

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Gene L. Barris — PETITIONER
(Your Name)

vs.

8th Circuit Court of Appeals RESPONDENT(S)
Gruender, Bowman, Erickson Circuit Judges
ON PETITION FOR A WRIT OF CERTIORARI TO

8th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gene L. Barris 41164044
(Your Name)

Po Box 1000
(Address)

Lewisburg, Pa. 17837
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. How can a sentencing Court sentence a defendant outside of the Guidelines originally outlined in the defendant's plea agreement. Does that not breach the contract the two parties both agree to.
2. How or can a sentencing Judge sentence a defendant with a 3553 downward departure (mental health history, lack of parental Guidance) at original sentencing hearing. Then when defendant shows that he was sentenced unconstitutionally and in violation of his Rights to due process as a ACCA and career offender. Sentencing Judge then sentences said defendant without fact downward departure being applied to defendant's new lower guideline range when those sentencing factors have not changed or been challenged by the government.
3. Does repeated denial of review by Public Defender's Office in Light of Johnson constitute a violation of due process. Also is the fact that defendant had to point out conflict of interest between defendant and Public Defender's Office a violation of defendant's Rights.
4. Does the fact that sentencing Judge orders and grants motion to vacate set aside or correct count as a defendant's 3553 motion.
5. Can a U.S. District Attorney threaten a defendant with enhancement to persuade him not to have a suppression hearing for fear of losing acceptance of responsibilities points. Also to persuade him to sign a plea agreement to avoid enhancements that he does not qualify for.
6. Does the fact that I asked original attorney at my sentencing to appeal my decision in Circuit Court and he advised that I had no appealable issues not prove that he was ineffective since I have been granted relief.
7. My original sentencing Attorney Phil Pormagr advised me not to have a suppression hearing based on a letter from U.S. Attorney Tim Willis. The informant in question stated that I sold him drugs during a time period it has been proven that I was incarcerated at that time does that not bring into question the validity of the relative conduct portion of my PSI.

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Apprendi v New Jersey	
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Gall v United States	
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STATUTES AND RULES

18 USC 922(g)(1)
18 USC 3553(A)
21 USC 841 (a)(1)
21 USC 841 (b)(1)(A)

OTHER

1. Letter from Public Defender office - Michael Skrein
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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:

Judge Bowman - UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Judge ERICKSON - UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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 _____ 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 _____ 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 March 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: March 21, 2018, 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. § 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 violations of defendant's 6th Amendment and 2nd Amendment Rights.

Claim of ineffective assistance of counsel
And claim of Abuse of discretion by
District Court Judge.

STATEMENT OF THE CASE

A Federal Grand Jury Indictment was filed charging Gene Lemoy Barris, herein after Appellant, in Count I for possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. §41 and punishable under 21 USC §841 (b)(1)(A), and Count II for being a felon in possession of a firearm in violation of 18 U.S.C. 922(q)(1). On September 15 2014 a plea of guilty was entered by Appellant on Counts I and II pursuant to a guilty plea agreement signed by both parties. A presentence investigation report was prepared and accepted by the government and by Appellant. An officer revised Final Presentence Investigation Report was filed with the court. As noted therein, the Presentence Investigation Report made determinations that were not part of the plea agreement. In particular the United States Probation office concluded that Appellant was a career offender under USL 4.(b)(1), and further that he had sufficient prior predicate offenses to qualify him as an armed career offender. Sentencing was held on Dec 15, 2014 at which time the court imposed a sentence of 216 months in the Bureau of Prisons as to each Count I and II, to be run concurrently. In July of 2016, Appellant filed a motion for relief under Johnson v. United States 133, S.Ct. 2551 (2015) and the District court ordered that the motion be treated as an independent filing of a request under 28 USC 2255 and docketed as Barris v. US Case number 1:16-cv-00207-JR. Counsel was appointed after defendant pointed out there was a conflict of interest with the Public Defenders office. A motion was filed twice issues as to whether or not Appellant at his original sentencing was properly found to be subject to the ACCA or the Sentencing Guidelines career offenders provision. Ultimately the District court found that Appellant did not have sufficient prior criminal convictions to qualify as a ACCA or career offender. Court set aside. over →

Judgement from conviction on Dec of 2014. On March 20th 2017, An amended judgement was entered as to counts I and II. Appellant was sentenced to a term of 204 months on Count I, and 120 months as to Count II.

