

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Mario Lee Brown, Pro-Se — PETITIONER
(Your Name)

vs.

U.S. Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court Of Appeals For The Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mario Lee Brown #51449-018
(Your Name)

P.O. Box 1032
(Address)

Coleman, Florida 33521
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether The United States Court Of Appeals For The Eleventh Circuit Erred denying petitioner a Certificate Of Appealability (COA) request?

Whether petitioners ACCA enhancement violative of his Fifth and Sixth Amendment Rights?

Whether petitioners Fifth Amendment right was violated when the District Court refused to apply Descamps v. United States, 136 S.Ct.2276,2281,186 L.Ed 2d 483(1013);Mathis v. United States,136 S.Ct. at 2249(2016) on collateral review?

Whether petitioners Fla. Robbery under Fla. Statute 812.13 qualifies as a ACCA predicate in light of Stokeling v. United States, U.S. no.17554?

Whether the District Court erred denying his 2255 motion without an Evidentiary Hearing?

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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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 2018 U.S. App. Lexis 9776; 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☐ is unpublished.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 B to the petition and is

☒ reported at 2017 U.S. Dist. Lexis 34087; 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☐ is unpublished.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☐ is unpublished.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 2-21-2018.

☐ 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: 4-27-2018, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

This case involves the application of The Fifth Amendment of The United States Constitution. Amendment 5 -No person shall be held to answer for a capital,or otherwise infamous crime,unless on a presentment or indictment of a grand jury,except in cases arising in the land or naval forces,or in the Militia,when in actual service in time of war or public danger;nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb;nor shall be compelled in any criminal case against himself,nor be deprived of life,liberty,or property,without due process of law;nor shall private property be taken for public use,without just compensation.

This case involves the application of the Sixth Amendment Of The United States Constitution. Amendment 6- In all criminal prosecutions,the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where that crime shall have been committed,which district shall have previously ascertained by law,and to be informed of the nature and cause of accusation;to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor,and to have the Assistance of Counsel for his defense.

Amendment 8- Excessive bail shall not be required,nor excessive fines imposed,nor cruel and unusual punishments inflicted.

18 U.S.C. 924(E)(2)(A)(II),in part,.....Appendix A p.3

28 U.S.C. 2253(C)(2).....Appendix A p.11

28 U.S.C. 2255(A)Not cited

STATEMENT OF THE CASE

On ~~12-02-2009~~ petitioner was charged by information with felon in possession of a firearm in violation of 18 U.S.C. § 922(g) and 924(e) (cr Dkt. 3). He pled guilty (cr. DKts 62, 89). He was sentenced as an Armed Career Criminal to 216 months, followed by a 60 month term of supervised release (cr DKts 75, 90). His conviction and sentence were affirmed (cr. Dkt, 93).

On 1-8-2014 petitioner timely filed motion to vacate, set aside or correct sentence (2255)(A) (cv Dkt 1). On 3-9-2017 order denying motion to vacate, set aside or correct sentence (2255)(A) (civ. Dkt 33). On 4-3-2017 motion for reconsideration re. 34 judgment-prisoner, 33 order on motion to vacate set aside/correct sentence (2255)(A) was filed (civ Dkt 35). On 8-17-2017 petitioner filed motion requesting leave, to file reply motion to (civ. Dkt. 37). See (civ. Dkt. 40). On 8-24-2017 order denying (cv Dkt 35) (cv Dkt 40).

On 9-21-17 Notice Of Appeal filed and request for Certificate Of Appealability. (Dkt 47) (Dkt 48) (Dkt 49). On 9-25-17 order Denying (Dkt 48) (Dkt 49). On 2-21-2018 order was issued denying (Dkt 47). On 3-15-2018 motion for reconsideration/and or vacate, set aside, modify or reverse order pursuant to 28 U.S.C 2106 of The Eleventh Circuit order dated 2-21-2018, denying a Certificate Of Appealability and leave to proceed inform a pauperis in his appeal from the denial of his motion to vacate, set aside, or correct sentence, 28 U.S.C § 2255(A).

On 4-27-2018 order entered denying reconsideration/and vacate, set aside, modify or reverse order pursuant to 28 U.S.C. 2106.

