No. 25-7155

ORIGINAL

FILED
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Lonnie E. Lillard — PETITIONER
(Your Name)

vs.

USA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U. S. Court of Appeals — Ninth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lonnie Lillard
(Your Name)

5055 South Barton Place
(Address)

Seattle, WA 98118
(City, State, Zip Code)

425- ~~524-0001~~ 568-0024
(Phone Number)

QUESTION(S) PRESENTED

Did the ninth circuit ruled erroneously when it failed to find that District Court had the authority and jurisdiction at the resenting hearing to exercise its discretion and hear Mr. Lillard as it relates to cause number 16-07?

Even though the night circuit did not vacate the sentences for both supervised release violations, and the underlining, new criminal offense, is such fact detrimental to the District Court judges discretion?

Should both, Mr. Lillard's sentences for his supervised release violations and his new criminal offense fall under the "sentence package doctrine"?

Did the night circuit issue a general remand versus a limited remand as to its published opinion at United States of America versus Lonnie Eugene Lillard, 57 F. 4th 729 (9th Cir. 2022) ?

Did the ninth circuit rule erroneously when the court failed to find that the district court judge committed a procedural error by refusing to hear Mr. Lillard as to mitigating factors in relation to any potential re-sentencing?

Should the ninth circuit determined whether or not appointed council, Thomas E Weaver, was ineffective for refusing to submit any 3553(a) materials and argue for a lower sentence on behalf of Mr. Lillard, once he infused himself into the criminal cause number 16-07?

LIST OF PARTIES

[X] 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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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,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is "NO opinion was issued or other order"

[ ] 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 June 4, 2025 Appendix A.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Dec 5, 2025, and a copy of the order denying rehearing appears at Appendix B.

[ ] 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

The Fifth Amendment Due process

the Sixth Amendment effective assistance of counsel

STATEMENT OF THE CASE

. On March 9, 2016, a Superseding Indictment charged Mr. Lillard and his co-defendants with Conspiracy to Commit Bank Fraud.

Because Mr. Lillard was on supervised release on the CR 15-270 matter, a petition to revoke his supervised release was filed, for committing the conspiracy to commit bank fraud, leaving the Western District of Washington, associating with a known felon, and obtaining a credit access device. CR15-270 Dkt. 4.

On January 6, 2017, Mr. Lillard pled guilty to the conspiracy charge and admitted to the supervised release violations.

For the Conspiracy to Commit Bank Fraud conviction, the court imposed a sentence of 196 months. . On the supervised release matter, the court imposed a 36-month sentence to run concurrently with the 196-month sentence.

Mr. Lillard appealed the sentences.

The Ninth Circuit affirmed, but reversed on one issue – that the 36-month sentence for the supervised release violations exceeded the statutory maximum sentence and must be reversed.

Mr. Lillard timely filed a notice of appeal.

1 First Appeal (CoA Nos. 18-30106, 18-30114, 20-30110).

Mr. Lillard appealed the judgments in CR 15-270 and CR 16-07 under CoA Nos.18-30106, 18-30114, 20-30110 In these appeals, Mr. Lillard raised the following issues:

1. the government's seizure of his inmate funds pursuant to the restitution order from his 1998 conviction violated (1) his Sixth Amendment right to counsel of choice by preventing him from hiring a lawyer, and (2) his Fifth Amendment due process right to a court appointed expert and investigative assistance. 2-ER-54.

2. The 36-month sentence the district court imposed for Mr. Lillard's supervised release is illegal because it exceeds the applicable statutory maximum.

In its Opinion published on January 17, 2023, the Ninth Circuit "panel held that an illegally excessive sentence affects the fairness, integrity, or public reputation of judicial proceedings. The panel therefore vacated the 36-month sentence imposed for the violation of supervised release and remanded for resentencing in that case."

Mr. Lillard's appeal was mandated on May 4, 2023.

2. Record on Remand.

On remand for resentencing, Mr. Lillard argued that his two cause numbers were bundled together at the same sentencing proceeding and that he should be resentenced on both cause numbers. citing *United States v. Hanson,* 936 F.3d 876 (9th Cir. 2019). Mr. Lillard explained that in *Hanson,* this Court treated a case where two causes were sentenced on the same date as a "sentencing package."

