

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JULIAN SNIPE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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May 18, 2026

QUESTIONS PRESENTED

1. Whether the Court should hold this petition pending its decision in Hunter v. United States, No. 24-1063, and dispose of it accordingly, where the Second Circuit dismissed the criminal appeal as barred by an appellate waiver deemed to waive “all challenges,” and failed to consider contractual defenses, claims of unconstitutional and structural error that placed convictions and sentences for unadmitted murder-for-hire crimes against a second unadmitted victim outside the scope of the appellate waiver, claims sentences exceeded statutory maximums, and failed to address the government’s breach by advocacy the defendant could be convicted and sentenced for unadmitted crimes it agreed to dismiss.
2. Whether the Court should hold this petition pending its decision in Hunter v. United States, No. 24-1063, and dispose of it accordingly, where the district court advised the defendant at sentencing of a far less restrictive appellate waiver than the plea agreement, or that applied by the Second Circuit, and the government did not object.

PARTIES TO THE PROCEEDING

Petitioner, the defendant-appellant below, is Mr. Julian Snipe.
Respondent, the plaintiff-appellee below, is the United States of America.

RELATED PROCEEDINGS

The following proceedings relate directly to the case before the Court:

Eastern District of New York, (underlying criminal proceeding):
United States v. Shelton (Snipe), No. 1:18-cr-00609-HG-9, Aug. 1, 2024
judgment, entered Aug. 2, 2024.

Second Circuit, (appellate proceeding below):
United States v. Shelton (Snipe), No. 24-2101-cr,
judgment entered Dec. 19, 2025.

Eastern District of New York, (post-appeal hearing to impose
standard of conditions of release in defendant's presence, from which no
appeal has been taken):
United States v. Shelton (Snipe), No. 1:18-cr-00609-HG-9, April 9, 2026.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING.....	ii
RELATED PROCEEDINGS	ii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI	1
OPINION BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE PETITION	
1. This Court should vacate dismissal of the criminal appeal because the appellate waiver did not, and should not, bar contractual defenses and arguments the convictions and sentences were beyond its scope, exceeded statutory maximums, and other serious constitutional and structural claims.	14
2. This Court should vacate dismissal of the criminal appeal where the Second Circuit’s appellate waiver bar was more restrictive than the district court’s advice of broader appellate rights at sentencing, to which the government did not object.	19
CONCLUSION	22
APPENDIX	
A – Summary Order of the Second Circuit, Dec. 19, 2025	1a
B – Plea Agreement, May 9, 2022	18a
C – Transcript, Change of Plea, May 27, 2022	28a
D – Transcript, Sentencing, Aug. 1, 2024	51a
E – Judgment, Aug. 2, 2024	108a

TABLE OF AUTHORITIES

Cases

<u>Burrage v. United States</u> , 571 U.S. 204 (2014).....	15
<u>Garza v. Idaho</u> , 586 U.S. 232 (2019).....	14, 15
<u>Griffith v. Kentucky</u> , 479 U.S. 314 (1987).....	20
<u>Hunter v. United States</u> , S. Ct. No. 24-1063	passim
<u>United States v. Barnes</u> , 158 F.3d 662 (2d Cir. 1998).....	13, 16
<u>United States v. Buchanan</u> , 59 F.3d 914 (9th Cir. 1995)	20
<u>United States v. Fisher</u> , 232 F.3d 301 (2d Cir. 2000).....	11, 20
<u>United States v. Malpeso</u> , 115 F.2d 155 (2d Cir. 1997).....	7, 13
<u>United States v. Orozca-Prada</u> , 732 F.2d 1076 (2d Cir. 1984)	17
<u>United States v. Rosa</u> , 123 F.3d 94 (2d Cir. 1997).....	9
<u>United States v. Wood</u> , 378 F.3d 342 (4th Cir 2004)	20

Constitutional Provisions

U.S. Const., amend. V	passim
U.S. Const., amend. VI	passim

Statutes

18 U.S.C. § 1958	3
------------------------	---

U.S. Sentencing Guidelines

U.S.S.G. § 1B1.2(d)	7, 16
U.S.S.G. § 2A2.1	9

PETITION FOR A WRIT OF CERTIORARI

Petitioner Julian Snipe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this criminal case.

