

UNITED STATES SUPREME COURT
NO. _____

BRYANT LAMAR MONIE.,
PETITIONER,

V.

UNITED STATES OF AMERICA.,
RESPONDENT

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

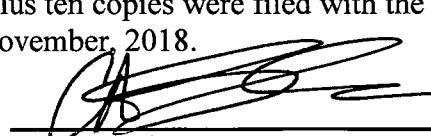
PETITION FOR A WRIT OF CERTIORARI



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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition plus ten copies were filed with the Clerk of the United States Supreme Court on this 26th day of November, 2018.



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QUESTIONS PRESENTED

1. Whether the Defendant's Kentucky Drug trafficking conviction, which carries a maximum sentence of five (5) years and was enhanced by Kentucky's Persistent Felony Offender statute to a maximum punishment of 10 years, fulfills the conviction requirement under the Federal Armed Career Criminal Act (ACCA)?

PARTIES

1. Bryant Lamar Monie, Petitioner
2. The United States of America, Respondent

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OPINION BELOW

The Judgment of the United States District Court dated February 23, 2018, and the Opinion dated August 31, 2018, affirming same, are attached hereto as Appendices 1 and 2 respectively.

JURISDICTION

This Court has jurisdiction of this Petition to review the Opinion Affirming the Judgment of the United States District Court from the United States Court of Appeals for the Sixth Circuit pursuant to 28 USC § 1254(1).

STATEMENT OF THE CASE

On August 13, 2015, a search warrant was issued for Bryant Monie's (hereinafter "Mr. Monie") address after a confidential informant purchased heroin and cocaine from him directly and through other persons. (See Presentence Investigation Report pg. 5, Section 10 & 13, attached hereto as Appendix 3). The search of Mr. Monies' home found a loaded 9mm pistol, cocaine base, and heroin. *Id.* at section 15-16.

Mr. Monie pled guilty on March 30, 2016 to Conspiracy to Distribute Heroin and Cocaine and Felon in Possession of a Firearm. *Id.* at pg. 4, Section 2-3. On April 26, 2016, Mr. Monie was found guilty of Possession with the Intent to Distribute Heroin and Cocaine, Aiding and Abetting and Possession of a Firearm in Furtherance of a Drug Trafficking Crime. *Id.* at Section 4. Mr. Monie appealed his sentence and was allowed to withdraw his plea to the Felon in Possession of a Firearm charge. *Id.* at Section 5. On November 20, 2017, Mr. Monie entered a plea of guilty to the Felon in Possession of a Firearm charge. *Id.* at Section 7.

On February 23, 2018, Mr. Monie appeared for his sentencing hearing. (See Criminal Minutes-Sentencing, attached hereto as Appendix 4). The one objection Mr. Monie had to the presentence report was to his classification under the ACCA authority as an armed career

criminal. (*See* Sentencing Transcript, attached hereto as Appendix 5). One of the convictions used to classify Mr. Monie as an armed career criminal was for a State charge conviction of Trafficking in Controlled substance 1st Degree, 1st Offense. (*See* Presentence Investigation Report pg. 11, Section 49). The normal penalty range for this crime is one to five years in jail, but Mr. Monie was subject to an enhancement for the status of being a persistent felony offender under the Kentucky Persistent Felony Offender Statute. This resulted in his penalty range being increased to five to ten years in jail. (KRS 532.080).

Mr. Monie's position is that the Kentucky Persistent Felony Offender statute is not a conviction, but instead a status, and therefore its enhancement of Mr. Monie's penalty range cannot be used to make Mr. Monie eligible for the designation as an armed career criminal. (*See* Sentencing Memorandum, attached hereto as Appendix 6). The Court overruled the defendant's objection at sentencing. (*See* Appendix 5).

Mr. Monie was then sentenced to 180 months on Counts 1, 6, and 8, all to run concurrently, and 60 months on Count 7, to run consecutive to the other counts, for a total term of 240 months. (*See* Appendix 1). Monie filed a timely Notice of Appeal. Mr. Monie and the United States submitted briefs on the matter each waiving the right to oral argument. On August 31, 2018, the Opinion of the Court of Appeals was entered affirming the Judgment of the U.S. District Court. (*See* Appendix 2). This Petition is now before this Court, timely and respectfully requesting review of the Court of Appeals Opinion.

