

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHUCK WAYNE BOYD — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHUCK WAYNE BOYD #98660-004
(Your Name)

FCI MARIANNA, P.O. BOX 7007
(Address)

MARIANNA, FLORIDA 32447
(City, State, Zip Code)

850-526-2313
(Phone Number)

QUESTION(S) PRESENTED

When considering a sentence reduction under 18 U.S.C. § 3582 and U.S.S.G. Amendment 782, does the court abuse its discretion by not explaining the reasons behind its denial, taking into equal consideration the Petitioner's pre-sentence history as well as the post-sentence history, which includes the Petitioner's progress as an inmate in a penal institution, when the court considers 18 U.S.C. § 3553 factors to determine a sentence reduction is unwarranted based on the Petitioner's sentence being already "lenient"?

Note: The U.S. Supreme Court is presently considering a similar issue, having granted certiorari in United States v. Chavez-Maza, 854 F.3d 655 (10th Cir. 2017) in case No. 17-5639.

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 F 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☒ is unpublished.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 B 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☐ is unpublished.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☐ is unpublished.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 January 26, 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: March 14, 2018, and a copy of the order denying rehearing appears at Appendix G.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including June 9, 2018 (date) on April 10, 2018 (date) in Application No. A. (SEE Clerk's letter APPENDIX H)

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

SEE : APPENDIX I

STATEMENT OF THE CASE

1. On April 4, 2013, Petitioner pled guilty to two counts of Conspiracy to Possess with Intent to Distribute Twenty-Eight (28) grams or more of Crack Cocaine [DE-304] pursuant to a plea agreement [DE-305].
2. On August 12, 2013, Petitioner was sentenced to three hundred (300) months in prison. [DE-596,603] as a career offender. [DE-574, paragraph 121]. However, his drug (total offense level) guidelines were scored higher than his career offender guidelines. On July 31, 2014. the Eleventh Circuit Court of Appeal affirmed. [DE-692]. U.S. v. Boyd, 574 Fed. Appx. 878 (11th Cir. 2014).
3. On March 1, 2015, Petitioner filed a Motion for Reduction of Sentence. [DE-754]. Petitioner sought relief under Amendment 782. On March 6, 2015, the District Court denied the motion, [DE-757], finding that his career offender classification disqualified him from an Amendment 782 reduction. Later that day, the Court vacated the order. [DE-758]. On March 16, 2015, the Government responded and conceded that Petitioner was eligible for a reduction under Amendment 782, but agreed that no reduction was warranted. [DE-759]. On March 20, 2015, the District Court again denied Petitioner's motion [DE-768], finding that Amendment 782 would change Petitioner's guidelines to 235-293 months. The Court found that it would not promote respect for the law to grant an Amendment 782 reduction, because the imposed sentence of 300 months was lenient. An Amended Order denying the reduction was entered on March 23, 2015 [DE-771]. On August 5, 2015, the District Court dismissed a Motion to

Supplement a Motion to Reduce Sentence. [DE-839]. On December 3, 2015, the Eleventh Circuit Court of Appeals summarily affirmed the denial of an Amendment 782 reduction. [DE-861].

4. On February 18, 2015, Petitioner filed his first Motion to Vacate, [DE-1 in 15-20925 CV]. The District Court denied relief on March 23, 2015. [DE-5 in 15-20925-CIV]. On September 11, 2015, the Eleventh Circuit Court of Appeals denied a certificate of appealability. [DE-13 in 15-20925-CIV]. The U.S. Supreme Court denied certiorari on April 18, 2016. [DE-14 in 15-20925-CIV].

Boyd v. U.S., 136 S. CT. 1690 (2016).

5. On June 23, 2016, Petitioner filed a second Motion to Vacate [DE-1 in 16-22737-CIV]. The District Court denied relief on June 29, 2016. [DE-3 in 16-22737-CIV]. On July 15, 2016, the Eleventh Circuit denied leave to file a successive motion to vacate. [DE-6 in 16-22737-CIV].