OPINION BELOW

The Second Circuit's unpublished Summary Order is available at United States v. Shelton, No. 24-2101, 2025 U.S. App. LEXIS 33160, 2025 WL 3687777, (2d Cir., Dec. 19, 2025). (App.1a-17a.)

JURISDICTION

The Second Circuit had jurisdiction under 28 U.S.C. § 1291 and entered judgment Dec. 19, 2025. Mr. Snipe did not seek rehearing.

This Court has jurisdiction under 28 U.S.C. § 1254(1), governed by Part III of the Rules of the Supreme Court of the United States.

Justice Sotomayor's March 12, 2026, Order in 25A998 extended the time to file this petition for certiorari to May 18, 2026.

RELEVANT CONSTITUTIONAL PROVISIONS

The Fifth Amendment provides in relevant part:

No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .

The Sixth Amendment provides:

In all criminal prosecutions, 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 defence.

STATEMENT OF THE CASE

Pursuant to a plea agreement containing an appeal waiver of any sentence below 480 months, Mr. Snipe pleaded guilty to two “lesser included” counts of murder for hire under 18 U.S.C. § 1958— Count 1, a conspiracy murder-for-hire count, and Count 2, a substantive murder-for-hire count. The indictment’s Counts 1 and 2 were unconstitutionally duplicitous as each named two victims, and each listed three possible crimes – murder for hire without resulting injury with a ten-year statutory maximum, murder for hire causing personal injury with a twenty-year maximum, and murder for hire causing death with a life sentence maximum. Mr. Snipe’s plea agreement should have eliminated this duplicity – it contemplated a plea to two singular “lesser-included” offenses of conspiracy and substantive murder for hire involving a single victim and resulting in personal injury, but not death, to the victim. Three other counts against Mr. Snipe were to be dismissed.

The 2021 indictment in the Eastern District of New York named ten defendants in a murder-for-hire plot, (2d Cir. Record Appendix at R.44), where co-defendant Anthony Zottola hired co-defendant Bushawn Shelton and others to murder Anthony’s father, Sylvester Zottola, and Anthony’s brother, Salvatore Zottola, to take over Sylvester’s lucrative real estate portfolio. Mr. Snipe was recruited by Shelton, the lead defendant.

Mr. Snipe participated in the July 11, 2018 attempted murder of Salvatore Zottola, Sylvester’s son, which Salvatore survived – with grievous

injuries, by helping secure a car and riding along with the shooter and others. However, there was little the government cited, other than texts after the fact suggesting general knowledge of a plot, connecting him to Shelton and others' successful murder of Sylvester Zottola, the Father, months later on October 4, 2018.

Mr. Snipe's first two change-of-plea hearings were cut short by the judge when Mr. Snipe expressed lack of understanding of the charges and extreme hesitation. He was expected to plead guilty a single "lesser-included" offense causing injury to a victim within Counts One and Two. In these hearings, Snipe, who had been held in extremely restrictive and prolonged Covid confinement conditions at the MDC in Brooklyn, told the judge he was "having difficulty" because "it's going on 35 months and most of the 35 months I've had the death penalty hanging over my head...And the moment the death penalty comes off, I'm being offered the zero to 40 and I haven't yet been able to understand my actual role in this conspiracy." (R.63.) When asked if his plea was voluntary, he answered, "I'm taking this plea on my own but this plea is crazy." (R.80-81.) The judge postponed the plea.

