

Supreme Court, U.S.
FILED

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No. 18-6812

IN THE
SUPREME COURT OF THE UNITED STATES

Jack Ferranti — PETITIONER
(Your Name)

vs.
United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Second Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jack Ferranti #45299-053

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None

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ORIGINAL

QUESTIONS PRESENTED

- 1) WHETHER THE DISTRICT COURT IMPOSED A DEFACTO LIFE SENTENCE THAT WAS NOT AUTHORIZED BY THE STATUTE OF CONVICTION BY CALCULATING THE DEFENDANT'S LIFE EXPECTANCY PLUS ADDING UP THE EXPECTED GOOD TIME CREDITS OVER THE ENTIRE COURSE OF THE DEFENDANT'S SENTENCE AWARDED THROUGH THE FEDERAL BUREAU OF PRISONS.
- 2) WHETHER THE FEDERAL RULES OF CIVIL PROCEDURE UNDER RULE 60(b) WOULD ALLOW PETITIONER TO CORRECT HIS UNLAWFUL DEFACTO LIFE SENTENCE WHERE HE HAD PREVIOUSLY PRESERVED THIS ISSUE BY ARGUING, AT SENTENCING, ON FIRST APPEAL ON HIS FIRST 28 USC §2255 MOTION, AND TWO PRIOR 28 USC §2241 POST-CONVICTION MOTIONS.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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 is unpublished.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 is unpublished.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 is unpublished.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

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was March 8, 2018

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 1, 2018, and a copy of the order denying rehearing appears at Appendix A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

[] For cases from state courts:

The date on which the highest state court decided my case was _____. 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

The Constitutional provisions in the instant petition involve Petitioner's due process clause right protected by the Fifth Amendment; his Fair Trial Clause right protected by the Sixth Amendment; and the Ex post-Facto Clause as provided in the United States Constitution.

The statutory provisions involved are found under the sentencing provisions found in 18 USC §844(i) and under 18 USC §34, which was controlling at the time that the offense allegedly occurred.

Preliminary Statement

Petitioner Jack Ferranti acting pro se respectfully moves this Court to grant his application for a writ of Certiorari in order to challenge the Second Circuit Court of Appeals upholding the District Court's decision that dismissed his Rule 60(b) motion. Further, Ferranti's 60(b) is premised on a defect in earlier courts sentencing calculation that allowed the Court to impose a sentence that exceeded the statutory maximum that Congress had authorized at the time the Instant Offense was committed by Petitioner. Specifically, when Ferranti allegedly committed the Title 18 USC 844(i) offense, the statutory penalty did not carry a life sentence without specific findings by the jury. Consequently, when the District Court calculated Petitioner's sentence, it based the sentence on Ferranti's life expectancy, which included the estimated good time that he should receive from the Bureau of Prisons (BOP) for the entire length of the sentence that the Court imposed.

Long after Ferranti's conviction/sentence became final and all his post-conviction remedies have been exhausted, the Supreme Court in Barber v. Thomas, 560 U.S. 130 (2010) clarified that the BOP does not have to pro-rate a prisoner's total good conduct time based on his entire sentence, but should only award good time credit after each year the prisoner has completed. See Sentencing Transcripts Attached.

The above decision by this Court presents a serious constitutional violation(s) if Ferranti's sentence is not recalculated which further violated the separation of power principle - if not corrected through any post-conviction proceedings.

Statement of Case

Petitioner was found guilty by a jury on August 5, 1995, of arson homicide, arson conspiracy, 16 counts of mail fraud, and witness tampering. (Doc. 6, Ex.1, Criminal Docket in United States v. Ferranti, et. al., 1 95-cr-119,

Doc. 223). He was sentenced to 435 months of imprisonment and 5 years supervised release on the arson homicide charge. On the remaining counts, Ferranti received the statutory maximum sentences, each to run concurrently with the arson homicide sentence. Ferranti was also sentenced to restitution, fines and special assessments. (See United States v. Tocco, et al., 135 F.3d 116, 122-23 (2d Cir. 1998)).