REASONS FOR GRANTING THE PETITION

The Attorney appointed to me in my original sentencing, Phil Dorman, failed to determine the truth when it comes to the relative conduct attributed to me as it pertains to the statements made by Jason Roper. He failed to interview or question MR Roper even after I told him I was incarcerated at the time MR Roper stated he bought drugs from me. Pursuant to Strickland v Washington his actions were prejudicial and inadequate and undermined the truth finding process. Had he also objected to the fact that the Government sentenced me with enhancements that were not part of my plea agreement I would not have been sentenced to 216 months on count II instead of the statutory maximum of 120 months. The mere fact that he did not object during these proceedings proves his ineffectiveness. If not for his ineffectiveness Judge Ross could have not been placed in the mindset to sentence me as a career career offender and I could have got a significantly lower sentence the 216 months. The fact that I was sentenced with these enhancements (also in error) severely prejudice Judge Ross's decisions and caused great error in my case. When I asked MR Dorman if I had any appealable issues he could have relied on the rulings of Apprendi v New Jersey, 530 U.S. 466 120 S.Ct. 2348, 147, F.3d 435 (2000)

that held that "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. The U.S. Probation office was in error when it submitted a Presentencing Report stating that I qualified as a ACCA, and a career offender. The United States v Booker 125 S.Ct. 738, 160 F.3d 621 (2005) reaffirmed Apprendi and decided the holding in Blakely v Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 F.3d 403 (2004) was applicable to the Federal Sentencing Guidelines. According to the Supreme Court, the Sixth Amendment requires that it be proved beyond a reasonable doubt any facts other than prior convictions which are "necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty."

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Reason for Granting the Petition.

On Dec 14 2014 Gene Lemay Barris was sentenced in Federal District court. Count I for possession with intent to distribute 50 grams or more of methamphetamine in violation of 21 U.S.C. 841(a)(1) and punishable under 21 U.S.C. 841(b)(1)(A) and Count II for being a felon in possession of a firearm in violation of 18 U.S.C 922(g)(1). A presentencing report was prepared and was accepted by the Government and appellant. Later an office Revised Final Presentencing Investigation Report was filed with the court. As noted therein the Presentence Investigation Report made determinations that were not part of the Plea agreement signed by Appellant. In particular the United States Probation office concluded that Appellant was a career offender under USC 4(b)(1) and further that Appellant had sufficient higher predicate offenses to qualify as a armed career criminal. At the time of sentencing Defendants Attorney Phil R. Dommeyer did not object to these findings, And also advised defendant not to have pretrial suppression hearings that could have challenged relative conduct that could have been excluded. Phil Dommeyer advised defendant that having these hearings could jeopardize defendants acceptance of responsibility points if defendant were to lose said hearings. Sentencing was held on Dec 15, 2014 at which time the court imposed a sentence of 216 months in the Bureau of Prisons.

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as to each of counts I and II. Defendants attorney Phil Dommier did not object to my being sentenced as a career and armed career offender. And advised me that this was the best possible outcome that could be expected. In June of 2015 I wrote the Public Defenders office asking for a review of my file to see if I was eligible for Relief under Johnson v United States B 135 S. (4) 2551(2015) Public Defender Michael Skrein wrote me back telling me that his office would not be filing any motions on my behalf and that I qualified as both a career and ACCA offender. I then wrote Judge John A Ross asking him to court order the Public Defenders office to review my file to see if I was entitled to Relief under Johnson. I was again contacted by Michael Skrein and told that I would not be getting any help from his office but I would be free to obtain private counsel. I then remembered that Michael Skrein's office defended one of the informants in my case "Jason Roper" I then wrote Judge John A Ross and explained to him the Michael Skrein was prejudiced to my case and by asking him to review my file it was creating a conflict of interest