6. On June 8, 2017, Petitioner filed another Motion for Reduction of Sentence [DE-890]. On June 21, 2017, the Court again denied relief again declining to exercise discretion to reduce Petitioner's sentence and citing Petitioner's prior litigation of this issue. [DE-891].

7. Petitioner filed a 60(b)(6) motion which was dismissed by the District Court on June 28, 2017. [DE-897].

8. Petitioner filed a Motion for Reconsideration which was denied on July 7, 2017. (See: APPENDIX D).

9. Petitioner was granted permission to appeal in forma pauperis and filed a timely appeal, which was denied on January 26, 2018. (See: APPENDIX E and F), and filed for rehearing en banc, which was denied on March 14, 2018. (SEE: APPENDIX G).

REASONS FOR GRANTING THE PETITION

The District Court ruled, "having considered a two-step process; first, calculating the guidelines range and then considering the factors in 18 USC § 3553(a), the Court concludes that a reduction is not warranted." The Court further wrote, "Having considered the second step, the Court then and now declines to exercise discretion to reduce Boyd's sentence." (SEE: APPENDIX B).

The Appeals Court ruled that, "As to Boyd's motion to reduce his sentence, the district court did not err by denying his motion because we have previously affirmed the district court's first denial of his motion to reduce his sentence based on Amendment 782 and has not demonstrated any exceptions to the law-of-the-case doctrine." (SEE: APPENDIX F).

The Appeals Court, in citing the law-of-the-case doctrine, is referring to the Petitioner's initial §3582 motion where the District Court ruled the sentence reduction was not warranted, according to the §3553 factors, because of the Petitioner's pre-sentence history. The District Court never articulated its consideration of the Petitioner's post-sentence progress, either in the initial §3582 motion or in the §3582 motion at issue here.

Under 18 USC §3582(c)(2), a court may reduce a sentence after considering the §3553 factors. According to § 3553(c), the statement of reasons for imposing a sentence shall be stated in open court. 18 USC § 3661 provides, "no information is placed on the information the sentencing court may consider." The court is allowed to "consider evidence of post-sentencing rehabilitation"

in deciding a downward variance from the sentencing guidelines.
Pepper v. United States, 562 U.S. 476 (2011).

In United States v. Chavez-Maza, 854 F. 3d 655 (10th Cir. 2017), the 10th Circuit ruled that the district court provided sufficient explanation when it issued a form order stating that it had taken into account the § 3553 factors and §3582(c) did not incorporate the explanatory requirement of § 3553(c). A Writ of Certiorari was granted by this Court challenging this issue, therefore the Petitioner requests this Court to hold this writ in abeyance pending the outcome of the Chavez-Maza writ.

18 USC § 3553(a)(2)(D) states, "the need for the sentence imposed is to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." The main purpose of incarceration should be rehabilitation. The Holy Scripture says that a person reaps what he sows, and if that person is now sowing good, then he should be rewarded good. GALATIANS 6:7-9. Almighty God does not forget good works, neither should we overlook them. HEBREWS 6:10. If a person is now doing good, it should be recognized that a change (rehabilitation) has occurred. GOSPEL OF LUKE :43-45.

The District Court abused its discretion by not fully articulating the post-incarceration history of the Petitioner before denying his motion for sentence reduction, giving him the benefit of this history, and the Appeals Court did not recognize this exclusion in its ruling and its law-of-the-case rationale. Petitioner should be given the benefit of the good works that he has shown during his incarceration, which would offset any problems

with his pre-incarceration conduct. The Court must recognize this possibility and specifically state whether or not it considered post-incarceration aspect of Petitioner's conduct account before denying his sentence reduction, based on his pre-sentence history and the Court's belief that Petitioner's sentence was already "lenient".

Petitioner prays that this Court will reverse the decision of the Court of Appeals and remand this case back to the District Court to rule consistent with the above argument, or in the alternative, that this Court will hold the Petitioner's writ in abeyance pending the outcome of the Chavez-Maza writ.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Chuck Boyd

Date: 6/8/18