Because the offense occurred prior to the enactment of the Violent Crime Control and Law Enforcement Act of 1994, the Court was aware that it could not sentence Ferranti to a life sentence without a specific recommendation by the jury pursuant to 18 U.S.C §34, the controlling statute at the time of the offense. The District Court therefore utilized statistical information prepared by the Metropolitan Life Insurance Company that provided that the life expectancy for a white male was 74 years. Ferranti at the time was 43 years old, therefore in accordance with the data from the Metropolitan Life Co., Ferranti's remaining life expectancy was 31 years; the Court then concluded that a sentence of 371 months [one month short of Ferranti's life expectancy] could be imposed without a specific finding from the jury. The court then added the total amount of good time credit that Ferranti should be awarded based on the entire 371 months sentence, which added an additional 64 months, imposing a total sentence of 435 months that the Court assumed with good time credit would still be under a life sentence. The additional 64 months is improper.

Since his sentencing, Appellant has challenged his conviction and sentence in the following ways: He filed a direct appeal to the second Circuit which affirmed the conviction and sentence on January 16, 1998 (Docket No. 96-1282). Thereafter, he filed a motion under §2255 (Case No. 99-Co-2332). Subsequently, on July 13, 2000, the motion was denied procedurally, based on nothing persuasive, thus the District of Ruling was affirmed by the Second Circuit. (Docket No. 00-2271).

On Direct Appeal, this Court in denying Ferranti's challenge to the District Court miscalculation of good time credits when formulating his sentence held:

We also reject Ferranti's additional contention that, even considering the good-time credits, a 371-month term of imprisonment violates §34 by falling uncomfortably close to his life expectancy. A sentence that is close to a person's life expectancy based on actuarial tables is not the functional equivalent of a sentence for the actual life of the person.

Subsequently, denying Appellant's argument that his sentence exceeded his life expectancy.

Appellant was granted leave to file a second or successive §2255 by the Second Circuit Court of Appeals (Docket No. 05-5222) based on newly discovered evidence that proved actual innocence that was presumed on review of the video tapes to ascertain whether the arson charge was fabricated by law enforcement or the fire marshall. However, Judge Weinstein refused to review the tapes and recused himself from any further proceedings dealing with this case.

Subsequently, Judge Garufis was assigned the case and requested further briefing from Ferranti's co-defendant Mr. Tocco. However, Judge Garufis failed to make any ruling on Ferranti's actual innocent claim and the case was again transferred to Judge Korman's Court. Judge Korman denied both Ferranti's §2255 motions and his §3582(c) motion without viewing the video tape or holding an evidentiary hearing on either motion, subsequently Ferranti appealed the denial of his second §2255, which was further denied §3582 (591 Amendment) Motion.

Consequently Ferranti, pursuant to 28 U.S.C. §2241 filed with the United States District Court for the District of South Carolina (where Petitioner was incarcerated) was dismissed for lack of jurisdiction on February 6, 2014. The District Court found that it must defer to the Bureau of Prisons ("BOP") calculation and that any sentencing recalculation must come from the sentencing court. Petitioner appealed, which was also denied by the Fourth Circuit. A motion to file a second or successive §2255(e) motion based on "newly discovered" evidence was thereafter filed by Petitioner with the Second Circuit Court of Appeals but was denied on February 9, 2016. (Doc.2 at 2-4; Ex.3 Mandate).¹

¹ The newly discovered evidence referred to by Petitioner was the District Judge of South Carolina's remark in his opinion that the Petitioner was "facing a potential constitutional violation if his sentence is not recalculated."

In February of 2016, Petitioner filed a petition for rehearing, but it was denied.

Petitioner's next attempt to correct his unlawful sentence was through a §2241 petition in the Middle District of Pennsylvania (where Petitioner is currently incarcerated). Case No. 3-CV-16866-EMKLQ that was subsequently denied on October 28, 2016 by the Third Circuit (Doc. 316-4098)²

A. Petitioner's Rule 60(b) Motion

Petitioner recently attempted to correct his unlawful sentence through the provision set forth in Fed.R.Civil.P. 60(b) which argued that there is a substantial defect in the District Court's prior rulings for failure to grant Petitioner relief from his previously challenged unconstitutional de facto life sentence, which the Court did not have the authority to impose. The record seems to demonstrate that Judge Weinstein denied Petitioner's Rule 60(b) motion without reviewing the material factual basis to Ferranti's claim. What is further bewildering is why Judge Weinstein agreed to preside over Petitioner's Rule 60(b) motion when he had clearly recused himself for Ferranti's previous 28 USC §2255 motion that presented a very critical argument of actual innocence. Nevertheless, Judge Weinstein never provided Petitioner with an adequate written opinion explaining as to what ground the Court dismissed Petitioner's motion.³

Petitioner appealed the District Court dismissal of his Rule 60(b) motion, however the Second Circuit seemed to follow Judge Weinstein's lead by purposefully failing to adequately review the relevant factual basis to Ferranti's motion. Specifically first the Circuit Court denied Ferranti's motion on the ground

² All judgments and opinions are provided in the Appendix section of this brief for the Court's convenience.

