

No. 18-5730

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

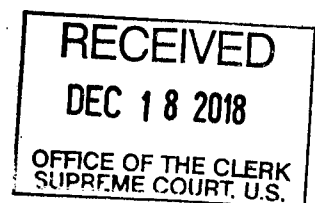
TERRENCE DENMARK

(Petitioner)

v.

UNITED STATES OF AMERICA

(Respondant)



LIST OF PARTIES

Terrence Denmark - Petitioner

United States of America - Respondent

TABLE OF CONTENTS

| | |
|---|-------------|
| Table of Contents | pg. i |
| Table of Authorities Cited | pg. ii-iiib |
| Questions Presented | pg.iii |
| Motion For Leave Informa Pauperis | pg. iv |
| Resonse to Respondents Memorandum | pg.1-5 |
| Proof of Service | pg. 6 |

TABLE OF AUTHORITIES CITED

| Cases | Page Number |
|---|-------------|
| <u>Haines v. Kerner</u> , 404 U.S. 519 (1972) | 1 |
| <u>Welch v. United States</u> , 136 S.Ct 1265 (2016) | 1,4-5 |
| <u>McCarthan v. Goodwill Ind.</u> , 851 F.3d 1076 | 1-2 |
| <u>United States v. Wheeler</u> , No. 16-6073 | 2 |
| <u>Harrington v. Ormand</u> , No. 17-62229 | 2 |
| <u>United States v. Simmons</u> , 635 F.3d 140 (4th Circuit) 2 | |
| <u>McCarthan v. Collins</u> , ____ U.S. ____ (2017) | 2-3 |
| <u>Mathis v. United States</u> , 579 U.S. ____ (2016) | 3-5 |
| <u>Session v. Dimaya</u> , 585 U.S. ____ (2018) | 4-5 |
| <u>Rudolph Kidd</u> , No. 18-13457-G | 4 |
| <u>Davis v. United States</u> , ____ F.3d ____ (2018) | 4 |
| <u>United States v. Thanh</u> , ____ F.3d ____ () | 5 |
| <u>Roseles- Mirales</u> , 583 U.S. ____ (2018) | 5 |
| <u>Molina-Martinez v. United States</u> , 579 U.S. ____ (2016) | 5 |

Satutes Cited

| | |
|-----------------------------------|-----|
| 28 U.S.C. §2241 | 1-5 |
| 28 U.S.C. §2255(e) | 2 |
| Florida §893.13(1) | 3-4 |
| 28 U.S.C. §3582(c)(2) | 4 |
| 21 U.S.C. §802 | 4 |
| 18 U.S.C. §16(b) | 4 |
| 18 U.S.C. §924(c)(3)(B) | 5 |

Other

| | |
|--|---|
| Writ of Habeas Corpus | 2 |
| Federal Rule of Criminal Procedure 52(b) | 5 |

QUESTION(S) PRESENTED

- 1) Should there be a two-part test for the 28 U.S.C. § 2241 instead of a Five-part test, and should the test be based on (1) illegal unconstitutional confinement; and (2) a new change in statutory interpretation unavailable to petitioners.
- 2) Did Welch v. United States, 136 S.Ct. 1265 (2016) clarify the standard of retroactivity in all habeus corpus and creat a test based on (1) Due Process violations; and (2) a change during collateral proceeding.

NO. 18-5730

IN THE
SUPREME COURT OF THE UNITED STATES

TERRENCE DENMARK - PETITIONER

-VS-

UNITED STATES OF AMERICA - RESPONDENT

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner asks leave to file the attached Petition for a Writ of Certiorari without prepayment of costs and to Proceed In Forma Pauperis.

Terrence Denmark

Response To Respondents Memorandum

Comes now, Petitioner, Terrence Denmark "Petitioner" who files this Motion pro se, prays this Court construe this Motion liberally Haines v. Kerner, 404 U.S. 519 (1972). Petitioner files this Response to Respondents Memorandum in opposition to request that this Court Grant Certiorari to Clarify the split amongst the 4th, 6th, 9th, and 11th Circuits in regards to the Savings Clause of 28 U.S.C. § 2241. Petitioner brought this initial petition asking the following questions.

- (1) Should there be a two part test for the 28 U.S.C. § 2241 instead of a five part test and should the test be based on (1) Illegal unconstitutional confinement; and (2) a new change in Statutory Interpretation unavailable to Petitioners.
- (2) Did Welch v. United States, 136 S.Ct. 1265 (2016) clarify the standard of retroactivity in all Habeas Corpus and create a test based on (1) A Due Process Violation; and (2) a change during Collateral Proceedings.

Petitioner brought this questions to this Court for the simple fact that while his § 2241 Petition was pending in the Court of Appeals the Court of Appeals issued its opinion in McCarthan v. Goodwill Industries, 851 F.3d 1076. Then in McCarthan the Petitioner filed for a stay pending the resolution of McCarthan in this Court. During that procedure Petitioner stay was granted in the Court of Appeals. See Cert. PEDJA.4. Petitioner's Appeal was summarily dismissed because of the Ruling