REASONS TO GRANT PETITION

This Court should grant this Petition and review the Opinion of the United States Court of Appeals for the Sixth Circuit because its reliance on U.S. v. Rodriguez, 553 U.S. 377, 381 (2008) is improper. The United States Court of Appeals for the Sixth Circuit fails to recognize the

differences in Rodriguez and the instant matter. In U.S. v. Rodriguez, the United States Supreme Court addressed a very similar situation to the current case, but there is an important distinction. In Rodriguez, the defendant's penalty range was a maximum of 10 years because it was his "second or subsequent offense." U.S. v. Rodriguez, 553 U.S. 377, 381 (2008). Kentucky's drug trafficking statute KRS 218A.1412(3)(b)(1) states that a second or subsequent offense is a C felony, which provides for a penalty range of 5-10 years, pursuant to KRS 532.060. If Mr. Monie had been convicted for drug trafficking second offense or subsequent, this case would be identical to Rodriguez. Instead, Mr. Monie's offense had a penalty range of 1-5 years, which was enhanced by his status as a Persistent Felony Offender (PFO) to 5-10 years. This sentencing range does not increase the range of the underlying offense. It simply punishes Monie for his status of being a persistent felony offender.

Mr. Monie's sentence was enhanced under the ACCA, which states "an *offense* under State law, involving manufacturing, distributing, or possessing with intent to distribute, a controlled substance, for which a maximum term of imprisonment for ten years or more is prescribed by law." 18 USC 924(e)(2)(A)(ii). (Emphasis added). The use of the word "offense" is important because in Kentucky, the PFO statute is not treated as an offense, but as a status. In Commonwealth v. Derringer, the Kentucky Supreme Court held that a "Designation of a person as a PFO is not a charge of an independent criminal offense but of a *status*, that enhances the punishment for a crime committed by a defendant who qualifies as a PFO." Comm. v. Derringer, 386 S.W. 3d 123 (Ky. 2012). (*citing* White v. Comm., 770 S.W. 2d 222, 224 (Ky. 1989)). (emphasis added).

To satisfy the requirements as an Armed Career Criminal, a defendant must have been convicted on three (3) different occasions for, in this case, a serious drug offense. Under 18 USC §924(e)(2)(A)(ii), a "serious drug offense" is defined as "an offense ... for which a maximum term

of imprisonment of 10 years or more is prescribed by law" (Emphasis added). In the instant case, the District Court considers the Petitioner's three prior offenses under state criminal action number 10-CR-00155 as satisfying the prerequisites under 18 USC §924(e)(2)(A)(ii). However, Mr. Monie was never convicted of any offense that carried a maximum penalty of up to 10 years. A closer examination of what actually occurred is that Mr. Monie was initially charged with Class C offenses which indeed carry a term of imprisonment of up to 10 years. What the court failed to take in to consideration is that the original charge was amended to a Class D felony which carries a **maximum term of imprisonment of 5 years.** (Emphasis added)

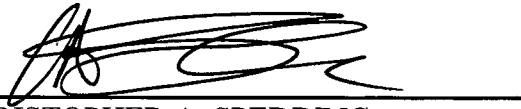
Under Kentucky law, KRS 532.080 states in pertinent part "A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted". KRS 532.080(5). (Emphasis added). Mr. Monie was sentenced as a PFO II, however, the status of being a PFO II is not a conviction, it is merely a status and does not satisfy the requisites of 18 USC §924(e)(2)(A)(ii).

Therefore, Mr. Monie's offense had a maximum penalty of 5 years, but his status is what increased his potential punishment to 5-10 years. The distinction between an offense and status is not addressed by either the ACCA or the Rodriguez case and the ACCA was not established to address such a wide ranging "status" statute, similar to the Kentucky PFO statute and the Federal Court is required to use existing State law in this matter.

CONCLUSION

For the above and foregoing reasons, Petitioner respectfully requests the issuance of a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully Submitted,



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