

No: 18-6926

IN THE

SUPREME COURT OF THE UNITED STATES

JAMES VALENTINE - PETITIONER,

vs.

UNITED STATES OF AMERICA - RESPONDENT.

PRO SE PETITION FOR RECONSIDERATION IN BEHALF OF THE JANUARY 7, 2019,
"ORDER OF DENIAL" OF PETITIONER'S "WRIT OF CERTIORARI" FOR CASE NO: 18-69269

JAMES VALENTINE #06383-017
PENSACOLA FEDERAL PRISON CAMP
P.O. BOX 3949
PENSACOLA, FLORIDA 32516

PETITIONER'S PRO SE GROUNDS FOR RELIEF PRESENTED

(1) THERE IS A **COMPLETE CONFLICT BETWEEN** THE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA CASE "UNITED STATES v. JERMON SHANNON, JR., aka. WINFIELD WINCHESTER ROYE, 631 F.3d 1187 (January 26, 2011, Filed in the 11th Circuit Court of Appeals)" AND THE NINTH CIRCUIT COURT OF APPEALS IN CALIFORNIA CASE "UNITED STATES v. LUIS OCAMPO-ESTRADA, aka. LUIS ENRIQUE OCAMPO, 2017 U.S. App. LEXIS 16511; No.15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" based on **"What constitute a "control substance offense"."**

Petitioner would state that the **New Change in the Law for California prior felony drug convictions under California Health & Safety Code Sections 11359 and 11360**, states that Petitioner's prior California State Case (Case Number: FWV17882) **Do Not Qualify as a "Controlled Substance Offense"** pursuant to "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No.15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" which uses "Mathis v. United States, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016), that's a **controlling effect because of the intervening circumstances of substantial rights**, which makes The Eleventh Circuit Court's **June 7th 2018 & July 24, 2018 "ORDER"** a **"Plain and Obvious Error"** that's a **complete conflict between** The Eleventh Circuit Court of Appeals Case "United States v. Jermon Shannon, Jr., aka. Winfield Winchester Roye, 631 F.3d 1187 (11th Cir. Jan. 26, 2011)" and The Ninth Circuit Court of Appeals Case "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No.15-50471 (9th Cir. Aug. 29, 2017)."

LIST OF PARTIES

A list of all parties to the proceedings in the Court whose judgment is the subject of Petitioner's "Pro se Petition for Reconsideration" is as follows:

Canova, Christopher P., United States Attorney;
Couch, Clinton A., Former Trial Counsel for Defendant/Appellant;
Davis, Robert G., Assistant United States Attorney;
Kahn, Jr., Charles J., United States Magistrate Judge;
Knight, Edwin F., Assistant United States Attorney;
Rhew-Miller, Karen, First Assistant United States Attorney;
Valentine, James, Pro se Defendant/Petitioner;
Vison, Roger, Senior United States District Judge; and
Solicitor General of the United States, Department of Justice.

TABLE OF CONTENTS

	PAGE(S)
PETITIONER'S PRO SE GROUND FOR RELIEF PRESENTED.....	2
LIST OF PARTIES.....	3
TABLE OF CONTENTS.....	4
TABLE OF AUTHORITIES CITED AND STATUTES AND RULES.....	5
CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.....	5
JURISDICTION.....	6
PETITIONER'S PRO SE GROUND FOR RELIEF PRESENTED ARGUMENT.....	7
CONCLUSION.....	11
PROOF OF SERVICE.....	14

EXHIBIT LIST

EXHIBIT-#1 - A copy of the January 7, 2019, "Order of Denial" of Petitioner's "Writ of Certiorari."

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER(S)
<u>COOPER v. PATE</u> , 378 U.S. 546, 12 L.Ed.2d 1030 (1964).....	10
<u>DePIERRE v. UNITED STATES</u> , 546 U.S. 70 , 131 U.S. 2255, 180 L.Ed.2d 114 (2011)...	9
<u>DESCAMPS v. UNITED STATES</u> , 133 S.Ct. 2276, 2284, 186 L.Ed.2d 438 (2013).....	10
<u>HAINES v. KERNER</u> , 30 L.Ed.2d 652 (1972).....	7
<u>MATHIS v. UNITED STATES</u> , 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016).....	2- 8 07-10
<u>MEDINA-LARA v. HOLDER</u> , 771 F.3d 1106, 1112 (9th Cir. 2014).....	9
<u>SHEPARD v. UNITED STATES</u> , 544 U.S. 13, 26, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005)...	9-10
<u>UNITED STATES v. HERNANDEZ</u> , 312 F. App'x 937, 939 (9th Cir. 2009).....	9
<u>UNITED STATES v. HOLLIS</u> , 490 F.3d 1149, 1157 (9th Cir. 2007).....	9
<u>UNITED STATES v. JERMON SHANNON, JR., aka. WINFIELD WINCHESTER ROYE</u> , 631 F.3d - 1187 (11th Cir. 2011).....	2- ² 8 7-10
<u>UNITED STATES v. LUIS OCAMPO-ESTRADA, aka. LUIS ENRIQUE OCAMPO</u> , 2017 U.S. App. - LEXIS 16511; No.15-50471 (9th Cir. 2017).....	2.& 7-10
<u>UNITED STATES v. SAHAGUN-GALLEGOS</u> , 782 F.3d 1094, 1100 (9th Cir. 2015).....	10
<u>UNITED STATES v. TOWNSEND</u> , 2018 BL 259775, 2nd Cir., 17-757-cr, July 23, 2018....	10

