No. 26-5961

ORIGINAL

Supreme Court, U.S.
FILED
SEP 24 2026
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Kyle Quentin Sago — 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 Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kyle Quentin Sago #03608-509
(Your Name)

USP Canaan P.O. Box 300
(Address)

Waymart, PA. 18472
(City, State, Zip Code)

N/A (confined in prison)
(Phone Number)

QUESTION(S) PRESENTED

1) Is it unconstitutional for defense counsel to concede an accused's guilt at trial for the same offense that he(defense counsel) previously advised the accused to withdraw a guilty plea for?

2) When rejecting an 11(c)(1)(C) plea agreement under Rule 11(c)(5), does a court's (and defense counsel's) failure to advise and give a defendant the opportunity to keep his guilty plea affect his substantial rights?

LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

All parties appear in the caption of the case on the cover page.

Kyle Quentin Sago
v.
United States of America

RELATED CASES

- United States v. Sago, 74 F. 4th, 1152 (10th. Cir. 2023) (Appeal No. 5011) 22-5011 (Doc. No. 80, 82, 102, 103)
- United States v. Sago, Appellate Case: 25-5057 (Doc. 50-1)
  D.C. Nos. 4:23-CV-00492-GKF-MTS
  4:20-CR-00094-GKF-1
  Judgement Entered - 07/01/26

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CASES — PAGE NUMBER

- Lafler v. Cooper, 566 U.S. 156, 163-64, 132 1376, 182 L. Ed. 2d 398 (2012) (5, 9)
- McCoy v. Louisiana, 584 U.S. 414 S. Ct. (2018) (6)

STATUTES AND RULES

- Federal Rules of Criminal Procedure Rule 11(c)(5) (5, 7, 8, 9)
- Federal Rules of Criminal Procedure Rule 52(b) (10)
- L. Ed. Digest: Criminal Law §§ 46.4, 46.7 (9)

OTHER

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at _____; or,
[✓] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix 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

[ ] 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 07/01/2026.

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

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

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

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

[ ] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The questions presented implicate the following provisions of the Constitution of the United States and the United States Code

- The Fifth Amendment
- The Sixth Amendment
- The Fourteenth Amendment
- 28 U.S.C. § 2255(a)

STATEMENT OF THE CASE

On 08/04/2020 - Kyle Sago was indicted for first degree murder.
On 12/04/20 - Mr. Sago filed a Motion for Appointment of New Counsel (Martin Hart)(Doc. No. 21)
On 12/22/20 - Heath Hyde was appointed as new counsel (Doc. No. 30, 31, 32)
On 04/01/21 - Mr. Sago filed a Motion for Appointment of New Counsel which was withdrawn because a plea agreement was made. (Doc. No. 37, 38)
On 04/01/21 - Kyle Sago entered a plea of guilty for second degree murder (Doc. No. ~~40,41~~ (40,41)
On 04/01/21 - The District Court issued an Order Accepting Plea (Doc. No. 40), and scheduled sentencing for 07/13/21.
On 07/13/21 - The District Court rejected the Plea Agreement and Mr. Sago was forced to withdraw his guilty plea (Doc. No. 44, 45). Jury Trial was set for 09/20/21.
On 08/17/21 - Superseding Indictment was given to Kyle Sago: 4 counts; 1) First Degree Murder; ~~2)~~ Causing Death by Use and Discharge of a Firearm; 3) Possession of Ammunition - 922(g)(1); ~~2)~~ Possession of Ammunition - 922(g)(1);
On 09/22/21 - Kyle Sago was found guilty and convicted of all 4 counts of the Superseding Indictment.
On 01/27/22 - Mr. Sago was sentenced to Life on count 1, LIFE on count 4, ~~to run concurrently to each other~~ **run concurrently** but consecutive to the 2 - 120 month sentences imposed on counts 2 and 3.
On ~~02/01/22 or around 01/27/22~~ - Mr. Sago filed a timely notice of appeal (Doc. No 80) Appeal # ~~22-5011~~ #22-5011
On 07/24/23 - Tenth Circuit affirmed the District Court's decision on direct appeal (Doc. No. 102-103)
On 11/15/23 - Kyle Sago filed a motion to Vacate/Set Aside/Correct Sentence under 28 U.S.C. § 2255 (Doc. No. 105)
On 03/04/24 - Kyle Sago amended his 28 U.S.C. § 2255 Motion, adding 4 grounds for relief
On 04/04/25 The District Court denied Mr. Sago's 28 U.S.C. § 2255 Motion, as well as several related filings - Discovery, Evidentiary, etc. (Doc. No. ~~158~~) Doc. No. 158
On 04/28/25 - Mr. Sago filed a timely Notice of Appeal to the Circuit Court (Doc. No. 161)
On 05/01/25 - Mr. Sago filed a Motion ~~to~~ for Leave to Appeal in Forma Pauperis (Doc. No. 165)
On 05/02/25 - District Court Granted Mr. Sago's Motion for I.F.P. (Page 4 of 10)
On 06/17/25 - Tenth Circuit granted a C.O.A., appointed counsel, and an Appeal was later Denied. Appeal No. 25-5057
On 09/24/26 - This petition for a writ of certiorari timely follows (Page 4 of 10) ~~Page 9 of 16~~