At the third change-of-plea hearing on May 27, 2022, he finally entered his plea, pursuant to a plea agreement containing an appeal waiver. The government told the judge Mr. Snipe was pleading guilty to a lesser included offense involving personal injury to John Doe 1, which it identified as Salvatore the Son, and said Snipe did "not need to allocute to the murder

itself.” (App.46a.) The government proffered it could “prove at trial,” and requested Snipe “stipulate,” that “personal injury, in fact, resulted to the individual described in the superseding indictment as John Doe 1.” (App.47a (i.e., Salvatore the Son).) Mr. Snipe allocuted to a singular conspiracy and singular substantive murder for hire resulting in singular personal injury to a singular person. (App.46a.) His allocution, however, did not name the victim. He did not admit or allocute to any crime or involvement in, or to being the but-for cause of, any resulting harm to Sylvester the Father. The government never proffered it could prove Mr. Snipe harmed Sylvester the Father. No one revealed to Mr. Snipe he would later be pronounced substantively guilty beyond reasonable doubt for, and sentenced for, the first-degree murder of Sylvester Zottola.

Mr. Snipe’s plea agreement promised not to seek appeal or collateral review of the conviction or any sentence of 480 months or less,” and in exchange the government would drop the other charges, and not further prosecute the crimes against Sylvester and John Doe 1, and take no position on where in the guideline range the sentence should fall, and Snipe was eligible for a three-point reduction for acceptance of responsibility. (App.21a-22a.)

Mr. Snipe, however, later moved to withdraw his plea, initially in prose filings, when he expressed confusion and innocence of any involvement in Sylvester the Father’s murder, stating he “didn’t understand” why the

murder of Sylvester Zottola the Father was “part of the plea.” (R.136.) The government vehemently opposed his motions to withdraw his plea. His counseled attempt to withdraw the plea on cognitive grounds because he had discontinued an antidepressant was ultimately rejected, and the government subsequently argued Mr. Snipe should be deprived of his three points for acceptance of responsibility because he asserted his innocence in his uncounseled filings.

The PSR calculated Snipe’s offense level for the conspiracy count by splitting calculations for two victims. Count 1A conspiracy used the offense level applicable to Sylvester’s 1st degree murder, a crime and resulting harm Mr. Snipe did not admit. The PSR grouped this with Count 2, the substantive “Murder for Hire (Sylvester Zottola),” of the murdered father, also a crime Mr. Snipe did not admit. (Sealed Appendix at 64, PSR ¶43.) A separate calculation for the Count 1B conspiracy to murder Salvatore, the injured Son, was counted as a separate unit. There was no calculation for a Count 2 related to Salvatore. With these calculations based on a second murdered victim, a brand new unit of prosecution, using a 1st degree murder guideline, rather than the attempted murder guideline otherwise applicable to the crime to Salvatore Mr. Snipe actually admitted, and without any credit for acceptance of responsibility, Mr. Snipe’s Guideline range was life, with the stacked statutory caps limiting the range to 480-480 months. Mr. Snipe’s plea agreement, in contrast, had estimated a range of 360-480.

At sentencing, the district court said that even though Snipe had “only pled guilty to such offenses to the extent they caused serious injury rather than death,” it would consider Sylvester the Father’s murder under U.S.S.G. § 1B1.2(d), Application Note 4, and the never-before-mentioned Second Circuit’s nearly three-decades-old decision in United States v. Malpeso, 115 F.3d 155 (2d Cir. 1997). (App.58a-59a.)

The sentencing judge pronounced in open court that because the “plea is unclear as to which offenses were the object of a defendant’s conspiracy,” it would “find beyond reasonable doubt that defendant Snipe entered into the conspiracy to commit a murder-for-hire involving both Sylvester and Salvatore Zottola. And therefore I consider the murder of Sylvester Zottola when calculating defendant Snipe’s offense level in conducting the sentencing guidelines grouping analysis.” (App.60a. (citing unspecified text messages not properly entered into the record by the government.) It accepted the PSR’s calculations for Sylvester and Salvatore, which included the naming of Sylvester as the victim of Count 2’s substantive murder for hire, which errors either no one noticed or pointed out, and the resulting range of life imprisonment, bounded by the statutory maximum, was 480-480.

