NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

AMILCAR CABRAL BUTLER
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for
the Sixth Circuit in Cause No. 17-5371

PETITION FOR WRIT OF CERTIORARI FOR AMILCAR CABRAL BUTLER

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Amilcar Cabral Butler©

QUESTIONS PRESENTED

I. Does Butler's Statutory Mandatory Minimum Sentence Initially Imposed By The Judicial Branch And Later Commuted By The Executive Branch Bar Him From Seeking Reduction Even Further Pursuant To Amendment 782 To The Sentencing Guidelines.

LIST OF PARTIES

AMILCAR CABRAL BUTLER
Defendant/Appellant

United States Of America
Plaintiff/Appellee

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The Honorable Aleta Arthur Trauger
United States District Court Judge

United States Court Of Appeals
for the Sixth Circuit
100 E. Fifth Street, Room 540
Cincinnati, Ohio 45202-3988
Appellate Court

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI
FOR AMILCAR CABRAL BUTLER

Amilcar Cabral Butler© humbly prays for this Court's full consideration in that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Tennessee, **United States versus Amilcar C. Butler,** Crim. No. 3:02-00097 (MDTN February 14, 2017) , appears at Appendix A.

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished, United States versus Amilcar C. Butler, No. 17-5371 (6th Cir. Feb. 21, 2018), appears at Appendix B.

STATEMENT OF JURISDICTION

The Sixth Circuit offered its opinion on December 14, 2018. Butler filed a timely Petition for Rehearing and/or Rehearing En Banc which the Sixth Circuit denied on February 21, 2018. Later, Butler filed an application for a 60 day extension of time within which to file a petition for a writ of certiorari that extends the time to July 21, 2018. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3582(c)(2) provides:

> "[I]n the case of a defendant who has been sentenced to a term of imprisonmant based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. § 994(o), . . . the court may reduce the term of omprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

STATEMENT OF THE CASE

On September 19, 2002, a jury in the United States District Court for the Middle District of Tennessee, Nashville Division, found Amilcar C. Butler ("Butler") guilty of conspiracy to possess and attempted possession of five kilograms or more of cocaine in violation of 21 U.S.C. § 846. The district court determined that Butler was subject to a mandatory life sentence under 21 U.S.C. § 846 because he had two or more prior felony drug convictions and sentenced him to a term of life imprisonment. The Sixth Circuit affirmed Butler's conviction and sentence. United States v. Butler, 137 F. App'x 813, 820 (6th Cir. June 22, 2005).

On December 19, 2016, President Barack Obama commuted Butler's sentence to a 240-month term of imprisonment.[1] In January 2017, Butler filed the current petition, which discussed that his sentence should be reduced even further pursuant to Amendment 782 to the Sentencing Guidelines. Amendment 782 reduced by two levels most of the offense levels listed in the Guidelines' Drug Quantity Table. See U.S.S.G. § 2D1.1(c). Butler discussed that he was entitled to a reduced sentence because Amendment 782 reduced his base offense level from 32 to 30. See U.S.S.G. § 2D1.1(c)(5). The district court denied Butler's petition, finding that Butler was ineligible for relief under § 3582(c)(2), because his 240-months was a statutory mandatory minimum sentence. Butler filed a petition for reconsideration, which was denied as well.

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[1] When unbundling Butler's previous two life terms of imprisonment President Barack Obama (of the Executive Branch) found it prudent to commute Butler's sentence to 240-months, with only the supervise release remain intact.

On appeal, Butler challenged the district court's finding in denying his petition of eligibility for reduction of sentence pursuant to the 782 amendment, after the President commuted the Secured Party's Sentence.

The Sixth Circuit offered that Butler was not sentenced based on a guidelines range that was subsequently lowered by the Sentencing Commission and because his guideline sentence of life imprisonment was unaffected by Amendment 782, he is inelibile for relief under § 3582(c)(2).

REASONS FOR GRANTING THE WRIT

I. Does Butler's Statutory Mandatory Minimum Sentence Initially Imposed By The Judicial Branch And Later Commuted By The Executive Branch Bar Him From Seeking Reduction Even Further Pursuant To Amendment 782 To The Sentencing Guidelines.