REASONS FOR GRANTING THE PETITION

This case presents two important nationwide issues: 1) concerning a variance of a McCoy claim, where defense counsel advised the accused to withdraw a guilty plea (for second degree murder) and proceed to trial, only to concede the accused's guilt (for second degree murder) at the trial; and 2) an 11(c)(1) Error, where a defendant's substantial rights were affected when the District Court rejected an 11(c)(1)(C) plea agreement under Rule 11(c)(5) and failed to advise the defendant that he could keep his guilty plea and also failed to give him an opportunity to do so. Defense counsel acquiesced to this 11(c)(1) Error as well, and failed to advise the defendant of his rights, resulting in a loss of the plea opportunity for the defendant and a conviction on more serious charges.

This petition presents the opportunity for the Supreme Court 1) to clarify what is required for a McCoy claim, thereby resolving a similar dispute that has been arising over the McCoy issue in the lower courts; and 2) to enforce the Federal Rules of Criminal Procedure Rule 11(c)(5), when a court rejects a plea agreement. This issue is similar to the one presented in Lafler v. Cooper, 566 U.S. 156, 163-64, 132 S. Ct. 1376, 182 L. Ed. 2d 398 (2012), and this case meets the prejudice inquiry set forth in Lafler v. Cooper, except "prong" two - that the court would have accepted its (plea agreement) terms. Resolution of this issue would settle a dispute concerning the plea agreement process and provide an example for the lower courts to follow in the future.

1) Is it unconstitutional for defense counsel to concede an accused's guilt at trial for the same offense that he (defense counsel) previously advised the accused to withdraw a guilty plea for?

In this case the District Court rejected an 11(c)(1)(C) plea agreement, and defense counsel (Heath Hyde) advised the defendant (Mr. Sago) to withdraw a guilty plea for second degree murder (300 months), and proceed to trial, only to concede the defendant's guilt for second degree murder at the trial. (Notably, Mr. Sago was not given any other choice but to withdraw his guilty plea, either by the Court itself nor defense counsel. This was 11(c)(1) Error which affected Mr. Sago's substantial rights and forms the basis for Petitioner's second question/claim.)

Mr. Sago was convicted at trial of First Degree Murder and 3 other charges from a Superseding Indictment given 1 week before trial. Mr. Sago was given 2 Life sentences to run concurrently, plus 2 120 month sentences to run consecutively. After the Tenth Circuit affirmed Mr. Sago's conviction and sentence on direct appeal, Mr. Sago filed a 28 U.S.C. § 2255 Motion that was denied by the District Court. Mr. Sago filed a timely notice of appeal and moved for Issuance of a C.O.A. The Tenth Circuit granted a C.O.A. on only one claim: "whether trial counsel was ineffective for conceding guilt against Mr. Sago's wishes, resulting in a failure to subject the prosecution's case to a meaningful adversarial testing process."