REASONS FOR GRANTING THE PETITION

Petitioner states to the Honorable U.S. Supreme Court, that he understands that the Honorable Court has the discretion as to whether or not it wants to accept a case for a Writ Of Certiorari or not. Petitioner request a Writ Of Certiorari from the Honorable Court becuase absent this courts intervention petitioner will continue tobe deprived of his liberty for years beyond what congress has authorized for a conviction under 922(g)(1). Based upon decisions of the Eleventh Circuit Court Of Appeals interpretation of 924(e) that's contrary and conflicts with relevent decisions of this Honorable Court. Based upon a violation of his Fifth amendment right to have proper state documentation that was never submitted to the record at sentencing . To verify legally and legitamately as to whether or not petitioner qualified for Armed Career Offender status under 924(e)(2)(a)(2). Based on invalid,non-certified state predicate documentation.

Based upon misinformatio and assumptions. Based on no divisible/indivisible analysis,no Modified/Categorical approach to determine whether his prior convictions qualified for 924(e) enhancement,under federal law. Based upon his Fifth Amendment right of having this courts retroactive statutory cases applied to his 2255(A) motion. Based upon a violation of his Sixth Amendment rights to effective assistance of counsel and to be proven guilty beyond a reasonable doubt by a jury.

An Eighth Amendment right has occurred because petitioner has been serving a sentence above the statutory maximum as an ACCA offender when in fact he is not.

This case presents a perfect vehicle for this court to decide an important legal issue that has been unneccessarily bombarding this honorable Court for years.

These are some of the reasons why petitioner is requesting a Writ Of certiorari.

Petitioner therefore,state the following in argument in support for a Writ Of Certiorari: To The Honorable Supreme Court:

Issues

Whether petitioners ACCA enhancement
violative of his Fifth and Sixth
Amendment rights

Whether petitioners Fifth Amendment right
was violated when the District Court
refused to apply Descamps v. United
States, 136 S.Ct. 2276, 2281, 186 L.Ed 2d
483(2013); Mathis v. United States, 136
S.Ct. at 2249(2016) on collateral review

Petitioner contends that the Court of Appeals For The Eleventh Circuit erred in denying his request for a **Certificate Of Appealability(COA)** to challenge the District Courts assessment of his **Title 28 U.S.C. §2255(A) motion. (Ground One).**

To obtain a coa a prisoner must make a substantial showing of the denial of a constitutional right' **28 U.S.C. 2253(C)(2); Gonzalez v. Thayler, 564 U.S. 134 140-141(2012).** The **"substantial showing"** standard requires the prisoner to show that jurist of reason would find debatable whether the section 2255 motion states a valid claim of the denial of a constitutional right, or that reasonable jurist would find the District Courts assessment of the constitutional claims debatable or wrong. **Slack v. McDaniel, 529 U.S. 473, 483-484 (2000); Buck v. Davis, 137 S.Ct. 759, 775-76, 197 L.Ed. 2d 1 (2017) slip op 13-15.**

(1) Petitioner expressed to counsel that he was not an Armed Career offender long before he was sentenced. Before and after he received his presentence report that counsel said categorized him as a ACCA offender. Petitioner informed counsel that applying the **Modified/Categorical** as instructed by the United States Supreme Court and the Eleventh Circuit that none of his State of Florida Controlled substance convictions for **"sale"** of cocaine Case No. **92-cf-12119/** Case no. **94-cf-12595/"poss"** with intent to sell Case No. **04-cf-2218,**

were serious drug offenses. And the fact that Florida's mandatory sentencing scheme in affect at the time he was sentenced. The legal maximum was 18 months and 3½yrs for his controlled substance offenses. **Fn1**

(2) Counselor violated petitioners Sixth Amendment rights when he failed to investigate relevant authority, and present to the court those basis that would've achieved an outcome favorable to the defense.

(3) Counselor failed to investigate the circumstances and facts relevant to sentencing. To ascertain whether petitioners prior convictions qualify for ACCA enhancement. Counselor failed to challenge information provided in the presentencing report, in violation of petitioners Sixth Amendment right to effective assistance of counsel. Which has prejudiced petitioner with an erroneous enhancement 8yrs. above the statutory maximum. See (cv DKt 17); (Doc. 15-4)..

All counsel had to do was simply object to the pre-sentence report, so that it would not be automatically used as evidence against petitioner. Counsel refused to object and request the Gov't nor himself to submit petitioners "**Florida State Record Of Conviction**" as legally required by United States V. Rodriquez 553 U.S. 377 128 S.Ct. 1783, 170 L.Ed. 2d 719 (2008); McNeil v. United States, 563 U.S. 816, 825 131 S.Ct. 2218, 180 L.Ed. 2035 (2010); Carachuri-Rosendo v. Holder 130 S.Ct. 2577 (2010); Haltiwanger v. United States, 131 S.Ct. 81 178 L.Ed 2d 2(2010) U.S. lexis 6503 (U.S., 2010).