"The Department of Justice's 'Drugs Minus Two' sentencing policy [was] adopted under then-Attorney General Eric Holder and codified in the Guideline through Amendment 782, effective November 1, 2014," and "[p]ursuant to that policy, the base offense level of many, but not all, drug crimes was retroactively reduced by two." United States v. Powell, 798 F.3d 431, 442 (6th Cir. 2013) (internal quotation marks and citation omitted). "The effective date of this amendment is November 1, 2014," but "offenders cannot be released from custody pursuant to retroactive application of Amendment 782 before November 1, 2015." Sentencing Guidelines for the United States Courts, Am. 782 to policy Stmt. § 1B1.10, 79 Fed. Reg. 44973-01 (Aug. 1, 2014).

Continuing on, "Federal courts are forbidden, as a general matter, to modify a term of imprisonment once it has been imposed, but the rule of finality is subject to a few narrow exceptions." Freeman v. United States, 564 U.S. 522, 131 S. Ct. 2685, 2690, 180 L. Ed. 2d 519 (2011) (internal

citation and quotation marks omitted). One exception identified in 18 U.S.C. § 3582(c)(2):

> [I]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission. . ., the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission. The United States Supreme Court has interpreted § 3582(c)(2) as setting forth two requirements for a sentence reduction. First, "the defendant [must] ha[ve] been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission[.]" United States v. Riley, 726 F.3d 756, 758 (6th Cir. 2013) (internal quotation marks and citation omitted). Second, "such reduction [must be] consistent with applicable policy statements issued by the Sentencing Commission." Id. (internal quotation marks omitted). If the reviewing court determines that the defendant is eligible for a sentence reduction, then "[t]he court may then 'consider whether the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a).'" United States v. Thompson, 714 F.3d 946, 949 (6th Cir. 2013) (quoting Dillion v. United States, 560 U.S. 817, 826, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010)).

In determining whether Butler has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the sentencing commission the court must first determine, "the amended guideline range that would have been applicable to the defendant had the relevant amendment been in effect at the time of the initial sentencing." Dillon, 560 U.S. at 827 (internal quotation marks and citation omitted); see also U.S. Sentencing Guidelines Manual § 1B1.10(b)(1). Other than substituting Amendment 782 for the corresponding provision applicable when Butler was originally sentenced, the Court "shall leave all other guideline application decisions unaffected." Id. And the Court "shall not" reduce a defendant's term of imprisonment to a term "less than the minimum of the amended guideline range," nor to a term "less than the term of imprisonment has already served." Id. § 1B1.10(b)(2)(A), (C). In addition to these limits, section 1B1.10 states that a court must also consider the § 3553

factors and the danger to the public created by any reduction in a defendant's sentence. Id. at cmt. n.1(B). A court may further consider a defendant's post-sentencing conduct. Id.

Section 1B1.10 of the Sentencing Guidelines addresses reductions under § 3582(c)(2):

> In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement is warranted, the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. U.S. Sentencing Guidelines Manual § 1B1.10(b). Amendment 782 is listed in subsection (d). Id. § 1B1.10(d).

A defendant's amended guidelines range is calculated by using the procedures set forth in section 1B1.1(a). Id. § 1B1.10 cmt. n.1(A); United States v. Joiner, 727 F.3d 601, 604 (6th Cir. 2013). Accordingly, in calculating Butler's amended guidelines range, the reviewing court ordinarily must first substitute the revised base offense level provided by Amendment 782 and then apply the trumping provisions of sections 5G1.1 and 5G1.2 as appropriate. See Joiner, 727 F.3d at 605 (discussing the procedure for calculating a defendant's amended guideline range in light of the revised base offense levels for crack cocaine offenses provided by Amendment 750).

Section 5G1.1 provides, in relevant part, that "[w]here the statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence." U.S. Sentencing Guidelines Manual § 5G1.1(b). Section 5G1.2 provides, in relevant part, that "the sentence to be imposed on a count for which the statute (1) specifies a term of imprisonment to be imposed; and (2) requires that such term of imprisonment be imposed to run consecutively to any other term of imprisonment, shall be determined by that

statute and imposed independently." Id. § 5G1.2(a).

A. Courts Can Disagree With The Career Offender Guideline

This Court may sua sponte find it prudent to consider the question whether a district judge is entitled to disagree with the career offender Guideline. More importantly, the previously decision-maker(s) offered "Amendment 782 reduced by two levels most of the offense levels listed in the Guidelines' Drug Quantity Table. See U.S.S.G. § 2D1.1(c)" (COA at 1).[2] However, the Supreme Court offered that judges may disagree with the Guidelines' equation of crack cocaine to 20 or more times the quantity of powder cocaine, see Kimbrough v. United States, 552 U.S. 85, 128 S. Ct. 558, 169 L. Ed. 2d 481 (2007).

