18-6212

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2018

THOMAS BURGESS

Pro-se Petitioner

vs.

WARDEN, F.C.I. MARIANNA

Respondent

_____/

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

EMERGENCY PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. IF A DEFENDANT DID TRY TO PERSUADE THE COURT OF APPEALS TO CHANGE ITS BINDING PRECEDENT BUT WAS UNSUCCESSFUL, WOULD THE DEFENDANT BE ABLE TO SEEK RELIEF UNDER THE SAVINGS CLAUSE OF 28 U.S.C. § 2255(e) IF YEARS LATER THE COURT OF APPEALS CHANGED ITS PRECEDENT TO WHAT THE DEFENDANT TRIED TO PERSUADE THE COURT TO CHANGE ITS PRECEDENT TOO ?

2. IF THE DISTRICT COURT USED A TRAFFIC STOP AGAINST A DEFENDANT AS A INTERVENING ARREST AT SENTENCING, THAN YEARS LATER BINDING PRECEDENT IS ISSUED THAT SAYS A DISTRICT COURT IS NOT ALLOWED TO USE A TRAFFIC STOP AS A INTERVENING ARREST AGAINST A DEFENDANT AT SENTENCING, WOULD THE DEFENDANT BE ABLE TO SEEK RELIEF UNDER THE SAVINGS CLAUSE OF 28 U.S.C. § 2255(e) ?

3. IF A DEFENDANT IS DENIED A REDUCTION OF HIS SENTENCE UNDER AMENDMENT 782 BECAUSE THE DISTRICT COURT INCORRECTLY APPLIED A DEFUNCTED 10 YEAR MANDATORY MINIMUM STATUTE TO THE DEFENDANT'S SENTENCE AT THE DEFENDANT'S SENTENCING HEARING, CAN THE DEFENDANT SEEK RELIEF UNDER THE SAVINGS CLAUSE OF 28 U.S.C. § 2255(e) IN ORDER TO HAVE THE DEFUNCTED 10 YEAR MANDATORY MINIMUM STATUTE REMOVED FROM HIS SENTENCE SO THAT THE DOOR CAN BE OPEN FOR THE DEFENDANT TO SEEK A REDUCTION OF HIS SENTENCE UNDER AMENDMENT 782 ?

4. IS IT A MISCARRIAGE OF JUSTICE WHEN A DEFENDANT IS DENIED A REDUCTION OF HIS SENTENCE UNDER AMENDMENT 782 BECAUSE OF A DEFUNCTED 10 YEAR MANDATORY MINIMUM STATUTE THAT LEGALLY DOES NOT APPLY TO HIM, AND IF SO, CAN THE DEFENDANT USE THE SAVINGS CLAUSE OF 28 U.S.C. § 2255(e) TO CURE THE INJUSTICE WHEN NO OTHER VEHICLE OF A PETITION IS AVAILABLE FOR HIM ?

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TO THE HONORABLE CHIEF JUSTICE ROBERTS
AND THE ASSOCIATE JUSTICES OF THE
UNITED STATES SUPREME COURT:

Petitioner, Thomas Burgess, a federal prisoner serving 125 months at F.C.I. Marianna, would respectfully request that a Writ of Certiorari issue to review the judgment and decision of the United States Court of Appeals for the Eleventh Circuit. Burgess filed a 28 U.S.C. § 2241 petition with the United States District Court for the Northern District of Florida attacking his 125 month federal prison sentence which the District Court denied. Burgess than requested the Eleventh Circuit Court of Appeals to review the District Court's decision denying Burgess § 2241 relief, but the Eleventh Circuit refused to grant Burgess leave to file his brief In Forma Pauperis which disabled Burgess from briefing the Eleventh Circuit on the denial of his § 2241 motion by the District Court. Burgess now moves the United States Supreme Court for a Writ of Certiorari in order to review the way the land of the Eleventh Circuit has set their high standards of a federal prisoner seeking relief under the Savings Clause of 28 U.S.C. § 2255(e) and 28 U.S.C. § 2241.

Binding precedent in the land of the Eleventh Circuit is McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc, 851 F.3d 1076, 1081 (11th Cir. 2017), and the Eleventh Circuit is using the McCarthan case to deny every federal prisoner relief under the Saving Clause of 28 U.S.C. § 2255(e), and Burgess is requesting this court to grant him a Writ of Certiorari so this court can review if the Eleventh Circuit's interpretation of McCarthan is correct.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are Petitioner, Thomas Burgess, and the United States of America being represented by the U.S. Department of Justice. Petitioner is acting pro-se in this action and would request liberal construction of his pleadings. Erickson v. Pardus, 551 U.S. 89, 92 (2007)("[a] document filed pro-se is to be liberally construed..."); Haines v. Kerner, 404 U.S. 519 (1972).

OPINIONS BELOW

The United States Court of Appeals for the Eleventh Circuit issued an opinion denying Burgess In Forma Pauperis for the second time on September 11, 2018, which is attached to this petition as Exhibit "A", and the first order that the Eleventh Circuit made is attached to this petition as Exhibit "B", also see Burgess v. F.C.I. Marianna, Appeal # 18-11744-B.

Burgess filed a motion to reconsider the denial of his motion to proceed In Forma Pauperis and the Eleventh Circuit denied Burgess's request, See Exhibit "A" of this petition.

JURISDICTIONAL STATEMENT

The Judgment of the Court of Appeals for the Eleventh Circuit was entered on September 11, 2018, please see Exhibits "A" & "B".

The Eleventh Circuit Court of Appeals below had proper jurisdiction to entertain Petitioner's civil appeal pursuant to Title 28 U.S.C. § 1291. This Court's jurisdiction is invoked under Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, When in actual service in time of War or Public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation
>
> (emphasis added)

Title 28 United States Code Section 2255(e)

(e) An Application for a Writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentence him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

Under the Saving Clause of 28 U.S.C. § 2255(e), a prisoner may bring a habeas petition under 28 U.S.C. § 2241 if the remedy by [2255] motion is inadequate or ineffective to test the legality of his detention.

Title 28 United States Code Section 2241

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

STATEMENT OF THE CASE

On 8-3-10 the Fair Sentencing Act of 2010 was passed into law, than five months later Burgess was indicted in the United States District Court for the Southern District of Florida for 74.97 grams of crack cocaine, See Case # 9:11-CR-80012-DMM (CR-DE # 12), and see (P.S.I. # 15).