³ Nor did Judge Weinstein order the US Attorney to respond to Petitioner's Rule 60(b) motion therefore dismissing Petitioner's motion without being fully briefed and argued by all parties concerned.

that he failed to argue the standard to grant a certificate of Appealability (COA). Thus denying the appeal without considering the merits of the claim. Subsequently Ferranti submitted a motion for rehearing or rehearing en banc where he extensively argued substantial grounds in which the Court should grant him a COA. (See Doc. 44). However the Court of Appeals issued an order denying Petitioner's motion for reconsideration on June 1, 2018 (See Doc. 50) and once again the Court failed to issue a written opinion as to what grounds Petitioner 's Rule 60(b) appeal motion was denied, nor did the Appeals Court request the Government to respond to Ferranti's appeal brief. Consequently, making it virtually impossible for Petitioner to determine on what grounds this Court was dismissing his properly submitted Rule 60(b).

Therefore, Petitioner now seeks relief though this Court's granting his request for a writ of Certiorari.⁴

REASONS FOR GRANTING PETITION

Petitioner Jack Ferranti presents to this Honorable Court a case of first impression, which this Court has not previously had a chance to litigate, that addresses the legal question, "can a sentencing court calculate a sentence that by statute is supposed to be less than life and base its sentence on the defendant's life expectancy and further add good time credits that the court presumes that the defendant will receive during his entire incarceration."

Furthermore, this brief presents the legal question as to whether a defendant [such as Ferranti] who had diligently challenged his miscalculated sentence on direct appeal, first 28 USC §§2255 and through other habeas proceedings could finally get the relief that he seeks through Fed.R.Civil.P.60(b) when an intervening change in law by the Supreme Court had clarified the Bureau

⁴ Petitioner at the present time has a motion pending to Recall the Mandate in the Second Circuit Court of Appeal that is addressing the same sentencing miscalculation as presented in this brief.

of Prisons authority as to how good time credits can be calculated by prison authority, i.e. Petitioner's Rule 60(b) motion explicitly challenged an inconsistent application of law to set aside the judgment on his direct appeal, First §2255 motion and other post-conviction motions when he challenged the constitutionality of his de facto life sentence.⁵

Accordingly, the decision to grant or deny relief pursuant to Rule 60(b) lies in the sound discretion of this Court, guided by accepted legal principles in light of all relevant circumstances and that Justice be done. Gonzalez v. Crosby, 545 U.S. 524, 529 (2005)(noting that Rule 60(b)'s "whole purpose is to make an exception to finality.").

It is a case-by-case inquiry that requires that Trial Court to intensively balance numerous factors, including the competing policies of the finality of judgments and the incessant command of the Court's conscience that Justice be done in light of all the factual issues presented, rather than by the existence of a technical or procedural defect.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, Section 1331 confers jurisdiction upon the Court over "all Civil Action arising under the Constitution, Laws, or Treaties of the United States" a lawsuit "arises under Federal Law if (1) Federal Law creates the cause of action," or (2) "the resolution of the dispute depends upon the validity, Constitution, or effect of Federal Law, so long as the Federal question is real and substantial issue." See City Nat'l Bank v. Edminster, 681 F.2d 942, 945 (1982).

Petitioner seeks adjudication on the "merit" of the Constitutional violations of his rights in the interest of Justice, and asserts that "extraordinary

⁵ Several other circuit courts have now determined that "it is the defendant's sentence rather than the district court's estimate of the time that the defendant may actually serve [i.e. without incorporating good time credits] that is to be considered in determining whether the sentence awarded exceeds the defendant's approximate life expectancy. i.e., an erroneously imposed life sentence ordinarily constitutes an abuse of discretion; see United States v. Martin, 100 F3d 46, 48 (7th Cir. 1996).

"circumstances" warranting post-judgment relief, including Rule 60(b)(4)(6).

In summary this provides for an appropriate reason for the Honorable Court to grant Petitioner his request application for a writ of Certiorari in order to fully explore and advance the legal questions that are further argued within this brief that this Court has not previously answered.