In the Government's Response to Lillard's Motion for Full Resentencing, the government argued that the court lacked inherent authority to resentence on the CR 16-07. 4-ER-480, citing *United States v. Handa,* 122 F.3d 690, 691 (9th Cir. 1997). Because the district court's authority to resentence "must flow either from the court of appeals mandate … or from Federal Rule of Criminal Procedure 35."

Another avenue to gain resentencing would be with a successful § 2255

The proposed amendment deleted the name of particular payees and reduced it to the "payment processor.", . The district court asked Mr. Lillard whether he had any objection to reducing the number of payees and the court signing the amended restitution form . Mr. Lillard responded, "I'm not in a position to – I don't have any objection. I'm not in a position to object or not object at the present."

An amended judgment was filed in CR16-07, with an update to the amendment chart in which costs for Chase Paymentech were put under the same group name rather than being listed individually.

remanded for resentencing on both cause numbers. citing *Hanson,* 936 F.3d at 879. The government argued that the motion was merely a motion to reconsider, which the court should deny. The government reiterated its argument that *Handa* requires the authority to resentence flow from the court of appeals mandate, FRCP 35, or a successful § 2255 petition.

The district court denied the motion for de novo sentencing, finding the motion to

be a motion for reconsideration and ruled that the court stood by its prior ruling.

A resentencing hearing was held on May 17, 2024. The court imposed a 24-month sentence on the supervised release case. The government then turned its attention to the CR16-07 cause number and related to the court the following:

> when the case was remanded from the Court of Appeals on the government's motion many years ago now, it was remanded because there was a question as to the number of victims, because there was a question about whether two of the payment processors had, in fact, subsumed the losses of their victims, and it turned out that one of them had and one of them had not. So we proposed an amendment to the restitution schedule, not to the amount, to reflect that.

The government reminded the court that it had already entered the order with respect to the three other co-defendants, but could not do that on CR16-07 until the case came back from the Court of Appeals. . The sole change was the quantity of the payees, as the total amount was the same.

petition. The government argued that because this Court vacated only the sentence for the supervised release, and the sentence for the fraud conviction under CR16-07 was left intact, resentencing for CR16-07 was not before the district court. 4-ER-480—481, citing 2-ER-53—70. The government further argued that avenues for relief under FRCP 35 or from a successful 2255 petition did not apply.

The district court agreed with the government that the court lacked the inherent authority to have a full resentencing including the CR16-07 cause number. 4-ER-478. The court found that the most important reason that the court lacked

authority was because this Court did not vacate the sentence in CR16-07, instead only vacating the sentence for the supervised release violations in CR15-270. ("We vacate the 36-month sentence imposed for Lillard's violation of supervised release and remand to the district court for re-sentencing in that case."). The court further found that the 196-month sentence in CR16-07 was not "otherwise illegal and the Court would decline to reconsider it in its discretion, if it had discretion to do so."

Mr. Lillard's counsel later filed a Motion for De Novo Sentencing, moving the court for a de novo sentencing hearing on both cause numbers. Lillard argued that under *Hanson,* because the two cause numbers were sentenced on the same date, the Court of Appeals followed its "customary practice" and

REASONS FOR GRANTING THE PETITION

Did the District Court Have the Authority and Jurisdiction at the Resentencing Hearing to Exercise its Discretion Hear Issues as to Both of My (Mr. Lillard) Cause Nos., CR15-279 and CR16-07, Regarding Resentencing?????

Eight (8) Federal Appellate Circuit Courts have adopted a holistic approach to resentencing, treating a criminal sentence as a package of sanctions that may be fully revisited upon resentencing. See U.S. v. Fumo, 513 Fed. App'x. 215 (3rd Cir. 2013); U.S. v. Brown, 385 Fed. App'x. 147 (3rd Cir. 2010); U.S. v. Proctor, 28 F.4th 538 (4th Cir. 2022); U.S. v. Said, 26 F.4th 653 (4th Cir. 2022); U.S. v. McFalls, 675 F.3d 599 (6th Cir. 2012); U.S. v. Litos, 847 F.3d 906 (7th Cir. 2017); Gardner v. U.S., 114 F.3d 734 (8th Cir. 1997); U.S. v. Cantrell, 774 F.3d 666 (10th Cir. 2014); and U.S. v. Martinez, 606 F.3d 1303 (11th Cir. 2010).