The Fair Sentencing Act of 2010 (FSA) increased the amount of crack cocaine that triggers a 10 year mandatory minimum from 50 grams to 280 grams, Burgess was convicted of having 74.97 grams of crack cocaine, See (P.S.I. # 15), and no 21 U.S.C. § 851 enhancement happen in this case, please see Case # 9:12-CV-80340-KMM (CV-DE # 119 pages 83:11-15; 88:22-24; 90:21-25).

On 3-14-11 Burgess entered into a written plea agreement with the government and plead guilty as charged to the single-count indictment (CR-DE # 24, 25, & 62), and the plea agreement called for Burgess to be sentence to the high-end of the guidelines, See (CR-DE # 25 page 3).

There is a sentence appeal waiver in Burgess's plea agreement (CR-DE # 25 bottom of page 4, and page 5), however the sentence appeal waiver in Burgess's plea agreement is invalid and cannot be enforced based on the fact that the district court failed to address the sentence appeal waiver with Burgess at his 3-14-11 change of plea hearing, See (CR-DE # 62), in fact the deal that Burgess made with the government was for the sentence appeal waiver to be addressed to Burgess by the district court at his change of plea hearing, See (CR-DE # 25 page 5), --- Burgess cites the following case laws in support to show that the sentence appeal waiver is invaild and cannot be enforced, See See United States v. Andres Quintanilla, 658 Fed. Appx 465 (11th Cir. 2016) LEXIS 15223; United States v. Smith, 654 F.3d 1263 (11th Cir. 2011) LEXIS 18600; United States v. Boneshirt,

662 F.3d 509, 516 (8th Cir. 2011); Rule 11(1)(b)(N) Fed.R.Crim.P.; and (CV-DE # 119 page 128:12-24).

Therefore Burgess prays that a invalid sentence appeal waiver that cannot be enforced will not get in the way of this request for a Writ of Certiorari.

United States v. Gomes, 621 F.3d 1343 (11th Cir. 2010) LEXIS 20211, was binding at the time of Burgess's 3-14-11 change of plea hearing (CR-DE # 24).

On June 7, 2011 the P.S.I. was made available for disclosure, and Gomes was still binding when Burgess's P.S.I. was made available for disclosure.

After all the adjustments the P.S.I. placed Burgess in a offense level of 25 (P.S.I. # 24) and Burgess was given 12 criminal history points which resulted in a criminal history category of "V", See (P.S.I. # 42).

With a offense level of 25 and a criminal history category of "V" Burgess's guideline range was 100-125 months, however because Gomes was still binding at the completion of Burgess's P.S.I., Burgess's guideline range was raisen to 120-125 months (P.S.I. # 99).

One month after Burgess's P.S.I. was completed, the Eleventh Circuit vacated the Gomes case in United States v. Rojas, 645 F.3d 1234 (11th Cir. 2011) LEXIS 13677. In Rojas the Eleventh Circuit held that the more lenient mandatory minimums of the FSA applies

to those sentence after its 8-3-10 enactment. Rojas was decided on July 6, 2011. Seven days after the Eleventh Circuit made the Rojas decision Burgess was sentence to 125 months in federal prison (CR-DE # 30-32), therefore Rojas was binding at the time of Burgess's 7-13-11 sentencing hearing.

The P.S.I. found that the offense level in the plea agreement was incorrectly calculated (P.S.I. # 109) which Burgess accused the government of intentionally doing, See (CV-DE # 119 pages 63:12-25; 64:1-25; 65:1-15).

After Burgess was sentence to 125 months in federal prison he filed a timely 28 U.S.C. § 2255 FSA claim arguing that he should have been sentence to a five year mandatory minimum pursuant to the FSA, See Case # 9:12-CV-80340-KMM (CV-DE # 69 pages 26-29), and the district court agreed that the more lenient mandatory minimums of the FSA applied to Burgess, and that Burgess should have been subject to a five year mandatory minimum, but the district court denied Burgess's § 2255 FSA claim under the conclusion that Burgess could not show how he was prejudice by the defuncted 10 year mandatory minimum being incorrectly applied to his 7-13-11 sentence, See (CV-DE # 174 pages 22-26).

Than the U.S. Sentencing Commission passed into law Amendment 782 which gave a two level reduction in sentence to most drug offenders which Burgess applied for (CR-DE # 83 & 117).

The government and the district court agreed that Amendment 782 applied to Burgess and reduced his guideline range under 10 years, See (CR-DE # 85 page 7); (CR-DE # 101 page 6); (CR-DE # 103 page 1); & (CR-DE # 113). But the district court denied Burgess's request for a reduction of sentence under Amendment 782. The district court stated that it was denying Burgess a reduction of sentence under Amendment 782 because Burgess could not receive a sentence under 10 years, See (CR-DE # 103 page 1) & (CR-DE # 125), therefore Burgess was denied a reduction of his sentence under Amendment 782 because of a 10 year mandatory minimum road block that legally does not apply to him pursuant to the FSA.

Burgess than went on a mission to try to get that defuncted 10 year mandatory minimum taken off his sentence. Burgess filed for leave to file a Second or Successive § 2255 motion pursuant to Dorsey-Hill v. United Stated, 132 S.Ct. 2321 (2012) but was unsuccessful, See Eleventh Circuit Appeal numbers: Appeal # 17-13594-B; Appeal # 16-16938-J; & Appeal # 16-17212-J.

Burgess than filed a motion for relief of judgment pursuant to Rule 60(b) Fed.R.Civ.P. arguing that the district court should reconsider his § 2255 FSA claim because the passage of Amendment 782 has proven that Burgess did suffer prejudice as a result of the defuncted 10 year mandatory minimum being placed on his sentence, and the district court denied Burgess's Rule 60(b) motion, See (CV-DE # 196); (CV-DE # 200); (CV-DE # 218); & Appeal # 17-10602-J.

Also see how Burgess tried to seek relief under the FSA and Amendment 782 under the following case number, See Case # 9:17-CV-80336-Middlebrooks/White.

