

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

QUITMAN CARTER
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 17-60376

PETITION FOR WRIT OF CERTIORARI

MICHAEL L. SCOTT (MB #101320)
Assistant Federal Public Defender
Office of the Federal Public Defender
Southern District of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Attorney for Defendant-Petitioner

QUESTIONS PRESENTED FOR REVIEW

The underlying issue presented in this § 2241 case is whether Mr. Carter is entitled to resentencing under this Court’s holdings in *Johnson v. United States*, 135 S.Ct. 2551 (2015). However, because the Fifth Circuit never reached the merits of Mr. Carter’s claims, the issue on review before this Court is **whether the Fifth Circuit erred by ruling that Mr. Carter’s claims under 28 U.S.C. § 2241 are jurisdictionally barred from consideration because they “don’t fit within the savings clause of 28 U.S.C. § 2255(e).”** See Fifth Circuit Opinion, p. 1.¹

¹ The Fifth Circuit’s Opinion in this case is attached hereto as Appendix 3.

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED FOR REVIEW	ii
PARTIES TO THE PROCEEDING.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	vi
I. OPINIONS BELOW	1
II. JURISDICTIONAL STATEMENT.....	3
III. CONSTITUTIONAL PROVISION INVOLVED.....	4
IV. STATEMENT OF THE CASE	5
A. Basis for federal jurisdiction in the court of first instance.....	5
B. Statement of material facts.....	5
V. ARGUMENT	9
A. Review on certiorari should be granted in this case	9
B. Narrowing the issue on review before this Court	9
C. Mr. Carter's substantive claims.....	10
D. The Fifth Circuit's ruling regarding jurisdiction conflicts with this Court's rulings in <i>Sharbutt v. Vasquez</i>	11
1. Section 2241 standard	11
2. Application of the § 2241 standard to Mr. Carter's case.....	13

a. Mr. Carter's Petition is based on retroactively applicable Supreme Court law.....	14
b. Mr. Carter was convicted of a nonexistent crime of he is actually innocent	14
c. Mr. Carter's claim was foreclosed by law as it existed when Mr. Carter filed his initial Johnson-related § 2255 Petition	16
d. Conclusion – eligibility for relief under § 2241	17
VI. CONCLUSION.....	18
CERTIFICATE OF SERVICE	19
(Appendices 1, 2 and 3)	

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases:</u>	
<i>Christopher v. Miles</i> , 342 F.3d 378 (5th Cir. 2003)	13
<i>Cox v. Warden, Fed. Detention Ctr.</i> , 911 F.2d 1111 (5th Cir. 1990)	11
<i>James v. United States</i> , 550 U.S. 192, 127 S.Ct. 1586 (2007).....	16
<i>Johnson v. United States</i> , 135 S.Ct. 2551 (2015).....	ii, 1, 4, 7, 8, 10, 14, 16, 17
<i>Lee v. Wetzel</i> , 244 F.3d 370 (5th Cir. 2001)	11
<i>Reyes-Requena v. United States</i> , 243 F.3d 893 (5th Cir. 2001)	12, 13
<i>Sharbutt v. Vasquez</i> , 600 Fed. App'x 251 (5th Cir. 2015)	14
<i>Sharbutt v. Vasquez</i> , 136 S.Ct. 2538 (2016).....	9, 10, 14, 15, 16, 18
<i>Sharbutt v. Vasquez</i> , 669 Fed. App'x 707 (5th Cir. 2016)	15
<i>Solsona v. Warden, F.C.I.</i> , 821 F.2d 1129 (5th Cir. 1987)	11
<i>Tolliver v. Dobre</i> , 211 F.3d 876 (5th Cir. 2000)	11, 12