Counsel refused to object and request the Gov't/or he himself conduct a Div **Divisible/Indivisible or Modified/Categorical** approach analysis as legally required by Taylor v. United States, 495 U.S. at 600-02 (1990); Shepard v. United States, 544 U.S. 13, 26 (2005); Johnson v. United States, 599 U.S. 133, 144 (2010); United-

Fn1 The Gov't attempts to now rely on petitioners prior Robbery conviction **Fla. Stat. 812.13**. To sustain his ACCA status. Petitioner does not concede this point made by the Gov't. The court relied on three controlled substance convictions. See (Doc. 15) and (Doc. 24). This court has granted certiorari to settle this issue. Stokeling v. United States, U.S., No. 175554

States v. James, 430 F.3d 1150, 1154 (11th cir. 2005); United States v. Robinson 583 F.3d at 1295 (11th cir. 2009); Descamps v. United States 133 S.Ct. 2276, 2281, 18 186 L.ED 2d 483 (2013); Mathis v. United States, 136 S.Ct. at 2249 (2016); United States v. Sneed 600 f.3d at 1332-33 (11th cir (2010)). All verify that petitioner was not an ACCA offender. In violation of his Sixth amendment right to effective assistance of counsel and to be proven guilty beyond a reasonable doubt.

(4) Instead counsel continued to engage in violating petitioners constitutional rights by allowing him to be enhanced to ACCA status in violation of his judicial rights.

(5) During sentencing counsel refused to object and request the Gov't to submit to the record, petitioners prior "record of conviction" to legally and legitimately determine whether Fla. Stat. 775.082(8)(a)(b)(c) or Fla. Stat. 775.082(3)(c) applied to his prior 2nd degree controlled substance conviction in the states of Florida for sale of cocaine Case No.92-cf-12119/case No.94-cf-12595 at the time of his convictions. Therefore violating petitioners Fifth Amendment right to the legal requirements of the principle enunciated in Carachuri-Rosendo v. Holder 130 S.Ct. 2577 (2010); United States v. Rodriguez 553 U.S. 377, 128 S.Ct. 1783 170 L.E.D 2d 719 (2008); McNeil v. United States 563 U.S. 816, 825, 131 S.Ct. 2218, 180 L.ED 2035 (2011); Counsel refused to investigate in violation of his Sixth Amendment right. The fact that Florida Statute 775.082(8)(a)(b)(c) which links the maximum term of imprisonment for a second degree felony directly to Floridas Rules of Criminal Procedures. In which Floridas Mandatory Guideline system is a point system based on petitioners offense and his prior criminal history, played a role in setting the maximum sentence applicable by law, to petitioners 1992 and 1994 controlled substance convictions. See (cv DKT 2)(exhibit B) of (CVDKT (1)) "A recidivist finding or (lack of) must be a part of the record of conviction before it can play a role in setting the maximum sentence applicable.

Analyzing "The version of state law" that defendant was actually convicted of violating". (Quoting Carachuri-Rosendo (respectfully); United States v. Rodriguez; and McNeil v. United States). Therefore violating petitioners Sixth Amendment right to be proven guilty beyond a reasonable doubt. "The language of the sentencing guidelines is clearly mandatory". (Quoting Boynton v. State 473 So. 2d 703, 704, Fla. Dist. Ct. App. (1985) at 707). And departures from the presumptive guidelines shall be articulated in writing and made when circumstances of factors reasonably justify the aggravation or mitigation of sentence". (Quoting Rule 3.701(b)(6)).

(6) The fact remains the Gov't failed to submit any legal or legitimate documentation at sentencing to substantiate their assumptions nor did counsel himself submit or request these required docs.

During a critical stage of petitioners judicial proceedings, trial counsel failed to object, investigate and apply this courts principle which verifies that Fla. Stat. 775.082(8)(A)(B)(C) played a role in setting the maximum sentence applicable to his prior convictions. Counsel should've been aware of relevant decisions of this court which contradicts, undermines and invalidates the Eleventh Circuits Interpretation of 924(E)(2)(A)(ii) in McCarthy v. United States, 135 F.3d 754 (11th cir. 1998) See memorandum of law (cv Dkt. 30) (pp. 6-11); (cv Dkt. 35) (p. 4-6); (cv Dkt. 40) (p. 7-8) (

