

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Tracey L. Johnson — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Tracey L. Johnson 65304041
(Your Name)

FCI Elkton, Po Box 10
(Address)

Lisbon Ohio 44432
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether a defendant should be subject to a mandatory 25 year consecutive 924(c) sentence for the same drug Conspiracy based on the facts that in a two hour time frame the Agents instructed the informant to continue to purchase drugs . The location being the same , Agents remaining the same advising and instructing the same informant , with the same surveillance team for both transactions , also the location , firearm , and the drugs remained the same .

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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APPENDIX B Sixth Circuit Court of Appeals Order dated 7-27-2018

APPENDIX C District Court Order dated 4-5-2017

TABLE OF AUTHORITIES CITED

CASES

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Hill v. Masters, 836 F.3d 591- 595 (6th Cir. 2016)

United States v. Vichitvongsa, 819 F.3d 260 (6th Cir. 2016).

United States v. Nabors, 901 F.3d 1357- 58 (6th Cir. 1990)

STATUTES AND RULES

28 U.S.C. Sec. 2241

18 U.S.C. Sec. 924(c)(1)(C)(i)

28 U.S.C. Sec. 2255(e) "savings clause"

OTHER

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 A 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[] is unpublished.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[] is unpublished.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 C 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 16 - 19 - 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: 7 - 27 - 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 4 - 5 - 2017.
A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: 4 - 24 - 2017, 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

Petitioner Tracey L. Johnson continues to be unlawfully deprived and restrained of his liberty by virtue of an illegal and erroneous sentence enhancement predicated upon Title 18 U.S.C. 924(c) . Although Petitioners numerous Pro se pleadings has squarely presented this error to the courts below ; Relief has been denied and facts ignored , and a denial of the equal protection of the Law and Constitution of the United States i.e. the fourteenth and sixth Amendments , resulting in cruel and unusual punishment in violation of the Eight Amendment .

STATEMENT OF THE CASE

On January 9, 2017 . petitioner Johnson filed a Writ of Habeas Corpus for relief , raising a claim of Actual Innocence of Title 18 U.S.C. 924(c) 25 year enhancement . The primary issue raised in petitioners 28 U.S.C. Sec. 2241(c)(3) Petition , was that his Immediate Custodian Respondent Federal Prison Warden S. Merlak , (Executive Branch of Government) is unlawfully detaining Petitioner Johnson , in involuntary servitude in federal Custody for conduct not deemed punishable as prescribed for an 25 year enhancement under 18 U.S.C. 924(c) . Specifically Petitioner asserts that his 25 year enhancement under 18 U.S.C. 924(c) that was received for conduct that arose out of the same Conspiracy . (Conspiracy to Distribute Crack cocaine) is not a violation of 18 U.S.C. 924(c)(1)(C)(i)

Petitioner Charges that error by the courts has resulted in his unlawful detention i.e. "Petitioner Johnson , present physical confinement" by his Immediate Custodian , Respondent Federal Prison Warden S. Merlak , (Executive Branch of the Government) and that petitioner is being detained in violation of his Equal Protection of the Law i.e. Fifth, Eight and thirteenth Amendment and his Constitutional Right secured and guaranteed to Petitioner Johnson , pursuant to the United States Constitution , and Petitioner's fundamental right to be free from the Respondent Federal Prison Warden S. Merlak , (Executive branch of the Government) unlawful Executive Detention.

Disposition

On April 5th , 2017 the United States District Court for the Northern District of Ohio Eastern Division , denied petitioner Johnson's , Writ of Habeas Corpus 28 U.S.C. 2241(c)(3) stating that the proper vehicle to assert such a challenge is a motion to vacate pursuant to Title 28 U.S.C. sec. 2255. See: .lower Courts Order dismissing Petition Johnson Writ of Habeas Corpus , attached hereto marked as Appendix (A).

On or about April 7th , 2017 , Petitioner clearly established that 28 U.S.C. Sec: 2255 was inadequate and ineffective whereas a matter of fact and Law . Petitioner Johnson sentencing court in the southern district of Ohio (Columbus Ohio) pursuant to 28 U.S.C. sec: 2255(e) Savings Clause has no subject matter jurisdiction and/or personal jurisdiction over Petitioner Johnson present physical confinement.

On June 19, 2018 the U.S. Sixth Circuit court of Appeals affirmed the lower District Court order dated 4/5/2017 . Petitioner subsequently filed for a rehearing and rehearing En Banc in the Sixth circuit court of Appeals on June 26 , 2018 .Petitioner Johnson raised the Constitutional Question , Whether a defendant is subject to the 25 year 18 U.S.C. sec: 924(c)for a drug conspiracy were the offences accrued at the same location two hours apart and have the exact same element and is considered as " part of the same common scheme and plan". As the sixth circuit noted in Vichitvongsa 819 f.3d 260(6th cir 2016)" a single agreement to commit several crimes constitutes "One Conspiracy".

REASONS FOR GRANTING THE PETITION

The Supreme Court should within the interest of Justice grant this Writ of Certiorari because it is the judicial and province of this Court to Judicially review this matter , based on the conduct of the Agent / Detectives advising the informant to purchase more crack cocaine that day . Doing so petitioner Johnson was given a 25 year enhancement under 18 U.S.C. 924(c) for conduct that occurred in the same conspiracy . As the Sixth Circuit noted in United States v. Vichitvongsa 819 F.3d 260 (6th Cir. 2016) a single agreement to commit several crimes constitutes "One Conspiracy" . The two drug crimes have the exact same elements and is considered as part of the same common scheme an plan.

CONCLUSION

The Petitioner Prays that pursuant to the above mentioned described reasons this most Honorable Supreme Court should grant the petitioner petition for Writ of Certiorari and reverse the lower U.S. sixth circuit Court of appeals Order dated June 19th, 2018 affirming the District Court's judgment .

Respectfully submitted,

Tracey L. Johnson

Date: 9/19/2018