The Ninth. Court itself has a string of cases going back nearly three (3) decades holding that when a defendant is sentenced on multiple counts and one of them is later vacated on appeal, the sentencing package becomes "unbundled." See U.S. v. Davis, 854 F.3d 601 (9t Cir. 2017); U.S. v. Christensen, 828 F.3d 763 (9th Cir. 2015); U.S. v. Ruiz-Alvarez, 211 F.3d 1181 (9th Cir. 2000); U.S. v. Avila-Anguiano, 609 F.3d 1046 (9th Cir. 2010; and U.S. v. Handa, 122 F.3d 690 (9th Cir. 1997).

After the string of cases cited above, The Ninth court made the following comment: "However, the parties have cited no published case from this circuit (nor have we uncovered one) addressing the specific circumstances present

here: namely, where the sentence on a judgment of revocation of supervised release and the sentence on a count of criminal conviction, both based on the same underlying conduct, were calculated and imposed at the same sentencing proceeding but the revocation sentence was subsequently determined to be illegal. U.S. v. Hanson, 936 F.3d 876, 886 (9th Cir. 2019).

Hanson held that when a judgment of revocation of supervised release and the sentence on a count of criminal conviction, both based on the same underlying conduct, were calculated and imposed at the same sentencing proceeding but the revocation sentence was subsequently determined to be illegal, that the Court has the discretion (but it is mandatory to so so) resentence for both cause numbers and not just for one.

On September 21, 2023 at the initial resentencing hearing, Judge Martinez stated: "You appealed, as was your right, up to the Ninth Circuit. The Ninth Circuit, in their written opinion, affirmed your sentence on the 2016 case; therefore, I have no authority, no jurisdiction to do anything about that sentence..."

On May 17, 2024, Judge Martinez reiterated about his lack of authority in dealing with any other sentencing issues other than the supervised release matter, stating in pertinent part: "Mr. Lillard, my jurisdiction today is very, very, vary limited. Your point about the Court of Appeals really is very valid in terms of they have control of most of this stuff, and you are able to argue any of these - - make any of these arguments and present them to the Court of Appeals, and how they rule, of course, is always up to them.

In short, Judge Martinez abused his discretion when he held he did not have the authority or jurisdiction to do anything about case no. CR16-07. A District Court abuses its discretion if the Court incorrectly applies the law or does not follow the correct law. U.S. v. Dunn, 728 F.3d 1151, 1155 (9th Cir. 2013). Judge Martinez clearly did not follow the correct law: That under the 'de novo default sentencing rule', eight circuit federal appellate courts, to include the Ninth Circuit, have all held that under the sentencing package doctrine when a sentence is set aside, the District Court Judge has the discretion to reconsider the sentencing package de novo. See also 18 U.S.C. Section 3584(c) (Multiple terms of imprisonment are treated under federal law as a single, aggregate term of imprisonment). My case should be remanded back to the lower court because this is a case that the District Court Judge was uncertain about whether he understood his authority and his ability to exercise it. This is what has happened in one hundred and percent (110%) of cases as related to such failure of the Judge's acknowledgment of their authority. See U.S. v. Quintero-Leyva, 823 F.3d 519, 523 (9th Cir. 2016); U.S. v. Henderson, 649 F.3d 955, 964 (9th Cir. 2011); U.S. v. Arellano, 387 F.3d 794, 798 ((9th Cir. 2004) (remand required where it was unclear whether District Judge validly exercised authority not to depart or erroneously felt legally constrained not to do so).

Even Though the Ninth Circuit did not Vacate the Sentences for both Supervised Release violations and the underlying New Criminal Offense, is such Fact detrimental to the District Court Judge's Discretion?????