in McCarthan v. Collins.⁽¹⁾ Petitioner's petition for Certiorari was filed on May 4, 2018. After that filing the 4th Circuit Court of Appeals decided United States v. Wheeler, No. 16-6073 decided March 28, 2018. Then the Sixth Circuit widen the split even further when it Ruled in Harrington v Ormand, No. 17-6229, Ruling that Barrage was retroactive and that the claim can be presented in a 28 U.S.C. § 2241 petition, in Wheeler the Petitioner was granted a remand back to the district court for an Evidentiary Hearing. In which the Petitioner was also entitled to an Evidentiary Hearing based on the 4th Circuit Interpretation of United States v. Simmons, 635 F.3d 140 (4th circuit). The question presented in this petition are of National Importance because there is 180,195 inmates in Federal Prison and roughly 2 million people confined in prison in America. The 28 U.S.C. § 2241 is the Greatest Writ in American History. The Memorandum in Opposition is opposite of what the Writ of Habeas Corpus⁽²⁾ presents to an inmate confined illegally in prison. The § 2255(e) provision "Savings Clause" not only provides Petitioner the ability to challenge their convictions but gives them the ability to bring previously unavailable claims into the Courts. For instance when a Petitioner is confined in a judicial district in which he/she is not sentenced 28 U.S.C. § 2241 offers the Petitioner the ability to challenge his/her confinement once they have exhausted all available remedies. in McCarthan v. Collins,

(1) Respondent's name change cause Petitioner was no longer "in custody" to meet the "confinement" Provision of 28 U.S.C. § 2241.

(2) Respondent conceded that there exist a Circuit conflict and that United States v. Wheeler, No. 18-420 (Oct. 3 2018) was filed AFTER Petitioner brought this petition to this Court for resolution of the Circuit conflict in which exist.

____ U.S. ____ (2017). Petitioner neither exhausted all available remedies even then Respondent conceded that there was an issue of National Importance "however" the Petitioner was released. Therefore, he would not benefit from the grant of Certiorari, because he was no longer "in custody". Therefore, McCarthan would be moot. "A case becomes moot when the issues presented are no longer, or the parties lack a legal interest in the outcome. When a defendant's sentence expires during legal proceedings that challenge the length of the term of imprisonment the case becomes moot unless Collateral consequences remains."⁽³⁾ The doctrine of Mootness derives from Article III of the U.S. Constitution. Petitioner is not only convicted in a Circuit in which the requirements to receive relief in a 28 U.S.C. § 2241 is nearly impossible there are thousands of similarly situated defendants in which sentences are illegally exhausted all available remedies but the Circuits interpretation of their confinement not only overrules their interpretation of what confines them, but offers them the ability to challenge their confinement. The Respondent raised a question about Mathis v. U.S., 579 U.S. ____ ____ (2016) and its applicability to Florida's §893.13(1), prior drug offense, that is misplaced because Florida changed its sentencing scheme and it must "include" "Mens Rea" and Petitioner "Never" conceded that he was in possession with "Intent" to Sell anything and 28 U.S.C. § 2241 affords Petitioner the ability to challenge the enhancement, Not Under the Guidelines. How the Respondent

⁽³⁾ Wheeler is no longer in custody.

interprets the Mathis claim is misplaced. Petitioner did not have the ability to bring a Mathis claim because Mathis, 579 U.S. ____ (2016) was decided in (2016). Petitioner's § 2241 & his § 3582(c)(2) Motion were still pending. However Petitioner's Florida § 893.13(1) Possession w/Intent no longer meets the definition of Serious Drug Offense under 21 U.S.C. 802 of the Control Substance Act, therefore since it has been changed in 2002 and Florida Constitution has been Amended, Nov. 6, 2018, "Any change in law that affects a defendants sentence is Retroactive". See Florida Constitutional Amendment. That substantive change not only proves that Respondent's argument is misplaced and Petitioner prays that this Court Grant Certiorari to clarify the Circuit split that exist pertaining to 28 U.S. . § 2241 "Savings Clause" Petitioner concedes that a Second and Successive is applicable once Retroactivity has been announced by this Court. That is not a sufficient nor an easy analysis when States are permitted to create their own interpretation of Supreme Court Precedents. That is why a Ruling that clarifies the requirement of Retroactivity, but sets a standard of what warrants relief under Retroactivity. Welch v. United States, 136 S.Ct. 1057 (2016) "stated" a Rule is substantive when it alters the range or conduct used for punishment. Since Welch, Id. this Court's rule in Session v. Dimaya, 585 U.S. ____ (2018) invalidated the 16(B) Residual, with Welch being a progeny of Johnson, and Dimaya automatically would be Retroactive. See In re: Rudolph Kidd, No. 18-13457-G (collecting cases) Dimaya not Retroactive; See Davis v. United States, ____ F.3: ____ (2018) Cert pending (Oct. 4, 2018). Then

the 9th Circuit ruled Dimaya is Retroactive and applies to the § 924(c)(3)(B). See United States v. Thanh⁴, ____ F.3d ____ (____). The Welch test is needed because in the event Congress passes any Legislation that is substantive and clarifies is misapplied sentencing provision. This Great Court will face another legal conundrum of what is Retroactive and what is not. Petitioner prays this Certiorari gets granted to resolve the applicability of Welch to the 28 U.S.C. § 2241 and All Habeas Petitions. Petitioner renews that he objects to Respondent's Interpretation the guidelines this Court in Roseles-Mirales, 583 U.S. ____ (2018) clarified when a Guideline Error would be considered under Federal Rule of Criminal Procedure 52(b) and create the 4th prong under Olan^o and clarified Molina-Martinez v. U.S., 579 U.S. ____ (2016). Petitioner neither brought Mathis v. U.S., 579 U.S. ____ (2016) in reference to the Guidelines. Petitioner prays this Court Grant Certiorari to clarify the issues presented above

Respectfully submitted,

Terrence Denmark
Terrence Denmark
Reg. No. 14465-018
F.C.C. Coleman Medium
P.O. Box 1032
Coleman, Florida 33521