

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
Fort Worth Division**

THE UNITED STATES OF AMERICA,

Plaintiff-Respondent,

**Criminal Case No.: 4:17-CR-158A(03)**

-against-

DAVID BRADLEY HUGHES,

Defendant-Petitioner

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**MOTION UNDER 28 U.S.C. §2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

COMES NOW the Petitioner, David Hughes, by and through undersigned counsel,  
and hereby submits this motion pursuant to 28 U.S.C. § 2255. In support, David Hughes states:

**JURISDICTION AND VENUE**

Petitioner seeks relief from a Judgment of this Court entered against him on January 12, 2018, convicting him of conspiracy to possess with intent to distribute a controlled substance, in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(B). Petitioner was sentenced by this Court to 240 months' imprisonment. Petitioner is currently in the custody of the United States Bureau of Prisons.

David Hughes is currently in the custody of the Federal Bureau of Prisons at USP Victorville Medium II under Register Number 56021-177

This Petition is brought pursuant to 28 U.S.C. § 2255, et seq., and Article I, § 9, Clause 2, of the Constitution, and federal question jurisdiction pursuant to 28 U.S.C. § 1331. The Declaratory Judgment Act, 28 U.S.C. § 2201, § 2202, authorizes declaratory relief.

Venue is proper in the United States District Court for the Northern District of Texas. Petitioner was originally represented by Brian Salvant. Petitioner now files this [Dallas Texas Criminal Appeal and Post Conviction](#).

### **STATEMENT OF FACTS**

On August 23, 2017, David Bradley Hughes (“Petitioner”) was placed into the custody of the U.S. Marshals and charged with one count of Conspiracy to Possess with Intent to Distribute a Controlled Substance. In September of 2017, Hughes, of his own volition, began to have open talks with the DEA and cooperated fully with the Government’s investigation. On September 26, 2017, the Petitioner pled guilty to a single count of conspiracy to possess with intent to distribute a controlled substance, per 21 U.S.C. §§ 846, 841(a)(1) and (b)(1)(B). This is a class B felony with a sentencing range of not less than five years, but no more than forty years.

The Presentence Investigative Report (“PSR”) was prepared on November 20, 2017. Part A of the PSR considered the total offense level. Part A increased the offense level by two points for the Specific Offense Characteristic per USSG §2D1.1(b)(1), which considers the possession of a firearm. However, the gun in question, was sold to a Fire Marshal; this sale was independently verified by a police sergeant and should not have been included in the PSR. However, Petitioner’s counsel did not raise an objection to this incorrect inclusion.

Part B of the PSR considered the Petitioner’s criminal history. Part B included a juvenile

adjudication from 2007, when Petitioner was 17 years old. Petitioner's counsel did not raise an objection to the inclusion of this charge in the PSR. However, this charge was thrown out and was erroneously included in the report, adding points to his sentencing level.

On December 11, 2017, the Petitioner requested a Downward Departure, for his voluntary cooperation with the Government. Hughes's role in the conspiracy was significantly less involved, and he was less culpable than the other defendants in the conspiracy. Therefore, it would be appropriate for his sentence to reflect his minor role, as well as his cooperation with the Government. The Government offered a plea deal that would have resulted in a five-year sentence. However, Hughes's counsel neglected to communicate this offer in a timely manner and the offer was lost.

On January 12, 2018, Hughes received his sentence. He was given a sentence of 240 months, or twenty years, followed by four years of supervised release. This Petition followed.

### **GROUND OF UNCONSTITUTIONALITY OF PETITIONER'S SENTENCE**

#### **I. THE PETITIONER'S SIXTH AMENDMENT RIGHTS WERE VIOLATED BY HIS DEFENSE COUNSEL'S INEFFECTIVE ASSISTANCE DURING THE PLEA BARGAINING STAGE.**

Hughes's defense lawyer neglected to communicate a plea offer that would have resulted in a five-year sentence. Instead of speaking with his client about this offer in a timely manner, he let the offer expire and Hughes was sentenced to a twenty-year imprisonment. This was a violation of Hughes's Sixth Amendment right. The "right to counsel is the right to the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970). The Supreme Court holds that a defendant is entitled to relief when "the outcome of the plea process would have been

different with competent advice.” *Lafler v. Cooper*, 566 U.S. 156, 163 (2012). Here, the outcome of the plea process *would* have been different with competent advice; namely, a lawyer who diligently and promptly communicates such important plea offers to his client.

Every criminal defendant has to right to counsel, which “is the right to the effective assistance of counsel.” *McMann v. Richardson*, 397 U.S. 759, 771, n. 14 (1970). The Constitution guarantees every defendant in a criminal prosecution the right to effective assistance of counsel. U.S. Const., Amend. VI. This fundamental right to the effective assistance of counsel “is recognized not for its own sake, but because the effect it has on the ability of the accused to receive a fair trial.” *U.S. v. Cronin*, 466 U.S. 648, 658 (1984). There is a two-pronged test for determining ineffective assistance of counsel, consisting of a performance prong and a prejudice prong. *Strickland v. Washington*, 466 U.S. 688 (1984). In this case, both prongs of the *Strickland* test are satisfied. Hughes’s Sixth Amendment right to the effective assistance of counsel was abrogated when his defense counsel ignored his duty to communicate an attractive plea bargain to his client.