I would say to this Honorable Supreme Court the answer should be answered in the "NEGATIVE." WHY????? Judge Martinez's authority and jurisdiction to restructure my entire sentence, when this Circuit Court only vacated the supervised violation sentence (this was akin to vacating one sentence of a multi-count indictment after conviction) by finding such invalid, is well within the sound discretion of the District Judge's call. See Troiano v. U.S., 918 F.3d 1082, 1086-87 (9th Cir. 2019). Troiano cleared up any misinterpretations that when this Circuit Court vacates a sentence on one count, but not on others, the District Court "MAY" resentence the defendant on all counts, but is not required to do so. Id. at 1087. (Emphasis added). In other words, just because this Circuit Court exercised its authority to affirm the sentence on one count, so to speak, does not upset the District Court's authority to put together a new package on its own accord, due to the multiple sentences becoming "unbundles."

Should Both My (Mr. Lillard) Sentences Fall Under the "Sentence Package Doctrine"?????

I would respectfully ask this Court to answer such question raised on appeal and in this pro se supplemental brief in the affirmative. Why???

It is undisputed that the District Court did not request myself nor Government counsel in the sentencing proceedings to make separate sentencing recommendations for the new criminal offense conviction and the supervised release violations. Furthermore the District Court did not consider and impose either of my sentences I received independently of each other.

Thus, the District Court imposed a single, overall sentencing package for the new criminal conviction together along with the supervised release violations.

Did this Court Issue a General Remand or a Limited Remand as to its Published Opinion at U.S. v. Lillard, 57 F.4th 729 (9th Cir. 2022).

The propriety of the District Court's de novo sentencing on remand turn on whether "the district court's authority was abridged by any express or implied limits in the remand order. U.S. v. Caterino, 29 F.3d 1390, 1394 (9th Cir. 1994).

The critical language in the Lillard opinion held that the 36-month sentence imposed for my violation of supervised release was vacated and this Court remanded back to the District Court for re-sentencing. Id.

Had the Court sought to limit the scope of the District Court's authority on remand, it could have easily done so. Instead this Court vacated my sentence I received as to my supervised release violation and remanded my case back to the lower court. Moreover, such language does not amount to "clear evidence" of a limited remand. Caterino at 1395.

Furthermore, a narrow reading of the remand order would be inconsistent with The Ninth Circuit Court's general and customary

practice as held in the numerus cases I cited earlier in this pro se brief, which stands for the proposition that a criminal sentence is a package composed of several parts and when one part of the package is disturbed, the Appellate Court prefers to give the District Courts the opportunity to reconsider the sentence as a whole.

Think about it this way. The Circuit Court often affirms sentences, in a multi-count situation while simultaneously vacating others, right??? If the Government were somehow able to get the Court to go along with the fact that by leaving the other sentences in tact by affirming them and therefore the District Court has no jurisdiction nor authority to reconsider them under the sentence package doctrine, thus such doctrine would ultimately be useless and pointless. It would just be empty words. This Court would have to no longer be silent in any case it decided if this Court were to adopt such a dangerous precedent. Defendants in various jurisdictions in the Circuit would point out that such silence negatively impacted them while others would even be able to argue discrimination by this Court's silence in remanding the cases back to the lower courts on remand, but not stating SPECIFICALLY that resentencing was allowed. Some activist judges would clearly take advantage of such and even improperly determine that the new precedent set by this Court holds that unless this Court SPECIFICALLY states in the remand order that the defendand should be re-sentenced on all counts, then they take such silence as clear evidence that they should not be resentenced. This Court should not impose an extra-textual limitation on the previous Court's precedential opinions. This Court should not otherwise expand the limitations already crafted by this Court's precedents related to general remands versus limited remands.

Again, I reiterate, because no such clear evidence exists in the case at hand, the Lillard published decision should be read as granting a general remand rather than a limited remand to the District Court. I should have been allowed the benefit of the general rule in this Circuit Court that a District Court on remand may take any matter into account and may hear any evidence relevant to sentencing. U.S. v. Audette, 923 F.3d 1227, 1241-1242 (9th Cir. 2019).

There is an exception to this general rule where "'additional evidence would not have changed the outcome or where there was a failure of proof after a full inquiry into the factual question at issue.'" U.S. v. Culps, 300 F.3d 1069, 1082 (9th Cir. 2002) (quoting U.S. v. Matthews, 278 F.3d 880, 886 (9th Cir. 2002) (en banc)).

