No. 18-6761

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

TELLIS T. WILLIAMS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SIXTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TELLIS T. WILLIAMS #19060-075(pro se)
(Your Name)

F.C.I. MEMPHIS, P.O. BOX 34550
(Address)

MEMPHIS, TN. 38184-0550
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

1. When a Petitioner seeks a Certificate Of Appealability(COA) based on whether this Court's decision in Beckles v. United States, 137 S. Ct. 886, affects his Johnson based claim, and in denying Petitioner's COA the Sixth Circuit gathers and forms their own opinion that this Court's decision in Beckles held that "Johnson's reasoning does not apply to the advisory Sentencing Guidelines", does the Sixth Circuit reach its conclusion that reasonable jurist could not debate the district court's conclusion that Petitioner is not entitled to relief based on Johnson, only after essentially deciding the case on its merit? And if so, does the Sixth Circuit place too heavy a burden on the Petitioner at the COA stage?

2. Whether the Sixth Circuit's denial of Petitioner's COA was based on whether the Petitioner's appeal would have merit instead of whether reasonable jurist could debate the district court's resolution of his constitutional claim, and if so, did the Sixth Circuit exceed the limited scope of the COA analysis when reviewing Petitioner's application for a COA?

3. Whether every collateral attack of a sentence under the advisory Guidelines, based on Johnson v. United States, 192 L. Ed. 2d. 569, 576, 135 S. Ct. 2551, 2555, must be a substantive due process claim, a vagueness challenge, and/or a facial challenge to the advisory Guidelines' residual clause, §4B1.2(a)(2); or may a Petitioner collaterally attack the sentence/judgment and/or §4B1.2(a)(2) relying on Johnson raising a procedural due Process claim and/or an as-applied

constitutional challenge, and if so, on the present record could reasonable jurist at least debate whether this Court's decision in Beckles v. United States, 137 S. Ct. 886, "squaerly rejects" Petitioner's due process challenge to his sentence/judgment, and/or §4B1.2(a)'s residual clause based on Johnson's reasoning? Or, could reasonable jurist at least debate the district court's resolution of Petitioner's constitutional claim?

4. Whether the new rule announced in Johnson v. United States, 192 L. Ed. 2d. 569, 576, 135 S. Ct. 2551, 2555, is applicable to the advisory Guidelines because it should have retroactive effect according to the second exception in Teague v. Lane, 489 U.S. 288, 311, 109 S. Ct. 1060, 103 L. Ed. 2d. 334(1998), as a watershed rule of criminal procedure, because the new rule announced in Johnson as-applied to Petitioner implicates the fundamental fairness of a criminal proceeding? And if so, should this Court decide the retroactivity issue under the context in which it actually applies to the case, before ruling on whether Johnson's rationale is applicable to the advisory Guidelines, so that the proper analysis may govern the case?

5. Whether following Johnson core principles, the vagueness of the residual clause's constitutional implications require that Petitioner's judgment is void because Johnson implicates the fundamental fairness of a criminal proceeding and/or because the district court's consideration of the vague residual clause means that Petitioner was not afforded a reasonable opportunity to address the career-offender issues "in a meaningful manner", which during the sentencing hearing is a major component of procedural due process?

6. Whether the abeyance procedures instructed by the Sixth Circuit Court of Appeals instructed the district court to construe Petitioner's Johnson based due process claim as a vagueness challenge to §4B1.2(a)(2), a facial challenge to §4B1.2(a)(2), or a substantive due process claim because of 4B1.2(a)(2)'s vaguness? And if so, does this allow the district court to construe a Petitioner's pleadings liberally? And if the Sixth Circuit's instructions did not direct the district court to construe Petitioner's Johnson based due process claim as a vagueness challenge, a facial challenge, and or a substantive due process claim because of §4B1.2(a)(2), how did the district court come to the conclusion that Petitioner's §2255 motion raises a vagueness challenge, a facial challenge, or a substantive due process claim, that because of the "outcome of Beckles", has no merit, when none of these contentions were specified in Petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §2255?

7. Whether applying a career-offender enhancement during Petitioner's sentencing proceedings, relying on §4B1.2(a)(2), deprives Petitioner of a protected liberty interest according to Johnson's rational, by not providing notice of the specific facts so that he could make his defense against the recommended enhancement during the sentencing hearing, pursuant to Fed. R. Crim. P. 32? And if so, could reasonable jurist at least debate whether Petitioner was "condemned unlawfully", or whether Petitioner's claim(s) should have been concluded in a different manner?

8. When a Petitioner claims that the residual clause of the advisory Sentencing Guidelines, §4B1.2(a)(2), allowed the district court's sentencing judge to apply an inappropriate career-offender enhancement during sentencing, relying on the new rule announced in Johnson v. United States, 192 L. Ed. 2d 569, 576, 135 S. Ct. 2551, 2555, according to §2255(h)(2) procedures; does the appellate court place a restrictive and diminished standard on §2255(h)(2) at a policy level, when they grant a Petitioner permission to file a second or successive §2255 motion, and then instructing the district court to hold the case in abeyance pending the outcome of a supreme court case, which is to determine the merits on a specific issue and has already been argued on that specific issue, instead of granting Petitioner permission to file a §2255 motion simply on the grounds that Petitioner's motion "relies" on a qualifying new rule, thus allowing the district court, unimpeded by the excessive and restrictive instruction, to decide whether the new rule announced in Johnson "as-applied" to Petitioner's claims substantiates a due process violation, because §2255(h)(2) motions involve rules that are "new"(therfore difficult to foresee)?

9. Whether Johnson v. United States, which held that the residual clause of the ACCA, 18 U.S.C.S. §924(e)(2)(B)(ii), denied fair notice to defendant's and invited arbitrary enforcement by judges was a procedural decision that applied retroactively to a prisoner's case on collateral review under the context of the advisory Sentencing Guidelines?

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:

Table Of Authorities Cited

Table Of Authorities Cited (cont.)

Table Of Authorities Cited (cont.)