	<u>Page(s)</u>
<i>United States v. Cantrell,</i> 530 F.3d 684 (8th Cir. 2008)	16
<i>United States v. Cleto,</i> 956 F.2d 83 (5th Cir. 1992)	11
<i>United States v. Moore,</i> 108 F.3d 878 (8th Cir. 1997)	16
<i>United States v. Welch,</i> 136 S.Ct. 1257 (2016).....	10, 14
 <u>Statutes:</u>	
Armed Career Criminal Act.....	1, 4, 6, 7, 8, 10, 14, 15, 17
18 U.S.C. § 922.....	5
18 U.S.C. § 924.....	1, 5, 6, 7, 16
18 U.S.C. § 3231	5
28 U.S.C. § 1254	3
28 U.S.C. § 2241	<i>passim</i>
28 U.S.C. § 2255	<i>passim</i>
 <u>Rules:</u>	
Rule 10, Supreme Court Rules.....	9
Rule 13.1, Supreme Court Rules.....	3
Rule 29.5, Supreme Court Rules.....	19

	<u>Page(s)</u>
<u>Provisions of the United States Constitution:</u>	
Fifth Amendment, United States Constitution.....	4
<u>Sentencing Guidelines provisions:</u>	
Guidelines Sentencing Table	7
U.S.S.G. § 4B1.2.....	16

I. OPINIONS BELOW

The criminal case that this § 2241 Petition arises out of was filed in the United States District Court for the Eastern District of Missouri. Mr. Carter pled guilty to felon in possession of a firearm in that court on November 28, 2005. At sentencing, the court deemed Mr. Carter an armed career criminal under 18 U.S.C. § 924(e)(1) of the Armed Career Criminal Act (hereinafter “ACCA”). Under the sentence enhancing provisions of the ACCA, the court ordered him to serve 180 months in prison, and entered a Judgment on February 13, 2006. The Final Judgment from the Eastern District of Missouri is attached hereto as Appendix 1.

The Bureau of Prisons assigned Mr. Carter to serve his sentence at the United States Penitentiary in Yazoo City, Mississippi, which is located in the Southern District of Mississippi. Invoking the provisions of *Johnson*, Mr. Carter filed the subject *pro se* § 2241 Petition in the United States District court for the Southern District of Mississippi on July 19, 2016. The district court case number is 3:16cv565-HTW-LRA.

The undersigned entered an appearance in this case on October 21, 2016. All relevant pleadings filed on Mr. Carter’s behalf after that date were filed by the undersigned. In this § 2241 case, the defense argued that Mr. Carter should be resentenced because under *Johnson v. United States*, 135 S.Ct. 2551 (2015), he no longer qualifies as an armed career criminal under the ACCA. The district court

entered an Order denying the § 2241 Petition on May 15, 2017. A copy of the district court's order is attached hereto as Appendix 2.

Mr. Carter appealed the case to the United States Court of Appeals for the Fifth Circuit on May 15, 2017. The Fifth Circuit case number is 17-60376. On April 30, 2018, the Fifth Circuit entered an Order affirming the district court's denial of Mr. Carter's § 2241 claims. The court filed a Final Judgment on the same day. The Fifth Circuit's Order and Final Judgment are attached hereto as composite Appendix 3. Aggrieved by the lower courts' rulings, Mr. Carter filed this Petition for Writ of Certiorari.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Opinion and its Judgment in this case on April 30, 2018. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case pursuant to the provisions of 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL PROVISION INVOLVED

In *Johnson*, the case that Mr. Carter's argument is based on, this Court found that the “residual clause” portion of ACCA’s definition of “violent felony” is unconstitutional under the Due Process Clause of the Fifth Amendment to the United States Constitution. 135 S.Ct. at 2563. The Due Process Clause of the Fifth Amendment states: “No person shall … be deprived of life, liberty, or property, without due process of law[.]”

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction filed against Mr. Carter for felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). The court of first instance, which was the United States District Court for the Eastern District of Missouri, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charges levied against Mr. Carter arose from the laws of the United States of America.

After the Judgment was filed in the Eastern District of Missouri, Mr. Carter was placed in the Federal Penitentiary in Yazoo City Mississippi to serve his sentence. Yazoo City is located in the boundaries of the Southern District of Mississippi. Mr. Carter filed the instant Petition under 28 U.S.C. § 2241 after he was placed at the penitentiary in Yazoo City. Since Mr. Carter was housed at a prison in the Southern District of Mississippi when he filed the § 2241 Petition, the United States District Court for the Southern District of Mississippi had jurisdiction over the case under 28 U.S.C. § 2241(a).