According to the Supreme Court, this Sixth Amendment right to the effective assistance of counsel includes all aspects of the plea-bargaining phase. *Lafler* at 156. The Supreme Court in *Hill v. Lockhart* utilized the *Strickland* standard within the context of a botched plea agreement process, holding that “in the context of guilty pleas, the first half of the *Strickland v. Washington* test is nothing more than a restatement of the standard of attorney competence... The second, or “prejudice,” requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” 474 U.S. 52, 58 (1985).

The prong of the *Strickland* test, the performance prong, “requires a defendant to show that counsel’s representation fell below an objective standard or reasonableness.” *Lafler* at 156. This

prong is satisfied because no reasonable attorney would allow a plea agreement with significantly shorter prison time to be ignored. Instead, a reasonable attorney would expeditiously relay the information contained in that plea offer to the client and determine a proper course of action. Instead, Hughes's attorney carelessly allowed the plea offer to expire, and as a result, Hughes must serve an additional fifteen years.

The second prong of the *Strickland* test, the prejudice prong, when applied to plea bargaining requires the defendant to show "whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Hill* at 58. Here, the outcome of the plea process would have been entirely different had Hughes's attorney followed a reasonable standard of professionalism. Had Hughes received the plea agreement that offered only five years, he would have readily accepted and would be currently sentenced to a five-year, and not a twenty-year, sentence.

On account of the aforementioned facts, Hughes endured a violation of his Sixth Amendment rights and is currently serving a sentence that is constitutionally impermissible.

## **II. THE PETITIONER'S SENTENCE IS UNCONSTITUTIONAL BECAUSE HIS COUNSEL FAILED TO RAISE OBJECTIONS TO MULTIPLE CLAIMS AND CHARGES THAT WERE INAPPROPRIATELY USED TO ENHANCE THE PETITIONER'S SENTENCE.**

In Hughes's case, his counsel unreasonably failed to object to two inappropriate claims and charges, which were unfairly used to enhance the petitioner's sentence.

First, the Government used USSG §2D1.1(b)(1) to increase Hughes's sentencing level by two points. The Government did so on the false basis that Hughes was in possession of a firearm during the conspiracy, specifically a .38-caliber handgun. However, this claim is categorically false and has been verified by law enforcement. Hughes did possess that gun from 2012 through

early 2014, however, he sold it prior to the conspiracy starting. After his daughter was born in March of 2014, his girlfriend was uncomfortable with weapons in the home, and so he sold the gun to the Fire Marshal of White Settlement. In an unrelated incident, the police were called to Hughes's home and during the investigation, Sargent Elliot verified with the Fire Marshal that Hughes had indeed sold the Marshal the gun. Despite this, when the Government claimed that Hughes was still in possession of the sold weapon, his defense counsel did not object based on the gun's sale or bring up the relevant evidence of its sale.

Second, Hughes's defense counsel failed to object to an incorrect juvenile charge, used by the Government to enhance Hughes's sentencing level. In calculating Hughes's criminal history per USSG §4A1.2, comment. n.1, the Government included a juvenile charge for terroristic threats. However, this charge was thrown out when Hughes was a juvenile and should not have been used for PSI purposes.

In *Strickland*, the Supreme Court provided a two-prong standard to determine whether the accused's right to effective counsel has been unconstitutionally undermined. 466 U.S. 688. In turning to the first prong, the defendant must show that the counsel's performance was so deficient that the accused did not have an adequate defense counsel, as guaranteed by the Sixth Amendment. *Id.* at 687. This objective standard is proven here because no reasonable attorney would passively allow their client to be given a longer sentence due to false and inappropriate charges and convictions. Here, Hughes's attorney unreasonably declined to object to the false firearm charge and to the inappropriate juvenile charge, thus stripping Hughes of his right to effective counsel.

In the second *Strickland* prong, the defendant must prove that the deficient performance prejudiced the defendant, and deprived them of the due process of law. *Id.* at 687. Here, this

prong is proven because Hughes is serving an enhanced sentence, on account of his defense counsel. Had his attorney objected to the false, and provably false, accusation of the possession of the firearm and to the juvenile charge, which had been thrown out, then Hughes would be serving a shorter sentence. Since Hughes's sentence is unjustly elongated on account of his attorney's deficient performance, prejudice is established.

The constitutional right to effective assistance of counsel is imperative to the "proper functioning of the adversarial process" and when the counsel was ineffective, as it was in this case, the adversarial process is undermined and the resulting conviction is unjust. *Id.* Here, Hughes's conviction is unjust, as his counsel unreasonably declined to raise objections to the inappropriate use of prior claims and convictions to enhance his sentence.

### **CONCLUSION AND RELIEF REQUESTED**

WHEREFORE for the reasons discussed above, DAVID BRADLEY HUGHES, respectfully requests that this Court enter an Order:

- (A) Granting this Motion;
- (B) Vacating the Judgment Sentence; or in the alternative;
- (C) Reducing his sentence;
- (D) Scheduling an evidentiary hearing; or
- (E) Granting such other and further relief as this Court may deem just, proper, and equitable.

Dated:

Respectfully Submitted,

/s/ Robert L. Sirianni, Jr.  
Robert L. Sirianni, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day of May 2019, the foregoing was filed with the Clerk's Office and a copy was served to opposing counsel via the EC/ECF filing system.

/s/ Robert L. Sirianni, Jr.  
Robert L. Sirianni, Jr.