CONSTITUTIONAL, STATUTES, REGULATIONS, AND RULES

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Appendix I -- Constitutional Provisions, Statutes, and Regulations Involved: Verbatim Text

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 C 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**: N/A

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 30, 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 August 27, 2018 (date) on May 31, 2018 (date) in Application No. 17 A 1329.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:** N/A

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

18 U.S.C. §2113(a) & (d)

18 U.S.C. §3553(c)

28 U.S.C. §2244

28 U.S.C. §2253

28 U.S.C. §2255

Federal Rules of Criminal Procedure 32(i)

Title 18- App'x, Chapter Four, Part B,
Sentencing Provision Of The Advisory
Sentencing Guidelines

The United States Constitution, Amendment V

(See Appendix I For Verbatim Text)

STATEMENT OF THE CASE

I. Course of Proceedings In The Section 2255 Case Now Before This Court and The Relevant Facts Concerning Sentencing Procedures

On September 22, 2009, in a cause then pending in the United States District Court for the Middle District of Tennessee entitled United States v. Tellis Williams, criminal case No. 3:09-cr-00090, Petitioner pled guilty on an indictment of one (1) count charging violation of 18 U.S.C. section 2113(d).

On November 9, 2009, Petitioner received his presentence report (PSR), twenty eight(28) days before his sentencing hearing in the mail at the Overton County Jail. Petitioner's appointed counsel, Ronald Small of the Federal Public Defenders Office then informed him that he would meet with him to discuss the contents of the PSR.

On November 23, 2009, without meeting with Petitioner, appointed counsel filed objections to the PSR, including objections to the career-offender enhancement, stating his intention to argue and/or object to the career offender enhancement at sentencing.

On November 30, 2009, still without meeting with Petitioner, appointed counsel filed a "Position of Defendant" with respect to sentencing factors. Therein, appointed counsel stated on behalf of petitioner, that Petitioner, "Mr Williams has reviewed the PSR and has no objection(s) to the advisory

guidelines" the advisory Guidelines were 188-235 month term of imprisonment. Appointed counsel hadn't met or discussed the PSR nor the advisory Guidelines with petitioner.

On November 30, 2009, appointed counsel also filed a sentencing memorandum which failed to mention the career-offender issues and argued for a sentence of 151 months. Appointed counsel never met with Petitioner to discuss neither the issues in the memorandum nor the proposed one hundred-fiffty one (151) month sentence. The sentencing memorandum advocated a sentence (151 months) that appointed counsel had never discussed with with Petitioner. The sentencing memorandum was mailed to Petitioner at the Overton County Jail and received on December 2, 2009, five days before sentencing hearing.

On December 7, 2009, the U.S. District Court for the Middle District of Tennessee entered judgement and Petitioner was sentenced to one hundred-sixty eight (168) months of imprisonment.

On October 25, 2010, Petitioner filed a motion for permission to file a delayed appeal on the ground that his appointed counsel had failed to file an appeal on his behalf despite being requested to do so. The U.S. District Court for the Middle District of Tennessee denied Petitioner's motion without breifing or a hearing on the issue.

In December 2010, Petitioner filed a 28 U.S.C. §2255 motion, arguing that: (1) appointed counsel was ineffective for failing to: (a) file a direct criminal appeal despite request by Petitioner; (b) advise Petitioner so that he could make an informed decision on whether to proceed to trial or enter a guilty plea; (c) conduct meaningful plea negotiations; and (d) challenge Petitioner sentencing recommendation as a career-offender, or argue that his criminal history was overstated, or attempt to present mitigation evidence concerning Petitioner's prior convictions for aggravated burglary; (2) Petitioner's guilty plea is invalid; (3) the prosecuter engaged in misconduct by opposing and arguing in opposition, Petitioner's request to be transferred from the Robertson County Detention Facility, resulting in a coerced guilty plea; and (4) Petitioner's sentence was improperly enhanced because the district court considered prior convictions unlawfully.

The district court held an evidentiary hearing on Petitioner's §2255 motion on June 4 and 6, 2012, and concluded that because Petitioner was entitled to a delayed appeal it was unnecessary to rule on the merits of Petitioner's other claims.

> "Here is my current thinking. That the issue about assistance of counsel on the notice of appeal is the first issue that has to be addressed. If that has merit, then it appears to me all other issues are moot because the remedy for ineffective assistance of counsel regarding notice of appeal would be to allow a delayed appeal, and all those other issues could be presented on delayed appeal." (Hearing Tr., Case No. 3:10-cv-1176, doc. at 169)

In Petitioner's delayed appeal for some odd reason unknown to him newly appointed counsel who represented Petitioner during his initial §2255 only raised the argument of ineffective

assistance of counsel and abandoned all other issues that Petitioner presented in his initial §2255.

On June 4, 2013, the Sixth Circuit ordered the District Court to reopen Petitioner's §2255 and consider the ineffective claims there, because ineffective assistance of counsel claims were better addressed in a post conviction motion.

On September 30, 2014, the district court concluded that Petitioner was not entitled to relief under 28 U.S.C. §2255. And Petitioner's motion under §2255 was denied and his action was dismissed.

On May 1, 2015, the Sixth Circuit denied Petitioner's application for a Certificated of Appealability.

On June 10, 2016, Petitioner filed a pro se motion in the case at bar, with the district court, pursuant to §2255 claiming that the sentencing judge applied an inappropriate career-offender enhancement during sentencing proceedings, based on the Supreme Courts decision in Johnson v. United States, 135 S. Ct. 2551, 2555(2015).

On June 13, 2016, Petitioner filed a pro se motion in the case at bar, with the Sixth Circuit, pursuant to §2255(h)(2), for an order authorizing the district court to consider a second or successive Application for relief, pursuant to 28 U.S.C. 2255.

On June 13, 2016, the district court appointed counsel to represent Petitioner on his §2255 motion, and set forth scheduling dates for filing deadlines, including a July 5, 2016, deadline for breifing addressing the issues of whether Petitioner's §2255 motion is a second or successive motion under 28 U.S.C. §2255 that requires prior authorization by the Sixth Circuit.

On July 16, 2016, without consulting with Petitioner, appointed counsel Caryll S. Alpert amended Petitioner's original §2255 motion.