B. Statement of material facts.

On July 21, 2005, the prosecutor in the United States District Court for the Eastern District of Missouri indicted Mr. Carter for felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). He pled guilty to the charge on

November 28, 2005. The district judge in the Eastern District of Missouri conducted a sentencing hearing on February 13, 2006. At the sentencing hearing, the court used the 2004 edition of the United States Sentencing Guidelines to compute Mr. Carter's sentencing range.

At sentencing, the Court deemed Mr. Carter an armed career criminal under 18 U.S.C. § 924(e)(1) of the ACCA because he had a minimum of three prior qualifying convictions. This increased his total offense level from 17 to 30. His criminal history category, which was unaffected by the ACCA, was V. Finally, Mr. Carter was subject to a 15- year mandatory minimum sentence under 924(e)(1) because of the armed career criminal classification.

At a criminal history category of V and an offense level of 30, Mr. Carter's Guidelines sentencing range was 151 to 188 months in prison. *See Guidelines Sentencing Table.* However, the 15-year mandatory minimum requirement of § 924(e) increased the 151 month floor to 180 months. So his actual Guidelines sentencing range was 180 to 188 months in prison. The court sentenced Mr. Carter to 180 months in prison, and entered a Judgment on February 13, 2006.

Without the “armed career criminal” enhancement, Mr. Carter’s offense level would have been 17. At a criminal history category of V and a total offense level of 17, his Guidelines sentencing range would have been 46 to 57 months in

prison, with no required statutory minimum sentence. *See Guidelines Sentencing Table.*

As analyzed above, Mr. Carter was subject to sentencing enhancements because of his status as an armed career criminal. To be deemed an armed career criminal under the ACCA, Mr. Carter had to have a combined total of three or more prior convictions for either violent felonies and/or drug trafficking crimes.

See 18 U.S.C. § 924(e). We are not sure which of his prior convictions that the district court relied on to support the armed career criminal status. The PSR merely states “[t]he defendant has at least three prior violent felony convictions as described in paragraphs 26, 30, 34, and 38.” The convictions described in these four paragraphs of the PSR are:

- An Illinois state court conviction for “Unlawful Use of Weapons.”
- An Illinois state court conviction for “Attempted Murder.”
- A Missouri state court conviction for “Assault with Intent to Kill.”
- A Missouri state court conviction for “Burglary Second Degree.”
- A Missouri state court conviction for “Involuntary Manslaughter.”

As stated above, we are not sure which of these five prior convictions that the district court relied on to make its ACCA determination. Therefore, Mr. Carter analyzed all five of the priors in his § 2241 Petition. Based on that analysis, at least four of the prior convictions no longer qualify as violent felonies under *Johnson*. These four priors are:

- The Illinois state court conviction for “Unlawful Use of Weapons.”
- The Illinois state court conviction for “Attempted Murder.”
- The Missouri state court conviction for “Burglary Second Degree.”
- The Missouri state court conviction for “Involuntary Manslaughter.”

Since Mr. Carter has only one prior qualifying felony conviction post-*Johnson* he no longer qualifies as an armed career criminal. The district court erred by finding otherwise.

On appeal to the Fifth Circuit, the Court did not analyze whether any of Mr. Carter’s prior convictions qualify as violent felonies under the ACCA. Rather, the court found that the district court lacked jurisdiction over this § 2241 case because “Carter has failed to show that he was actually innocent of the crime of conviction, and he is not entitled to use the savings clause of § 2255 to challenge his sentence by petitioning under § 2241.” Fifth Circuit Order, p. 3. Since the Fifth Circuit never reached the merits of Mr. Carter’s arguments, the issue in this Petition for Writ of Certiorari is limited to that court’s ruling regarding jurisdiction.