Based upon the lower Court's actions that Judge Martinez held he had no authority or jurisdiction to hear any issues pertaining to my new criminal conviction at the resentencing hearing, it shows without a shadow of a doubt and it should be obvious then that there never was a full inquiry, or any inquiry for that matter - not even a minutiae, into any factual question as issue, in the first instance. It definitely would not have been futile to allow me to introduce

additional evidence regarding my above and beyond strong efforts at rehabilitation, as such evidence would have surely changed the outcome of the first sentencing hearing. The Court's remand did not limit the overall sentence or otherwise circumscribe the manner in which the lower court could consider any matter and hear any evidence relevant to resentencing . See U.S. v. Washington, 172 F.3d 1116, 1118-19 (9th Cir. 1999). The District Court is only without jurisdiction to revisit other issues if the Court of Appeals has limited the scope of the remand order. Caterino at 1394.

The Appellate Court did not take any steps whatsoever to direct the District Court's procedure or otherwise direct that Court to conduct a limited resentencing on remand, Thus the presumption in favor of me being allowed a de novo resentencing was not overcome. See U.S. v. Klump, 57 F.3d 801, 803 (9th Cir. 1995) (holding that "the general rule that resentencing is de novo applies" absent limiting language.); see also U.S. v. Matthews 278 F.3d 880, 885 (9th Cir. 2002) (en banc) ("[A]s a general matter, if a district court errs in sentencing, we will remand for resentencing on an open record-that, is without limitation on the evidence that the D.C. may consider."); U.S. v. Campbell, 168 F.3d 263, 267 (6th Cir. 1999) ("A limited remand must convey clearly the intent to limit the scope of the district court's review."). Accordingly the District Court should have determined this Circuit Court issued a general remand, since there was no clear evidence that this Court issued a limited remand --- U.S. v. Ponce, 51 F.3d 820, 826 (9th Cir. 1995), therefore Judge Martinez should have allowed my arguments for resentencing to be heard as to my criminal matter, DE NOVO.

Did the District Court Judge Commit a Procedural Error by Refusing to Hear Me (Mr. Lillard) as to Mitigating Factors, in relation to any Potential Resentencing.

By the District Court , out of the gate, determining it would not resentence me, even if it had the authority to do so, in lieu of not even knowing what mitigating factors I would provide to the Court, such action was procedurally erroneous as to its refusal to consider any such aguments as they related to mitigating factors as well as the criminal matter. See U.S. v. Valencia-Barragan, 608 F.3d 1103 (9th Cir. 2010).

I should have benn allowed to provide a full panapoly of post-conviction factual examples related to my conduct after sentencing. See Pepper v. U.S., 562 U.S. 476 (2011). I should have been allowed to make a nonfrivolous argument tethered to any relevant Section 3553(a) factors in support of a downward departure from the previous 196 months imposed on me. "THEN AND ONLY THEN" could Judge Martinez explain why he accepts or rejects my sentencing

position, "NOT BEFORE" he has actually allowed me to speak or other heard my reasons. See U.S. v. Carty, 520 F.3d 984 (9th Cir. 2008); see also U.S. v. Gonzalez, 529 F.3d 94 (2nd Cir. 2008) (resentencing required where judge delayed defendant's opportunity to speak until after sentencing);U.S. v. Luepke, 495 F.3d 443 (7th Cir. 2007) (resentencing required when judge delivered sentence before allowing defendant to speak); U.S. v. Gunning; 401 F.3d 1145 (9th Cir. 2005); (resentencing required when Court prematurely adjudged defendant's sentence by announcing sentence before giving defendant opportunity to speak). Take for example, Sept. 21, '23 when Judge Martinez stated: "You've already served at least 24 months of the 2008 violations; therefore, assuming you intend to go along with this, the court would then be resentencing you on the 2008 supervised release violations to a sentence of 24 months, give you credit - - because you've already done it - - and terminate supervision on the 2008 matter."

I had not yet, at that time, even spoke as to what type of request for a sentence I would prefer. Sure enough, on May 17, 2024, after the initial resentencing hearing was postponed and continued, Judge Martinez handed down myself 24 months on my supervised release violations. Had Judge Martinez allowed me to present nonfrivolous arguments as to any resentencing matter related to cause no. CR16-07, he would have been under a duty to consider the Section 3553(a) factors and would have had to provide a sufficient explanation of his sentencing decision, regardless of whether he accepted or rejected my arguments, so as to permit meaningful appellate review. See U.S. v. Trujillo, 713 F.3d 1003, 1009 (9th Cir. 2013). In other words, Judge Martinez would have been required to satisfy this Court that he, in truth and in fact, had considered my arguments related to resentencing and had a reasoned basis for exercising his own legal decision-making authority. Rita v. U.S., 551 U.S. 338, 356 (2007); see also Carty, 520 F.3d at 992.