Early July,2016 Petitioner spoke with appointed counsel for the first time and immediately requested that she not file anything on his behalf without first clarifying and getting permission to do so first. Appointed counsel agreed with that resolution. During that same phone call Petitioner asked appointed counsel to comply with the deadline set by the district court and submit a breif as to why the district court should consider Petitioner's §2255 motion as first habeas motion. Petitioner had already mailed a copy of the breif and the issues that he wanted filed on his behalf. Appointed counsel confirmed that she had received a copy of the breif and the issues set forth therein, but stated that she "would not file anything she thought was wrong". Williams and appointed counsel disagreed on what the breif should contain,and why. Williams instructed the appointed counsel not to file a breif on the issue. Appointed counsel agreed

with that resolution and the phone call ended.

On July 5, 2016, Petitioner filed a breif as to why his §2255 motion should be considered his first habeas corpus motion. (Williams v. United States, Case No. 16-01336 Doc. 12).

On July 5, 2016, Petitioner's appointed counsel filed a breif on the issue of whether Petitioner's §2255 motion should be considered a second or successive §2255 motion, and why she believed that Petitioner's §2255 motion should be treated as a second or successive motion. (Williams v. United States, Case No. 16-01336 Doc No. 11).

On July 6, 2016, the district court judge found that because Petitioner had already filed a request with the Sixth Circuit for authorization to file a second or successive petition and that request was pending before that court, the filing deadlines set forth in previous order are vacated. (Williams v. United States, Case No. 16-01336 Doc. 13).

On December 22, 2016, the Sixth Circuit granted Petitioner authorization to file a second or successive §2255, and transferred the case to the district court with instructions to hold the case in abeyance pending the outcome of Beckles v. United States, 137 S. Ct. 886, 887(2017). App. F .

> "the district court record does not indicated how it counted Williams's prior convictions. Because his aggravated burglary convictions cannot now be considered under the residual clause, and their viability under the enumerated offense clause has been called into question by our en banc rehearing in Stitt, Williams has made a prima facie showing that his claim contains an issue base on Johnson."

On November 28, 2016, during oral argument Beckles in the Supreme Court sparred over three questions:(1)Whether Johnson applies retroactively, (2)Whether the Guidelines' residual clause is so vague that its application is a denial of due process, and (3)Whether if the residual clause is void for vagueness, its deficiency fatally taints the commentary to the guideline, which specifically list the defendant's crime of carrying a sawed-off shotgun.

Deputy U.S. Solicitor General Michael R. Dreeben, arguing for the government, told the Court that there are thousands of cases in the pipeline waiting for a decision on the retroactivity issue.

On March 6, 2017, the Supreme Court held in Beckles " The Federal Sentencing Guidelines, including §4B1.2(a)'s residual clause, are not subject to vagueness challenges under the Due Process Clause".

On March 6, 2017, the Supreme Court in Beckles clarified " The holding in this case does not render the advisory Guidelines immune from constitutional scrutiny, see Peugh v. United States, 569 U.S.___,or render ' sentencing procedure[s]' entirely 'immune from scrutiny under the due process clause' Williams v. New York, 337 U.S. 241, 252,n.18. This Court holds only that the sentencing Guidelines are not subject to a [illegible] challenge under the void for vagueness doctrine".

On May 10, 2017, the district court denied Petitioner's second §2255 motion, ruling that the challenge Petitioner raised based on Johnson was squarely rejected by the Supreme Court's decision in Beckles v. United States, 137 S. Ct. 886, 887(2017). (Williams v. United States, Case No. 16-cv-01336, Doc 18). (App.C___)

On July 10, 2017, Williams filed an application for a Certificate of Appealability(COA) in the Court of Appeals for the Sixth Circuit. Appealing: (a) Whether based on the record as it exist Petitioner's career offender enhanced sentence was inappropriate/unreasonable/or unconstitutional and requires resentencing, (b) Whether a COA should be issued because reasonable jurist could debate the district court's assessment of Petitioner's constitutional claim of a due process violation, (c) Whether Petitioner's due process claim can be distinguished from Beckles due process claim. (Williams v. United States, Case No. 16-01336 Doc 21). (App. B)

On March 30, 2018, the Sixth Circuit denied Petitioner's COA, ruling that "the Supreme Court held that Johnson's reasoning does not apply to the advisory Sentencing Guidelines", following the Supreme Court's decision in Beckles v. United States, 137 S. Ct. 886, 887(2017).(Williams v. United States, Case No. 17-5855). (App. A)

On May 31, 2018, an application for an extension of time within which to file a writ of certiorari was presented to Justice Kagan, who extended the time to and including August 27, 2018.(Williams v. United States, Application No. 17A1329)(App. G)

II. TheCourt Of Appeals Has Decided A Federal Question In Conflict With The Applicable Decisions Of This Court

The Sixth Circuit Court of Appeals misreads this Court's decision in Beckles v. United States, 136 S. Ct. 886. Beckles had a specific holding, that: "The Federal Sentencing Guidelines, including §4B1.2(a)'s residual clause, are not subject to vagueness challenges under the Due Process Clause."

The issue of whether §4B1.2(a)(2) was void for vagueness was squarely at issue in Beckles. This was the only basis, afterall, for affirming Beckles sentence.

Beckles sentence was not affirmed by this Court because Johnson's reasoning is not applicable to the advisory Guidelines. That is an opinion of the Appellate Court, which was given to explain why reasonable jurist could not debate the district court's conclusion of Petitioner's constitutional claim of a due process of the law violation, and deny Petitioner a COA, which is in conflict with Miller-El Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 154 L. Ed. 2d. 931(2003).

When the lower courts do not address both prongs of the Due Process analysis, procedural and substantive, this Court has discretion to correct its errors at each step. Although not necessary to reverse an erroneous judgment(s), doing so ensures that courts do not insulate constitutional decisions at the frontiers of the law from this Court's review or

inadvertantly undermine the values due process seeks to promote.

The former occurs when the constitutional - law question is wrongly decided; the latter when what is not clearly established is held to be so. In this case, the Court of Appeals' analysis at both steps need correction.

