

No. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES

DARRYL JOHNSON — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SECOND CIRCUIT NO. # 17-2424

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARRYL JOHNSON REG.#:06344-097  
(Your Name)

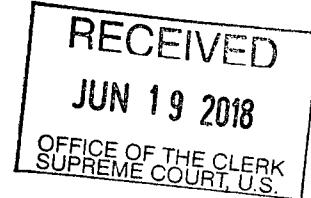
FEDERAL CORRECTIONAL INSTITUTE JESUP GA.  
2680 US HWY. 301 SOUTH

(Address)

JESUP, GA. 31599

(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)



## QUESTION(S) PRESENTED

Was Petitioner's guilty plea sustained in violation of due process warranting habeas relief where the district court failed to advise the petitioner correctly to terms of what appeal right's he was waving?

Was counsel's (three at that) constitutionally ineffective because they misadvised petitioner that he was waving his sentencing and conviction right's, and failed to object to the confusing and vague grammatical text in the plea agreement?

Did the courts below commit reversible error denying Johnson's §2255 motion without conducting an evidentiary hearing to resolve the factual disputes?

Whether the court of appeals for the second circuit err by not applying the correct standard of review when jurists of reason could have debated the issues presented herein?

Whether the Second Circuit Court of Appeals err when it did not review de novoly the district court's interpretation of a contract, the plea in Mr. Johnson case?

## 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:

Darryl Johnson, Reg.#06344-097  
F.C.I. Jesup Georgia  
2680 US HWY. 301 South  
Jesup, Ga. 31599  
Pro se representation for Petitioner

Attorney for Respondent  
United States  
Valerie H. Yancey  
Solicitor General  
Department of Justice  
950 Pennsylvania Ave., N.W., Room 6627  
Washington, D.C. 20530

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### 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 \_\_\_\_\_ 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 2/8/2018.

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: \_\_\_\_\_, 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 JUNE 11, 2018 (date) on MAY 7, 2018 (date) in Application No. 17 A 1226.

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**

## STATEMENT OF THE CASE

### PROCEDURAL HISTORY:

1. Johnson was convicted in 1995, upon his plea of guilty, in the United States District Court for the Western District of New York (Hon. John T. Curtin, SJ), of various crimes proscribed by Title 18 and 21 of the United States Code. He was sentenced on March 31, 1995, to five consecutive and three concurrent terms of life imprisonment, and a concurrent 10-year term of imprisonment (DKT. #940). Johnson is currently serving his sentence at Jesup F.C.I..
2. Johnson did not file a direct appeal of his conviction. However, he did file a petition pursuant to 28 U.S.C. §2255 in the Western District of New York, which was denied by decision and order dated April 13, 2001 (DKT #1092). The District Court's 2001 decision and order also denied a C.O.A.. Johnson appealed the denial of his petition to the United States Court of Appeals for the Second Circuit. The Second Circuit likewise denied Johnson's request for a C.O.A. and dismissed the appeal (DKT # 1/28/2002).
3. Johnson's latest motion is filed under Rule 60(b) of the Rules of Civil Procedure as a re-opening of his previously filed section 2255 petition and asserts that the District Court failed to adequately consider his previous claims or to hold an evidentiary hearing with respect to such claim or claims (DKT. #1321, #4).
4. Johnson's decision to play guilty to the various life sentence was in exchange for an agreement that Petitioner would not receive a death sentence, and on counsel's advise.
5. Johnson, accepted his plea without the District Court engaging in the formal colloquy proceedings, to verify if Johnson voluntarily and intelligently waived his right's.
6. For instance, the plea agreement was vaguely drafted, confusing Mr. Johnson to whether he waived the right's to appeal his sentence "or" conviction, See: page 35 Johnsons' Plea Agreement.
7. In the April 13, 2001 Order page 4, the Honorable Judge either confused or creatively tried to cure this grammatic defect, by displacing the disjunctive clause and placing the conjunctive clause to give the unvaguely meaning intended.
8. The drafting of contracts is serious business, and the misplacement of grammatical text can confuse the average lay person. Therefore, Mr. Johnson humbly request's the review of our highest Court to verify these errors and/or defects committed by the lower Courts standards of review applied.

## REASONS FOR GRANTING THE PETITION

The guilty plea was sustained in violation of due process and in direct conflict with the applicable decisions of this Court and is cognizable in a §2255 motion, in light of this Court's precedence. This Court should exercise its supervisor powers over the lower courts and issue the writ.

The record reveals that counsel signed a plea agreement which stated a vague and ambiguous term; failed to object when the sentencing court imposed a sentence that exceeded the Rule 11 statutory terms. Petitioner asserted in the §2255 motion that he would not have plead guilty, absent counsel's erroneous and faulty legal advice concerning the plea.

The Second Circuit Courts erred affirming the denial of Petitioner's §2255 motion where the district court failed to conduct an evidentiary hearing to resolve the factual disputes, which if true, warrants habeas relief and the record did not "conclusively show" that he could not establish facts warranting relief under §2255, which entitled Petitioner to a hearing.

Petitioner respectfully urges that all aspects of the Circuit Court decision are erroneous and at a variance with this Court's decisions.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darryl Johnson

Date: 6/11/18