

In December 2023, Wadsworth, acting pro se, moved to vacate his sentence under 28 U.S.C. §2255. In support, he raised three grounds. First, he insisted that his attorney was constitutionally ineffective because she did not file a notice of appeal upon his request. See Appendix A . Second, he asserted that his

attorney was constitutionally ineffective because she counseled him to plead guilty to attempted enticement of a minor even though he lacked the intent to have sex with a person under the age of 18. Id. at 5. Third, he argued that his attorney was constitutionally ineffective in counseling him to plead guilty to attempted commercial sex trafficking of a child because, again, he lacked intent to have sex with a person under the age of 18. Id. at 7.

In support of his assertion that he lacked the requisite intent to commit the crimes to which he had pleaded guilty, Wadsworth pointed to the following exchange between himself and the undercover agent with whom he had (unknowingly) been conversing:

Wadsworth: She's 18 right wink wink

Agent: Of course wink wink

Wadsworth: ? she is 18 correct

Agent: Yes wink

Wadsworth argued that this proved his lack of intent because "wink" is a text-message abbreviation for the phrase "what I need to know." Id. at 3,4. Wadsworth tried to confirm that the person with whom he sought to have sex was 18 years old — which is "what I need to know." See Id.

Wadsworth also filed a sworn declaration regarding his claim that he instructed his attorney, Kim Freter, to file an appeal. He swore that he discussed his right to appeal with his attorney and directed her to file an appeal. Id. He swore that his attorney said she would be in touch, but then never filed the appeal. Id.

The government conceded that an evidentiary hearing was required to resolve Wadsworth's claim that his attorney was ineffective for failing to file the notice of appeal. But, according to the government, there was ample evidence that Wadsworth knew he was pleading guilty to crimes that contain as an element the specific intent to engage in a sex act with a minor.

The court agreed that Wadsworth's appeal-related claim required an evidentiary hearing and appointed counsel to represent Wadsworth at that hearing. But the court dismissed as frivolous Wadsworth's claims that his attorney was ineffective in plea negotiations.

b) The Evidentiary Hearing

At the hearing, Wadsworth testified under oath that he instructed his attorney to file an appeal on his behalf. Attorney Freter testified that she could not remember whether she discussed Wadsworth's appeal rights with him before the hearing. Nor could she remember whether Wadsworth had instructed her to file an appeal afterward, partly because she "didn't write any notes." See Appendix B . But, she said, her standard practice is to discuss with clients their appeal rights and, if instructed to file an appeal, she typically followed up with questions about the issues that the client wished to pursue. The fact that she couldn't recall having those conversations led her to believe that Wadsworth had never asked to file an appeal.

In the district court's view, the issue boiled down to a simple "he-said/she-said" swearing contest and concluded that "[t]here's no corroborating evidence" that Wadsworth had asked

Attorney Freter to file the notice of appeal. See Appendix B. Accordingly, the court orally denied Wadsworth's §2255 motion.

The court also entered a written order explaining its ruling. See Appendix B. The court resolved the swearing contest by crediting Attorney Freter's testimony and discrediting Wadsworth's. It explained that Wadsworth bore "the evidentiary burden" and had presented only his testimony that he directed Attorney Freter to file a notice of appeal. This, said the court, "cuts against the credibility of Wadsworth's testimony." *Id.* By contrast, Attorney Freter's testimony was "persuasive" because "'appeal' is a 'trigger word'" and she would have been "well aware that a failure to appeal is per se ineffective assistance of counsel." *Id.* at 8. More, Attorney Freter's testimony that she had a habit of asking questions regarding a potential appeal when the subject was broached by a client, but may never have had that conversation with Wadsworth, was evidence that Wadsworth had not asked her to file a notice of appeal.

Nevertheless, the court issued a certificate of appealability that reads in its entirety as follows:

After the hearing, Wadsworth's attorney contacted Chambers and stated that he intended to file an appeal. Given Wadsworth is represented by counsel and counsel has requested an appeal, the Court GRANTS a certificate of appealability.

c) Appeal

Having obtained a certificate of appealability, Wadsworth appealed. See Appendix C. There is only one possible issue that the district court would have certified as meeting the 28 U.S.C. §2253(c)(3) standard in this case.