Burgess than tried to get reliefed of the defuncted 10 year mandatory minimum that was placed on his sentence by filing a 28 U.S.C. § 2241 petition arguing that the district court should vacate his sentence under the Saving Clause of 28 U.S.C. § 2255(e). Burgess argued that the defuncted 10 year mandatory minimum that was incorrectly placed on his sentence was stopping him from being granted a reduction of his sentence under Amendment 782, but the district court for the Northern District of Florida denied Burgess's request for relief under § 2255(e), See Case # 5:16-CV-00121-WTH-CJK Docket # 12.

Another § 2255 Motion:

Burgess also filed a timely § 2255 motion attacking his criminal history category, please See U.S. District Court for the Southern District of Florida - Case # 9:12-CV-80340-KMM (CV-DE # 27); (CV-DE # 33); (CV-DE # 35, 36, 38, 39, 44, 45, 46, 47, 48, & 49); (CV-DE # 69 pages 41-45); & (CV-DE # 74).

Burgess argued in a timely § 2255 motion that (P.S.I. #'s 34, 37, & 38) should have been counted as a single sentence pursuant to U.S.S.G. § 4A1.2(a)(2), See (CV-DE # 69 pages 41-45) & (CV-DE # 27).

The P.S.I. in (P.S.I. # 38) used a traffic stop as an intervening arrest against Burgess, See (CV-DE # 33).

Burgess argued that a traffic stop should not be counted as a intervening arrest under the United States Sentencing Guidelines pursuant to case law United States v. Leal-Felix, 665 F.3d 1037 (9th Cir. 2011), See (CV-DE # 33) & (CV-DE # 69 pages 41-45), but the district court rejected the argument and denied Burgess § 2255 relief, See (CV-DE # 87 pages 16-18).

Four years after the district court rejected Burgess's Leal-Felix argument the Eleventh Circuit issued binding precedent that agreed with the Leal-Felix case, See Case law United States v. Wright, 862 F.3d 1265 (11th Cir. 2017).

The Eleventh Circuit in Wright agreed with the Leal-Felix court that a traffic stop is not an intervening arrest under the U.S. Sentencing Guidelines.

Burgess requested leave to file a Second or Successive § 2255 motion pursuant to Wright but it was denied, See Eleventh Circuit Appeal # 18-13199-D.

Burgess requested leave to file a Second or Successive § 2255 motion pursuant to Mathis v. United States, 136 S.Ct 2243 (2016) so the district court could review the court documents of (P.S.I. #'s 34, 37, & 38) but Burgess's request was denied, See Eleventh Circuit Appeal # 16-17212-J.

Burgess than filed a 28 U.S.C. § 2241 motion requesting the court to vacate his sentence under the Saving Clause of § 2255(e) pursuant to Wright in the United States District Court for the Northern District of Florida, and it was denied, please see Case # 5:18-CV-00074-MCR-CJK Docket #'s 4 & 8.

Burgess than tried to request the Eleventh Circuit Court of Appeals to review the District Court's denial of Burgess's § 2241 motion, but the District Court refused to grant Burgess leave to file his brief In Forma Pauperis, which disabled Burgess from filing a brief with the Eleventh Circuit because Burgess does not have any money.

Burgess is now requesting this court to grant him leave to proceed In Forma Pauperis, and Burgess is requesting this court to grant him a Writ of Certiorari so that this court can review if the Eleventh Circuit's binding precedent in McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc, 851 F.3d 1076, 1081 (11th Cir. 2017) is a correct interpretation of the Saving Clause of § 2255(e).

McCarthan is what the land of the Eleventh Circuit is using to deny every defendant seeking relief under the Saving Clause of § 2255(e), and the McCarthan case is in conflict with every other circuit in the United States of America.

REASONS FOR GRANTING CERTIORARI

I. CERTIORARI SHOULD BE GRANTED DUE TO THE APPARENT CONFLICT AMONG LOWER COURTS' RELATED TO LEGAL ISSUES INVOLVED AND THE CONFLICT BETWEEN THE ELEVENTH CIRCUIT'S DECISION WITH ITS SISTER COURTS AND ESTABLISHED SUPREME COURT AUTHORITY.

Conflicts between decisions of the Federal Court of Appeals and lower federal courts has long been considered a compelling factor in this Court's determination whether to grant writ of certiorari in a particular case. Altria Group, Inc. v. Good, 555 U.S. --- (2008)(writ of certiorari granted to resolve an apparent conflict among the federal circuits); Martin v. Franklin Capital Group, 546 U.S. 132 (2005)(certiorari granted because of a conflict among the circuits); Whitefeild v. United States, 543 U.S. 209, 210-11 (2005)("we grant certiorari to resolve the conflict among the circuits on questions presented"); Marks v. United States, 430 U.S. 188, 190-92 (1977)(certiorari granted "to resolve conflict among the circuits on the appealability issue"). Also see Supreme Court Practice, Seventh Ed. (2000) Stern, Gressman, Shaprio & Geller at pgs. 168-74; Rule 10(a), Supreme Court Rules.

Petitioner Burgess contents that the Eleventh Circuits' decision in McCarthan is in conflict with every circuit court and lower courts who have issued a interpretation on how a federal prisoner can seek relief under the Saving Clause of 28 U.S.C. § 2255(e).

Petitioner Burgess will argue that the Eleventh Circuit's decision in McCarthan conflicts with every circuit court in the United States of America on how a federal prisoner can seek relief under the Saving Clause of 28 U.S.C. § 2255(e).

Petitioner Burgess will argue that every lower court of appeals is in conflict with each-other when it comes to how a federal prisoner can seek relief under the Saving Clause of 28 U.S.C. § 2255(e).

Further, a direct conflict between the Court of Appeals for which review is being sought and a decision of this Court is one of the most compelling grounds for securing the issuance of a writ of certiorari. See Lambert v. Wicklund, 520 U.S. 292, 294-96 (1977)("because the Ninth Circuit's holding is in direct conflict with our precedence, we grant the petition for writ of certiorari and reverse); Dolan v. City of Tigard, 512 U.S. 374, 383 (1980)(observing that writ of certiorari granted because the Oregon Supreme court had misapplied Supreme Court precedent); Henderson v. Kibbe, 431 U.S. 145, 152-53 (1977)(Court of Appeals decision below "appeared to conflict with this [Supreme] Court's prior holdings"); Supreme Court practice, supra, "Factors Motivating Exercise of Certiorari Jurisdiction" Ch. 4.5; Rule 10(d), Supreme Court Rules; Federal Habeas Corpus Practice And Procedure, Fifth Ed. (2006) Liebman & Hertz, § 39.2d, pg. 1870.