The judge noted, “although defendant pled guilty only to conspiring to committing a murder-for-hire that resulted in Salvatore Zottola’s grievous injuries, I cannot turn a blind eye to the text messages that show that defendant clearly knew about the evidence of a broader conspiracy that

defendant Shelton was orchestrating which resulted in the successful murder of Sylvester Zottola.” (App.98a.) No one at sentencing argued that knowledge alone is insufficient to establish criminal guilt for a violent crime, or that texts after a crime was completed are also insufficient, and undersigned appellate counsel in any case cannot determine what texts were actually relied upon. The district court rejected defendant’s requested 15-year variance sentence from the PSR’s originally calculated 360-480 month range – a sentence more on par with the 16- and 17-year sentences received by two co-defendants of similar culpability. The court did not recognize that a ten-year statutory maximum applied to both the substantive murder for hire and conspiracy to murder for hire of Sylvester the Father, given the total absence of a jury finding, or a personal admission of guilt by Mr. Snipe, that Mr. Snipe was a but-for cause of either Sylvester’s harm or death. From the 480-480 statutory-maximum Guidelines range starting point, it imposed a downward variant sentence of concurrent 240-month terms on each count. (App.100a.)

Nothing in Mr. Snipe’s plea agreement, and nothing at his change of plea hearing, alerted him to the fact that he would be judicially declared substantively guilty beyond reasonable doubt of murder for hire conspiracy targeting Sylvester the Father, in open court, essentially a criminal conviction for an additional crime and victim he did not admit, or that he would be sentenced for two crimes to two victims, rather than crimes against

a singular victim, or that the court would use a first degree murder guideline to sentence him. The words “first degree murder,” or “Sylvester,” appeared nowhere in his plea agreement.

Mr. Snipe appealed to the Second Circuit from this judgment.

The Second Circuit held that “Snipe is Bound by His Plea Agreement, in Which He Waived All Challenges to His Conviction and Sentence,” (App.4a) and dismissed Mr. Snipe’s appeal “pursuant to the appeal waiver in his plea agreement.” (App.17a.)¹

The panel totally ignored and failed to rule on the most serious of Mr. Snipe’s contractual defenses to the appeal waiver, that he “did not waive the right to appeal convictions and sentencing for unadmitted crimes committed against Sylvester Zottola,” (Def. Reply Br. at 5).

The “unconstitutional pronouncement of a verdict at sentencing was something so ‘unconstitutional’ and ‘so unfair or erroneous as to warrant [the court’s] refusal to uphold the agreement.’ [citing United States v. Rosa, 123 F.3d 94, 101 (2d Cir. 1997) (J. Oakes)]. He did not waive the right to appeal a fundamentally defective determination of guilt, or sentence resulting from it. Mr. Snipe should have been sentenced only for a group, **for a single victim**, Salvatore, under U.S.S.G. § 2A2.1, and **anything else was beyond the knowing, voluntary and intelligent scope of his plea**. The appeal waiver is also unenforceable because Mr. Snipe asserts the government breached its promise not to advocate for any sentence within a given range, for reasons described below.”

(Def. Br. at 44 (bold emphasis added).)

¹ The panel also affirmed imposition of a special condition of supervised release not encompassed by the appeal waiver, and vacated and remanded the thirteen standard conditions of supervised release, which were re-imposed in Mr. Snipe’s presence at a district court hearing on April 9, 2026, and from which no appeal has been taken.

Snipe had argued his “appeal waiver does not encompass a sentencing that introduced structural error with an unconstitutional verdict of guilt, or that exceeded the judge’s judicial authority.” (Def. Initial Br. at 43.)