That issue is whether Wadsworth's trial counsel was constitutionally ineffective because she was directed to file a notice of appeal but failed to do so. That issue is one of structural, constitutional importance. An attorney's failure to file a notice of appeal once directed to do so is ineffective assistance per se. Roe v. Flores-Ortega, 528 U.S. 470 (2000); Castellanos v. United States, 26 F.3d 717, 720 (7th Cir.1994). It is, in essence, a structural error akin to attorney abandonment. See Castellanos, 26 F.3d at 718 (citing United States v. Cronin, 466 U.S. 648, 658-59 (1984)). Of course, "[t]o succeed on such a claim... a defendant must show that he actually requested his attorney file an appeal." See Gant v. United States, 627 F.3d 677, 681 (7th Cir.2010).

Making that showing involves two steps. First, the individual needs to raise a viable claim that he instructed his attorney to file the notice, but the attorney failed to do so. See generally Kafo v. United States, 467 F.3d 1063 (7th Cir. 2006)(discussing the requirements for raising a viable §2255 claim, including the inclusion of a sworn affidavit). If the individual raises that claim, he is entitled to an evidentiary hearing on the issue, and the Seventh Circuit Court of Appeals has not hesitated to remand for such a hearing when a viable claim is raised. E.g., Castellanos, 26 F.3d at 720.

The second step is that the individual "must show that he actually requested his attorney file an appeal." Gant, 627 F.3d at 681 (emphasis added). Though the burden of proof rests on the petitioner, this Court has not addressed squarely whether an individual's sworn testimony can be defeated by the

sworn testimony of his attorney alone.

Here, the district court appropriately held an evidentiary hearing to resolve whether Wadsworth instructed Attorney Freter to file a notice of appeal. That such a step was appropriate is clear from Castellanos and its progeny. It is also clear that in §2255 appeals the district court's credibility findings are entitled to "exceptional deference," Gant, 627 F.3d at 681, and a "credibility determination is not a basis for appellate review." Id. (quoting United States v. Burke, 125 F.3d 401, 404 (7th Cir. 1997)).

With those principles in mind, Petitioner does not contend that the district court certified the appeal to give the Seventh Circuit Court of Appeals a chance to second-guess a credibility judgment. Rather, it appears that the district court must have certified the antecedent legal question as satisfying §2255(c). Specifically, is it permissible to resolve an error of structural magnitude based on a credibility finding alone? As best Petitioner can tell, this issue has never squarely been addressed by this Court.

The flip side of this unresolved issue is a constitutional error so significant that a petitioner need not even overcome the typical hurdle of showing prejudicial error. Castellanos, 26 F.3d at 719. At the same time, if the petitioner prevails, relief is narrow: "the defendant receives the right to an appellate proceeding, as if on direct appeal, with the assistance of counsel." Id. at 720 (citing Page v. United States, 884 F.2d 300 (7th Cir. 1987)).

Accordingly, Petitioner seeks to argue that when there

is no documentary support one way or the other — when it is a naked he-said, she-said dispute — then the tie must go to the individual whose liberty and constitutional rights are on the line, not an attorney with comparatively little at stake. Given the issue appears novel, and the constitutional right involved is substantial, Petitioner submits that this petition should be granted for review by this Court.

Petitioner was deprived of a direct appeal due to his attorney's failure to file a notice of appeal; which violated his right to the effective assistance of counsel. U.S. Const. VI Amend. Petitioner also has been denied due process when the district court weighed credibility contrary to the structural error.

U.S. Const. V Amend.

PRAYER

Petitioner respectfully presents this Honorable Court the following questions:

- 1) Does the ordinary rules of credibility determinations apply to claims of structural error?
- 2) Is an attorney's uncorroborated testimony categorically sufficient to overcome a defendant's contrary testimony?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Justin Wadsworth

Date: 04-14th, 2025

APPENDIX A