Kimbrough authorized district judges to disagree with the Sentencing Commission but not with statutes. In the Supreme Court, the Solicitor confessed error in United States v. Vazquez, 558 F.3d 1224 (11th Cir. 2009), on which the Seventh Circuit in Welton had relied. The Justices vacated Vazquez and remanded for reconsideration in light of the Solicitor General's position, 130 S. Ct. 1135, 175 L. Ed. 2d 968, 2010 U.S. Lexis 736 (U.S. Jan. 19, 2010)-- a step that, though it does not endorse the Solicitor General's views, it dictates receptivity to them. The Solicitor

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[2] At least four courts of appeals (including the Sixth Circuit) have concluded that sentencing judges may disagree with the policy behind § 4B1.1 See United States v. Michael, 576 F.3d 323, 327-28 (6th Cir. 2009); United States v. Clay, 524 F.3d 877, 878 (8th Cir. 2008); United States v. Boardman 528 F.3d 86 (1st Cir. 2008); United States v. Sanchez, 517 F.3d 651, 664-65 (2d Cir. 2008); Cf. In re Sealed Case, 548 F.3d 1085, 1087, 383 U.S. App. (D.C. Cir. 2008), which assumes that this view is sound. In United States v. Welton, 585 F.3d 494 (7th Cir. 2009), the Seventh Circuit cited United State v. Jimenez, 512 F.3d 1, 8 (1st Cir. 2007), as a decision holding that senten judges may not disagree with § 4B1.1, but Boardman shows that the first circuit itself does not read the language in Jimenez that way. (The crack/ powder ratio was irrelevant in Jimenez because the defendant had so much cocaine that the statutory maximum sentence recommended by § 4B1.1, would have been life imprisonment even if all of his sales had been cocaine powder

General additionally supported United States v. Corner, 598 F.3d 411 (7th Cir. March 3, 2010) position, and the vacatur of Vazquez, occurred after Welton and were not considered in that decision.

United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 160 L. Ed. 2d 621 (2005), holds that the Sentencing Guidelines are advisory and that judges may vary from their recommendations as long as they respect all statutory requirements. Before Kimbrough most circuits, including this one, thought that the 100-to-1 ratio between crack and powder cocaine then used in the Guidelines (the ratio was reduced in 2007 by Amendment 706) must be treated as a statutory rule, not only because the 100-to-1 ratio comes from § 841 but also because the sentencing Commission's efforts to change the ratio in the Guidelines had been rejected by status disapproving proposed amendments. See United States v. Miller, 450 F.3d 270 (7th Cir. 2006). Kimbrough disagreed with that understanding and concluded that the ratio in the Guidelines is the work of the sentencing Commission rather than Congress, and that district judge may use their own assessment of the appropriate ratio rather than Sentencing Commission's.

When some circuits held, in the wake of Kimbrough, that judges may vary from the Guidelines crack/powder ratio only if the facts of particular cases make it application unjust, the court responded that a sentencing court's power is general: "district courts are entitled to reject and vary categorically from the crack-cocaine Guidelines based on a policy disagreement with those Guidelines." Spears v. United States, 129 S. Ct. 840, 843-44, 172 L. Ed. 2d 596 (2009). Some courts initially understood Kimbrough and Spears to mean that district judges are at liberty to reject any Guideline on policy grounds--though they must act reasonably when using that power. As the Seventh Circuit remarked in United States v.

Kirkpatrick, 589 F.3d 414, 416 (7th Cir. 2009), "[t]he allowable band of variance is greater after Booker than before, but intellectual judgment is to be guided by sound legal principles.' United States v. Bun, 25 F. Cas. No. 1469 2d (No. 14692d) (C.C. Va. 1807) (Marshall, C.J.)." So long as a district judge acts reasonably, however, the Sentencing Commission's policies are not binding.