STATUTES AND RULES	PAGE NUMBER(S)
CALIFORNIA HEALTH & SAFETY CODE SECTIONS 11359 and 11360.....	2 & 7-10
FLORIDA STATUTE § 893.135.....	2 & 7-10

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

FIFTH (5th) UNITED STATES CONSTITUTIONAL AMENDMENT RIGHTS.....	10
FOURTEENTH (14th) UNITED STATES CONSTITUTIONAL AMENDMENT RIGHTS.....	10

JURISDICTION

The jurisdiction of this Honorable United States Supreme Court is invoked under 28 U.S.C. § 1254.

PETITIONER'S PRO SE GROUND FOR RELIEF PRESENTED ARGUMENT

- (1) THERE IS A **COMPLETE CONFLICT BETWEEN** THE ELEVENTH CIRCUIT COURT OF APPEALS IN ATLANTA, GEORGIA CASE "UNITED STATES v. JERMON SHANNON, JR., aka. WINFIELD WINCHESTER ROYE, 631 F.3d 1187 (January 26, 2011, Filed in the 11th Circuit Court of Appeals)" AND THE NINTH CIRCUIT COURT OF APPEALS IN CALIFORNIA CASE "UNITED STATES v. LUIS OCAMPO-ESTRADA, aka. LUIS ENRIQUE OCAMPO, 2017 U.S. App. LEXIS 16511; No.15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals)" based on **"What constitute a "control substance offense"."**

1

Petitioner would like the records to reflect that on August 29, 2017, The Honorable Ninth Circuit Court of Appeals, in Pasadena, California, filed said case "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No.15-50471 (9th Cir. 2017)", in which states in the **Case Summary** the following in part:

"Cal. Health & Safety Code § 11378 is a divisible statute that is susceptible to the modified categorical approach. However, using this approach, government failed to prove that defendant had pleaded guilty to violating a controlled-substance element under § 11378 that was encompassed by the federal definition for "felony drug offense.""

Petitioner would like the records to reflect that on **January 16, 2018**, Petitioner filed Petitioner's **First "Pro se 28 U.S.C. § 2255 Motion to vacate, Set Aside or Correct Movant's (James Valentine) Sentence for District Court Case No: 03-cr-00134/RV-1"** that states in light of "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No.15-50471 (9th Cir. 2017)", Petitioner's prior "Superior Court of Calif County of San Bernardino, California, State Prior Conviction(s) under California Health & Safety Code sections 11359 and 11360 for Case Number: FWV17882" **is No Longer a Qualifying Predicate Offense as a "Controlled-Substance Offense"** because "Mathis v. United States, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016), compels the conclusion that the statute is indivisible."

(1) Haines v. Kerner, 30 L.Ed.2d 652 (1972), "Pro se litigants pleadings are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers; if Court can reasonably read pleadings to state valid claim on which litigant could prevail, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements..."

Petitioner would like the records to reflect that on **January 30, 2018**, The Honorable Magistrate Judge Charles J. Kahn, Jr. filed a "Report and Recommendation" in behalf of Petitioner's 28 U.S.C. § 2255, which stated in part:

"...Accordingly, it is respectfully **RECOMMENDED**:

1. Defendant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence by a person in federal custody (ECF No. 86) be summarily **DENIED and DISMISSED** as untimely.
2. A certificate of appealability be **DENIED**..."

Petitioner would like the records to reflect that on **February 6, 2018**, Petitioner filed a "Pro se Motion for Reconsideration and/or Objections to The United States Magistrate Judge Charles J. Kahn, Jr.'s January 30, 2018, Report and Recommendation."

Petitioner would like the records to reflect that on **February 13, 2018**, The Honorable Senior United States District Judge Roger Vinson, filed a "Order" Adopting and Incorporating by reference the Magistrate Judge's Report and Recommendation."

Petitioner would like the records to reflect that on **June 7, 2018**, The Honorable United States Court of Appeals For The Eleventh Circuit, filed an "ORDER" that **DENIED** Petitioner's "Certificate of Appealability" and **DENIED AS MOOT** Petitioner's "Motion for Leave to Proceed "In Forma Pauperis"."