A. Whether the District Court Abused Discretion By Imposing A Defacto Life Sentence

On direct appeal, Mr. Ferranti challenged the virtual life sentence, arguing that Judge Weinstein did not give effect to former 18 U.S.C 34, which required a jury determination before a life sentence could be imposed, and that the Sentencing Guidelines for arson are hopelessly ambiguous and lead to arbitrary results because they direct the court to the "most analogous" homicide guideline without proving any illumination as to the facts relevant to making the analogy.

Consequently, the district court recognized that it could not impose a life sentence because former sections 34 and 844(i) required a jury recommendation and there was none, the Court did an "end-run" around the statute to impose a sentence that would consume this defendant's life nonetheless. The sentence, and this Court's affirmance of it, flies against Barber v. Thomas, 560 US 130 (2010).

Assuming arguendo, in imposing Ferranti's sentence Judge Weinstein's reasoning that a sentence only "slightly less than defendant's life expectancy satisfies a former 18 U.S.C. §34, the Court failed to give real effect to the enactment, which at the time precluded a life sentence without a jury's concurrence. The Court purported to follow the lead of Judge Posner, but, with due respect, Judge Posner gave more serious treatment to §34 than did Judge Weinstein.

Judge Posner thus wrote⁶ that sentence had to be "significantly", although not necessarily greatly, less severe than a sentence of life imprisonment."

United States v. Prevatte, 66 F.3d at 848 (Posner, J. concurring). The ruling here that the sentence could be only "slightly" less than life expectancy stands in marked contrast and violates §34.

The Seventh Circuit however effectively overturned that decision [and the use of good time credits when formulating a less than life sentence] in United States v. Martin II, 100 F.3d 46, 48 (7th Cir. 1996) which was Martin's second appeal on his sentence which held:

Our decision to reverse Martin's original sentence was based on our belief that a contrary holding would permit sentencing courts to evade the restrictions imposed by Congress in the pre-1994 version of 18 USC §34, which authorized the imposition of life sentence, but only in those cases in which the jury so directed. See Martin, 63 F.3d at 1434. Our holding that the sentencing judge's imposition of a term of years in excess of Martin's approximate life expectancy constituted an abuse of discretion was an attempt to give "real meaning" to Congress' decision to "impose...limits on a district court's otherwise broad sentencing discretion." Id. This same respect for Congress' policy determinations supports our conclusion that sentencing courts should not consider good-time credits in determining whether the sentence imposed exceeds the defendant's life expectancy.

Martin 100 F3d at 48.⁷

The Seventh Circuit further summarized the good-time credit statute provides that "[a] prisoner...who is serving a term of imprisonment for the duration of the prisoner's life, shall receive credit toward the service of the prisoner's sentence..." 18 U.S.C. §3624(b)(1). This provision is an express direction by Congress that good time credits be made available to prisoners serving sentences other than natural-life sentences. Denying a prisoner who has been sentenced to a term, not defined by his natural life, the benefit of good-time credit

⁶ Judge Posner wrote in United States v. Martin, 63 F.3d at 1434: "...the pre 1994 version of Sec.34 indicated a Congressional intent to impose real limits on a district court's otherwise broad sentencing discretion...If we are to give that legislative decision real meaning, a sentencer cannot be permitted to evade the restrictions on one kind of sentence by imposing a substantially identical one with a slightly different name..."

⁷ The Martin case was decided on October 28, 1996 while Ferranti's appeal was pending, which certainly demonstrates a potential for ineffective assistance of counsel for failure to raise the point that Prevatte had been effectively overturned on Ferranti's direct appeal.

is therefore contrary to this statutory direction. Congress, in enacting this provision, expressed its determination that these credits further certain legislative policies, such as encouraging inmates to comply with prison regulations. See generally S.REP.No. 98-225, at 57 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3240 ("If a prisoner is aware that his behavior will have a direct effect on his release date, he can set a personal goal for early release by demonstrating compliance with prison rules. Thus, prison discipline should improve greatly."). Because the good-time credit system is provided by district court judges, rather than viewed as an obstacle to be overcome in imposing long sentences. Cf. United States v. Fountain, 840 F.2d 509, 517-23 (7th Cir. 1988)(forbidding sentences designed to defeat parole-release system under former law). As the Supreme Court has stated, "Whatever views may be entertained regarding severity of punishment....these are questions of legislative policy." Gore v. United States, 357 U.S. 386, 393 (1957).

