
No. 18-6096

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL JACKSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

SECOND SUPPLEMENTAL BRIEF OF PETITIONER

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TABLE OF AUTHORITIES

Cases

Fabian Jackson v. United States, 2018 WL 6681458 (8th Cir. Dec. 19, 2018). 1

Walker v. United States, 900 F.3d 1012 (8th Cir. 2018)..... 1, 2

Statutes

28 U.S.C. § 2255..... 1

Rules

Sup. Ct. R. 15.8 1

SUPPLEMENTAL BRIEF

Pursuant to Supreme Court Rule 15.8, Petitioner wishes to alert this Court to the Eighth Circuit Court of Appeals' recent decision in *Fabian Jackson v. United States*, ___ Fed. Appx. ___, 2018 WL 6681458 (8th Cir. Dec. 19, 2018). We have previously pointed out that Fabian Jackson is the brother and co-defendant of Mr. Jackson, and that Fabian Jackson's appeal presents an indistinguishable legal issue as Michael Jackson's petition for certiorari.

In *Fabian Jackson*, the Eighth Circuit "vacate[d] the order denying Jackson's second [§ 2255] motion and remand[ed] to the district court to determine in the first instance whether Jackson has shown by a preponderance of the evidence that his successive § 2255 claim relies on *Johnson*'s new rule invalidating the residual clause." 2018 WL 6681458, *1. The outcome in Fabian Jackson's case highlights why, at a minimum, the Eighth Circuit erred in denying Michael Jackson a certificate of appealability. Fabian Jackson's appeal was reversed based on the Eighth Circuit's "silent record" test announced in *Walker v. United States*, 900 F.3d 1012 (8th Cir. 2018), and there would appear to be no reason why the outcome should be different for Michael Jackson's case.

But merely remanding Michael Jackson's case to the Eighth Circuit would be insufficient to cure the constitutional harm that exists to him---and many other defendants in the Eighth Circuit---- which are on the wrong side of this circuit split regarding "silent record" § 2255 cases. The test in *Walker* is wrong, and the "factual remands" ordered by the Eighth Circuit (to Mr. Walker, Fabian Jackson, and

others) are an illusory remedy, *precisely because the evidentiary record is silent*. Therefore, Mr. Jackson's petition for certiorari should be granted by this Court and the merits of the case heard by this Court, because defendants in unfavorable circuits like the Eighth Circuit will otherwise continue to serve unconstitutional sentences based on the ACCA's void residual clause.

Finally, it should be noted by this Court that the Eighth Circuit denied the petition for rehearing *en banc* in *Walker* on November 26, 2018, but only after four judges of that court indicated that the motion should be granted and the case reheard. *See Walker Order* in 16-4284 (Judges Colloton, Smith, Kelly and Erickson voting in favor of granting petition for rehearing). Because *Walker* is now final, this Court is the last remaining hope for the plethora of defendants impacted by *Walker*'s flawed reasoning.

Respectfully submitted,

s/ Dan Goldberg
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Attorney for Petitioner