Since only considerations of the greatest urgency can justify denial of due process, and since the validity of a denial of due process in each case depends on careful analysis of the particular circumstances, the procedures by which the facts of the case are adjudicated are of special importance and the validity of the restraint may turn on the safeguards which they afford, compare Kuntz v. New York, 340 U.S. 290, 95 L. Ed. 280, 71 S. Ct. 312, 328, with Feiner v. New York, 340 U.S. 315, 95 L. Ed. 295, 71 S. Ct. 303, 328. It becomes essential, therefore, to scrutinize the procedures by which the district court and/or the Appellate Court review a due process claim.

Moreover, when dealing with the complex strands in the web of freedoms which make up due process, the operation and affect of the methods by which due process is sought to be afforded must be subjected to close analysis and critical judgment in light of the particular circumstances to which it is applied.

A.

This Court has not previously focused on what is required for a claim to "rely" on a qualifying new rule for purposes

of §2255(h)(2).

Since the Appeals Court, in their gatekeeping function, cannot address the merits in a peteitioner's motion for permission to file a second or successive §2255, at all, nor in their §2253 inquiry into whether to grant a petitioner a "COA"; whether and how a claim "relies" on a qualifying new rule must be construed permissively and flexibly on a case by case basis.

This interpetation is based first on the text of §2255(h)(2), which supports a permissive and flexible approach to whether a petitioner "relies" on a qualifying new rule. See Maslenjak v. United States, 137 S,Ct. 1918, 1924(2017)("We begin, as usual, with the statutory text"). And second, on the text of §2253(c)(2), which due to its limited nature in the review of an application for a COA, also supports a permissive and flexible approach when determining "only if the applicant has made a substantive showing of the denial of a constitutional right."

The Appellate Court when granting Petitioner permission to file a second §2255 and then instructing the district court to hold Petitioner's case in abeyance pending the "outcome of Beckles" distorted the function of §2255. When this Court held in "Beckles" that "The Federal Sentencing Guidelines, including §4B1.2(a)'s residual clause, are not subject to vagueness challenges under the due process clause", the district court presumes that the Appellate Court's instruction to hold Petitioner's case in abeyance pending the "outcome of Beckles" meant that since Beckles's case was decided on as a facial challenge to §4B1.2(a)'s residual clause, that Petitioner's constitutional challenge based on "Johnson" was also a facial challenge to §4B1.2(a)'s residual clause ,, or even

a vagueness challenge, and that since Beckles was analyzed under a substantive due process doctrine, rather than one based on a procedural due process doctrine, Petitioner's claim deserved a substantive due process analysis only. The district court, by relying on a substantive due process analysis only, appears to have presumed that the novel standard that the Appellate Court created was necessary to analyze Petitioner's due process violation.

The liberty interest that Petitioner seeks to protect consist of his right to be heard "in a meaningful manner" before judgment is entered. He seeks procedural protection, not substantive protection for this freedom. Compare Wilkinson v. Austin, 545 U.S. 209, 221, 125 S. Ct. 2384, 162 L. Ed. 2d 174(2005)(Due process clause requires compliance with fair procedures, when the government deprives an individual of certain "liberty" or "property" interest), with Reno v. Flores, 507 U.S. 292, 302, 113 S. Ct. 1439, 123 L. Ed. 2d 1(1993)(Due Process Clause limits the extent to which government can substantively regulate certain "fundamental"rights, "no matter what process is provided.") Cf. Smith v. Organization of Foster Families For Equality& Reform, 431 U.S. 816, 842, n. 48, 97 S.Ct. 2094, 53 L. Ed. 2d. 14(1977) (Liberty interest arising under the constitution for procedural due process purposes are not the same as fundamental rights requiring substantive due process protection).

This Court's cases make clear that due process clause entitles Petitioner to such procedural rights as long as (1)he seeks protection for a liberty interest sufficiently important for procedural protection to flow "implicitly" from design,

object, and nature of the due process clause, or (2)nonconstitutional law creates "an expectation" that a person will not be deprived of that kind of liberty without fair procedures. Wilkinson, supra, at 221, 125 S. Ct. 2384, 162 L. Ed. 2d. 174.

To drive home the point, there is no reason why a procedural new rule should be limited to the circumstances under which it arose if the reason for the right it protects remain, notice and arbitrary enforcement. None of the modern innovations such as the advisory or mandatory nature of the Federal Sentencing Guidelines lessen the need for the defendant, personally, to have a reasonable opportunity to present to the court his plea in mitigation of the sentence, in a meaningful manner. The key terms that Petitioner's procedural due process claim turns on is "reasonable" and"in a meaningful manner". That means that the empty gestures, to mitigate the career-offender enhancement during sentencing hearing, caused by the vague and indeterminate language of §4B1.2(a)'s residual clause, violated Petitioner's due process rights

The right to be heard is often vital at the sentencing stage before the law decides the punishment of the person found guilty. Mempa v. Rhay, 389 U.S. 128, 135, 19 L. Ed. 2d. 336, 330, 88 S. Ct. 254. The hearing,whether on guilt or punishment, is governed by the requirements of due process. This Court stated in Specht v. Patterson, 386 U.S. 605, 610, 18 L. Ed. 2d. 326, 330, 87 S. Ct. 1209:

> "Due process, in other words, requires that he be present with counsel, have an opportunity to be heard, be confronted with witnesses against him, have the right to cross-examine, and to offer offer evidence of his own."

REASONS FOR GRANTING THE WRIT

Introduction.

The United States District Court for the Middle District of Tennessee denied Petitioner Tellis T. Williams's 28 U.S.C. 2255 motion to vacate, set-aside, or correct his sentence, concluding that in light of this Court's ruling in Beckles v. United States, 137 S.Ct. 886, 890 (2017)(herein after "Beckles") his "challenge to the residual clause was without merit" and that "the challenge to the residual of the career-offender Guidelines that Petitioner raises in his motion and amended motion 'squarely' was rejected by the Supreme Court in Beckles." See Williams v. United States, U.S. Dist. LEXIS 72255 (May 11, 2017)(order). App. C .