This Court has granted certiotari in numerous cases that presented conflicts among lower federal Courts of Appeals. e.g. Watson v. United States, 128 S.Ct. 579 (2007)(Certiorari granted to resolve conflict in lower Courts of Appeals); Lopez v. Gonzalez, 549 U.S. 47 (2006)(same); McEroy v. United States, 455 U.S. 642, 643 (1982); Shapiro v. United States, 335 U.S. 1, 4 (1948)(same).

Petitioner will argue herein that the Eleventh Circuit's opinion below is not only in conflict with other Federal Courts of Appeals decisions but also appears to be inconsistant with this court's authority related to such questions of law. As setforth above, a conflict between a lower court's decision and this Court's prior holdings is a powerful ground for issuance of a writ of certiorari allowing parties to submit more fuller arguments on issues presented. S.E.C. v. Otis & Company, 338 U.S. 843, 846-47 (1949); McCandles v. Furland, 296 U.S. 140, 141-43 (1935).

II. CERTIORARI SHOULD BE GRANTED BECAUSE OF THE IMPORTANCE OF QUESTIONS PRESENTED AND BECAUSE THE ELEVENTH CIRCUIT'S DECISION IS CLEARLY ERRONEOUS AND AFFECTS PETITIONER'S FUNDAMENTAL CONSTITUTIONAL RIGHTS.

Even though it has been stated numerous occasions that this court is not primarily concerned with the correction of errors committed by lower courts, the erroneousness of a circuit court's opinion

remains a factor in deciding whether to grant certiorari. Ross v. Moffitt, 417 U.S. 600 (1974); Skidmore v. Swift & Company, 323 U.S. 134 (1963). Williams v. Lee, 358 U.S. 217 (1959). Although the erroneousness of the district court's decision to deny Burgess a reduction of sentence under Amendment 782 because of a defuncted 10 year mandatoy minimum road block that legally does not apply to him pursuant to the Fair Sentencing Act of 2010 (FSA) may not be the determinative factor for granting a writ of certiorari in this case, it should be a factor meriting weight in the Court's decisional process. Skidmore, 323 U.S. at 136-38.

A further basis for granting certiorari in this particular case would be that the lower court's erroneous decision represents a substantial and severe hardship and fundamental miscarriage of justice. cf. Schlup v. Delo, 513 U.S. 298, 301 (1995)(granting certiorari to "protect against miscarriage of justice"); Selvage v. Collins, 494 U.S. 108 (1990)(same); Montana v. Kennedy, 366 U.S. 308, 309 (1961)(certiorari granted "in view of the apparent harshness of the result entailed [by lower court's decision]"); Washington v. United States, 357 U.S. 348 (1958). Despite this Court's general reluctance to grant certiorari to correct an erroneous decision by a Circuit Court of Appeals, the Court does often grant review simply to correct an error committed by a lower court as a reflection of this Court's error-correction function in exercising its supervisory powers over the federal judiciary system. See Massachusetts v. Sheppard, 468 U.S. 981

988 (1984); Florida v. Rodriguez, 469 U.S. 1, 12 (1984)(granting certiorari "to undertake de novo review of the factual findings of a [lower court] that misapprehended controlling principals of [14th Amendment] law"); Donlan, 512 U.S. at 383; also see Rule 10(c) of the Supreme Court Rules.

Finally, the fact that there are many more reversals than affirmations following this Court's grant of certiorari further indicates that the court is more likely to grant certiorari when it believed the lower court's decision may be erroneous. Estelle v. Gamble, 429 U.S. 97, 115 (1976)("the Court seldom takes a case to merely reaffirm the law"). Moreover, in conjunction with Petitioner's other grounds for granting certiorari (i.e., conflict between lower court's judgment and Supreme Court law, conflict among circuit courts, and erroneousness of lower court's decision) the importance of questions presented serves to further enhance cause for granting writ of certiorari. See Sanchez-Llames v. Oregon, 548 U.S. 331, 334-35 (2006)("we granted the petition for certiotari in significant part because of importance of questions presented"); Rumsfled v. Padilla, 542 U.S. 426, 455 (2004)(certiorari should be granted due to the "profound importance [of questions] to the Nation"); Elk Grove Unified School Dist. v. Newdon, 524 U.S. 1, 5 (2004)("In light of the obvious importance of decision we granted certiorari"). As this Honorable Court will see from the facts of this case, the questions presented are of substantial import and justify certiorari being granted accordingly.

ARGUMENTS

1. The Eleventh Circuit's binding precedent of how a defendant can seek relief under the Saving Clause of 28 U.S.C. § 2255(e) is a misinterpretation of law and violates Petitioner's Constitutional Right under the Fifth Amendment to due process of law.

At the time of Burgess's 7-13-11 sentencing hearing the land of the Eleventh Circuit was following case law United States v. Morgan, 354 F.3d 621 (7th Cir. 2003), also see United States v. Johnson, 876 F.Supp.2d 1272 (M.D. Fla. 2012).

In Morgan the court held that a traffic stop is an intervening arrest under the U.S. Sentencing Guidelines, and the Johnson court argeed with the Morgan court.

The U.S. Probation Officer used a traffic stop as an intervening arrest against Burgess, See (P.S.I. # 38).

The Morgan case is in conflict with case law United States v. Leal-Felix, 665 F.3d 1037 (9th Cir. 2011). In Leal-Felix the court held that a traffic stop is not an intervening arrest under the U.S. Sentencing Guidelines.

Burgess filed a timely 28 U.S.C. § 2255 motion trying to persuade the court to stop following Morgan, and to start following Leal-Felix, please see U.S. District Court for the Southern District of Florida - Case # 9:12-CV-80340-KMM (CV-DE # 27); (CV-DE # 33); (CV-DE # 44); & (CV-DE # 69 pages 41-45).

The district court and the Eleventh Circuit rejected Burgess's Leal-Felix argument and elected to continue to follow the Morgan case, See (CV-DE # 87 pages 16-18); (CV-DE # 128 bottom of page 3 and the top of page 4); (CV-DE # 128 pages 10-11); (CV-DE # 174 pages 26-28); & (CV-DE # 175 pages 4-6).