The Martin case is crystal clear that the Prevatt case which Judge Weinstein relied on when calculating Ferranti's life expectancy was effectively overturned by its own circuit's later precedents, which certainly present an inconsistent application of law to defendants who were similarly situated to Ferranti.

In essence, Judge Weinstein did more than impose a sentence of months equal to defendant's life expectancy. He started there, but added good time credits that defendant "will receive" to make certain that he would not get out until shortly before his expected death, and on the basis of life expectancy tables that show a 50% likelihood that he will die before that date. This is not "significantly" less than a life sentence; it is more.

Despite this, Judge Weinstein (stating that this was "for the court of appeals" (A.227)) ruled that, for purposes of this sentence and future application of good time credit by the Bureau of Prisons, Defendant's offense was not a "violent crime" and that he will receive factored-in credit of 64.3 months

of "earned" credit (4/24/96 Tr. 55-56, A.226-27; Mem.p.20-21, A.395-96). The decision to impose a sentence of assumed life expectancy was wrong in the first place.

Furthermore, since Judge Weinstein said he only had to impose a sentence, "slightly less" he obviously did not consider whether Ferranti's sentence was "significantly less" than life. Accordingly, Ferranti's sentence was based on conjecture, exceeds his life expectancy and is not only unreasonable but is unconstitutional because it exceeds the statutory maximum penalty set by Congress at the time Ferranti had committed the offense.

More specifically, by Judge Weinstein erroneously pro rating Ferranti's expected good time credits, clearly imposed a sentence beyond his life expectancy that, explicitly was greater than the statutory maximum sentence authorized by Congress. As the Supreme Court clarified in Barber v. Thomas, 560 U.S. 130 (2010), which held that under the plain language in §3624(b) the method in which good time credits are to be calculated are based on the length of time that the prisoner has actually served and not a straight forward calculation based upon the length of the term of imprisonment that the sentence Judge imposed. *Id.* Certainly Barber is controlling in this case where Judge Weinstein's erroneous good time calculation provided a defacto life sentence that is beyond the statutory maximum allowed, thus creating a grave miscarriage of justice, that the Petitioner will continue to suffer unless this Court grant the relief that he seeks through the instant petition.

B. WHETHER PETITIONER PRESENTED A PROPER
APPLICATION FOR RELIEF UNDER RULE 60(b)

First, Petitioner Ferranti respectfully applies for relief under Fed.R.Civ.P.60(b) in the interest of Justice, which provides in relevant parts:

"On motion, and upon such terms as are just, the Court may relieve a party or parties legal representative from a judgment order or proceedings, for the following reasons: (mistake, inadvertance, surprise, or excusable neglect, (2) newly discovered evidence, which

by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), (3) fraud...misrepresentation, or other misconduct of an adverse party, (4) the judgment is void, (5) the judgment is satisfied, released or discharged, or a prior judgment upon which it is no longer equitable that the judgment should have prospective operation, or (6) any reason justifying relief from the operation of the judgment to further the interest of Justice.")

The general purpose of Rule 60(b) is to allow Courts to reconsider its judgment when it is "clear and convincing" that it rests upon a defective foundation, which violates the Constitution. The factual predicate of Rule 60(b) motions deal with some irregularity or procedural defect in the procurement of the judgment. Rodwell v. Pope, 324 F.3d 667, 70 (1st Cir. 2003), "the Court's discretion in granting relief under Rule 60(b) is especially broad and has been described as the "grand reservoir of equitable power to do justice in a particular case." Pierre v. Bernuth, Lemulce Co., 20 F.R.D. 116,117 (SDNY 1956) "A Rule 60(b) motion must be construed liberally to obtain substantial justice."

The decision to grant or deny relief pursuant to Rule 60(b) lies in the sound discretion of this Court, guided by accepted legal principles in light of all relevant circumstances and that Justice be done. Gonzalez v. Crosby, 545 U.S. 524, 529 (2005)(nothing that Rule 60(b)'s "whole purpose is to make an exception to finality").

It is a case-by-case inquiry that requires that Trial Court to intensively balance numerous factors, including the competing policies of the finality of judgments and the incessant command of the Court's conscience that Justice be done in light of all the factual issues presented, rather than by the existence of a technical or procedural defect. id.

