

No. 17-6135

IN THE  
SUPREME COURT OF THE UNITED STATES

BENJAMIN A. GIBBS — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS, FOURTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BENJAMIN A. GIBBS  
(Your Name)

FEDERAL CORRECTIONAL INSTITUTION - 2  
(Address)

P.O. BOX 1500  
(City, State, Zip Code)

BUTNER, N.C. 27509  
(Phone Number)

(1) SHOULD THE COURT DENYING A CERTIFICATE OF APPEALABILITY BE VAPORATED IN LIGHT OF BUCK V. DAVIS 137 S.Ct. 759 (2017) WELCH V. UNITED STATES 136 S.Ct. 1257 (2016) JACKSON V. UNITED STATES 195 L.Ed.2d 777 (2016) MILLER-EL V. COLKHAFF 537 US 322 (2003) ?

(1A) WAS TRAIL COUNSEL AND APPELLATE COUNSEL INEFFECTIVE BY FAILING TO OBJECT TO AND RAISE THE PETITIONER'S SENTENCING ERRORS ?

(2) DID THE COURT OF APPEALS DENIAL OF A CERTIFICATE OF APPEALABILITY CONFLICT WITH A DECISION OF THE UNITED STATES SUPREME COURT ?

(3) DID THE APPELLANT DEMONSTRATE INEFFECTIVE ASSISTANCE OF COUNSEL ?

(4) IS TITLE 18 USCS UNITED STATES CRIMINAL CODE UNCONSTITUTIONAL ?

## 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:

(1) PATRICK MICHAEL DUFFY, UNITED STATES DISTRICT JUDGE

(2) EMILY MUSSER, DEPUTY CLERK COURT OF APPEALS

## TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	
STATEMENT OF THE CASE .....	
REASONS FOR GRANTING THE WRIT .....	
CONCLUSION.....	

## INDEX TO APPENDICES

APPENDIX A	RULING FROM THE DISTRICT COURT
APPENDIX B	PER CURIAM RULING FROM THE FOURTH CIRCUIT
APPENDIX C	PETITION FOR REHEARING AND REHEARING EN BANC
APPENDIX D	PETITION FOR REHEARING BY THE FULL COURT
APPENDIX E	U.S. SUPREME COURT GRANT OF CERTIORARI IN JACKSON V U.S. FOR IDENTICAL MERITS
APPENDIX F	WELCH V. UNITED STATES 136 S.Ct 1257 GRANTING CERTIORARI FOR IDENTICAL MERITS
APPENDIX G	DOCUMENTATION SUPPORTING THE UNCONSTITUTIONALITY OF TITLE 18

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BUCK V DAVIS	137 SCT 759 (2017)
WELCH V UNITED STATES	136 SCT 1257 (2016)
JACKSON V U.S.	195 LED 21 777 (2016)
MILLER-EL V. LOCKRELL	537 US 322 (2003)
MOLINA-MARTINEZ V U. S.	136 SCT 1338 (2016)
UNITED STATES V BOOKER	543 US, 125 SCT 755

## STATUTES AND RULES

FEDERAL RULE CIVIL PROCEDURE 6D (B)  
TITLE 18 USC CRIMINAL CODE  
FED RULE CRIM PROCEDURE 52 (B)

## OTHER

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 B 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 A 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 AUGUST 24, 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: AUGUST 10, 2017, and a copy of the order denying rehearing appears at Appendix 6.

☐ 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. § 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

CONSTITUTIONAL AMENDMENT V. NO PERSON SHALL BE DENIED LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW.

IN U.S. V. BOOKER THE SUPREME COURT HELD THAT NO ONE SHOULD BE SENTENCED ABOVE THE GUIDELINES STATUTORY MAXIMUM WITHOUT BEING INDICTED, INDICTED FOR THAT OFFENSE (S).



## STATEMENT OF THE CASE

THE PETITIONER AT BAR WAS SENTENCED TO LIFE IN PRISON APPROX 20 PLUS YEARS AGO FOR THE OFFENSE OF MURDER IN WHICH HE WAS NEVER INDICTED FOR MURDER OR TRIED FOR MURDER.

A CHANGE IN LAW OCCURRED IN 2012 WITH RETROACTIVE APPLICATION TO THIS CASE AND THAT RETROACTIVE APPLICATION WILL PROMPT MY RELEASE. HORTON V. UNITED STATES 693 F3D 463 (4TH CIR APP 2012) ESTABLISHED THAT "THE COURT ERRED BY SENTENCING PETITIONER TO LIFE FOR AN UNCHARGED OFFENSE OF MURDER" AND "THE OFFENSE OF MURDER REQUIRED GROUPING". ALSO SEE U.S. V SULLIVAN 455 F3D 248 (4TH CIR APP 2005) AND U.S. V SELLARS 512 FED. APPX 319 (4TH CIR APP 2003)

"THE GROUPING GUIDELINES REQUIRES A FELON IN POSSESSION OF A FIREARM OFFENSE TO BE GROUPED".  
(2) IT SPECIFICALLY FORBIDS THE GROUPING OF HOMICIDE OFFENSES AND OTHER VIOLENT OFFENSES.

AS A RULING ON THE MERITS OF THIS PETITION WOULD SHOW PETITIONER IS NOW SERVING AN ILLEGAL SENTENCE.

THIS COURT SHOULD GRANT A CERTIFICATE OF APPEALABILITY.

REASONS FOR GRANTING THE PETITION

(1) PETITIONER CAN SHOW VIA MERITS THAT  
HE IS SERVING AN ILLEGAL SENTENCE

AS THIS COURT AS RECENTLY AS MARCH  
2017 VIA BUCK V. DAVIS, WELCH  
V. U.S., JACKSON V U.S., MILLER  
EL V COCKRELL, MDLINA-MARTINEZ V  
U.S. AND BOOKER V U.S., HELD

"THE COURT OF APPEALS SHOULD NOT  
DECLINE AN APPLICATION FOR CERTIFICATE OF APPEALABILITY  
MERELY BECAUSE IT BELIEVES THE APPLICANT WILL NOT DEMONSTRATE  
AN ENTITLEMENT TO RELIEF."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Benjamin A. Mills

Date: 9-22-17