Four years after the district court and the Eleventh Circuit rejected Burgess's Leal-Felix argument, the Eleventh Circuit issued Case law United States v. Wright, 862 F.3d 1265 (11th Cir. 2017).

The court in Wright agreed with the Leal-Felix court and held that a traffic stop is not an intervening arrest under the U.S. Sentencing Guidelines.

So the District Court and the Eleventh Circuit rejected Burgess's Leal-Felix argument, than four years later the Eleventh Circuit accepted the Leal-Felix argument in Wright.

So if Burgess did try to persuade the Eleventh Circuit to agree with the Leal-Felix court in a timely § 2255 motion but was unsuccessful, would Burgess be able to seek relief under the Saving Clause of § 2255(e) if years later the Eleventh Circuit agreed with the Leal-Felix case under another case that was filed by a different petitioner (i.e. Wright).?

Burgess prays that this Honorable Court will answer YES to the above question.

The main point Burgess is trying to make under the above argument is that Burgess filed a timely § 2255 motion arguing that (P.S.I. #'s 34, 37, & 38) should have been counted as a single sentence under U.S.S.G. § 4A1.2(a)(2), See (CV-DE # 27); & (CV-DE # 33). Which the District Court denied, See (CV-DE # 87 pages 16-18).

After the District Court denied Burgess's § 2255 claim all kinds of new laws were passed that supported the claim, in fact had the newly passed laws been binding at the time of the district court's review of Burgess's § 2255 claim, it is most likely that Burgess's § 2255 motion would have been granted.

For example, the P.S.I. in number 38 of Burgess's P.S.I. used a traffic stop as an intervening arrest against Burgess, See (P.S.I. # 38), but now the Eleventh Circuit has said that the District Courts are now no longer allowed to use a traffic stop as an intervening arrest against a defendant under the U.S. Sentencing Guidelines, See Wright.

Than the P.S.I. in numbers 37 & 38 of Burgess's P.S.I. used a failure to appear arrest as an intervening arrest against Burgess, See (P.S.I. #'s 37 & 38).

After the District Court denied Burgess's § 2255 claim the U.S. Supreme Court issued case law Mathis v. United States, 136 S.Ct. 2243 (2016).

In Mathis the court held that district courts should look at a divisible of a Statute and a limited class of documents of a prior offense.

Also the District Court failed to follow Case Law United States v. Rosales-Bruno, 676 F.3d 1017, 1021 (11th Cir. 2012) when the district court reviewed Burgess's § 2255 claim.

In Rosales-Bruno the Eleventh Circuit held that Federal Courts are bound to follow state law in conducting divisibility analysis.

The failure to appear arrest of (P.S.I. #'s 37 & 38) happen as a result of a clerical error and the hurricanes of the year 2004, and Burgess proved that with the documents that he attached to his 28 U.S.C. § 2241 motion, See U.S. District Court for the Northern District of Florida - Case # 5:18-CV-00074-MCR-CJK - Docket # 1.

Therefore had the district court followed Mathis by reviewing the documents attached to Burgess's § 2241 motion before denying Burgess § 2255 relief (CV-DE # 87 pages 16-18) it is likely that the district court would have not used those failure to appear arrest against Burgess, But Mathis was not binding law at the time of the District Court's review of Burgess's § 2255 motion (CV-DE # 87).

It should be noted that Burgess did submit documents of (P.S.I. #'s 37 & 38) to the district court before they denied Burgess § 2255 relief, See (CV-DE # 35); (CV-DE # 48 pages 19 & 20); & (CV-DE # 87).

Than both (P.S.I. #'s 37 & 38) were initiated by a Summons, and the Sixth Circuit has said that a Summons is not an intervening arrest, See United States v. v. Powell, 789 F.3d 431 (6th Cir. 2015), but it should be noted that the P.S.I. did not use a Summons as an intervening arrest against Burgess, See (P.S.I. # 37).

Pursuant to Florida Statute 901.11 a defendant is allowed to show good cause for failing to appear in court as commanded by a Summons. Also Florida Case Law Williams v. State, 68 So.3d 1010 (4th DCA 2011) states that a trial court cannot use a failure to appear arrest against a defendant when the defendant failed to appear for a court date as a result of a clerical error. Therefore had the district court been following case law Rosales-Bruno before denying Burgess's § 2255 claim (CV-DE # 87 pages 16-18) it is most likely that the district court would not have used those failure to appear arrest against Burgess, based on the fact that Burgess has proven with the documents attached to his § 2241 motion that the failure to appears of (P.S.I. #'s 37 & 38) happen as a result of a clerical error and the hurricanes of the year 2004.

Also a failure to appear arrest is excluded from being used under the U.S. Sentencing Guidelines pursuant to U.S.S.G. § 4A1.2(c)(1), See United States v. Efrain Martinez, 1994 U.S. App. LEXIS 43577 (5th Cir. 1994); also see United States v. Martines-Santos, 184 F.3d 196 (2d Cir. 1999).

The district court failed to follow U.S.S.G. § 4A1.2(c)(1) when reviewing the merits of Burgess's § 2255 claim of whether (P.S.I. #'s 34, 37, & 38) should have been counted as a single sentence (CV-DE # 87 pages 16-18) based on the fact the the district court used those failure to appear arrest against Burgess.

There will be no intervening arrest with (P.S.I. #'s 34, 37, & 38) if the district court is not allowed to use a traffic stop against Burgess and if the district court is not allowed to use a failure to appear arrest against Burgess, and Burgess was sentence on the same day for (P.S.I. #'s 34, 37, & 38), therefore (P.S.I. #'s 34, 37, & 38) should have been counted as a single sentence pursunat to U.S.S.G. § 4A1.2(a)(2).

Burgess was given 12 criminal history points (P.S.I. # 42) so if two criminal history points are subtracted from (P.S.I. # 37) and if two criminal history points are subtracted from (P.S.I. # 38) than Burgess will have 8 criminal history points (12 - 4 = 8). Eight criminal history points is a criminal history category of IV, and with a offense level of 25 (P.S.I. # 24) and a criminal history category of IV Burgess's guideline range will be at 84-105 months which is way lower than the guideline range the P.S.I. placed Burgess in (P.S.I. # 99).