But the sentencing court failed to consider the 3553(a) factors, including Lillard's rehabilitation since his conviction. Instead, the court ruled that its "jurisdiction today is very, very, very limited... all I'm doing is I am changing the improper 36 months the court imposed previously to the maximum 24 months that's allowed by statute, and running it concurrently … as the sentence in 16-07."

. The Court has a duty to consider all information about postsentencing rehabilitation before imposing a new sentence. *Pepper,* 562 U.S. at 487-88. This Court's decision in remanding Mr. Lillard's case for resentencing did

not simply mandate the court simply strike the offending 36-month sentence and order the court to impose a 24-month sentence. Instead, this Court vacated the sentence in CR15-270 and remanded for resentencing. (Emphasis added.)

Was Counsel, Thomas E. Weaver, Ineffective for Refusing to Submit any 3553(a) Materials and Argue for Lower Sentence on My Behalf, Once he Infused Himself into the Criminal Cause No. CR16-07????

1. The Supreme Court has made clear that a criminal defendant has a Sixth Amendment constitutional right to the effective assistance of counsel. "The Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial." *Strickland v. Washington,* 466 U.S. 668, 684 (1984). To obtain relief based on ineffective assistance of counsel, a criminal defendant must establish that (1) his counsel's performance was deficient and (2) his counsel's deficient performance prejudiced his defense. *Williams v. Taylor*, 529 U.S. 362, 391, 120 S.Ct. 1479, 146 L.Ed.2d 435 (2000); *Strickland*, 466 U.S. at

687. Where trial counsel's errors are the result of reasoned, strategic judgment, reviewing courts must start with the presumption that counsel's performance fell within the range of reasonable professional decisions. *Kimmelman v. Morrison,* 477 U.S. 365, 384 (1986). In order to be effective, defense counsel has "a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Strickland*, 466 U.S. at 691. To provide constitutionally adequate assistance, "counsel must, at a minimum, *conduct a reasonable investigation* enabling [counsel] to make informed decisions about how best to represent [the] client."[1]

The presumption of reasonableness dissipates where the record establishes that counsel's conduct arose from "inattention, not reasoned, strategic judgment." *Id.* at 385; *Wiggins,* 539 U.S. at 526. The failure to investigate is "especially egregious" when a defense lawyer "fails to consider potentially exculpatory evidence." *Rios v. Rocha*, 299 F.3d 796, 805 (9th Cir. 2002). As this Court explained, "counsel cannot be said to have made a tactical decision without first procuring the information necessary to make such a decision." *Reynoso v. Giurbino,* 462 F.3d 1099, 1112 (9th Cir. 2006). Here, counsel did not make a tactical decision, when he failed to obtain post-conviction rehabilitation information that would assist Mr. Lillard in his attempts to receive a less time for his violation of supervised release at resentencing.

In *Wiggins v. Smith,* 539 U.S. 510 (2003), Wiggins was convicted of first-degree murder for drowning a 77–year–old woman. *Wiggins,* 539 U.S. at 514-15. At sentencing, counsel failed to present any mitigating evidence, although one counsel told the jury that Wiggins had "had a difficult life," had "tried to be a productive citizen" and had "reached the age of 27 with no convictions for prior

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[1] *Sanders v. Ratelle,* 21 F.3d 1446, 1456 (9th Cir. 1994) (citing *Strickland,* 466 U.S. at 691).

crimes of violence and no convictions, period." *Id.* at 515. Counsel failed to present persuasive evidence of Wiggins' life history. *Id.* at 516-18.

