

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2024

No. _____

JEREMY YOUNG HUTCHINSON,

Applicants,

v.

THE UNITED STATES OF AMERICA,

Respondent.

**APPLICATION FOR AN EXTENSION OF TIME TO FILE
A PETITION FOR WRIT OF CERTIORARI PURSUANT TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT**

To the Honorable Brett M. Kavanaugh, Associate Justice of the United States Supreme Court and Circuit Justice to the Eighth Circuit:

Pursuant to Supreme Court Rule 13(5), Jeremy Young Hutchinson respectfully applies to this Court for an order extending the time in which to file his petition for writ of certiorari from November 20, 2024 until January 19, 2025, a period of sixty (60) days. This Court has jurisdiction under 28 U.S.C. §1254. In support of this Application, Mr. Hutchinson states as follows:

1. This application is submitted ten (10) days prior to the

or to not oppose the defense recommendation at sentencing.

5. Defendant Hutchinson's position is that the government assented specifically to the application of Subsection (B) of Rule 11(c)(1) when it made mention of that specific subsection in the plea agreement. As a result, the government agreed to limit what prosecutors could argue at sentencing. Mr. Hutchinson argues that the plain reading of the rule is that a Rule 11(c)(1)(B) plea agreement is, in fact, that use of 11(c)(1)(B) creates a binding obligation for the government which cannot be argued around. By specifically incorporating by reference Rule 11(c)(1)(B) in the plea agreement, the government accepted limitations on its options at sentencing. Defendant Hutchinson reasonably relied upon that provision of the global plea agreement, and in exchange, ceded substantial Constitutional and procedural rights.

6. While federal case law (and indeed the rule itself) is clear that Rule 11(c)(1)(B) does not bind the Court to adopt the sentencing recommendation, the question whether the rule binds the government not been addressed in case law and that the plain language of the rule is clear.

7. Counsel of record has just entered the case and desires to fully brief the issue in a petition for *certiorari*, but needs an additional sixty days to prepare the petition.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of November, 2024, I sent via Federal Express, 2nd Day Delivery, a true and correct copy of the **APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF CERTIORARI PURSUANT TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT** to the following:

Solicitor General of the United States
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EXHIBIT A

United States Court of Appeals
For the Eighth Circuit

No. 23-2247

United States of America,

Plaintiff - Appellee,

v.

Jeremy Young Hutchinson,

Defendant - Appellant.

Appeal from United States District Court
for the Western District of Missouri - Springfield

Submitted: June 13, 2024

Filed: August 22, 2024

[Unpublished]

Before COLLOTON, Chief Judge, MELLOY and GRUENDER, Circuit Judges.

or the plea agreement. The district court sentenced Hutchinson to 50 months' imprisonment to be served consecutively to the sentences imposed in the Arkansas cases. In making its determination, the district court had access to the sentencing transcript from Hutchinson's cases in Arkansas, and the court referred to the sentences imposed in Arkansas.

Hutchinson raises several issues on appeal. All turn on whether his plea agreement and the government's conduct at sentencing complied with Rule 11(c)(1)(B). The arguments were forfeited in the district court, so we review only for plain error. *United States v. Olano*, 507 U.S. 725, 732-33 (1993).

Subsection (B) allows parties to enter plea agreements under which the government may:

recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court).

Hutchinson contends that the text of Rule 11(c)(1)(B) "requires that the Government either join in or not oppose the defense's sentencing recommendation." He maintains that the portions of the agreement reserving the government's right to make its own recommendation were unenforceable or rendered the agreement ambiguous. Hutchinson contends that the government committed prosecutorial misconduct by making its own sentencing recommendation. He also argues that his counsel was ineffective for failing to raise these objections.

Hutchinson's position is that Rule 11(c)(1)(B) constrains the government either to "recommend" or "agree not to oppose" *the defendant's request* for a particular determination at sentencing, and does not allow the government to make its own

Arkansas cases. We therefore reject his arguments regarding an alleged breach of the plea agreement and alleged prosecutorial misconduct.

We ordinarily defer claims of ineffective assistance to collateral proceedings, *see United States v. Oliver*, 950 F.3d 556, 566 (8th Cir. 2020), but Hutchinson’s claim in this appeal is foreclosed by our conclusion on his other contentions. He argues that his counsel was ineffective because the lawyer counseled him to sign an “illegal” plea agreement and did not object when the government made its own sentencing recommendation. Because the agreement was not illegal and the government permissibly made a recommendation, counsel’s performance was not deficient or ineffective. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

For these reasons, the judgment of the district court is affirmed. The government’s motion to dismiss the appeal is denied as moot. Hutchinson’s motion to supplement the record with his Arkansas plea agreement is denied because the terms of that agreement are immaterial to the arguments raised in Hutchinson’s brief on appeal.