Petitioner would like the records to reflect that on **June 15, 2018**, Petitioner mailed/ filed Petitioner's "Pro se Rehearing and/or Pro se Rehearing En banc Brief" to The Honorable United States Court of Appeals For The Eleventh Circuit, in which on **July 24, 2018**, The Honorable Eleventh Circuit Court of Appeals, filed a "ORDER" that **DENIED** Petitioner's "Motion for Reconsideration."

Petitioner would like the records to reflect that on **October 16, 2018**, Petitioner mailed/ filed Petitioner's "WRIT OF CERTIORARI", in which Petitioner was Directed to re-file Petitioner's "Writ of Certiorari" with a "Notarized Affidavit or Declaration of Indigency" and resubmit as soon as possible, within 60 days.

Petitioner would like the records to reflect that Petitioner re-submitted Petitioner's "Corrected" Pro se Writ of Certiorari on **November 16, 2018**, in which was **"DENIED"** on **January 7, 2019**. (See Exhibit-#1 - A copy of the **January 7, 2019**, "Order of Denial").

Petitioner would like the records to reflect that on **January 25, 2019**, Petitioner filed a "Pro se Motion for **Reconsideration** in behalf of the **January 7, 2019**, "Order of Denial" of Petitioner's "Writ of Certiorari", in which Petitioner was Directed to re-file Petitioner's "Petition for Rehearing" pursuant to **Rule 44**.

Petitioner would like the records to reflect that The Honorable Eleventh Circuit Court of Appeals in Atlanta, Georgia committed "**Plain and Obvious Error**" by allowing The United States District Court, In The Northern District of Florida, to **Fail** to apply the **New Change in the Law for California prior felony drug convictions** pursuant to "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No.15-50471 (August 29, 2017, Filed in the 9th Circuit Court of Appeals) which uses "Mathis v. United States, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016)" to **support** Petitioner's Argument that Petitioner's prior convictions under California Health & Safety Code sections 11359 and 11360 (Superior Court of Calif County of San Bernardino, California, State Prior Conviction(s) for Case Number: FWV17882) **Do Not Qualify as a "Controlled - Substance Offense"**, in which This Honorable United States Supreme Court should look to the statutory elements under which Petitioner was previously convicted, rather than the underlying conduct of facts giving rise to those convictions. See United States v. Hollis, 490 F.3d 1149, 1157 (9th Cir. 2007), abrogated on grounds by DePierre v. United States, 564 U.S. 70, 131 S.Ct. 2255, 180 L.Ed.2d 114 (2011) according United States v. Hernandez, 312 F. App'x 937, 939 (9th Cir. 2009)(unpublished)(applying the categorical comparison between the predicate offense of conviction and the federal definition.) First, "This Honorable United States Supreme Court should ask "Whether the statute of convictions is a categorical match to the generic predicate offense; that is, if the statute of conviction criminalizes only as much (or less) conduct than the generic offense." Medina-Lara v. Holder, 771 F.3d 1106, 1112 (9th Cir. 2014).

Petitioner would like the records to reflect that if a predicate statute is divisible - i.e., it lists alternative elemental versions of the offense within the same statute, rather than simply separate means for committing a single offense-then the modified categorical approach is used to determine which elemental version of the offense was committed. See Mathis v. United States, 136 S.Ct. 2243, 2249, 195 L.Ed.2d 604 (2016). In such a case, like this, "the sentencing court should look to a limited class of documents" from the record of the prior conviction(s) to determine which version of the offense was the basis for that conviction. Id. (citing Shepard v. United States, 544 U.S. 13, 26, 125 S.Ct. 1254, 161 L.Ed.2d 205 (2005)). The limited class of documents includes "the terms of the charging document, the term of the plea agreement or transcript

of colloquy between judge and petitioner in which the factual basis for the plea was confirmed by the petitioner, or to some comparable judicial record of this information." Shepard, 544 U.S. at 26. In the context of a guilty plea, that inquiry is "limited to assessing whether the defendant 'necessarily admitted' the elements of the particular statutory alternative that is a categorical match" with the federal definition. United States v. Sahagun-Gallegos, 782 F.3d 1094, 1100 (9th Cir. 2015)(quoting Descamps v. United States, 133 S.Ct. 2276, 2284, 186 L.Ed.2d 438 (2013)).

