

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES _____

Nigel Faison
(Your Name)

— PETITIONER

vs.

USA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals, Fourth Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Nigel Faison #14371171
(Your Name)

P.O. Box 725
(Address)

Edgefield, SC 29824
(City, State, Zip Code)

n/a

(Phone Number)

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QUESTION(S) PRESENTED

- ① YCCA erred when it failed to review claim that plea is invalidated due to insufficient factual basis.
- ② YCCA erred when it found that incorrect drug quantity attribution did not constitute a significant procedural or substantive error.

LIST OF PARTIES

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

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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STATUTES AND RULES

21 USC 841(a)(1), (b)(1)(C)	4.
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3rd Amend. USC

3.

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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 November 27, 2017.

☒ 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 June 3, 2018 (date) on April 3, 2018 (date),
a copy of the letter granting extension appears at Appendix B.

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 Fifth Amendment of the USC provides that no person shall be deprived of life, liberty, or property without due process of law, 5th Amend. USC.

STATEMENT OF THE CASE

Nigel Faison pled guilty without a plea agreement to POWID Foxy, in violation of 21 USC 841(a)(1), (b)(1)(C)(2012); being a felon in possession of a firearm and ammunition, in violation of 18 USC 922(g)(1)(2012); and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 USC 924(c)(2012), and was sentenced to 106 months in prison.

Faison appealed, his counsel filed a brief in accordance with *Anders v. California*, 386 US 738 (1967). Faison filed a pro se supplemental brief, the Government declined to file a responsive brief.

In his supplemental brief, Faison avers that there was no sufficient factual

basis to his plea and that the District Court erred in its drug quantity attribution. 4CCA failed to address the insufficient

~~factual basis assertion and determined that~~
the sentencing court's drug quantity finding was not a significant procedural or substantive error.

The criminal case against Faison stem from evidence that was seized by Columbia Police Department (CPD) in South Carolina on July 8, 2015 during the execution of a state warrant at a location that was not owned by Faison.

CPD discovered and confiscated a gram bag out of a trash can on a neighboring property of the property

Searched.

The bag contained a firearm, ammunition
and 2,237 dosages of Foxy.

Faison was indicted in federal court for

possessing with the intent to distribute

Foxy in violation of the Federal CSA

and for possessing a firearm in violation

of federal gun law, for using it in

furtherance of the drug possession offense.

Faison asked YCCA to review the factual

basis determination and drug weight
attribution for error.

The mere discovery of discarded Foxy,
in a trash can, does not constitute proof

that Faison intended to distribute
them, but quite the contrary.

The Government was required under

FRCP 11 to demonstrate that evidence is probative of the intent to distribute or distribution element of 841(a)(1) and qualify as a drug trafficking offense, see US v. Washington, 41 F.3d 917 (CA4 1974).

Falsen never actually possessed the confiscated pills and firearm.

The trashcan was not located on the searched property and more importantly CPD was not acting under the authority of the Federal government during their execution of the warrant.

Distribute means to deliver, the actual, constructive, or attempted transfer of a controlled substance, see 21 USC 803(8), (11).

Next, the evidence, Fox, does not support that the weapon was possessed by Faison to protect the distribution of Fox.

~~The District Court failed to determine~~
that there was a factual basis for the plea, see FRCP 11(b)(3), *US v. Mitchell*, 104 F.3d 649 (CA4 1997), *US v. Dawson*, 191 F.3d 561 (CA1 1991).

The District Court also erred in imposing a sentence based on 2,232 pills of MDMA, instead of DET.

Fox's chemical compound is analogous to Schedule I controlled substance DET, see *US v. McFadden*, 753 F.3d 432 (CA4 2014), *US v. Klecker*, 348 F.3d 69 (CA4 2003).

REASONS FOR GRANTING THE PETITION

The claim of insufficient factual basis

FRCP 11(b)(3), should have been reviewed under plain error standard, *US v. Martinez*, 277 F.3d 517 (CA4 2002), FRCP 52(b), *US v. Olano*, 507 US 725 (1993).

Faisca's plea was accepted on the erroneous assumption that CPD possessed sufficient evidence to support a factual basis for the element of distribution.

CPD never proffered evidence to satisfy distribution element. The record is valid of factual basis for POWD and a 924(c) offense.

The sentencing court ignored circuit precedent regarding sentencing

for Foxy. MDMA is not analogous of
Foxy, DET is, according to McFadden and
Elacker. therefore, Farrow's sentence is

procedurally and substantively erroneous.

The appropriate remedy for both
errors is to vacate and remand for
a new Rule 11 proceeding and sentencing
see US v. Carr, 271 F.3d 172 (CA4 2001)
and US v. Mastropa, 509 F.3d 652
(CA4 2007).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X Nigel Faison

Date: May 24, 2018