Petitioner sought to appeal the denial of his §2255 motion to vacate, set-aside, or correct his sentence. He accordingly filed an Application for a Certificate Of Appealability(herein after "COA") with the Sixth Circuit Court of Appeals.

To obtain a COA, Petitioner was required only to make a "substantial showing of the denial of a constitutional right." 28 U.S.C. 2253(c)(2).

The Sixth Circuit denied Petitioner a COA, concluding that, "this court granted Williams authorization to raise a claim based on Johnson, but the Supreme Court has since held that Johnson's reasoning does not apply to the advisory Guidelines."

The Sixth Circuit in denying Petitioner a COA agreed with the district court's resolution that "because Williams is challenging an enhancement that he received under the advisory Sentencing Guidelines he is not entitled to relief based on Johnson."

Petitioner's original §2255 alleges an error of constitutional magnitude and is based on this Court's holding in Johnson v. United States, 136 S.Ct. 2551, 2555 (2015). Petitioner's primary concern is not whether his prior convictions for aggravated burglary were crimes of violence under the advisory Guidelines residual clause, §4B1.2(a)(2), but whether the procedural process by which the sentencing court came to the conclusion that Petitioner's prior convictions were crimes of violence,violated his due process rights guaranteed to him by the Fifth Amendment of the United States Constitution.

Petitioner's constitutional challenge base on the new rule announced in Johnson is not contingent upon whether the advisory Guidelines was void for vagueness nor whether the advisory Guidelines were susceptible to vagueness challenges under the Due Process Clause's Void-For-Vagueness Doctrine, but is contingent upon whether the vagueness of the residual clause, §4B1.2(a)(2), afforded Petitioner the protected liberty interest of his right to be heard "in a meaningful manner" before judgment was entered.

Petitioner does not challenge the enhancement that he received under the advisory Guidelines as the district court erroneously implies in their order denying Petitioner's §2255 motion to vacate, set-aside, or correct his sentence base on the new rule announced in Johnson.

Petitioner's constitutional challenge base on the new rule announced in Johnson, claims that the procedures employed by the district court prior to entering judgment violated his due process rights guaranteed to him by the Fifth Amendment of the United States Constitutional.

Petitioner contends that because of §4B1.2(a)(2)'s use of indeterminate language denying him fair notice and invited arbitrary enforcement a constitutional violation occured before his sentence was entered. Petitioner's primary contentions based on the new rule announced in Johnson are that (1) he was not afforded a hearing appropriate to the nature of the case prior to the district court entering their judgment, and (2) just as the residual clause(ACCA) is void because of their constitutional infirmity caused by the residual clause's vagueness; his judgement is void because of the constitutional infirmity caused by the residual clauses vagueness(advisory USSG).

I. The Court Of Appeals Exceeded The Limited Scope Of The COA Analysis

A Federal prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a COA from a circuit justice or judge. 28 U.S.C. 2253(c)(2). A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Id. Until the prisoner secures a COA, the Court of Appeals may not rule on the merits of his case. Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S.Ct. 1029, 154 L.Ed. 2d. 931 (2003). The COA inquiry, this Court has emphsized, is not coextensive with a merit analysis.

At the COA stage, the only question is whether the applicant has shown that "jurist of reason could disagree with the district court's resolution of his constitutional claim or that jurist could conclude the issues presented are adequate to deserve encouragement to proceed further." Id., at 327, 123 S.Ct. 1029,

154 L. Ed. 2d.931. This threshold question should be decided without "full consideration of the factual or legal basis adduced in support of the claims." Id. "When a court of appeals sidesteps[the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction." Id.

The Sixth Circuit phrased its determination in the proper terms-- "that jurists of reason could not debate the district court's conclusion that Williams is not entitled to relief based on Johnson,"-- but reached that conclusion only after essentially deciding the case on its merits. As the Sixth Circuit stated in its order denying Petitioner a COA:

> "this court granted Williams authorization to raise a claim based on Johnson, but the Supreme Court has since held that Johnson's reasoning does not apply to the advisory Sentencing Guidelines and that the former residual clause of the career-offender guideline, section 4B1.2(a)(2), is not void for vagueness. Because Williams is challenging an enhancement that he received under the advisory Sentencing Guidelines, reasonable jurist could not debate the district court's conclusion that he is not entitled to relief based on Johnson. Accordingly, this court denies Williams's application for a certificate of appealability." App. A .

The balance of the district court's opinion reflects the same approach-- "The challenge to the residual clause of the career offender guidelines that Petitioner raises in his motion and amended motion squarely was rejected by the Supreme Court in its decision in Beckles." App. C .

The question for the Sixth Circuit was not whether Petitioner could challenge his enhancement under the advisory sentencing Guidelines, nor whether Johnson's reasoning applies to the advisory sentencing Guidelines. Those are ultimate merit determinations the panel should not have reached, yet. A "court of appeals should limit its examination [at COA stage[to a threshold inquiry into the underlying merit of the claim," and ask "only if the district court's decision was debatable." Miller-El v. Cockrell, 537 U.S., at 327, 348, 123 S. Ct. 1029, 154 L. Ed. 2d. 931.

Thus, when a reviewing court (like the Sixth Circuit here) inverts the statutory order of operations and "first decides the merits of an appeal, ... then justifies its denial of a COA based on its adjudication of the actual merits," it has placed to heavy of a burden on the prisoner at the COA stage. Id., 537 U.S., at 336-337, 123 S. Ct. 1029, 154 L.Ed. 2d. 931. Miller-El flatly prohibits such a departure from procedure proscribed by 28 U.S.C. 2253.Ibid. The §2253 statute sets forth a two-step process: an initial determination whether claim is reasonably debatable, and then -if it is- an appeal in the normal course. Whatever procedures that are employed at the COA stage should be consonant with the limited nature of the inquiry.

When the Sixth Circuit gathered from Beckles that this Court's holding there meant that Johnson's reasoning

does not apply to the advisory sentencing Guidelines they exceeded the limited scope of the COA analysis. To say otherwise would be to deny all actualities. Beckles had a limited holding: §4B1.2(a)(2) was not void for vagueness.