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and violating my Sixth Amendment Right to Counsel that is free from conflict of interest. In July of 2016 the District Court ordered that A motion be filed and treated as an independent filing of a request for relief under 28 USC 2255 and docketed as *Barris v. United States* (case number 1:16-cv-00207-JR). Michael Skrein filed the motion then filed a motion to be allowed to leave my case due to conflict of interest. Stephen Wilson was appointed and a motion was filed raising issues as to whether or not Appellant at his original sentencing was properly found to be subject to the enhanced sentencing ranges of the Armed Career Criminal Act or the sentencing guideline enhancements of the career offender provisions. Ultimately, the District Court found that I did not have sufficient prior criminal convictions to qualify as an Armed career criminal, or a career offender. In a Judgment Dated January 10, 2017 Judge Ross granted the motion in my favor and vacated and set aside the Judgment of conviction from December 15, 2014. On March 20, 2017, a judgment was entered with respect to the guilty pleas on Counts I, II, of said

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Indictment. I was sentenced to a term of 204 months on Count I, and 120 months on Count II.

Sentencing Issues.

My first issue has to do with the representation I received from my First Attorney, Phil R. Dormeyer. During my sentencing his advice was faulty and he caused me serious and irreversible harm. I wanted to have a suppression hearing in regards to the 2.2 kg of relative conduct drug quantity in my plea agreement. Phil Dormeyer contacted the US Attorneys office expressing my disagreement with the drug quantity being attributed to me. At first the number of weight was 14.6 kg. I told Mr. Dormeyer that the government informant was lying, telling the government what they wanted to hear to get time off his sentence. The informant Jason Roper stated that he was using me for a source of supply for methamphetamine for 3 years prior to 2013. I told Mr. Dormeyer to check and confirm my statement that I was incarcerated in the Arkansas prison system during this time period. He did so the quantity was dropped to 6.58 kg. I refused to sign the plea agreement. He then

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contacted the U.S Attorney Tim Willis and told him that I had issues with the drug quantity I was responsible for. Tim Willis wrote Mr. Dormeier. Back and Mr. Dormeier sent me a copy of said letter (I have included a copy) Mr. Willis stated that I had priors and Mr. Roper was prepared to testify against me. And that If he filed on my priors that I could face life plus 5 years. This letter scared me and influenced my decision making. Mr. Dormeier told me that I would be facing a life sentence if I went to trial and that if Mr. Willis filed for enhancement then even if I pled out I could get 30 years and so forth and so on. He advised me that If I lost at suppression hearing I could have to forfeit my acceptance of responsibility points and end up with more time than if I signed the plea with 2.2 kg of relative conduct drugs in it. His advice on this matter caused me to plead guilty when I could have had the suppression hearing and then not been subject to the guidelines that I

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was subject to. Instead of 262 to 327 months I could have been subject to 146 to 188 months. Mr. Darmeyer was also ineffective at my sentencing hearing when he did not object to my being sentenced to enhancements that were not part of my plea agreement. had he done so at my sentencing hearing. I could have received a sentence less the 216 months.

After my sentencing hearing I asked Mr. Darmeyer did I have any chance at an appeal he advised me that I did not and that I got the best sentence I could hope for.

I wrote him a month after sentencing to ask him to file an appeal on my behalf he told me to contact the public defenders office or hire a private attorney if I could afford one.

My next issue has to do with the fact that The Public Defenders office of Southeast Missouri refused to review my case when Johnson was ruled on. Michael Strickland refused on two different occasions to review my file to see if I was eligible for relief in light of Johnson. He and his office defended the informant on my case "Jason Roper". By even looking at my

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file Michael Skrein violated my Sixth Amendment Right to be free from a conflict of interest. It was not until I wrote Judge John A Ross and notified him that Michael Skrein's office defamed ^{the} Informant in my case that A motion was filed to vacate my sentence when I was due relief in 2015. Like all the other people with a Johnson issue. An actual conflict of interest occurs when during the course of representation the attorney's and the defendant's interest diverge with respect to a material, factual, or legal issue or to a course of action.