The errors that the district court made when reviewing if (P.S.I. #'s 34, 37, & 38) should have been counted as a single sentence under U.S.S.G. § 4A1.2(a)(2) is: (1) They failed to review over documents that Burgess submitted in support of the claim (CV-DE # 27,-33, 35, 36, 38, 39, 44, 48, 69 pages 41-45, & 74); (2) They failed to follow established law at the time of their review (i.e. U.S.S.G. § 4A1.(c)(1) which states a failure to appear : arrest is excluded from being used under the U.S. Sentencing Guidelines); (3) They errored in their relation back review under Rule 15(c) Fed.R.Civ.P. when Burgess tried to amend information to his § 2255 claim; & (4) They errored by separating Burgess's one § 2255 claim into two § 2255 claims. See the following docket numbers (CV-DE # 87 pages 16-18); (CV-DE # 128 bottom of page 3 and page 4); (CV-DE # 128 pages 10-11); (CV-DE # 174 pages 26-28); & (CV-DE # 178 page 4, & pages 20-25).

So the question is: If a defendant did try to persude the court to change its precedent but was unsuccessful, than years later the court changed its precedent to what the defendant tried to persuade the court to change its precedent too, would the defendant be able to seek relief under the Saving Clause of § 2255(e) ?

Or if newly passed laws favor a already denied § 2255 claim, would the defendant be able to seek relief under the Saving Clause of § 2255(e) ?

Or if a defendant can show that the district court failed to follow established law and/or failed to review over documents submitted in support of the § 2255 claim when the district court was reviewing the merits of the § 2255 claim, would the defendant be able to seek relief under the Savings Clause of § 2255(e) ?

2. The District Court's decision to deny petitioner a reduction of his sentence under Amendment 782 because of a defuncted 10 year mandatory minimum Statute that legally does not apply to him pursuant to the Fair Sentencing Act of 2010 is a fundamental miscarriage of justice.

On 8-3-10 the Fair Sentencing Act of 2010 (FSA) was passed into law, than five months later Burgess was indicted in federal court for 74.97 grams of crack cocaine, See Case # 9:11-80012-DMM (CR-DE # 12) & (P.S.I. # 15).

The FSA increased the amount of crack cocaine that triggers a 5 year mandatory minimum from 5 grams to 28 grams, and the FSA increased the amount of crack cocaine that triggers a 10 year mandatory minimum from 50 grams to 280 grams.

Burgess plead guilty as charged in the indictment on 3-11-11 and agreed to be sentence at the high-end of the guidelines, See (CR-DE # 25 page 3) & (CR-DE # 62).

At the time of Burgess's guilty plea case law Gomes was binding law, See United States v. Gomes, 621 F.3d 1343 (11th Cir. 2010).

The court in Gomes held that the more lenient mandatory minimums of the FSA do not apply to those who committed a crack cocaine offense prior to the FSA's 8-3-10 enactment.

Burgess's P.S.I. was made available for disclosure on June 7, 2011, and Gomes was still binding law when Burgess's P.S.I. was made avilable for disclosure.

The P.S.I. gave Burgess a offense level of 25 (P.S.I. # 24) and the P.S.I. gave Burgess 12 criminal history points which resulted in a criminal history category of V (P.S.I. # 42), and with a offense level of 25 and a criminal history category of V Burgess's guideline range was 100-125 months, however because Gomes was still binding at the completion of Burgess's P.S.I., Burgess's guideline range was raisen to 120-125 months, See (P.S.I. # 99).

One month after the P.S.I. was made available the Eleventh Circuit vacated the Gomes case in United States v. Rojas, 645 F.3d 1234 (11th Cir. 2011) LEXIS 13677.

In Rojas the Eleventh Circuit held that the more lenient mandatory minimums of the FSA applies to those sentence after its 8-3-10 enactment regardless of their offense date.

Seven days after the Eleventh Circuit made their decision in Rojas Burgess was sentence to 125 months in federal prison, See (CR-DE # 30-32), therefore Rojas was binding law at the time of Burgess's 7-13-11 sentencing hearing.

Nearly one year after Burgess was sentence the U.S. Supreme Court held that the Rojas court was correct, See Dorsey v. United States, 132 S. Ct. 2321 (2012).

Therefore pursuant to the FSA, Rojas, & Dorsey Burgess should have been subject to a 5 year mandatory minimum at his sentencing hearing based on the amount of crack cocaine he was convicted of (P.S.I. # 15).

Burgess filed a timely § 2255 FSA claim requesting the court to apply the more lenient mandatory minimums of the FSA to his sentence, See Case # 9:12-CV-80340-KMM (CV-DE # 69 pages26-29) but the district court denied it under the conclusion that Burgess would have received the same sentence with or with-out the more lenient mandatory minimums of the FSA being applied to his sentence, See (CV-DE 174 pages 22-26).

Than the U.S. Sentencing Commission passed into law Amendment 782 which gave a two level reduction of sentence to most drug offenders, and Burgess requested the district court to reduce his sentence under Amendment 782, See (CR-DE # 83 & 117).

The district court and the government argeed that Amendment 782 applied to Burgess and reduced his guideline range under 10 years, but the district court decline to reduce Burgess's sentence under Amendment 782 because of a 10 year mandatory minimum road block that legally does not apply to Burgess pursuant to the FSA, Rojas, & Dorsey, See (CR-DE # 85 page 7); (CR-DE # 101 page 6); (CR-DE # 103 page 1); (CR-DE # 113 bottom of page 6, & page 7); & (CR-DE # 125).

Burgess was denied a reduction of sentence under Amendment 782 because of a 10 year mandatory minimum road block that became defuncted under Rojas seven days before Burgess's 7-13-11 sentencing hearing.

Burgess filed a Rule 60(b) motion pursuant to Fed.R.Civ.P. in order to get that 10 year mandatory minimum road block taken off his sentence so the door could be open for him to seek a reduction of sentence under Amendment 782 but it was denied, See Case # 9:12-CV-80340-KMM (CV-DE # 227).

Burgess filed with the Eleventh Circuit Court of Appeals a motion for leave to file a Second or Successive § 2255 motion pursuant to Dorsey in order to have that 10 year mandatory minimum road block taken off his sentence so the door could be open to seek a reduction of his sentence under Amendment 782, but his request was denied, See Appeal # 18-10851-G; & Appeal # 16-16938-J.