Given the court’s re-introduction of a duplicity of victims, and multitude of crimes, on both Counts 1 and 2, Snipe urged he could only be sentenced to a ten-year statutory maximum applicable to the lesser of the two crimes, the murder for hire of Sylvester the Father, given that he had admitted no guilt for resulting injury or death to Sylvester, and the government agreed it was not seeking he allocute to murder and that his plea regarded John Doe 1, Salvatore. (Def. Br. at 42-44.)

He argued that not only had the government breached the plea agreement by advocating for a serious sentence of 360 months at sentencing, contrary to its promise to take no position, and in opposition to Mr. Snipe’s requested 15 years, but also that the government had further breached the agreement by advocating on appeal that Snipe was substantively guilty for crimes against Sylvester, and that he could properly be sentenced for more than one offense under both Counts One and Two, (see Gov’t Br. at 35 (“Evidence was Sufficient to Find that Snipe had Committed Both Offenses”), Gov’t Br. at 37 (arguing Snipe allocuted to two crimes and two harms to two victims)), contrary to its contractual promise, (App.22a), to pursue “no further criminal charges” for his participation in “the murder-for-hire and conspiracy

to commit murder-for-hire of Sylvester Zottola....” (App.22a; Def. Reply Br. at 6.)

On Dec. 10, 2025, six days after the merits brief in Hunter v. United States was submitted in S. Ct. No. 24-1063, Mr. Snipe filed a Rule 28j letter citing Hunter as further support for his arguments his appeal was not barred by his appellate waiver, and to note that while Second Circuit precedent in United States v. Fisher, 232 F.3d 301, 304-05 (2d Cir. 2000) foreclosed him from arguing his appellate waiver could be less restrictive given the sentencing judge’s advice, he wished to preserve it for further review pending Hunter. The letter argued that at sentencing, Mr. Snipe was informed he could “appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary, or if there is some other fundamental defect in the proceedings that was not waived by your guilty plea or plea agreement. Under some circumstances, a defendant also has the right to appeal the sentence.” (R.28j Letter at Doc. 72.1 in 2d Cir. No. 24-2101, citing App.104a-105a.) The government “did not object or otherwise seek to revise this advice to Mr. Snipe,” and thus “the government forfeited and/or waived its ability to enforce the appeal waiver or restrict Mr. Snipe’s appellate rights to a greater degree than that articulated by the sentencing judge, when it acquiesced to the court’s statement.” Id.

The Second Circuit's Summary Order, in a footnote, dismissed the sentencing advice Hunter argument as insufficiently preserved because raised in a Rule 28j letter rather than supplemental briefing. (App.10a.)

The Second Circuit dismissed Mr. Snipe's appeal, narrowly reasoning Snipe had confirmed he understood his "comprehensive" appeal waiver at his third change of plea hearing. (App.4a-5a.)

However, the Second Circuit's Summary Order totally failed to address Mr. Snipe's contractual defenses that the special judicial verdict of substantive guilt and sentencing for Sylvester Zottola's murder for hire exceeded the scope of his plea agreement, and his sentence exceeded the ten-year statutory maximum for murder-for-hire relating to Sylvester, even if Sylvester could be construed as part of his plea. The Second Circuit panel failed to acknowledge Snipe's plea could not be knowing, voluntary or intelligent as to crimes he did not personally admit. It failed to recognize that, absent a jury finding, only the defendant, and not the court, can admit guilt to crimes. McCoy v. Louisiana, 584 U.S. 414, 427-28 (2018) (violation of Sixth Amendment autonomy to admit guilt is structural error). It failed to address whether the government had breached the agreement by arguing on appeal Mr. Snipe could be declared substantively guilty beyond reasonable doubt and substantively sentenced for crimes against Sylvester the Father. It rejected the argument the government had breached the agreement by

arguing for a serious 360-month sentence at sentencing, contrary to its promise to take no position at sentencing.