The Tenth Circuit also appointed counsel, Timothy Kingston, to represent Mr. Sago in his § 2255 Appeal. On his § 2255 Appeal, Mr. Sago's primary argument was that his trial counsel commited structural error under McCoy v. Louisiana, 584 U.S. 414 S. Ct. (2018), when he conceded Sago's guilt to second degree murder at trial. Without holding an Evidentiary Hearing, the Tenth Circuit denied Mr. Sago's § 2255 Appeal because, in it's opinion, there was no contemporaneous indication in the record of a disagreement concerning counsel's concession strategy. (See Appendix A at page 18). Mr. Sago contends that this is where the lower court got it wrong: During Mr. Sago's testimony at trial, on cross exam., the prosecutor asked Mr. Sago whether or not Mr. Sago agreed that this case was either "Murder I, or Murder II" and Mr. Sago's response was "I don't exactly agree there." See: Appendix C at page 272-273. Mr. Sago also testified in self-defense at trial. Because of Mr. Sago's testimony, the District Court sua sponte included a self-defense instruction.

Prior to the trial, under advisement from defense counsel, Mr. Sago withdrew a guilty plea for second degree murder, (a guilty plea that had already been accepted by the court - See Appendix D at page 34) to proceed to trial, obviously with the hope of receiving a more favorable verdict than second degree murder, a charge Mr. Sago had already been adjudged guilty of. (Again, See Appendix D at page 34) Counsel also promised Mr. Sago that he wouldn't receive a Superseding Indictment if he withdrew his plea: 1 week before trial, Mr. Sago recesived a 4-count Superseding Indictment.

It doesn't make any sense to withdraw a guilty plea for second degree murder and proceed to trial, only to attempt to obtain a second degree murder conviction at trial. There is nothing to be gained from this strategy and everything to lose. Even if defense counsel successfully obtained a second degree murder verdict for Mr. Sago at trial, Mr. Sago would still have been prejudiced from counsel's concession for these reasons: without the 3-point downward departure for acceptance of responsibility provided by the 11(c)(1)(C) guilty plea, the base offense level for second degree murder would have been 38, with a criminal category of VI, resulting in a recommended Guideline range of 360-LIFE, coupled with the Superseding Indictment, the MINIMUM penalty Mr. Sago would have faced would have been 480 months. If counsel would have advised Mr. Sago that he could keep his guilty plea when the District Court rejected it (as Mr. Sago certainly would have done if he had been properly advised), Mr. Sago's base offense level would have been 35 with a Guideline Range of 292-365 months. Of course the court could have given Mr. Sago a sentence greater than the Guidelines recommended,

but Mr. Sago would not have had the consecutive penalties imposed by the Superseding Indictment. Another reason Mr. Sago was prejudiced by counsel's concession is that Mr. Sago testified in self-defense at trial, and Mr. Sago certainly would have benefited from an instruction for imperfect self-defense. Prejudice in this case can be shown from the reasons above, but according to this Court's holding in McCoy v. Louisiana, this case ranks as a structural error and prejudice is therefore presumed. The Tenth Circuit's decision on the McCoy issue conflicts with the decisions of other circuits. This petition presents an opportunity for the Supreme Court to clarify what is required for a McCoy claim, thereby resolving a similar dispute that has been arising over the McCoy issue in the lower courts.

2) When rejecting an 11(c)(1)(C) plea agreement under Rule 11(c)(5), does a court's and defense counsel's failure to advise and give a defendant the opportunity to keep his guilty plea affect his substantial rights?

As explained above, Mr. Sago pled guilty to second degree murder, an 11(c)(1)(C) plea agreement with an agreed upon disposition of 300 months. At the change of plea hearing on 04/01/21, after hearing from the prosecution, several members of the victim's family, and the defendant, the District Court made the requisite factual findings of guilt, accepted the guilty plea, and adjudged Mr. Sago guilty of Second Degree Murder. (See Appendix D at page 34) The Court advised the defendant that a Pre Sentence Investigation (P.S.I.) would be prepared to assist the court in sentencing, and scheduled the sentencing for 3 months later, on 07/13/21.

At the sentencing, after once again hearing from the prosecution as to why the government agreed to offer a second degree murder plea agreement, and after the prosecution defended it's position at length, arguing that there was no evidence of premeditation, and also after objection from some of the victim's family, the District Court rejected the plea agreement, arguing that premeditation could be found by a jury because the victim had been shot 3 times in the back. The court cited a recent unpublished Tenth Circuit case where premeditation was found to have been formed in an instant, during the course of the incident.

