

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DERRICK T. SEALS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHT CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

Derrick T. Seals

(Your Name)

PO BOX 5000

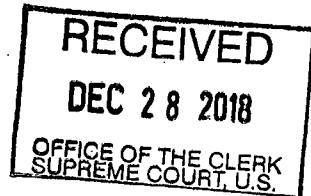
(Address)

OAKDALE, LA 71463

(City, State, Zip Code)

N/A

(Phone Number)



QUESTION(S) PRESENTED

- 1) Did government breach plea agreement/contract when defendant never agreed to enhancement?
- 2) Was Defendant mislead into plea agreement provisions inclusive of Supervised Release which would be subjective to PSIR?
- 3) Did District Court err by denying Defendants Motion for Reduction of sentence pursuant to 18 USC § 3582 (c)(2) and Amendment 782?
- 4) Was Defense Counsel deficient or ineffective in the assistance of defense in the criminal matter?
- 5) Why was Defendant held accountable for leadership role when he was minor participant?
- 6) Why was Defendant given "851" without being notified pursuant of the indictment?
- 7) Was plea agreement which was offered by government to the Defendant ambiguous or deceptive?

LIST OF PARTIES

- [] All parties appear in the caption of the case on the cover page.
- [X] 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:

Andre L. Brice
Arron Hall
Maurice L. Davis
Wayne A. Williams
Adrian Wright
Jeffery E. Morgan
Nicole Wyatt
Jermaine Talley
Jon C. Crawford
Adrian Washington
Damon S. Bryant
Simona S. Bryant
Gerald E. Dunn
Delesha N. Hughes
Dimitri Jones
Dempsey Johnson
Quebe Seals
Shannon Dewayne Luckey
Raphael L. Donnell
Boun Rattanavong
James Peterson
Southanome Fritchitavong
Dung A Nguyen

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT.....	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	Court of Appeals Decision
APPENDIX B	United States District Court Decision
APPENDIX C	Addendum to Brief for the Appellant
APPENDIX D	Indictment
APPENDIX E	Plea Agreement
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Anders v. California, 386 U.S. 738 (1967)	
Dillon v. United States, 560 U.S. 817 (2010)	
Freeman v. United States, 564 U.S. 522 (2011)	
Penson v. Ohio, 488 U.S. 75 (1988)	
Stump v. Bennett, 398 F.2d 111 (8th Cir. 1968)	
United States v. Tollefson, 853 F.3d 481 (8th Cir. 2017)	
United States v. Washington, 618 F.3d. 869 (8th Cir. 2010)	
Hughes v. United States, 201 L.Ed. 2d 72; 2018 U.S. Lexis 3385; 86 U.S. L.W. 4352; 27 Fla. L. Weekly Fed. S. 306	
United States v. Smith, 2018 U.S. App. Lexis 20210 (No. 16-3089 DC Cir 2018)	

STATUTES AND RULES

18 U.S.C. § 3231
18 U.S.C. § 3582
18 U.S.C. § 3583
21 U.S.C. § 841
28 U.S.C. § 1291

OTHER

Fed R. App. P. 32
Fed R. Crim. P. 11(e)(1)(C)
U.S.S.G. § 3B1.1

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

[x] 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 18-1255; 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 06-00408-01-CR-W-GAF; 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 October 19, 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: October 19, 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

21 U.S.C. § 841 pursuant to Rule 11(c)(1)(C) plea agreement

Amendment 782

18 U.S.C. § 3582(c)(2)

STATEMENT OF THE CASE

On August 3, 2007, Mr. Seals pled guilty to conspiracy to distribute and aiding and abetting an attempt to possess with intent to distribute Ecstasy, both Class C felonies (DCD 770). The Court ordered a presentence investigation report [PSI], which was filed on November 5, 2007 (PSI at 1).

Because the offense conduct involved several controlled substances, the PSI calculated Mr. Seals's base offense level by converting each drug to its marijuana equivalent (PSI at ¶ 57). The PSI determined that Mr. Seals's total base offense level was 38 based on a drug quantity that exceeded 30,000 kilograms of marijuana (PSI at ¶ 60). The PSI applied a two-level firearm enhancement and a four-level aggravated role enhancement, which elevated Mr. Seals's offense level to 44 (PSI at ¶¶ 61, 63). A three-level acceptance reduction for acceptance of responsibility reduced the offense level to 41 (PSI at ¶¶ 66-70).

The PSI determined that Mr. Seals's criminal history category was I (PSI at ¶ 75). Based on an adjusted offense level of 41 and criminal history category I, Mr. Seals's applicable guideline range was 324 to 405 months' imprisonment (PSI at ¶ 94).

On June 9, 2008, the Court overruled Mr. Seals's PSI objections, adopted the guideline calculations set forth above, and sentenced Mr. Seals to a controlling term of 240 months' imprisonment pursuant to Fed. R. Crim. P. 11(c)(1)(C) (PSI at Sentencing Addendum; DCD 353).

On February 2, 2015, Mr. Seals filed a motion for sentence reduction pursuant to Amendment 782 of the Sentencing Guidelines and 18 U.S.C. § 3582(c)(2) (DCD 1275 at 1-11). Mr. Seals noted that his binding plea agreement contemplated a guideline range of 188 to 235 months' imprisonment (DCD 1275 at 3). Mr. Seals further argued that his binding plea agreement was based on

STATEMENT OF THE CASE (CONTINUED)

the Sentencing Guidelines pursuant to *Freeman v. United States*, 564 U.S. 522 (2011), *United States v. Washington*, 618 F.3d. 869 (8th Cir. 2010), *Hughes v. United States*, 201 L.Ed. 2d 72; 2018 U.S. Lexis 3385; 86 U.S. L.W 4352; 27 Fla. L. Weekly Fed. S. 306, and *United States v. Smith*, 2018 U.S..App. Lexis 20210 (No. 16-3089 DC Cir 2018) (PSI at Sentencing Addendum; DCD 353).

On February 2, 2015, Mr. Seals filed a motion for sentence reduction pursuant to Amendment 782 of the Sentencing Guidelines and 18 U.S.C. § 3582(c)(2) (DCD 1275 at 1-11). Mr. Seals noted that his binding plea agreement contemplated a guideline range of 188 to 235 months' imprisonment (DCD 1275 at 3). Mr. Seals further argued that his binding plea agreement was based on the Sentencing Guidelines pursuant to 'Freeman V. United States, 564 U.S. 522 (2011) (DCD 1275 at 4). Additionally, the plea agreement specifically noted that the 240-month sentence is "based on defendant's criminal history and his role in the offense" (DCD 353 at 8).

On December 8, 2017, the district court denied Mr. Seals's sentence reduction motion because his 240-month sentence was imposed pursuant to Fed. R. Crim. P. 11(c)(1)(c) without addressing Mr. Seals's reliance on *Freeman* (DCD 1378). Mr. Seals thereafter perfected this appeal (DCD 1383).

REASONS FOR GRANTING THE PETITION

Defendant believes he should be granted the certiorari because he had deficient or ineffective assistance of counsel and was coerced into an ambiguous or deceitful plea agreement in which the government knowingly and willfully intended to use the defendant's PSIR to enhance his sentence and further deny him of liberty and freedom. Defendant was further denied mitigating reductions in which the government and the defense attorney knew he qualified for in accordance with Rule 32. Defendant further believes this will assist in correcting the err's made by the Respondent(s).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derrick Scott

Date: 12-19-18