(7) Assuming the District Court relied on the judgment (cv Dkt 33) (p. 4) submitted to the record by the Gov't (Doc. 15-1, 15-2). documents of dubious merit and does not have the indicia of reliability sufficient to support the courts assumption that Fla. Stat. 775.082(3)(c) was applicable to petitioners 2° F's. The judgment simply says 2° F. nothing more. These documents submitted

by the Gov't are missing crucial elements of the **Record Of Conviction**" which is the **"State Of Florida Sentencing Guideline Score sheet"** and the **"Transcript Of Plea Colloquy"**. The scoresheet was submitted by petitioner(cv Dkt 2)(Exhibit B) which verifies that Fla. Stat. 775.082(8)(A)(B)(C) was applicable by law to petitioners prior controlled substance convictions.

(8) The District Court denied §2255 (A) relief without conducting an evidentiary hearing. The Eleventh Circuit Court Of Appeals denied petitioners **Certificate Of Appealability(COA)** request. Which indicated this specific issue. See (DKT 47)(p.5-8).

Both courts,in part,relied on McCarthy v. United States,135 f.3d 754(11th cir. 1998)(rejecting argument that the language of 924(e)(ii)(A)(ii)-"Maximum term of imprisonment of ten years"-refer to the high end of the presumptive range of the florida sentencing guidelines, and holding that the language refers to "statutory maximum sentence") McCarthy results and has resulted in arbitrary enforcement of the ACCA.

(9) The court in McCarthy eschewed an interpretation of 924(e)(2) (A) in a manner that strips an offender of characteristics that trigger a sentence "prescribed" "by" "law", in Florida. This interpretation is not faithful to the statutory text of the ACCA. This court has instructed that courts must "ordinarily resist reading words or elements into a statute that do not appear on it's face".(Quoting Bates v. United States,522 U.S.23,29,118 S.Ct.285, 139 L.ed 215(1997)) The decision and holding of McCarthy is inconsistent,contrary and conflicts with this courts interpretation of 924(e)(2)(A)(ii). United States v. Rodriquez,553 U.S.377,128,S.Ct. 1783 170 L.Ed. 2d 719(2008);Carachuri-Rosendo v. Holder,130 S.Ct 2577(2010);McNeil v. United States,563 U.S. 816,825,131 S.Ct. 2218

180 L.Ed 2035(2011).

(10) During sentencing Trial Counsel refused to object and request the Gov't to submit to the record any transcript of plea Colloquy, The written Plea agreement, Jury Instructions or any factual findings by trial judge(Quoting Shepard v. United States 544 U.S. 13, 26(2005)) To legally and legitimately determine whether petitioner assented to committing prior convictions for sale of cocaine Case No. 94-cf-12595 on occasions different from one another. As required by federal law. In violation of petitioners Sixth Amendment right to effective assistance of counsel. Inturn ,violating petitioners Fifth Amendment right to the legal requirements of Taylor v. United States 495 U.S. at 575(1990);Shepard v. United States 544 U.S. 13,26(2005);United States v. Sneed 600,F.3d at 1332-33 (11th cir. 2010). Violationg petitioners Sixth amendment right to be proven beyond a reasonable doubt. See(cv DKt 29)(p.4-5) (cv DKT 35)(p.2-3);(cv DKt 40)(p.3-7).

(11) Trial counsel violated petitioners Sixth Amendment right to effective assistance of counsel when he refused to object to the pre-sentence report,investigate and conduct a Divisible/indivisible Modified/Categorical approach as instructed by the Eleventh circuit in United States v. James, 430 f.3d 1150,1154(11th cir.2005); United States v. Robinson,583 f.3d at 1295(11th cir.2009). To legally and legitimately determine whether the elements of petitioner Indivisible state prior Fla. Stat. 893.13 controlled substance convictions for sale of cocaine Case no.92-cf-12119/case no. 94-cf-12595/ poss. with intent to sell caseno. 04-cf-2218, by definition correspond to 924(e)(ii)(A)(ii) statutory crimes of Distribute and poss. with intent to distribute as inherently defined in section 102 of the controlled substance act (21 U.S.C.

802) Of the ACCA. By external reference to 21 U.S.C 841(a)(1).