When the District Court rejected the plea agreement, it failed to abide by Federal Rules of Criminal Procedure Rule 11(c)(5), failed to advise Mr. Sago that he could keep his guilty plea and also failed to give him an opportunity to do so. (See Appendix E at page 24-25.)(Doc. No. 46) This was 11(c)(1) Error, cannot be considered harmless error, and affected Mr. Sago's substantial rights. Notably, Mr. Sago's defense counsel also failed to advise Mr. Sago of his rights concerning withdrawal of his guilty plea, and also failed to advise Mr. Sago that he could keep his guilty plea.

Had Mr. Sago been properly advised, and had he known that counsel would concede his guilt to second degree murder at trial, Mr. Sago most certainly would have opted to keep his guilty plea. Mr. Sago was not advised, by neither the court itself nor defense counsel, that he could keep his guilty plea. Also worth mentioning: right before the District Court rejected the plea agreement it erroneously advised Mr. Sago that if he was found guilty of first-degree murder at trial he would be facing a Guideline range of 360-LIFE (See: Appendix E at page 22-23), when in fact first degree murder has a MANDATORY MINIMUM sentence of LIFE imprisonment. Defense counsel for Mr. Sago failed to advise him otherwise. This, coupled with the 11(c)(1) Error when the court rejected the plea agreement, resulted in a loss of the plea opportunity for Mr. Sago

Again, this issue is similar to the one presented in Lafler v. Cooper, and this case meets the prejudice inquiry set forth in Lafler v. Cooper, except the second prong that the court would have accepted the terms of the plea agreement. ~~Therefore, this~~ This case also meets the prejudice

In this case both defense counsel and the court itself denied Mr. Sago his due process and failed to advise him of his rights concerning withdrawal of his guilty plea. Namely, neither defense counsel nor the court itself advised Mr. Sago that he could keep his guilty plea. Mr. Sago was given no other choice but to withdraw his guilty plea and proceed to trial. Mr. Sago can definitively show the outcome of the plea process would have been different with competent advice. Had Mr. Sago been properly advised that he was facing a MANDATORY MINIMUM of LIFE imprisonment if convicted at trial, and had Mr. Sago been advised that he had the right to keep his guilty plea, and also had he been given the opportunity to do so, Mr. Sago would have

opted to keep his guilty plea for Second Degree Murder, and the District Court would have sentenced him accordingly. Mr. Sago has shown that the outcome of the plea process would have been different with competent advice. "In a situation where the allegedly ineffective advice 'led not to an offer's acceptance but to its rejection' - a defendant must show that three things would have happened 'but for the ineffective advice of counsel" Id at 163-164. First, that there is a reasonable probability that "the defendant would have accepted the plea and the prosecution would not have withdrawn it." Id at 164. Second, "that the court would have accepted it's terms." Id. And third, that under the rejected plea offer, "the conviction or sentence, or both... would have been less severe" than what the defendant received after trial. Lafler v. Cooper, 566 U.S. 156, 163-64, 132 S. Ct. 1376, 182 L. Ed 2d 398 (2012). "a defendant must show the outcome of the plea process would have been different with competent advice." Id

As previously stated, this issue is similar to Lafler v. Cooper, and meets the prejudice inquiry set forth in Lafler v. Cooper by this Court AND also meets the prejudice ~~inquiry set forth~~ requirements of this Court as stated in: L Ed. Digest: Criminal Law §§ 46.4, 46.7.

7) If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence. (Kennedy J., joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ

The loss of the plea opportunity for Mr. Sago resulted in a conviction on more serious charges AND the imposition of a more severe sentence, therefore prejudice is shown.

The District Court's violation of Rule 11 resulted in a "complete miscarriage of justice" when it failed to abide by Federal Rules of Criminal Procedure Rule 11(c)(5) when rejecting Mr. Sago's plea agreement. The accused's counsel was ineffective at the pleading stage in failing to provide advice concerning the District Court's rejection of the plea agreement.

Please consider the effect on substantial rights of the Rule 11 Error described here in this petition. (See: APPENDIX D and E attached to this petition.)

Petitioner invokes Rule 52(b) (Federal Rules of Cismsal Procedure)
Rule 52(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kyle Quentin Sago

Date: 09/24/26