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Error of Law: Failure to Consider Cronic Claim

When rejecting my arguments in Ground for Relief 3: Ineffective Counsel at Sentencing, under Inappropriate Release Conditions, The Court failed to address my claim under U.S. v. Cronic (466 U.S. 648) that Mr. Olson failed to "subject the prosecution's case to meaningful adversarial testing" at the sentencing hearing by stating "I don't want to take the position that Mr. Sullivan should just be able to do whatever he wants on the internet, on computers " (Sentencing Hearing Transcript, "SHT", p. 40).

The Court based its rejection of Ground for Relief 3 in part on Mr. Olson's brief advocacy against the conditions in his sentencing memorandum (00, p. 26) which did contain an overbreadth argument as well as the fact that my income would be "tremendously impacted". The Court however is silent on the fact that Mr. Olson torpedoed those arguments at the sentencing hearing. His performance was so bad that The Government tried to use it as grounds to dismiss my appeal for failing to preserve the objection. Bronson James credited my personal objection for preserving that argument both to me in person and to the Ninth Circuit in his brief (Appelate Brief, "AB", p. 9-10). In my reply to the Government's Response (Defendant's Final Reply to the Government's Response, "My Reply") I pointed out that the Government never offered any constructive counter

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argument against my Cronic claim (My Reply, p.14-16). and presented an exhibit explaining a correct application of Cronic (My Reply, Exhibit 2). If Mr. Olson's statement at the sentencing hearing does not qualify as IAC under Cronic then it would be difficult to say what would. Perhaps The Court would like to articulate for the record what part of "I don't want to take the position that Mr. Sullivan should just be able to do whatever he wants on the internet, with computers" is adversarial?

The other basis for The Court's rejection of Ground for Relief 3 when it comes to Inappropriate Release Conditions was that that the Ninth Circuit technically made them legal by erroneously declaring them constitutional and therefore failing to raise those issues caused no prejudice (00, p. 26). The problem with The Court's opinion is that in order to grant IAC relief under Cronic "no specific showing of prejudice is required" because when the adversarial process breaks down "prejudice is presumed".

As established on the record in this case and countless others assistance of counsel is a substantial constitutional right. For the COA to be expanded I "must make a substantial showing of the denial of a federal right", Barefoot v. Estelle (463 U.S. 880). The record in this case clearly establishes that judges of reason have been debating Cronic claims for over 30 years, so saying that jurists of reason could do the same thing is not far fetched. Any doubts

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about this should be resolved in my favor. Please expand the COA to include my IAC claim under Cronic that Mr. Olson failed to subject the prosecution's case to meaningful adversarial testing when it came to conditions of supervised release.

New Evidence: Involuntary Waiver

When reading The Court's opinion I discovered that I could potentially challenge the voluntariness of my waiver of appeal as an independent claim (00, p. 3) "he has not attacked the validity of his waiver". I did not package the involuntariness of the waiver as a claim independent of the involuntariness of the plea agreement as a whole. I did however attack the involuntariness of the plea in ways that can independently be applied to the waiver. Ways such as "I signed that waiver during the plea stage with the understanding that I would be represented by a reasonably competent lawyer to argue against any computer restrictions at sentencing" and "Had I known that Mr. Olson would completely abandon me at sentencing I would not have signed such a waiver or at least would have insisted on a waiver that did not apply to contested sentencing issues" (My Memo, p. 59) . The Supreme Court recognized in Hill v. Lockheart (474 U. S. 52) that in the context of a plea agreement I need only show a "reasonable probability" that but for counsel's advise I would not have pled guilty. I ask that The Court apply the same standard to the involuntary waiver I entered

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