V. ARGUMENT:

A. Review on certiorari should be granted in this case.

As stated in Rule 10 of the Supreme Court Rules, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only for compelling reasons.” One such compelling reason is when a United States court of appeals “has decided an important federal question in a way that conflicts with relevant decisions of this Court.” Supreme Court Rule 10(c). Rule 10(c) provides a reason to grant certiorari because the Fifth Circuit’s rulings in Mr. Carter’s case arguably conflict with this Court’s rulings in *Sharbutt v. Vasquez*, 136 S.Ct. 2538 (2016).

B. Narrowing the issue on review before this Court.

The substance of Mr. Carter’s § 2241 claims are not at issue in the Petition for Writ of Certiorari because the Fifth Circuit never reached the merits of his claims. Rather, the Fifth Circuit found that Mr. Carter lacked federal jurisdiction to pursue the claims because he “failed to show that he was actually innocent of the crime of conviction, and he is not entitled to use the savings clause of § 2255 to challenge his sentence by petitioning under § 2241.” Fifth Circuit Order, p. 3. So the relief sought by Mr. Carter is a ruling that the Fifth Circuit erred by concluding that he lacks jurisdiction to pursue his claims. If this Court grants certiorari and

agrees with Mr. Carter on the jurisdiction issue, then the case should be remanded to the Fifth Circuit for further consideration of the merit of his claims.

C. Mr. Carter’s substantive claims.

While the merits of Mr. Carter’s claims are not at issue during this phase of the litigation, a brief statement of the claims will provide context for the subject jurisdiction issue. Following is a brief summary of his § 2241 claims.

To be deemed an “armed career criminal” under the ACCA, a defendant must have a combined total of three prior convictions that fall under the purview of either “violent felonies” or “drug trafficking offenses.” Mr. Carter has no drug trafficking offenses. At the time of his sentencing in 2006, he did have at least three prior convictions that were violent felonies. This resulted in an increase of his prison sentence.

In 2015, this Court decided *Johnson v. United States*, 135 S.Ct. 2551 (2015). In *Johnson*, the Court analyzed the ACCA’s “residual clause” portion of the “violent felony” definition. The *Johnson* Court concluded that the residual clause is unconstitutionally vague. That decision was held retroactively applicable by *United States v. Welch*, 136 S.Ct. 1257 (2016).

Because the residual clause of the ACCA is no longer constitutional, Mr. Carter no longer has the requisite three prior violent felony convictions.

Accordingly, he is due a reduction of his sentence. The district court erred by finding otherwise.

D. The Fifth Circuit’s ruling regarding jurisdiction conflicts with this Court’s rulings in *Sharbutt v. Vasquez*.

1. Section 2241 standard.

Section 2241(a) states “[w]rits of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions.” “[T]he district court of incarceration is the only district that has jurisdiction to entertain a defendant’s § 2241 petition.” *Lee v. Wetzel*, 244 F.3d 370, 373 (5th Cir. 2001). Mr. Carter is housed at FCI Yazoo City, which is located in the Southern District of Mississippi, so this Court has jurisdiction to entertain his § 2241 Petition.

The following holding from *Tolliver v. Dobre*, 211 F.3d 876 (5th Cir. 2000) explains the relationship between § 2241 and § 2255.

Section § 2255 is the primary means of collaterally attacking a federal sentence. *Cox v. Warden, Fed. Detention Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990). Section § 2241 is used to attack the manner in which a sentence is executed. *United States v. Cleto*, 956 F.2d 83, 84 (5th Cir. 1992). A § 2241 petition which attacks errors that occur at trial or sentencing is properly construed under § 2255. *Solsona v. Warden, F.C.I.*, 821 F.2d 1129, 1131-32 (5th Cir. 1987). Nevertheless, a § 2241 petition attacking a federally imposed sentence may be considered if the petitioner establishes the remedy under § 2255 is inadequate or ineffective. *Cox*, 911 F.2d at 1113.

Id. at 877-78 (emphasis added).