Burgess than filed a 28 U.S.C. § 2241 motion with the U.S. District Court for the Northern District of Florida seeking relief under the Saving Clause of § 2255(e) in order to have that 10 year mandatory minimum road block taken off his sentence so the door could be open for him to seek a reduction in his sentence under Amendment 782, but it was denied, please see Case # 5:18-CV-00074-MCR-CJK - Docket # 8.

The above questions is of substantial import and jusify certiorari being granted --- If being denied a reduction of sentence because of a defuncted Statute is not a miscarriage of justice, than what is ?, See Schlup v. Delo, 513 U.S. 298, 301 (1995)(granting certiorari to "protect against miscarriage of justice); and See Supreme Court Rule 10(c).

3. Time is highly against Burgess.

Burgess remains incarcerated with a presumptive release date of 2-24-20, See WWW.bop.gov/inmatelocator. --- Burgess's federal inmate number is: 96195-004.

2-24-20 is 17 months away, and Burgess can do a portion of the remaining 17 months he has left in prison in a halfway house pursuant to 18 U.S.C. § 3624(c).

Inmates in the halfway house wear their own clothes and work jobs in the free world --- currently Burgess is in a federal prison that is 8 hours way from his family (P.S.I. #'s 70 & 97) and the prison always goes on lockdown.

If Burgess wins the arguments of this petition he will either be immediately released from prison or he will be immediately released into the halfway house.

Therefore for the above reasons Burgess prays that this Honorable Court will hear this petition in a timely matter so that he does not have to do any extra time in prison.

4. Evidence of conflict among Circuits when it comes to how a defendant can seek relief under the Saving Clause of 28 U.S.C. § 2255(e).

Binding precedent in the Eleventh Circuit of how a defendant can seek relief under the Saving Clause of 28 U.S.C. § 2255(e) is McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc, 851 F.3d 1076, 1081 (11th Cir. 2017).

The McCarthan case is clearly in conflict with every other Circuit in the United States of America which requires the Supreme Court to grant a Writ of Certiorari, See Supreme Court Rule 10(a).

Burgess would like to point this court out to Case Law United States v. Wheeler, (4th Cir. 2018) LEXIS 15753 -or- United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018) LEXIS 7756.

In Wheeler the court held that the Supreme Court should hear in a timley fashion and resolve the conflict separating the Circuit Courts of Appeal on the proper Scope of 28 U.S.C. § 2255(e).

In Case Law O'Neil v. FCC Coleman, (11th Cir. 2018) Appeal # 16-10979-EE, LEXIS 18082, its noted on foot note one how two brothers who were co-defendants imprisoned in two different circuits, and both brothers filed a § 2241 motion seeking relief under the Saving Clause of § 2255(e). One brother was imprisoned in the 3rd circuit and the other brother was imprisoned in the 11th circuit, and the 3rd circuit said they had jurisdiction over the claim while the 11th Circuit said they did not have jurisdiction over the claim, See Bruce v. Warden Lewisburg USP, 868 F.3d 170 (3d Cir. 2017).

It also should be noted how Judge Rosenbaum has stated that McCarthan is not correct, See (Rosenbaum, J., dissenting); and see O'Neil.

Every Circuit in the United States of America has a different interpretation of how a federal prisoner can seek relief under the Saving Clause of § 2255(e).

The Third, Fifth, and Seventh Circuits have applied a fundamental defect or miscarriage of justice standard to determine whether a prisoner can satisy the Savings Clause, See Hill, 836 F.3d at 595; Brown, 719 F.3d at 586-87; Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001); In Re Davenport, 147 F.3d 605, 609-11 (7th Cir. 1998); & In Re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997).

The Eleventh Circuit is refusing to accept jurisdiction of a claim seeking relief under the Savings Clause of § 2255(e) as is evidence of O'neil, thats why the Eleventh Circuit denied Burgess leave to proceed In Forma Pauperis, mean while the Third Circuit does accept jurisdiction.

The Fourth, Fifth, and Sixth Circuits have required proof of actual innocence of a charged offense, in addition to other factors, to obtain relief under the Savings Clause, See Wooten v. Cauley, 677 F.3d 303, 307-08 (6th Cir. 2012); Reyes-Requena v. United States, 243 F.3d 893, 904 (5th Cir. 2001); In re Jones, 226 F.3d 328, 333-34 (4th Cir. 2000). The Second Circuit holds that "inadequate or ineffective" means "the set of cases in which the petitioner cannot utilize § 2255, and which the failure to allow for collateral review would raise serious constitutional questions.", See Triestman v. United States, 124 F.3d 361, 377 (2d Cir. 1997). The Third Circuit focuses on when the second or successive limitations would cause a "complete miscarriage of justice.", See In Re Dorsainvil, 119 F.3d 245, 251 (3d Cir. 1997). And in the Eighth and Ninth Circuits, a prisoner must not have had an unobstructed procedural shot at presenting that claim, defined to include changes in law, See Harrison v. Ollison, 519 F.3d 952, 959-60 (9th Cir. 2008); & Abdullah v. Hedrick, 392 F.3d 957, 963 (8th Cir. 2004).

The Eleventh Circuit in McCarthan has agreed with the Tenth Circuit's review of the Saving Clause of § 2255(e) the most, See Prost v. Anderson, 636 F.3d 578 (10 Cir. 2011). In Prost the court held that a change in case law does not make a § 2255 motion inadequate or ineffective to test the legality of a prisoner's detention under the Saving Clause of § 2255(e).

The McCarthan court quoted all the Circuits review of the Saving Clause of § 2255(e).

The above facts clearly show that their is a conflict among the Circuits when it comes to the Saving Clause of § 2255(e) which requires this court to grant a Writ of Certiorari pursuant to Supreme Court Rule 10(a) & (c).

5. How Burgess feels the Savings Clause of 28 U.S.C. § 2255(e) should be interpreted by the Supreme Court.

Burgess is using his own story to show how he feels the Saving Clause of 28 U.S.C. § 2255(e) should be.