Rule 60(b) allows the Court to strike a proper balance between two conflicting principles--that litigation must be brought to a final close and that "justice must be done." The reasons for granting Substantive Relief are specifically listed as follows:

UNDER RULE 60(b)(4) -- VOID JUDGMENT: Allows the Court to relieve a party from final judgment, order, or pleading where "the judgment is void." A judgment is not void merely because it is erroneous. It is void only if the Court that rendered it acted in a manner inconsistent with due process of law. Schwartz v. United States, 976 F.2d 213, 217 (4th Cir. 1992)(quoting 11 Wright & Miller, Federal Practice and Procedure, Civil Section 2862 at 198-200 (1973)). The Court acted in a manner inconsistent with due process of law when it based its erroneous determination of good time credits that Ferranti should be awarded by the BOP that corresponded to his entire sentence that was imposed based on Ferranti's presumed life expectancy. Further, the sentence is in violation to the Separation of Power Principles where only Congress has the authority to implement rules and statutes that the Federal courts must adhere to, which all will be discussed fully further in this brief.

UNDER RULE 60(b)(6) - IN THE INTERESTS OF JUSTICE: Finally, relief from a judgment or order may be permitted to "further the interests of justice." Furthermore, Rule 60(b)(6) authorizes a Petitioner to grant relief from a final judgment for "any other reason that justifies relief" (Fed.R.Civ.P.60(b)(6)). While this catchall reason includes a few textual limitations, its context requires that it may be invoked in only "extraordinary circumstances" where the reason for relief from judgment does not fall within the list of enumerated reasons given in Rule 60(b)(1)-(5) See Liljeber v. Health Servs. Acquisition Corp., 486 U.S. 847, 863 (1988), as the Supreme Court stated:

Rule 60(b) authorizes a district court on motion and upon such terms as are just to relieve a party from a final judgment, order or proceeding for any "reason justifying relief from the operation of the judgment." However, we have repeatedly instructed that only truly "extraordinary circumstances" will permit a party successfully to invoke the "any other reasons clause." Id. at 873.

In the instant case, compelling extraordinary circumstances are clearly established where the Court's erroneous sentence computation imposed a de

facto life sentence that is contrary to the Separation of Power Principle where the Court does not have the judicial authority to ~~subvert~~ the statutory penalties that Congress had implemented. Therefore it is simply unreasonable to contend that extraordinary circumstances do not exist where an illegal sentence that exceeds the statutory maximum authorized by Congress which explicitly creates a miscarriage of justice if the Court's initial judgment and original sentence imposed is left standing.

The Supreme Court has historically stressed the need to have judicial relief governed by equitable principles, stating "the very nature of the writ demands the flexibility essential to insure that a miscarriage of justice within its reach is surfaced and corrected." Harris v. Nelson, 394 U.S. 296 (1969), and that formalities 'yield to the imperative of correcting...fundamentally unjust incarceration,' Engle v. Isaac, 456 U.S. 107 (1982).

Furthermore the very essence of civil liberty consists in the right of every individual to claim protection of the laws whenever he receives an injury. Marbury v. Madison, 5 U.S. (1 Cranch) 137, 162-63 (1803).

Additionally, Circuit Courts have persuasively held that [t]he "main application" of Rule 60(b) is, "to those cases in which the true merits of a case might never be considered." Thus, although we rarely reverse a district court's exercise of discretion to deny a Rule 60(b) motion, we have reversed "where denial of relief precludes examination of the full merits of the cause," explaining that in such instances, "even a slight abuse may justify reversal." Ruiz v. Quarterman, 504 F.3d 523, 532 (5th Cir. 2007); and also in Phelps v. Alameida, 569 F.3d 1120 (9th Cir. 2009)). The Court held that:

We too believe that a central purpose of a Rule 60(b) is to correct erroneous legal judgments that, if left uncorrected would prevent the true merits of a petitioner's Constitutional claims from ever being heard. In such instances, including the case presented before us, this factor will cut in favor of granting Rule 60(b)(6) relief. *Id.* at 1140

Therefore this Court should grant the Rule 60(b) motion and remand for resentencing to the District Court in order to avoid a grave miscarriage of Justice, ie. the imposition of 64 months additional time to an already substantial sentence, as the South Carolina Judge and Middle District of PA Judge have identified as potential constitutional violations if not recalculated.