As the *Dobre* court held, “a § 2241 petition attacking a federally imposed sentence may be considered if the petitioner establishes the remedy under § 2255 is inadequate or ineffective.” 211 F.3d at 878 (citation omitted). This statement is referring to what is commonly known as the “savings clause” provision contained in § 2255(e). Section 2255(e) states:

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(Emphasis added).

In *Reyes-Quenya v. United States*, 243 F.3d 893 (5th Cir. 2001), the Court provided the following Fifth Circuit rules of law on the issue:

We therefore hold that the savings clause of § 2255 applies to a claim (i) that is based on a retroactively applicable Supreme Court decision which establishes that the petitioner may have been convicted of a nonexistent offense and (ii) that was foreclosed by circuit law at the time when the claim should have been raised in the petitioner's trial, appeal, or first § 2255 motion. Under these circumstances, it can fairly be said, in the language of the savings clause, that “the remedy by [a successive § 2255] motion is inadequate or ineffective to test the legality of [the petitioner's] detention.” Of course, this test will operate in the context of our existing jurisprudence regarding what is not sufficient to obtain access to the savings clause.

(Emphasis added).

Stated another way:

A petitioner seeking relief under the § 2255 savings clause must demonstrate three things: (1) his claim is based on a retroactively applicable Supreme

Court decision; (2) the Supreme Court decision establishes that he was “actually innocent” of the charges against him because the decision decriminalized the conduct for which he was convicted; and (3) his claim would have been foreclosed by existing circuit precedent had he raised it at trial, on direct appeal, or in his original § 2255 petition. “[T]he core idea is that the petitioner may have been imprisoned for conduct that was not prohibited by law.”

Christopher v. Miles, 342 F.3d 378, 382 (5th Cir. 2003) (emphasis added; internal and end citation omitted).

Finally, we note that “Section 2255’s savings clause is available for ‘a prisoner who had no earlier opportunity to challenge his conviction for a crime that an intervening change in substantive law may negate.’” *Reyes-Requena*, 243 F.3d at 902 n.24.

2. Application of the § 2241 standard to Mr. Carter’s case.

Based on the above case law, we must establish following three factors for Mr. Carter to be eligible for relief under § 2241:

- 1) Mr. Carter’s Petition is based on retroactively applicable Supreme Court law;
- 2) Mr. Carter was convicted of a nonexistent crime or that he is actually innocent; and
- 3) Mr. Carter’s claim was foreclosed by law as it existed when he filed his initial *Johnson*-related § 2255 Petition.

Based on the following analyses, all three of these factors are met.

a. Mr. Carter’s Petition is based on retroactively applicable Supreme Court law.

Mr. Carter’s claims are based on the holdings in *Johnson*, which was made retroactively applicable by *Welch*. *Johnson* is applicable because one or more of Mr. Carter’s prior felony convictions were deemed violent felonies under the residual clause of the ACCA.

b. Mr. Carter was convicted of a nonexistent crime or he is actually innocent.

In Mr. Carter’s case, this is the test that the Fifth Circuit relied on to find that jurisdiction is lacking. That is, the Fifth Circuit held that the district court lacked jurisdiction to consider the merits of his claims because Mr. Carter “has failed to show that he was actually innocent of the crime of conviction, and he is not entitled to use the savings clause of § 2255 to challenge his sentence by petitioning under § 2241.” Fifth Circuit Order, p. 3. For the following reasons, the Fifth Circuit erred under this Court’s holdings in *Sharbutt v. Vasquez*, 136 S.Ct. 2538 (2016).

Mr. Carter is not contending that he is actually innocent of the underlying felon in possession crime. For the following reasons, however, that does not foreclose his § 2241 claim.

In *Sharbutt v. Vasquez*, 600 Fed. App’x 251 (5th Cir. 2015), the defendant filed a § 2241 petition in which he, like Mr. Carter, “challenged the enhancement

to his sentence pursuant to the Armed Career Criminal Act, following his conviction for being a felon in possession of a firearm.” *Id.* at 251. The Fifth Circuit held that “[b]ecause Carter essentially claims that he is innocent of his sentence under the Armed Career Criminal Act, rather than his offense of conviction,” he failed to show that he is entitled to relief under the savings clause of § 2255 and under § 2241. *Id.* at 251-52.