II.

Reasonable Jurist Could Easily Find It Debatable Whether "Beckles" Squarely Rejects Petitioner's Constitutional Claims

The decision Petitioner wants this Court to review here is the order in which the Sixth Circuit denied him a COA. Under the standards described above, that order determined not only that Petitioner had failed to show entitlement to relief but also that reasonable jurist would consider that conclusion beyond all debate. See Slack, supra, at 484, 121 S. Ct. 1595, 146 L. Ed. 2d. 542. The narrow question here is whether the Sixth Circuit erred in making that determination. That narrow question however implicates broader legal issues.

A.

The fact that the advisory sentencing Guidelines residual clause, §4B1.2(a)(2),is not void for vagueness and the advisory sentencing Guidelines are not susceptible to a vagueness challenge under the Due Process Clause is not a conclusive reason for affirming that Williams' sentence is not unconstitutional based on this Court's decision

in Johnson. Petitioner believes this is the essence of the Sixth Circuit's decision to deny him a COA. Such reasoning is not only at variance with 28 U.S.C. §2253, but also with this Court's decision in Beckles, and it is a retreat through the long agonizing history of retroactivity(see Teague v. Lane, 109 S.Ct.1060(1988)) and the privilege to liberal construction of a pro se litigant's pleadings (see Haines v. Kerner. 92 S.Ct. 594(1972)).

When Petitioner, a pro se litigant, does not claim that his Johnson based challenge to his sentence is a vagueness challenge to §4B1.2(a)(2) nor that §4B1.2(a)(2) is void for vagueness; construing Petitioner's pleadings liberally, the district court cannot automatically determine that these were his principle arguments, only after this Court renounces these arguments.

The Sixth Circuit granted Petitioner permission to file a second or successive 28 U.S.C. § 2255 because he made a prima facie showing that his claim contains an issue based on Johnson. (see App. F .) The Sixth Circuit also instructed the district court to hold Petitioner's case in abeyance pending "the outcome of Beckles". (see App. F). The Sixth Circuit did not however instruct the district court on what this Court in Beckles would address to make Petitioner's claim valid or invalid.(see App. F).

The district court suppose as fact that because this Court rejected Beckles's constitutional challenge based on Johnson, that Petitioner's constitutional challenge based on Johnson is automatically without merit. The district court does not present any logical confirmation, other than this Court's holding in Beckles, as to why Petitioner's arguement to why his sentence is unconstitutional and should be vacated, set-aside, or corrected, is without merit.

The district court did not to an acceptable degree justify how they came to the conclusion that Petitioner's primary and ultimate challenge was a vagueness challenge to the residual clause of the career offender guidelines and not a constitutional challenge based on Johnson to the sentencing procedures practiced by the district court prior to entering a judgment that deprived the Petitioner of a liberty interest to a fundamentally fair sentencing hearing. (see App. C).

The holding in Beckles does not render the advisory Sentencing Guidelines immune from constitutional scrutiny, see Peugh v. United States, 569 U.S.___, or render "sentencing procedures" entirely "immune from scrutiny under the due process clause," Williams v. New York, 337 U.S. 241, n.18. "This Court holds only that the sentencing Guidelines are not subject to a challenge under the void-for-vagueness doctrine. See Beckles v. United States, 137 S.Ct. 886(2017).

If Beckles is applicable to Petitioner's §2255 motion, it is only applicable because it squarely proves that Petitioner's constitutional claim based on the new rule announced in Johnson deserves encouragement to procede further.

A void for vaguness challenge is a facial challenge. See Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 494-495, 102 S.Ct. 1186, 71 L. Ed. 2d. 362, and nn. 5,6,7(1982). The distinction between facial and as-applied challenge is not so well defined that it has some automatic effect or that it must always control the pleading and disposition in every case involving a constitutional challenge. [But] the distinction is both instructive and necessary, for it goes to the breadth of the remedy employed by the court, not what must be pleaded in a compllaint. See United

States v. Treasury Employees, 513 U.S. 454, 477-478, 115 S.Ct. 1003, 130 L.Ed. 2d. 964(1995)(contrasting "a facial challenge" with "a narrower remedy").

Thus, when the district court chose to rely on this Court's holding in Beckles, which analyzed his claim as a facial challenge, to deny Petitioner's constitutional challenge to his sentence based on this Court's decision in Johnson, the district court misconstrued Petitioner's constitutional challenge as a facial challenge. This mischaracterization of Petitioner's claim came to be because the district court failed to contrue Petitioner's pleadings liberally. The district court chose to restrict and reshape Petitioner's due process claim by attaching the "outcome of Beckles" even though it was not an on-point holding, so that no cure was possible for the illegal judgment yeilded by a forbidden, unethical, and unconstitutional sentencing hearing.

By attaching Petitioner's constitutional challenge to the "outcome of Beckles" and providing no further instructions nor guidance, the Sixth Circuit put the district court in a situation where they did not have to construe Petitioner's pleadings liberally and they could manipulate Petitioner's pleadings as well as this Court's decision in Beckles.

B.

Different laws and doctrines come into effect and

therefore a different analysis may govern the merits of a certain claim. Especially when switching context, such as from the ACCA, which is statutory in nature; to the advisory sentencing Guidelines, which has been characterized as procedural. The problem caused by a vague statute, does not pose the exact same problem as a vague guideline sentencing provision, and vice versa. Differnt problems more than likely require different remedies.

This Court in Johnson invalidated the residual clause of the ACCA because it was unconstitutionally vague. The principle questions that were essential to Johnson's rationale in assessing the residual clause of the ACCA were: (1) Is the residual clause vague? And,if so (2) is there a constitutional violation caused by the residual clause's vagueness? And, if so (3) what is the remedy to cure this constitutional defect caused by the vague residual clause?

The void-for-vagueness doctrine was just the remedy to cure the constitutional defect caused by the vague residual clause of the ACCA. This Court in Johnson followed their own precedent when dealing with a vague statute. This in no way, shape, form, or fashion means that this is Johnson's principle rationale. Johnson's principle rationale is that the residual clause is vague. And because of its vagueness it violates the Constitution by inviting arbitrary enforcement and failing to provide notice.