(12) Counsel should've been aware of relevant decisions interpreting 924(e) that were favorable to the defense. Violating petitioners Fifth Amendment rights to the legal requirements of United States v. James, 430 F.3d 1150, 1154 (11th cir. 2005); United States v. Robinson, 583 F.3d at 1295 (11th cir. 2009); Taylor v. United States, 495 U.S. 575 (1990); Shepard v. United States, 544 U.S. 13, 26 (2005); Johnson v. United States, 599 U.S. 133, 144 (2010); Descamps v. United States, 133 S.Ct. 2276, 2281, 186 L.Ed. 2d 483 (2013); Mathis v. United States, 136 S.Ct. at 2224 (2016). Violating petitioners substantial rights allowing him to be illegally sentenced above the statutory maximum, an Eighth Amendment violation.

In violation of his Sixth Amendment right to be proven guilty beyond a reasonable doubt.

(13) Trial counsel violated petitioners Sixth Amendment right when he refused to investigate the fact that Fla. Sta. 893.13 on its face is a divisible state statute which "lists a number of alternative elements that creates; "several different crimes (Quoting Nijhawan v. Holder, 577 U.S. 29 (2009)). The Modified Categorical approach as instructed by this court is applicable.

(14) The Shepard approved "jury instructions" defines 893.13 statutory crime of **Sell** to mean-to transfer or deliver to another person in exchange for money or something of value or a promise of money or something of value (Quoting Florida Jury Instructions 25.2).

Investigate that 924(e)(2)(A)(ii) statutory offense of **Distribute**- means to deliver other than by administering or dispensing a controlled substance or a listed chemical. (Quoting 21 U.S.C. 802(11)).

(15) Florida statutory crime of sell covers a broader swath of conduct than the Federal crime of Distribute as defined in (21 U.S.C. 802(11)) Sell includes various factual means to satisfy the single element of "exchange for consideration"

Federal Drug Distribution charges **do not** require an "exchange of value"-To "involve" drug distribution. See 21 U.S.C. 802(8)(11); 21 U.S.C. 841 (a)(1).

(16) This court recently affirmed that a statute enumerating "various factual means of committing a single element" is not divisible but remains indivisible (Quoting Mathis v. United States 136 S.Ct. at 2249). The Modified/Categorical approach may not be applied to an indivisible state crime with a single element" (Quoting Descamps v. United States 133 S.Ct. 2276, 2281, 136 L.ed 2d 483 (2013)). This court's statutory interpretations reaffirms that lower courts cannot apply the modified categorical approach to compare the "factual means" of "transfer" or "deliver" included in Florida stat. 893.13 statutory definition of the indivisible crime of "sell" to determine if a particular defendant committed an Act/and or fact, that compares to the "element" of "deliver" included in the definition of "distribute" as defined in 21 U.S.C. 802(11).

(17) Coupled with the fact that a conviction under Fla. Statute 893.13 "knowledge of the illicit nature of a controlled substance is not an element of any offense under this chapter. (Quoting 893.101(2) legislative findings and intent).

Applying the categorical approach straight forward as reaffirmed in Descamps. A conviction under Fla. Stat. 893.13 does not correspond to the analogous federal law, 21 U.S.C. §841(a)(1).

See Donawa v. U.S. Att'y Gen. 753 f.3d 1278 (11th cir. 2013);

Sarmientos v. Holder, 742 f.3d 624 (5th cir. 2014)(same); See also United States v. Sanchez, 586 f.3d 918, 929-30 (11th cir, 2009) (concluding that a conviction under 893.13 is not a serious drug offense). Had counsel objected to the pre-sentence report and followed this courts and the Eleventh Circuit approach in United States v. James, 430 f.3d 1150, 1154 (11th cir. 2005). To determine if his prior Fla. Stat. 893.13 controlled substance convictions were Serious Drug Offenses as defined in section 102 of the controlled substance act (21 U.S.C. 802). There exists a probability of a different outcome. See (cv Dkt16)(p.3 para.4); (cv Dkt 25)(p.2-3); (Cv Dkt 29); (cv Dkt 32); (cv Dkt 35)(p.2-3); (cv Dkt 40)(p.4-7).

(18) The U.S. District Court, Middle District Of Florida (Tampa Division) has perpetuated the substantial violations of petitioners constitutional rights. Refusing to afford petitioners his Fifth Amendment right of having this courts interpretation of 924(e) reiterated in Descamps and Mathis applied to his Title 28 U.S.C. 2255(A) motion. See (cv Dkt 25). This courts interpretaion reaffirmed that he has recieved "a punishment that the law cannot impose on him" (Quoting Shriro v. Summerlin, 542 U.S. at 353, 124 S.Ct. 2159 (2004)).