A defendant should be able to seek relief under the Saving Clause of § 2255(e) and attack the legality of his conviction and/or sentence if: (1) The defendant in a 2255 motion did try to persuade a district, circuit, or Supreme Court to change its binding precedent but was unsuccessful, than years later the district, circuit, or Supreme court changed its binding precedent to what the defendant tried to persuade the courts to change its precedent to in another case; or (2) A defendant has filed a timely 28 U.S.C. § 2255 motion which was denied on the merits, and since the denial of the defendant's § 2255 motion there has been a change in Circuit or Supreme Court case law, and the change of circuit or Supreme Court case law is in favor of the already denied § 2255 claim, and had the change in Circuit or Supreme Court case law been binding law

when the defendant's § 2255 motion was pending before the court, it is most likely that the defendant's § 2255 motion would have been granted; or (3) The defendant can prove that the district or circuit court failed to follow binding precedent or any other kind of established law when reviewing and denying the merits of the defendant's § 2255 claim; or (4) The defendant can prove that the district or Circuit court made great errors when reviewing and denying the merits of the defendant's § 2255 claim; or (5) A defuncted law of any kind was placed on the defendant's sentence at sentencing, but the defendant could not show how the defuncted law prejudice him at sentencing in a timely § 2255 motion, than years later newly retroactive laws are passed, and the defendant cannot benefit from the newly retroactive laws because of the defuncted law that was placed on his sentence at his sentencing hearing.

This court should not set prongs that have to be satisfied from one through four like how it is done under plain error review, See United States v. Sumerlin, 489 Fed. Appx. 375 (11th Cir. 2012). Thats why Burgess put the word "or" between each number of how he feels the Savings clause of § 2255(e) should be. A petitioner should only have to satisfy one number in order to obtain relief under the saving clause of § 2255(e).

Every defendant's case is different and unique in its own way, thats why there should not be a prong standard in order to gain the benefits of the Saving Clause of § 2255(e).

Also this court should not set the bar so high where it would be impossible for a defendant to be granted relief under the Saving Clause of § 2255(e) --- when was the last time a defendant got his sentence vacated under the Saving Clause of § 2255(e) ?

The court in In re Jones, 226 F.3d 328 333 (4th Cir. 2000) said that there must exist some circumstance in which resort to § 2241 would be permissible; otherwise, the Savings Clause itself would be meaning less.

Also this court should not set the bar so high and say: Only a retroactive change in law can allow a defendant to seek relief under the Savings Clause of § 2255(e).

Each Circuit sets their bar so high in order to be saved by the Savings Clause of § 2255(e), when was the last time a defendant won relief under the Savings Clause of § 2255(e) ? ---- each Circuit has a meaningless point of view about the Savings Clause of § 2255(e).

Also how many new laws are made retroactive ?, and most of the time there is so much disagreements with the courts on whats retroactive and whats not that it takes years to learn whether the new law is retroactive or not, just like how it happen in case law Dorsey-Hill v. United States, 132 S.Ct. 2321 (2012), mean while defendants are lingering away in prison waiting for the Supreme Court to make a decision on whether a new law is retroactive or not.

Whether a new law is retroactive or not in order to obtain relief under the Savings Clause of § 2255(e) should not matter. What should matter in order to be saved under the Savings Clause of § 2255(e) is: (1) The defendant filed a timely § 2255 motion attacking the legality of his sentence and/or conviction, but it was denied on the merits; and (2) Newly passed laws favor the already denied § 2255 claim, and the newly passed laws would have subject the already denied § 2255 claim to a different result had the § 2255 claim still been pending.

The reason why each Circuit has a different interpretation of the Savings Clause of § 2255(e) is because each Circuit has come across a unique defendant, and when each Circuit came across their unique defendant they set their interpretation on how the defendant they had in front of them should be granted relief under the Saving Clause of § 2255(e), and each Circuit made it binding law not even thinking that each defendant is unique and different in its own way, and each Circuit set their one way street in order to be granted relief under the Savings Clause of § 2255(e), and the biggest mistake that each Circuit made was not realizing that each case is different and unique in its own way.

The key word in the Saving Clause is "Save", and there is more than one way to save a person if he is in danger, therefore Burgess prays that this Honorable Court will not set a one way street in order to be saved by the Savings Clause of § 2255(e) because every case is different and unique in its own way --- and Burgess prays that this Honorable Court will no set prongs within the Savings Clause of § 2255(e) that a defendant would have to satisfy.

Also this court needs to order the lower courts to change the label of a titled motion pursuant to Case Law United States v. Jordan, 915 F.2d 622, 624-25 (11th Cir. 1990).

Most defendants file a § 2255 motion arguing ineffective assistance of counsel, but the district court needs to know when to change the titled head of a § 2255 motion to a simple motion to correct in order to prevent the defendant from doing extra time in prison --- for example when a new law is passed in favor of a already denied § 2255 claim, and the defendant is able to reopen the claim under the Savings Clause of § 2255(e), and it is most likely that if the newly passed law is applied to the defendant's sentence that he will receive a reduction in his sentence - well it needs to be ordered to the district courts to not say that counsel cannot be deem ineffective for failing to anticipate a change in the law, See (CV-DE # 174 pages 22-26) - it needs to be ordered to the district courts that under the Savings Clause simply change the § 2255 motion to a "Motion to Correct" pursuant to Jordan, than vacate the defendant's sentence, than re-sentence and apply the newly passed law to the defendant's sentence when re-sentencing the defendant.

This Honorable Court needs to order the lower courts to change the titled head of a motion when justice is required so a defendant does not have to do any extra time in prison, just like how Burgess explained above.

What kind of a Country is this when the court system allows defendants in remain in prison based on laws that no longer exist ? (i.e. a traffic stop is no longer a intervening arrest pursuant to case law Wright).

In Wheeler the court concluded that § 2255(e) must provide an avenue for prisoners to test the legality of their sentence pursuant to § 2241.

however Burgess does not agree with the last part of prong two of the Wheeler test which states "and was deemed to apply retroactively on collateral review" -- and Burgess does not agree with the first part of prong four of the Wheeler test which states "due to this retroactive change in law".

It should not matter whether a new law is retroactive or not, and a prong standard should not be set within the Savings Clause of § 2255(e).

CONCLUSION

WHEREFORE, Petitioner would urge this Honorable Supreme Court to grant a writ of certiorari in this case based on the foregoing arguments. Also Petitioner would request that this Honorable Court hold oral arguments in this case.

Respectfully prayed for this 25th day of September, 2018.

Thomas Burgess, pro-se
inmate # 96195-004