Petitioner would like the records to reflect that the **"Conflict"** between The Eleventh Circuit Court of Appeals, In Atlanta Georgia **and** The Ninth Circuit Court of Appeals, In California, is the **Fact** that on **January 26, 2011**, The Honorable Eleventh Circuit Court of Appeals made a ruling that **"Florida Statute § 893.135 (Trafficking in Cocaine)" Did Not Not Constitute a "Controlled Substance Offense"** (See United States v. Jermon Shannon, Jr., aka. Winfield Winchester Royce, 631 F.3d 1187 (11th Cir. 2011), but **refuse to correct** Petitioner's **sentence** when The Honorable Ninth Circuit Court of Appeals, In California made the ruling that Petitioner's prior convictions under California Health & Safety Code sections 11359 and 11360 (Superior Court of Calif County of San Bernardino, California, State Prior Conviction(s) for Case Number: FWV17882) **Do Not Qualify as a "Controlled-Substance Offense."** (See United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No.15-50471 (9th Cir. 2017)).

Petitioner would like the records to reflect that **This Honorable United States Supreme Court** should **"GRANT"** Petitioner's **"Pro se Petition for Reconsideration in behalf of the January 7, 2019, "Order of Denial" of Petitioner's "Writ of Certiorari" for Case No. 18-6926, because "Drugs Banned by States Aren't Federal "Controlled Substances", and there is a Complete Conflict between The Eleventh Circuit Court of Appeals and The Second, Fifth, Eighth, and Ninth Circuits, in which should be resolved by This Honorable United States Supreme Court. See United States v. Townsend, 2018 BL 259775, 2d Cir., 17-757-cr, July 23, 2018.**

Petitioner would like the records to reflect that based on the above is a complete violation of Petitioner's Fifth (5th) and Fourteenth (14th) United States Constitutional Amendment Rights. See Cooper v. Pate, 378 U.S. 546, 12 L.Ed.2d 1030 (1964), "The Court accepts as true the facts alleged in the complaint."

CONCLUSION

The "Pro se Petition for **Reconsideration** in behalf of the **January 7, 2019**, "Order of Denial" of Petitioner's "Writ of Certiorari" for Case No: **18-6926**" should be **"GRANTED"**."

Respectfully submitted,


JAMES VALENTINE

DATE: FEBRUARY 15, 2019

EXHIBIT LIST

EXHIBIT-#1 - A copy of the January 7, 2019, "Order of Denial" of Petitioner's "Writ of Certiorari."

February 15, 2019
Date

By: James Valentine
James Valentine #06383-017

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

January 7, 2019

Mr. James Valentine
Prisoner ID #06383-017
PFPC, P.O. Box 3949
Pensacola, FL 32516

Re: James Valentine
v. United States
No. 18-6926

Dear Mr. Valentine:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk

EXHIBIT-#1

~~XXXXXX~~

No: 18-6926

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES VALENTINE - PETITIONER,

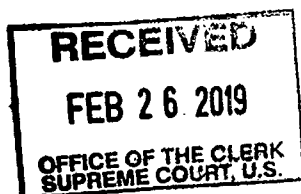
vs.

UNITED STATES OF AMERICA - RESPONDENT.

CERTIFICATION OF JAMES VALENTINE (PRO SE) AND UNREPRESENTED BY COUNSEL

This "Pro se Petition for Reconsideration in behalf of the January 7, 2019, "Order of Denial" of Petitioner's "Writ of Certiorari" for Case No: 18-6926, is presented in Good Faith and not for delay because of the complete conflict between the Eleventh Circuit Court of Appeals, case "United States v. Jermon Shannon, Jr., aka. Winfield Winchester Royce, 631 F.3d 1187 (11th Cir. 2011)" and the Ninth Circuit Court of Appeals, case "United States v. Luis Ocampo-Estrada, aka. Luis Enrique Ocampo, 2017 U.S. App. LEXIS 16511; No.15-50471 (9th Cir. 2017)", which is a New Change in the Law for California prior felony drug convictions under California Health & Safety Code sections 11359 and 11360, states that Petitioner's (James Valentine's) prior California State Case (Case Number: FWV17882) Do Not Qualify as a "Controlled-Substance Offense", in which said change in Law, changed Petitioner's "Sentence of 20 Years (240 Months) to 10 Years (120 Months) ~~and 14 Years (168 Months)~~ of Incarceration", in which Intervening Circumstances has a Substantial and Controlling Effect.

By: James Valentine
JAMES VALENTINE



UNNOTARIZED OATH

I (JAMES VALENTINE) Declare under penalty of perjury that the foregoing (Certification of James Valentine (Pro se) and Unrepresented by Counsel) is true and correct.

Executed on February 15, 2019.

By: James Valentine
JAMES VALENTINE

CERTIFICATE OF SERVICE

I (JAMES VALENTINE) HEREBY CERTIFY that a True and Correct copy of the foregoing was mailed to the below listed prepaid first class on this 15th day of February, 2019:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

United States Attorneys Office
100 North Palafox Street
Pensacola, Florida 32502

Respectfully submitted,

James Valentine
JAMES VALENTINE #06383-017
PENSACOLA FEDERAL PRISON CAMP
P.O. BOX 3949
PENSACOLA, FLORIDA 32516