No. 99-7896

In The

Supreme Court of the United States

Alvin Justin Huggins,

Petitioner,

v.

United States of America,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONER

Erik S. Jaffe
(Counsel of Record)
ERIK S. JAFFE, P.C.
5101 34th St., N.W.
Washington, D.C. 20008
(202) 237-8165

Susan G. James
SUSAN G. JAMES & ASSOCIATES
600 S. McDonough Street
Montgomery, AL 36104
(334) 269-3330

SUPPLEMENTAL BRIEF FOR PETITIONER

Petitioner, now represented by counsel in this Court, supplements his previous filings with the following points:

1. Respondent fully acknowledges the circuit split identified in the Petition. BIO at 9-11. Indeed, in the course of criticizing the more lenient standard adopted by the Fifth and Eleventh Circuits, Respondent highlights the substantial differences between the circuits.[1] Given that the split is well established and shows no sign of resolving, this Court should grant certiorari to establish uniformity among the circuits.

2. Respondent's claim that the result in this case would have been the same even under the more lenient standard is pure speculation and is not a reason to deny the Petition. The various snippets of the Fourth Circuit opinion quoted by Respondent have nothing to do with the burden of proof under the lenient standard of the Fifth and Eleventh Circuits. Instead, they are expressly addressed to the much stricter test of "whether the alleged transcript errors specifically prejudiced Huggins' efforts to appeal." Pet. App. A (slip op. at 7); see also, id. (errors and omissions "do not rise to the level of specific prejudice"); id. at 9 ("In summary, [the inaccuracies and omissions in the transcript] did not specifically prejudice Huggins' ability to identify issues for appeal."). At no point did the Fourth Circuit even consider whether, much less suggest that, its findings would have satisfied the lower standard. Having made no ruling

1 Regarding the merits of the more lenient standard, suffice it to say that Petitioner is fully prepared to defend his proposed standard and that the objections raised by the Respondent are overstated at best. Indeed, the particular argument that trial counsel can help newly obtained appellate counsel, BIO at 11, overlooks the fact that in many criminal appeals a significant potential issue is ineffective assistance of trial counsel. It is unrealistic to expect trial counsel to clarify portions of a defective transcript that would serve to paint that same trial counsel as ineffective. And as for encouraging defendants to seek out new counsel on appeal, some might think that a good thing. In any event, Respondent's arguments on the merits are irrelevant to the issue of *whether* the Court should resolve the admitted split. Rather, they go to *how* the Court should resolve the split and can be addressed more fully should the Court choose to grant the Petition.

whatsoever on the putative application of the standard it rejected, its conclusion cannot be considered "factbound" as the government argues. BIO at 14. Indeed, that the court recognized the existence of a split on the issue and nonetheless chose to take sides in the split suggests that it had significant doubts as to the result under the lower standard. Otherwise the Fourth Circuit could simply have resolved the issue without regard to which of the competing standards should apply. That it reached the issue at all, and then repeatedly cast its findings in terms of a lack of "specific prejudice," rebuts the government's suggestion that the disputed standard was not necessary to its decision.

3. Furthermore, the transcript in this case is quite deficient and would indeed fail the test applied by the Fifth and Eleventh Circuits. Petitioner has lodged with the Court a copy of the transcript of the closing arguments for the two defendants and the rebuttal for the government. As a mere scan of the transcript demonstrates, it is rife with numerous and often substantial omissions. Couple such omissions with the gross irresponsibility of the court reporter, who was ultimately charged with contempt and fired, and no appellate attorney could have confidence in the transcript in this case, regardless of whether "specific prejudice" could be shown. This case thus presents a persuasive example of why the more lenient rule of the Fifth and Eleventh Circuits should apply.

4. As a final matter, this Court need not even address the issue of whether the evidence would or would not meet the more lenient standard applied in the Fifth and Eleventh Circuits. The Question Presented by both Petitioner and Respondent raises only the legal issue of what the standard should be. As the courts below never considered the case under the lesser standard, the simplest and most sensible approach for this Court would be to set out the appropriate legal test and then, if a new standard is adopted, remand the case for such further factual development and application of that standard as might be necessary.

5. This split has existed for over a decade and shows no sign of resolving itself without this Court's intervention. Respondent does not argue otherwise. That the government would, not surprisingly, seek to prevail even under an alternative standard is not a sufficient reason to reject a clean vehicle for resolving an overripe split. The Court thus should grant the Petition for Writ of Certiorari.

Respectfully submitted,

Erik S. Jaffe
(Counsel of Record)
ERIK S. JAFFE, P.C.
5101 34th St., N.W.
Washington, D.C. 20008
(202) 237-8165

Susan G. James
SUSAN G. JAMES & ASSOCIATES
600 S. McDonough Street
Montgomery, AL 36104
(334) 269-3330

May 10, 2000