Following Johnson's principles, but not the same remedy, this Court should ask: (1)Is the residual clause of the advisory sentencing

sentencing Guidelines vague? And if so, (2)Is there a constitutional violation caused by the residual clause's vagueness? And if so, (3) What is the remedy to cure [this] constitutional defect caused by the vague residual clause of the advisory sentencing guidelines?

It is difficult to see how the residual clause of the advisory Guidelines could not be vague. According to Johnson's rationale the language of the residual clause in the ACCA, which is identical to the residual clause in the advisory Guidelines, uses indeterminate language and leaves grave uncertainty about how to estimate the risk posed by a crime. This statement is truthful in both contexts. So, yes §4B1.2(a)'s residual clause is vague. And this Court never held otherwise in Beckles.

A procedural due process limitation unlike its substantive counterpart, does not require that the government refrain from making a substantive choice to infringe upon a person's life, liberty, or property interest. It simply requires that the government provide "due process" before making such a decision. See Howard v. Grinage, 82 F. 3d 1343.

The touchstone of procedural due process is the fundamental requirement that an individual be given the opportunity to be heard "in a meaningful manner" see Loudermill v. Cleveland Bd. of Educ., 721 F.2d 550, 563(6th Cir. 1983), aff'd, 470 U.S. 532, 84 L. Ed. 2d 494, 105 S. Ct. 1487(1987). Many procedural due process claims are grounded on violations of created rights, as is the case here; rights that do not enjoy constitutional standing. However the right to a hearing prior to the deprivation

is of constitutional stature and does not depend upon the nature of the right violated.

The identically worded residual clause of the advisory Guidelines is vague. And a constitutional violation is caused by the residual clause's vagueness just as it is in Johnson; by failing to provide fair notice and inviting arbitrary enforcement. The residual clause of the advisory Guidelines, §4B1.2(a)(2), does not afford a defendant an opportunity to defend against the application of a prior conviction to enhance a defendant's sentencing range and sentence him as a career-offender. It does not provide notice of the facts that will be used against him during sentencing. Defendant will not be able to present mitigation testimony to oppose the career-offender enhancement. When a defendant is allowed to speak pursuant to Rule 32 of the federal rules of criminal procedure, it is only an empty gesture made by the district court because of the residual clause's vagueness. Nothing a defendant says will actually have an effect of discrediting or validating the PRS's recommendation that defendant's prior conviction qualifies as a violent felony under the residual clause of the advisory Guidelines.

Fundamental in the concept of due process, and so in that of liberty, is the thought that condemnation shall be rendered only after trial. Scott v. Mcneal, 154 U.S. 34, 38 L. Ed. 896, 14 S. Ct. 1108; Blackmer v. United States, 284 U.S. 421, 76 L. Ed. 375, 52 S. Ct. 252. The hearing, moreover, must be a real one, not a sham or a pretense. Moore v. Dempsey, 261 U.S. 86, 67 L. Ed. 543, 43 S. Ct. 265; Mooney v. Holohan,

294 U.S. 103, 79 L.ED. 791, 55 S.Ct. 340, 98 A.L.R. 406. For that reason, defendants in a capital case were held to have been condemned unlawfully when in truth, though not in form, they were refused the aid of counsel. Powell v. Alabama, supra,(287 U.S. pp. 67, 68, 77 L.Ed. 169, 170, 53 S.Ct. 55, 84 A.L.R. 527). The decision did not turn upon the fact that the benefit of counsel would have been guaranteed to the defendants by the provision of the Sixth Amendment. The decision turned upon the fact that in the particular situation laid before the Supreme Court in the evidence the benefit of counsel was essential to the substance of a hearing.

For those very same reasons mentioned above, it is evident following the new rule announced in Johnson, Petitioner has been condemned unlawfully when in truth, though not in form, he was denied the opportunity to speak "in a meaningful manner" and present mitigation testimony prior to sentencing. Wherefore as in Petitioner's case, the decision of the district court to deny Petitioner's §2255 motion to vacate, set-aside, or correct his sentence should not have turned upon the facts that the benefit of a residual clause that provides fair notice and did not invite arbitrary enforcement would have been guaranteed to him by the provision of the Fifth Amendment. Instead, the decision should have turned upon the fact that in the particular situation laid before the district court in the evidence the benefits of a residual clause that provided that provided fair notice and did not invite arbitrary enforcement was essential to the substance of the hearing prior to passing judgment.

The rationale for granting procedural protection to

an interest that does not rise to the level of a fundamental right and Johnson's principle rationale are identical, and lies at the very heart of this country's democracy: the prevention of arbitrary use of government power.

At sentencing the parties must be allowed to comment on matters relating to an appropriate sentence, Fed. R. Crim. P. 32(i)(1)(c), and the defendant must be given an opportunity to speak and present mitigation testimony. Fed. R. Crim. P. 32(i)(4)(A)(ii). Irizarry v. United States, 171 L.Ed. 2d. 28, 553 U.S. 708 (2008). The presence of discretion does not displace the protections of procedural due process as it does substantive due process.

Failure to address defendants personally or to give defendants opportunity to make a statement requires resentencing. Unites States v. Medina, (1996, CA 11 Fla) 90 F. 3d 459, 10 FLW C241. At his sentencing hearing Petitioner was denied a reasonable opportunity to be heard "in a meaningful manner," and denied a "reasonable " opportunity to meet the [career offender enhancement] by way of defense or [illegible] explanation.

Petitioner's original §2255 presents the question whether he was denied due process when the sentencing judge sentenced him as a career offender relying in part on, §4B(1.2(a)(2), an inexplicable definition of a crime of violence. Petitioner and Petitioner's counsel's deprivation of a "reasonable opportunity... to challenge the accuracy or materiality" of the career offender recommendation due to the vagueness of the advisory guidelines residual clause, §4B1.2(a)(2), left manifest risk that the information relied upon by the sentencing court may have been misinterpeted. Petitioner and Petitioner's counsel's deprivation of a "reasonable opportunity... to challenge the accuracy

or materiality of the opposing party's claims by way of defense or explanation left manifest risk that the judgment entered imposing sentence upon Petitioner was in essence issued without a sentencing hearing appropriate to the nature of the case.