And the Second Circuit failed to address or follow binding Second Circuit precedent in United States v. Barnes, 158 F.3d 662 (2d Cir. 1998), which requires that any uncertainty regarding which crimes are encompassed in a plea calls for sentencing to the lowest applicable statutory maximum. It failed to address arguments that the Malpeso procedure had no application where a plea potentially encompassed crimes with different statutory penalties, nor did it acknowledge the circuit split on the Malpeso procedure, which Malpeso itself describes. This split is unlikely to be resolved, and criminal law on this issue is unlikely to develop, if appeal waivers bar appeals and this stagnant law is never subject to judicial review.

And the Second Circuit panel failed to recognize arguments that Mr. Snipe's sentence could have been lower if the district court had not pronounced Mr. Snipe substantively guilty for crimes to a second unadmitted murdered victim, if it had properly calculated and recognized the correct starting guideline range of 360-480, and had varied from this, rather than a 480-month statutory maximum, and if Snipe's arguments for a 15- year sentence had not been vehemently opposed by government advocacy for a 30- year sentence, contrary to its promise in the plea agreement.

This Petition now follows.

REASONS FOR GRANTING THE PETITION

This petition presents questions challenging the dismissal of a criminal appeal pursuant to an appellate waiver, questions likely to be governed by the Supreme Court’s anticipated decision on the two questions presented in Hunter v. United States, No. 24-1063. Mr. Snipe’s petition should be held and disposed of in accordance with Hunter. See 28 U.S.C. § 2106 (codifying authority to grant, vacate and remand judgments).

- 1. This Court should vacate dismissal of the criminal appeal because the appellate waiver did not, and should not, bar contractual defenses and arguments the convictions and sentences were beyond its scope, exceeded statutory maximums, and other serious constitutional and structural claims.**

“No appeal waiver serves as an absolute bar to all appellate claims.” Garza v. Idaho, 586 U.S. 232, 238, 247 (2019) (“[E]ven the broadest appeal waiver does not deprive a defendant of all appellate claims.”)

While the Second Circuit has recognized that some claims are unwaivable, or not subject to appellate waiver, and recognizes exceptions, its decisions, including the panel decision Mr. Snipe’s case, have been inconsistent regarding what claims are subject to review, and here the panel ignored substantial contractual and constitutional defenses that barred application of the waiver.

The Second Circuit panel held Mr. Snipe’s “comprehensive appeal waiver,” “Waived All Challenges to His Conviction and Sentence,” “relinquishing his right to challenge ‘the conviction and sentence in the event

that the district court imposed of imprisonment of 480 months or below.”

(App.4a.) But an appeal waiver can only apply to crimes within the scope of the agreement, cannot be enforced when it is breached by the government, cannot bar review of a sentence above the statutory maximum, or of an unconstitutional sentencing procedure that amounts to a miscarriage of justice. See Garza, at 232 (“Because a plea is essentially a contract, it does not bar claims outside its scope.”)

The Second Circuit erred in totally failing to consider or address arguments the contractual scope of Mr. Snipe’s appellate waiver could not encompass unadmitted separate violent crimes of murder for hire against unadmitted victim Sylvester Zottola, the Father. Mr. Snipe should be able to appeal conviction and sentencing for the wrong victim. The plea to crimes against a singular victim, Salvatore, could not be knowing, voluntary or intelligent as to unadmitted, different violent crimes against a second victim, Sylvester. They are separate units of prosecution.

Because the district court declared guilt for and imposed sentence for unadmitted crimes against Sylvester in both Counts 1 and 2 for sentencing, the lower ten-year statutory maximum applicable to them should have applied to both counts, and appeal from a sentence above the statutory maximum also could not be barred by any appeal waiver. Mr. Snipe never admitted involvement or but-for causation of any harm to the murdered Sylvester. Burrage v. United States, 571 U.S. 204, 218-19 (2014). Even if

Mr. Snipe's plea on both counts could encompass two victims, the statutory maximum on each count then had to be capped at the 10 years applicable to crimes against Sylvester. As a contractual matter, a plea agreement cannot expand Article III power beyond sentencing power conferred by statute. And it cannot extend to crimes to which there was no valid, factually supported, knowing, voluntary, or intelligent plea. Mr. Snipe had contractual defenses his sentence was outside the scope of the appellate waiver in both situations – whether Sylvester could, or could not, be considered part of his plea.