The Supreme Court noted that the investigation was not reasonable because counsel failed to do anything beyond arranging for psychological tests and reading the pre-sentencing investigation report and records kept by the Baltimore City Department of Social Services regarding Wiggins' various foster placements. *Id.* at 522-25. The Court concluded that Wiggins had been prejudiced by counsel's failure to investigate because the jury heard only one mitigating factor—that Wiggins had no prior convictions—and there was much more powerful evidence that could have been presented. *Id.* at 534-35. The Court held that "Had the jury been able to place petitioner's excruciating life history on the mitigating side of the scale, there is a reasonable probability that at least one juror would have struck a different balance." *Id.* at 536.

In *Stankewitz v. Woodford,* this Court was also confronted with a case where counsel failed to present mitigating evidence. 365 F.3d 706 (2004). Counsel did not interview anyone from the first trial or investigate his teachers, parents, psychologists about his childhood or his mental capabilities. *Id.* at 719. Counsel was unaware of Stankewitz's history of drug and alcohol abuse. *Id.* Counsel also failed to investigate and rebut the prosecution's evidence. *Id.* at 720.

This Court found that counsel's failure to investigate and uncover mitigating evidence would be ineffective. *Id.* at 722. The Court also found that had mitigating evidence been investigated and presented, there was a reasonable probability that the jury would not have sentenced Stankewitz to death. *Id.* at 725. Accordingly, the Court remanded for an evidentiary hearing. *Id.*

2. Counsel failed to present any mitigating evidence on behalf of Mr. Lillard. Mr. Lillard prepared a Sentencing Statement to Court in Lieu of Defendant's Right to Allocution on May 10, 2024, with proof of service on May 10, 2024, that he sent a copy of his Statement also to the AUSA and his counsel, and handed it to prison officials on that same date. The Statement was mailed from the FCI – Sheradan, Oregon facility on May 13, 2024. The Statement was received at the clerk's office of the US District Court on May 16, 2024.

In his Statement, Mr. Lillard explained that on May 1, 2024, Lillard spoke with his counsel via telephone. . His counsel told Mr. Lillard that counsel would not submit evidence of Lillard's efforts at rehabilitation.

Counsel refused to present any facts about Lillard's recidivism risk, including that the Bureau of Prisons dropped his pattern score from a high risk to reoffend, then to a medium, and finally dropped down to a low risk by the time of sentencing.

. Lillard explained to his counsel that it was important to show his likelihood of committing future crimes. . Counsel reiterated that he would not help Lillard in any way for asking for a sentence less than 24 months.

Mr. Lillard argued in his Statement that his counsel should have obtained Lillard's progress, up-to-date, report, his medical files to argue mitigating factors to the court.

, Mr. Lillard cited the *Pepper* Court's decision requiring a court to consider the §3553(a) factors. He informed the court that back in February of 2024, he had asked for up-to-date team papers to show the classes Lillard completed, but they were never provided to him. . Lillard asked the court to take judicial notice of his program review at CR 16-07 Dkt. No. 425-2 under cause number 2:16-cr-00007-RSM.[2]

Mr. Lillard complained about prison life, including being fed out-dated food, lockdown procedures, the lack of hygiene products, and the lack of educational or vocational training. Mr. Lillard argued that the court should consider his rehabilitation which "shed light on the likelihood that [Mr. Lillard]

[2] These documents show Mr. Lillard's Individualized Reentry Plan Program Review from 2020, including the 40 completed courses Lillard accomplished as well as the fact that he had no infractions over the most recent six-month period.

will [or will not] engage in future criminal conduct." citing *Pepper,* 562 U.S. at 492. Mr. Lillard argued that he has demonstrated he poses a minimal risk, if any, of dangerousness to society.

Although the Clerk of the US District Court received the Statement on May 16, 2024, at the time of sentencing the next day, 10:02 a.m. on May 17, 2024, the court had not yet received the Statement. . Mr. Lillard informed the court that he had mailed the Statement on May 10, 2024, and believed it would be filed in time for his sentencing on May 17. . Mr. Lillard addressed the court about the §3553(a) factors, stating that his trial counsel had failed to put into evidence his program for the progress report, his medical file, and his certificates of classes that he had participated in. . Counsel was ineffective for failing to make any effort to present mitigating factors for Mr. Lillard and refusing to assist in arguing mitigating factors in any way. *Wiggins,* 539 U.S. at 535-36. This Court should reverse for resentencing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lonnie Gilland

Date: March 5, 2025