When this is the case the proper remedy to this constitutional deficiency is to "void the judgment" (not the residual clause). Petitioner does not contend that he cannot be held for resentencing under the same indictment and subsequent guilty plea. Petitioner simply pleads that as in Johnson the constitutional defect caused by the residual clause's vagueness(§4B1.2(a)(2)) should be remedied.

Petitioner request that this Court grant him a writ of certiorari so that the lower courts can follow the proper procedure when dealing with a constitutional challenge that deserves a facial remedy, or the proper procedures to follow when dealing with a constitutional challenge that deserves a narrower remedy; and how and when to decide/analyze which remedy is proper.

In Welch v. United States, 136 S.Ct. 1257(2016), this Court started its analysis with a Teague, 489 U.S. 288, 311, 109 S.Ct. 1060, 103 L.Ed. 2d. 334(1988),. This Court should do the same here. In analyzing whether a writ of certiorari should be granted this Court should consider the §2244(b), prima facie, standard, and this Court's decision in Sessions v. Dimaya,,584 U.S.___, 138 S.Ct.___, 200 L.Ed. 2d. 549, 2018 LEXIS2497. In analyzing whether Petitioner's constitutional claim has merit based on the new rule announced in Johnson this Court should review 3553(c) and the Fifth Amendment Due Process Doctrine.

III. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER

A.

The Sixth Circuit failed to follow the legal standard a court of appeals should use in considering application under 28 U.S.C. §2255 for permission to file a second or successive motion.

In considering application under 28 U.S.C. §2255 for permission to file second or successive motion, court of appeals should use §2244 standard and thus insist only on prima facie showing of motions adequacy. In context of 28 U.S.C. §2244(b), by "prima facie showing" court understands simply sufficient showing of possible merit to warrant fuller exploration by district court; if in light of documents submitted with pre-filing authorization motion satisfies stringent requirements for filing of second or successive petition, court shall grant motion.

The Appellate Court when granting Petitioner's application to file a second or successive motion because he made a prima facie showing, but then limiting any further exploration by the district court with its excessive instructions, prohibited the fuller exploration, commissioned by §2244 of Petitioner's claim based on the new rule announced in Johnson, by the district court.

The actions of the Appellate Court here infringed upon the §2244 and §2255 standard of review, which in turn infringed upon

§2253 standard of review. To say otherwise would be to deny all actualities. (See Maslenjak v. United States,137 S.Ct. 1918,(2017).

B.

Whether a claim "relies" on a new rule must be construed permissively and flexibly on a case by case basis. 28 U.S.C.§2255(h)(2) has no express requirement that the "new rule" must actually pertain to the Petitioner's claim. At a policy level, a flexible, case by case approach advances two ends-- the need to meet new circumstances as they arise, and the need to prevent injustice.

The Sixth Circuit granted Petitioner authorization to raise a claim based on Johnson, but restricted Petitioner's limits of his claim by instructing the district court to hold his case in abeyance "pending the outcome of Beckles", after Beckles had already been argued in the Supreme Court. This in actuality restricted and ascertained the merits on which Petitioner's claims could prevail.

If Petitioner's claims are not contingent upon, and does not raise a "vagueness challenge", or even contend that §4B1.2(a)(2) is "void for vagueness" under the Due Process Clause's void-for-vagueness doctrine, in line with the §2255 and §2244 standard, the Sixth Circuit cannot decide how a Petitioner's motion "relies" on the "new" rule announced in Johnson; only whether. See §2244(b).

§2255(h)(2) does not require that the qualifying new rule be movants winning rule only that the movant rely on such

rule. The Sixth Circuit exceeded the §2255(h)(2) examination in determining whether Petitioner's claim "relies" on a qualifying new rule. A motion "relies" on a qualifying new rule where the rule "substantiates the movant's claim." This is so even if the rule does not "conclusively decide" the claim or if the Petitioner needs a non-frivolous extension of a qualifying rule.

The Sixth Circuit held Petitioner's case in abeyance pending the outcome of a Supreme Court case that had already been argued on specific grounds. This did not allow the district court to review Petitioner's motion de novo or to constue Petitioner's claims liberally, or warrant fuller exploration by the district court.

The Sixth Circuit's review of whether Petitioner's claim relies on a new rule was anything but permissive and flexible, and was not on a case by case approach. The Sixth Circuit erred when they placed Petitioner's claim in a class of cases that were dependant on a specific case that had already been argued in the Supreme Court. The approach employed by the Sixth Circuit when reviewing whether Petitioner relies on a new qualifying rule inconvenienced his case and were for dilatory purposes. The abeyance procedures were unlawful and unjust.

§2255(h)(2) motions may involve rules that are "new" (therefore difficult to forsee) and "procedural," thereby involving a particular type of injustice. The standard of review from start to finish was flawed. The Sixth Circuit goes on to follow this flawed approach when deciding if Petitioner should be granted a Certificate of Appealability.

This Court should enforce their supervisory power to ensure that Petitioner is afforded meaningful review of his §2255 motion

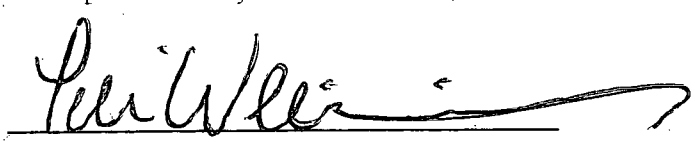
to vacated, set- aside, or correct his sentence based on the new rule announced in Johnson v. United States, 135 S.Ct. 2551, 2555(2015).

CONCLUSION

For the reasons set forth above, Petitioner, Tellis T. Williams, respectfully ask this Court to grant him a writ of certiorari because the Sixth Circuit has so far departed from the accepted and usual course of judicial proceedings and has sanctioned such departures by a lower court, as to call for an exercise of this Court's supervisory power.

NOVEMBER 12,2018.

Respectfully Submitted,



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