The U.S.S.G. § 1B1.2(d), Note 4 special guilty verdict was blatantly unconstitutional, and should not have been applied here because the admitted crimes and special verdict crimes carried differing statutory maximums. But if Mr. Snipe's plea permitted sentencing for a duplicity of crimes, Mr. Snipe should have been sentenced under the lowest 10-year statutory maximum applicable to a Count 1 conspiracy to murder Sylvester Zottola, and a 10-year statutory maximum applicable to Count 2 substantive murder for hire of Sylvester Zottola asserted in the PSR, for both of which no causation of harm had been admitted or proven, and which trumped any guideline calculation the government urged should apply. United States v. Barnes, 158 F.3d 662, 668, 670-72 (2d Cir. 1998) (for general verdict on duplicitous conspiracy count encompassing more than one conspiracy, court would proceed only by permitting sentence for conspiracy carrying the lowest mandatory minimum and maximum sentence)—government could opt either

to resentence under the lesser penalty or vacate the judgment); United States v. Orozca-Prada, 732 F.2d 1076 (2d Cir. 1984).

The district court's unconstitutional special judicial verdict of substantive guilt and actual sentence imposed for murder for hire crimes against Sylvester were not contemplated by the contractual plea, and also amount to a miscarriage of justice, undermining the public perception, fairness, and integrity of the criminal justice system, because no defendant can reasonably expect he will be declared guilty and sentenced in violation of his Sixth Amendment rights and Due Process without either a jury determination of his guilt, or his valid, constitutional admission by personal plea supported by a factual basis. Alternatively, his sentence above a ten-year statutory maximum on both counts violates his constitutional rights and was beyond the court's statutory and Article III power.

The panel totally failed to address the contractual defense that the government had also breached the plea agreement by advocating on appeal that Mr. Snipe could be guilty for both unadmitted conspiracy and substantive murder for hire crimes against Sylvester Zottola, when it had promised to dismiss and not further prosecute these crimes under the plea agreement.

The panel erred in rejecting claims the government breached its promise not to advocate for where the sentence should fall within a guideline range, when the government advocated for a serious 360-month sentence and

opposed Mr. Snipe's requested 15-year sentence. Mr. Snipe's motion to withdraw his plea cannot be grounds for releasing the government from every promise in the plea.

How inequitable and unfair, to charge a man in an unconstitutionally duplicitous indictment, lead him to believe he is pleading to only one of the duplicitous sets of crimes against one victim, then fault him for seeking to withdraw when he expresses confusion upon learning he may be sentenced for multiple crimes against multiple victims and disclaims involvement in a murder he did not plead guilty to, and then to have the government breach the very agreement the defendant has been locked into, depriving him of several of the few benefits of the plea.

The special judicial verdict of guilt beyond all reasonable doubt of crimes against a second unadmitted victim in open court, combined with sentencing for Sylvester's murder on both counts over the ten-year statutory maximum, violated the Fifth and Sixth Amendments and was structural error, and thus necessarily a miscarriage of justice. It was in every respect a judicial conviction, carrying all the same negative consequences and stigmas of a conviction, as well as potential future collateral consequences as well. Anyone present at sentencing would understand Mr. Snipe to be convicted and sentenced for crimes against two victims, and the murder of Sylvester Zottola.

If this case were remanded for reconsideration of the scope of the appellate waiver, the Second Circuit could consider whether the ten-year statutory maximum should apply to both counts, or alternatively whether the district court would have imposed a lower sentence had it not wrongfully pronounced Mr. Snipe guilty of unadmitted crimes, or if it had properly calculated and varied from a 360-480 month guideline range, and if the sentencing judge could consider advocacy for a 15-year sentence without the government's opposing advocacy for a 30-year sentence. There is a more than reasonable likelihood Mr. Snipe's sentence would be lower.