More importantly, sentencing judges must implement all statutes, whether or not the judges agree with them--but all 28 U.S.C. § 994(h) requires is that the Sentencing Commission set the presumptive sentencing range for certain serial criminals at or near the statutory maximum. Guideline 4B1.1 in turn provides a bench mark that every judge must take into account. See Rita v. United States, 551 U.S. 338, 351, 127 S. Ct. 2456, 168 L. Ed. 2d 203 (2007); Gall v. United States, 552 U.S. 38, 49, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007). The need to consider this reference point does not imply that the sentence must be within the range. 551 U.S. at 351. A sentencing judge needs to understand the Commission's recommendations, which reflect (among other things) the goal of avoiding unwarranted disparities in how different judges treat equivalent offenses and offenders. 18 U.S.C. § 3553(a)(6); United States v. Bartlett, 567 F.3d 901, 907-09 (7th Cir. 2009). But Booker, Kimbrough, and Spears conclude that a judge who understands what the Commission's recommendation categorically, as well as in a particular case. Because § 4B1.1 is just a Guideline, judges are as free to disagree with it as they are with § 2D1.1(c) (which sets the crack/powder ratio). No judge is required to sentence at variance with a Guideline, but every judge is at liberty to do so.

Several statutes raise the sentences of recidivists. See United States v. Wicks, 132 F.3d 383, 385 (7th Cir. 1997) (listing some of these laws). Sentencing judges must honor these statutes punctiliously. But § 994(h) does not set a floor under sentences; it sets a floor under one of the Sentencing Guidelines. That the floor in § 4B1.1 is linked to the statutory maximum sentence for the crime of conviction does not make § 4B1.1 itself a statute; it remains a Guideline. Booker, Kimbrough and Spears holds that § 4B1.1 differs from other Guidelines. The decisions on which Welton principally relied, including United v. Harris, 536 F.3d 798, 813 (7th Cir. 2008); United States v. Clanton, 538 F.3d 652, 660 (7th Cir. 2008), and United States v. Millbrook, 553 F.3d 1057, 1067 (7th Cir. 2009), likewise were overruled on the issue in United States v. Corner, 598 F.3d 411 (7th Cir. March 3, 2010).

B. Reducing Sentence Even Further Pursuant To Amendment 782 To The Sentencing Guidelines After Being Granted Executive Clemency

On December 19, 2016, President Barack H. Obama granted Butler's application for commutation of his two statutory mandatory minimum life sentences to 240 months, with the supervise release to remain intact. The Obama administration outlined eight (8) factors that must be met in order to be eligible for Clemency: 1. Petitioner must currently be serving a sentence that would be substantially lower if convicted for the same offense(s) today; 2. Petitioner must be a non-violent offender; 3. Petitione must be a low Level offender; 4. Petitioner must not have significant ties to large scale criminal organizations, gangs or cartels; 5. Petitioner must have served at least ten years of his prison sentence; 6. Petitioner must not have a significant criminal history; 7. Petitioner must have demonstrated good conduct in prison; and 8. Petitioner must have no history of violence prior to or during their current term of imprisonment. See

United States v. Kupa, 976 F. Supp. 2d 478 (E.D. NY. Oct. 9, 2013).

Lastly, the discretionary nature of the reduction and a high percentage of the motions seeking retroactive application of Amendment 782 have been granted. See, United States Sentencing Commission, 2014 Drug Guidelines Amendment Retroactivity Data Report, Table 1 (Jan. 2017), available at /sites/default/files/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20170130-Drug-Retro-Analysis.pdf. See 2017 U.S. Dist. LEXIS 74538::United States v. Hughes::May 16, 2017 (N.D. Ill. May 16, 2017).

Butler offers a novel question to this court, in which a President commutes a prisoner's sentence from an original statutory mandatory minimum and reduces even further his new guideline sentence of today pursuant to Amendment 782 to the Sentencing Guidelines.

Since President Barack H. Obama made Butler's new guideline 240-month sentence on December 19, 2016, substantially lower than his long past original statutory mandatory minimum life sentences under 21 U.S.C. § 846,[3] he is eligible for further relief.

CONCLUSION

The petition for writ of certiorari should be granted.

Authorized Representative

Amilcar C. Butler, sui juris

I declare under the penalty under the laws of the united States of America and Common that the foregoing is true, correct and not meant to mislead.

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[3] See, U.S. Department of Justice, National Institute Five Things About Deterrence, (May 2016), available at (stating that based on the current state of theory and empirical knowledge, "prison sentences (particularly long sentences) are unlikely to deter future crime").