C. EXTRAORDINARY CIRCUMSTANCES

The central purpose of Rule 60(b) is to correct erroneous legal judgments that, if left uncorrected, would prevent the ~~true~~ merits of a petitioner's constitutional claim from ever being heard. Phelps v. Alameida, 569 F.3d 1120, 1140 (9th cir. 2009). Moreover, an inconsistent application of law, that deprives a party of right accorded to other similarly situated parties presents "extraordinary circumstances" warranting post-judgment Rule 60(b) relief. Gondeck v. Pan Amer. World Airways, Inc. 382 U.S. 25 (1965). A fundamental miscarriage of justice would occur where defendant's who committed the same offens[es] as Petitioner here prior to the enactment of the Violent Crime Control and Law Enforcement Act of 1994 [i.e. similarly situated defendant] received a sentence less than life where the jury was not requested to make a specific finding as to the sentence the Court should impose. Here Ferranti received a de facto life sentence where other defendants tried for the same offense received a much more lesser sentence which contributed to one factor in the extraordinary circumstances analysis.

The second factor that would be applied to extraordinary circumstance is that Ferranti did challenge the District Court's erroneous good time credit calculation at sentence, on appeal or on his first 28 U.S.C §2255 motion. However, because the Supreme Court only clarified how the BOP is supposed to calculate good time credits pursuant to 18 U.S.C. §3624(b)(1) in Barber v. Thomas, 560 U.S. 130 (2010), which held that under the plain language in

§3624(b)(1) the method in which good time credits are to be calculated are based on the length of time that the prisoner has actually served and not a straightforward calculation based upon the length of the term of imprisonment that the sentence Judge imposed. Therefore clearly demonstrating that the District Court's erroneous calculation by pro rating and further adding good time credits in determining Ferranti's life expectancy certainly imposed a de facto life sentence that was not authorized within the §844(i) statute, at the time the offense was allegedly committed.

The third factor that provide for extraordinary circumstances is Judge Weinstein articulated during the sentence hearing that any sentence that exceeds Ferranti's life expectancy or the authorized statutory maximum would be a violation of the ex post facto clause to the Constitution because the offense occurred prior to the amendment of the statute under the Violent Crime and Control Act of 1994. See Weaver v. Graham, 450 U.S. 24, 30 (1981). Furthermore, any sentence that exceeds the statutory maximum [as Ferranti's sentence has] has traditionally been viewed as a violation of Eighth Amendment's prohibition against cruel and unusual punishment Rolph v. Blackburn, 590 F.2d 1335, 1337 (5th Cir. 1979). Which clearly satisfies the extraordinary circumstance requirement under Rule 60(b)(6). Additionally, as the Seventh Circuit held in United States v. Martin, 100 F.3d at 47 that:

Where a legislatively enacted sentence scheme has expressly deprived a court of the possibility of imposing a life sentence, a sentence for a term of years exceeding the defendant's approximate life expectancy ordinarily constitutes an abuse of discretion.

That is exactly the scenario that has transpired in the instant case, which brings us to the fourth factor that contributed to the extraordinary circumstance analysis found in the separation of powers principle, for only the legislative branch of the government has the power to proscribe the maximum punishment that a federal court may impose. Recently an example in Persuad

v. United States, 134 S.Ct. 1023 (2014)(brief for the United States), the Solicitor General vigorously argued that 2241 relief should be available for Mr. Persuad because "sentences that exceed the maximum, or that impose a statutory minimum based on legal error, are recognizable under the Savings Clause." Id. at 19. The Solicitor General started by explaining that "[a] sentence imposed above otherwise applicable statutory maximum based on a legal error is a fundamental defect redressable under the Savings Clause." Id. at 19. This is because "a sentence above the statutory maximum implicated the separation of powers principle that the power...to proscribe the punishments to be imposed upon those found guilty of [federal] crimes reside wholly with the Congress." Id. (citing Whalen v. United States, 445 U.S. 684, 689 (1989)). The Solicitor General elaborated that "[f]ederal Courts do not have the authority to impose a sentence without legislative authorization, and a sentence above the statutory maximum represents unjust and unauthorized sentence." Id. at 19-20 (citing Chapman v. United States, 500 U.S. 453, 465 (1991)).

Here there is no dispute that the Court miscalculation to the good time credit that Ferranti should receive based on the entire length of the sentence imposed has put his sentence several months longer than his life expectancy, which was certainly not authorized by Congress, thus implicating a separation of power principle concerns that provides for the final component to the extraordinary circumstance inquiry.