In sum, Mr. Snipe requests his petition be granted so the Second Circuit can fairly reconsider the appellate bar, and reach the merits of his arguments.

2. This Court should vacate dismissal of the criminal appeal where the Second Circuit's appellate waiver bar was more restrictive than the district court's advice of broader appellate rights at sentencing, to which the government did not object.

If the Supreme Court ruling in Hunter addresses whether a district court's advice and description of appellate rights, if not objected to by the government, can serve to loosen the strictures of the agreement, Mr. Snipe asks that any favorable ruling be considered grounds for vacation and remand of his judgment, because his sentencing judge's advice to him described broader circumstances in which he could appeal his conviction, and the government did not object to the advice.

Mr. Snipe was entitled to “trust the oral pronouncement of [his] district court judge[].” United States v. Buchanan, 59 F.3d 914, 918 (9th Cir. 1995). Furthermore, “the Government’s affirmative acquiescence in the court’s explanation can serve to modify the terms of the plea agreement.” United States v. Wood, 378 F.3d 342, 349 (4th Cir 2004).

Mr. Snipe’s judgment should be vacated and case remanded under any potentially favorable holding under Hunter because the decision should apply to any cases currently still on direct review, even if Mr. Snipe’s argument that the judge’s advice modified the waiver was not deemed preserved below. Griffith v. Kentucky, 479 U.S. 314, 322-23 (1987) (“the integrity of judicial review requires that we apply that [new] rule to all similar cases pending on direct review.”); see also 2d Cir. No. 24-2101, Doc. 72.1 (Snipe’s Dec. 10, 2025 Rule 28j Letter regarding Hunter, submitted a few days after the Hunter merits brief was filed). The argument was foreclosed by the Second Circuit’s binding precedent in United States v. Fisher, 232 F.3d 301, 304-05 (2d Cir. 2000) (holding sentencing court’s statement regarding appellate rights did not rendered waiver ineffective). If a decision in Hunter is applied to Mr. Snipe’s case while on direct review, the Second Circuit could consider whether the district court’s advice should frame its reassessment of the scope of Mr. Snipe’s appellate waiver, and the fundamental errors in his sentencing.

Mr. Snipe was informed by the sentencing judge:

“Now, Mr. Snipe, you can appeal your conviction if you believe that your guilty plea was somehow unlawful or involuntary, or if there is some other fundamental defect in the proceedings that was not waived by your guilty plea or plea agreement. Under some circumstances, a defendant also has the right to appeal the sentence. Any notice of appeal must be filed within 14 days of the entry of judgment or within 14 days of the filing of a notice of appeal by the Government.” (App.104a-105a.)

Mr. Snipe has raised fundamental defects in his sentencing proceedings, including an unconstitutional judicial special verdict of guilt unsupported by a valid plea, or proof, or a jury verdict; sentencing for unadmitted crimes against an unadmitted victim; and a claim that even if the plea *could* encompass a second victim he did not knowingly plead guilty to, the sentences on both counts then exceeded the ten-year statutory maximum for crimes against that unadmitted victim; and he argued these defects were outside the scope of his appellate waiver because they were, in no way shape or form, contemplated by his plea.

The district court’s advice at sentencing would permit these arguments on appeal.

The Second Circuit’s refusal to hear and consider the fundamental, unconstitutional, defects here was a miscarriage of justice, a fundamental error, a failure in its fundamental duties to review sentences and sentencing law, all of which disserve both the defendant and the public.

CONCLUSION

This Court should invoke its supervisory powers to grant the petition for a writ of certiorari, vacate the order dismissing the appeal, and remand for consideration of Mr. Snipe's challenges to his appellate waiver, and the merits of his challenges to his convictions and sentence.

Respectfully submitted,

/s/ Ines McGillion

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