My next issue is that the District Court erred procedurally and substantively by imposing a sentence of 204 months under the guidelines as calculated, when taken in consideration of the original sentence of 216 months under guidelines finding Appellant to be subject to the Armed career criminal enhancements and the career offender guidelines. My request is to have the judgement reversed and have case remanded to District Court with directions that the court should reconsider sentence and enter a lower more appropriate sentence consistent with the downward variance

applied at the original sentencing. I contend that procedural error occurred because district court failed to give consideration to all of the 3553(a) factors. Of (mental health history and lack of parental guidance) and failed to adequately explain the chosen sentence. This was a violation of Gall v United States, 552 U.S. 38 (2007) and amounted to an abuse of the District Court's discretion. I also contend that the district court failed to give adequate consideration to my post-conviction rehabilitative activities; including the completion of the Challenge Program, The Seven Habits of Highly Effective Living, Numerous Adult Continuing Education classes and Acting as a mentor and a GED tutor. My original sentencing guideline was 262 to 327 at resentencing my guideline was dropped to 188 to 235. The only difference in circumstances between the original sentencing and the resentencing were the absence of application of the Armed Career Criminal provisions, and the career offender guidelines applications. The underlying facts facing the District court remain the same. So how did I receive only a 12 month reduction in my overall sentence. This does not seem to take into account the factors in Appellants life which led the court

To make the dramatic downward variance at the original sentencing. Moreover given the rehabilitative efforts made by the Appellant during his time in incarceration, it would argue in favor of a downward variance of equal if not greater amount from the applicable guideline range as calculated.

My last issue has to do with the ineffective Representation I received from the court Appointed Attorney at my resentencing hearing on March 20 2017. His name was Stephen Wilson. I only had the chance for one Attorney visit from him before my hearing I requested copies of all motions PSR reports and any other relevant material concerning my resentencing. He did not provide them but assured me I would be looking at a sentencing of 100 to 156 months. I am providing letters from him showing his inability to grasp the concepts of my case and the confusion he displayed when trying to give me his faulty and erroneous advice. Any time there is a (PSR) Presentencing Report produced I am entitled to a copy so that I may help in the preparation of my defense without it I can not be aware of what the Government is trying to use against me. Mr. Wilson did not provide

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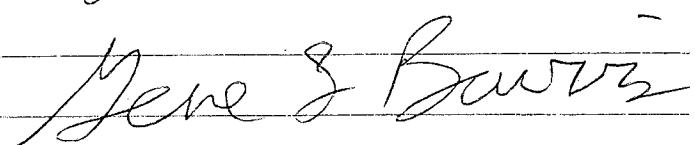
me with this until after I was resentenced by that time it was to late. I also expressed concerns with him about the overstating of my criminal history score by the government. My disagreement with the drug quantity I was charged with and the fact that the government did not abide by my plea agreement. His advice to me was that I had proved that I was not a first criminal or a career criminal and that I would be receiving a sentence somewhere in the neighborhood of 100 to 156 months and that I should be happy of that and not bring all the other issues up at my hearing and offset the sentence I had coming. Listening to his advice caused me irreparable harm and effected the amount of time I received because I did not bring up my issues that I wanted to. He did not have a complete grasp on the relevant issues of my case and his representation was clearly ineffective.

To sum up this argument every attorney that had any action on my case was ineffective. Both Phil R. Dommeyer and Stephen Wilson just went through the motions of defending me and Michael Skrein violated my 6th Amendment Rights.

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For the above reasons, this case should be remanded to District Court for resentencing and Directions should be given to the District Court that it should impose a sentence of a bearing a rational and reasonable relationship to the downward variance as determined by the District Court in the original sentencing and apply such factors to the recalculated sentencing guidelines as existed as sentencing. Also I would like to resentence to Guidelines that qualify for the Drug amounts that I was in possession of at the time of my arrest.

Respectfully submitted
Gene L. Barris



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Appellant should be resentenced with a variance that reflects the downward departure at original sentencing and also with out the disputed relative conduct amounts in PSZ. Also sentencing should reflect the variance Appellant would have received had not his Attorneys not been ineffective.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gene S. Barry

Date: May 14th 2018