

No. _____

18-7057

IN THE
SUPREME COURT OF THE UNITED STATES

Marcus J. Boyston — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT
OFFICE OF THE CLERK
SUPREME COURT U.S.

FILED
NOV 21 2018

ON PETITION FOR A WRIT OF CERTIORARI TO

8th Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Marcus Jermaine Boyston

(Your Name)

Beaumont Med. P.O. Box 26040
(Address)

Beaumont, Tx 77720
(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED
NOV 29 2018
OFFICE OF THE CLERK
SUPREME COURT U.S.

QUESTION(S) PRESENTED

Does this Court's ruling in the case of Hughes v. U.S., 584 U.S. 2018, No. 17-155, apply to a career offender seeking reduction in his sentence by way of a 3582(c)(2) motion pursuant to Amendments 750 & 782, when the career offender's sentence was based on a Guidelines calculation under 2D1.1, which was lowered by both Amendments?

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 CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT.....	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A *Ruling of 8th Circuit Court of Appeals*

APPENDIX B *Ruling + Opinion of District Court*

APPENDIX C *Page 4 of Petitioner's Sentencing Transcript*

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Hughes v. United States, 584 U.S. 2018, No. 17-155	3
STATUTES AND RULES	3
18 U.S.C 3582(c)(2)	
OTHER	
Amendments 750 and 782	3

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 26, 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: September 13, 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

18 U.S.C. 3582(c)(2)

Amendments 750 and 782

STATEMENT OF THE CASE

On November 20, 2017, the Petitioner filed a motion pursuant to 3582(c)(2), Amendments 750 & 782, seeking a reduction in his sentence. The petitioner states in his motion that he is entitled to a reduction in his sentence because the district court calculated his sentence under the Guidelines 2D1.1(c)(4) giving him a base offense level of 32 and then enhanced his offense level by 5, moving his base offense level up to a level 37. Because the Guidelines under 2D1.1 had been reduced by both Amendments 750 & 782, the petitioner argued that his base offense level of 32 would have been lower, thus, lowering the overall offense level of 37. This court ruled in *Hughes v. United States*, 584 U.S. 2018, No. 17-155 that the starting point of a sentence is what the sentence is based on. On April 13, 2018, the government filed a response in opposition and May 21, 2018 the district court denied the petitioner's motion. On June 7, 2018, the petitioner filed a motion for reconsideration and on July 23, 2018, the petitioner filed a motion to clarify some of the claims raised in his original motions. On July 23, 2018, the district court denied both motions. The petitioner filed a timely motion for appeal with the 8th circuit court of appeals and on July 26, 2018 his appeal was denied. The petitioner then filed a motion for rehearing and on September 13, 2018 that motion was denied.

REASONS FOR GRANTING THE PETITION

This writ should be granted so that uniformity throughout the judicial system can continue. Fairness and justice is the court's top priority and a ruling in favor of the Petitioner would provide that. This honorable Court cited in the Hughes v. United States, 584 U.S. 2018, that, "A district court imposes a sentence that is "based on" a Guidelines range if the range was a basis for the court's exercise of discretion in imposing a sentence..." "the Guidelines are "the starting point for every sentencing calculation in the federal system." "Even if the sentencing judge sees a reason to vary from the Guidelines, if the judge uses the sentencing range as the beginning point to explain the decision to deviate from it, then the Guidelines are in a real sense the basis for the sentence.

This Petitioner's case fits firmly within the cited opinion of this court. The district court did in fact use a Guidelines range under 2D1.1(c)(4) as the starting point for the petitioner's sentence and applied a 5 level enhancement to it. Those Guidelines under 2D1.1 had been lowered by Amendments 750 & 782 after this petitioner's sentence and had that lower range been in place at the time the petitioner would have been in a lower Guidelines range (see Appx. C, copy of sentencing transcript)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Marcus Boyston

Date: 11-15-2018