Narrowing the scope of lower courts application of 924(e), clarifying that he does not have "three valid convictions" to support an ACCA enhancement. The record clearly reflects the Gov't relied on invalid, uncertified documentation alone. "sentence based on invalid convictions" was "sentence founded atleast in part upon misinformation of constitutional magnitude". (Quoting United States v. Tucker, 404 U.S. 443, 592 (1972)). Relying on unpublished cases that are contrary and conflicts with decisions of this court. Fn2

Petitioner initiated his §2255(A) motion relying on this courts ruling in **Descamps**. The District Court had jurisdiction, but refused to apply Descamps in the instant case. Petitioner is serving an illegal and unconstitutionally obtained sentence above the statutory maximum. "there be no room for doubt that such a circumstance inherently results in a miscarriage of justice and presents exceptional circumstances that justify relief" (Quoting Davis v. United States, 417 U.S. at 346-47, 94 S.Ct. 2298 Id at 1091). See (cv DKT 25). The lower courts actions has affected the fundamental fairness of the §2255(A) proceedings. Seriously affecting the fairness, integrity and public reputation of judicial proceedings.

(19) The District Court denied relief, without an evidentiary hearing. The Eleventh Circuit Court Of Appeals denied petitioners **Certificate Of Appealability (COA)** request which asserted this specific issue. See (Doc 47)(p.2-5) Both courts, in part, relying on United States v. Smith, 775 F.3d 1262, 1264-68 (11th cir. 2014). The Smith court took on a factual approach to determine if a conviction qualifies for ACCA enhancement. Label matching statutes avoiding the **Indivisible/Divisible and Modified / Categorical** approach as instructed by this court. When faced with a §924(e) enhancement. The Smith court avoided the "generic offense" analysis outlined in **Taylor, Shepard, Johnson(1), Descamps and Mathis. James and Robinson**.

Fn2 Easton v. U.S. 489 Fed.Appx. 351 (11th cir. Sept. 7, 2012);
United States v. Johnson, 515 Fed. App'x 844, 847 (11th cir. 2013)
United State v. Pitts, 394 Fed. Appx 680, 684 (11th cir. (2010)
 All cases conflicting with this court in **Taylor, Shepard, Johnson (1), Descamps and Mathis. (Doc.15)(p.6)**

Smiths decision does not foreclose petitioners specific argument litigated in the district court(cv Dkt. 16)(p.3)and(cv Dkt. 32) supplemental memorandum submitted to the district court. The facts and circumstances of Smith misses the mark of petitioners issue. The decision in Smith is inconsistent,contrary and conflicts with relevant decisions of this courts application of an 924(e) enhancement.Fn3

(20) Trial counsels actions cannot be supported by sound strategy. It was simply cruel and unusual punishment to illegally and unconstitutionally sentence petitioner to 18 yrs. Based on invalid undocumented,inadequate,misinformation and assumptions for which no state predicate evidence or certified documentation was ever produced to the record at sentencing to legally verify and/or legitimately as to whether or not petitioner qualified for Armed Career Offender status under (924)(e)(2)(A)(ii).

(21) Petitioners Eighth Amendment Right has been violated because he has been serving his sentence as a ACCA offender when in fact, relevant decisions confirms he is not one. Decisions that were available to counsel at the time of petitioners sentencing.

(22) According to the emergency amendment and guidelines manual in effect Nov. 1, 2010 petitioners guideline total offense level

Fn3 The District Court has never made a factual finding of petitioners specific issues addressed. (cv Dkt. 29); (cv Dkt. 32). Simply circumventing petitioners issues.

is 27 and has 8 total criminal points which places petitioner at cat. iv. with a sentencing range between 100-120 months(**Quoting Pre-sentence report(p.7)**) Petitioner has served 107 of 120 month maximum applicable.

(23) Petitioner therefore, requests remand to appeal the District Courts Assessment of **(ground one)of (cv Dkt 1)**. Based on Eleventh Circuit Court Of Appeals decisions that are contrary, inconsistent, and conflicts with relevant decisions of this honorable court. Based on a violation of petitioners Sixth, Fifth, and Eighth amendment rights under the United States Constitution. Based on abuse of discretion by the district court whom had jurisdiction to apply Descamps and Mathis retroactively to his 2255(A) motion. Which should not be left unchecked, In this Writ Of Certiorari; by the Honorable Supreme Court Of The United States.

Jurist of reason would agree with or find debatable or wrong the District Court assessment of petitioners claims pursuant to **title 28 U.S.C 2255 (A)** motion. Of the violation of his Sixth and Fifth amendment rights.
Buck v. Davis, 137S.Ct. 759-774(2017)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 6-18-2018