Aggrieved by this ruling, Sharbutt filed a petition for writ of certiorari with this Court. *Sharbutt v. Vasquez*, Supreme Court Case Number 15-5587. The Court vacated the Fifth Circuit’s judgment. *Sharbutt v. Vasquez*, 136 S.Ct. 2538 (2016). It remanded the case to the Fifth Circuit for further consideration of the issue. *Id.* In turn, the Fifth Circuit remanded the case to district court for further consideration of the issue. *See Sharbutt v. Vasquez*, 669 Fed. App’x 707 (5th Cir. 2016).

From the procedural history of *Sharbutt*, it appears apparent that when a defendant presents a viable argument attacking the legality of a sentence rather than the conviction itself, the defendant satisfies the second test for an allowable petition under § 2241. Mr. Carter’s *Johnson*-related argument is legally viable. Therefore, this second test is met.

This analysis of *Sharbutt* shows that the Fifth Circuit’s ruling that Mr. Carter lacks jurisdiction to pursue his § 2241 claims is in conflict with precedent from this Court. That provides a compelling reason to grant certiorari under Rule 10(c).

c. Mr. Carter’s claim was foreclosed by law as it existed when Mr. Carter filed his initial *Johnson*-related § 2255 Petition.

The Fifth Circuit’s ruling in Mr. Carter’s case did not address the third factor. For the sake of completeness, we include a brief analysis of that factor.

Mr. Carter filed his first § 2255 Petition in 2007. At that time, even if a Missouri second degree burglary conviction did not qualify as a violent felony under the enumerated offense clause, it qualified under the residual clause. *United States v. Moore*, 108 F.3d 878, 880 (8th Cir. 1997) (holding that an Illinois state conviction for attempted burglary qualified as a violent felony under the “or otherwise” clause of § 924(e), which is the residual clause); *United States v. Cantrell*, 530 F.3d 684, 695 (8th Cir. 2008) (holding that Missouri burglary qualified as a crime of violence under the residual clause of U.S.S.G. § 4B1.2(a), which was equivalent to the residual clause in § 924(e)); *James v. United States*, 550 U.S. 192, 127 S.Ct. 1586, 1597-98 (2007) (holding that violation of Florida’s attempted burglary statute qualified as a violent felony under the residual clause of § 924(e)) (overruled by *Johnson*).

Under the cases cited in the previous paragraph, Mr. Carter’s Missouri burglary conviction qualified as a violent felony under the residual clause of the

ACCA. Under *Johnson*, the residual clause is no longer constitutional. *Johnson* was decided in 2015, about nine years after Mr. Carter was sentenced in 2006 and about eight years after he filed the initial § 2255 Petition. Because the law of the Eighth Circuit prior to *Johnson* foreclosed the argument presented in Mr. Carter's § 2241 Petition, the third test for a viable claim under § 2255(e)'s savings clause is met.

d. Conclusion – eligibility for relief under § 2241.

All three of the tests for Mr. Carter to proceed with his § 2241 Petition under the savings clause provisions of § 2255(e) are met in this case. Accordingly, the Fifth Circuit had jurisdiction to consider the merits of his claim.

VI. CONCLUSION

The Fifth Circuit held that jurisdiction is lacking in this case “[b]ecause Carter essentially claims that he is innocent of his sentence under the Armed Career Criminal Act, rather than his offense of conviction[.]” That ruling conflicts with this Court’s rulings in *Sharbutt*. The Court should grant certiorari to correct the Fifth Circuit’s error.

s/Michael L. Scott

Michael L. Scott (Miss. Bar No. 101320)
Assistant Federal Public Defender
Office of the Federal Public Defender
Southern District of Mississippi
200 South Lamar Street, Suite 200-N
Jackson, Mississippi 39201
Telephone: 601/948-4284
Facsimile: 601/948-5510

Attorney for Defendant-Petitioner