Finally, the most persuasive factor that contributed to the extraordinary circumstances inquiry comes from this Court's most recent decision in Rosales-Mireles v. United States, 578 U.S. ____ Case No. 16-9493 decided on June 18, 2018, which held a miscalculation of a Guidelines sentence range that had been determined to be plain and to affect a defendant's substantial rights calls for a court of appeals to exercise its discretion under Rule 52(b) to

vacate the defendant's sentence in the ordinary case.

As the Supreme Court held in United States v. Olamo, 507 U.S. 725 (1993), it is well-established that courts "should" correct a forfeited plain error affecting substantial rights "if the error seriously affects the fairness, integrity or public reputation of Judicial proceedings." Id. at 736.

In Rosales-Mireles, this Court further stated that an error resulting in a higher range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence greater than "necessary" to fulfill the purposes of incarceration, 18 U.S.C. §3553(a). See Molina Martinez v. United States, 578 U.S., at ____ (2018). That risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity or public reputation of judicial proceedings in the context of a plain Guidelines error because Guidelines miscalculations ultimately result from judicial error, as the district court is charged in the first instance with ensuring the Guidelines range it considers is correct. Moreover, remands for resentencing are relatively inexpensive proceedings compared to remands for retrial. Ensuring the accuracy of Guidelines determinations also furthers the Sentencing Commission's goal of achieving uniformity and proportionality in sentencing more broadly, since including uncorrected sentences based on incorrect Guidelines ranges in the data the Commission collects could undermine the Commission's ability to make appropriate revisions to the Guidelines. Because any exercise of discretion at the fourth prong of Olano inherently requires "a case-specific and fact-intensive" inquiry.

The Government had argued that even though the Fifth Circuit's standard was inaccurate, Rosaes-Mireles is still not entitled to relief because granting this type of relief would be inconsistent with the Court's statement that discretion under Rule 52(b) should be exercised "sparingly" Jones v. United States, 527 US 372 389 (1999) and reserved for exceptional circumstances.

This argument was unpersuasive, as the High Court reasoned: In contrast to the Jones remand, however, no additional jury proceedings would be required in a remand for re-sentencing based on a Guidelines miscalculation. Plus, the circumstances of Rosales-Mireles' case are exceptional under this Court's precedent, as they are reasonably likely to have resulted in a longer prison sentence than necessary and there are no countervailing factors that otherwise further the fairness, integrity, or public reputation of judicial proceedings.

In summary, the Supreme Court clarified that a court of appeals charged with determining whether a sentence is presumptively reasonable because it falls within the correct Guidelines Range only after it ensures that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines Range. Gall v. United States, 552 U.S. 39, 51 (2007). If a district court cannot properly determine whether, considering all sentencing factors, including the correct Guidelines range, a sentence is "sufficient, but not greater than necessary," 18 U.S.C. §3553(a), the resulting sentence would not bear the reliability that would support a "presumption of reasonableness, a sentence that lacks reliability because of unjust procedures may well undermine public perception of the proceedings.

Finally, as Justice Sonia Sotomayor, writing for the majority, quoted the words of then Circuit Judge Neil M. Gorsuch, stated:

"what reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison than the law demands?"

Moreover, even though the Rosales-Mireles decision was based on the plain error analysis it essentially holds that any miscalculation in a guideline sentence seriously affects the fairness, integrity, or public reputation of the Judicial proceedings that would without a doubt create a grave miscarriage of Justice triggering extraordinary circumstances that would warrant relief

through Fed.R.Civil.P. 60(b)(6)

D. Requested Relief

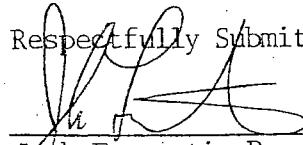
Petitioner respectfully requests that this Court grant his application for a Writ of Certiorari and (1) appoint Counsel to represent Petitioner in all further proceedings in this Court and (2) order further briefing by both parties on all issues presented within this application, or as an alternative, for this Court to remand this case back to the District Court with an Order for the District Court to resentence Petitioner to a sentence that is less than his life expectancy without calculating expected good time credits from the Bureau of Prisons.

CONCLUSION

This Court should grant Petitioner's application for a writ of Certiorari, because this Court has not yet decided what constitutes a defacto life sentence in terms of number of years where the statute of conviction clearly prohibits the imposition of a life sentence without authorization from the jury. Therefore, Petitioner presents a legal argument of first impression that this Court has not previously adjudicated.

Therefore for the above given reasons, this Court should grant Petitioner's application for a writ of Certiorari or as an alternative remand this case back to the District Court for resentencing.

Respectfully Submitted,



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