

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES GOOLSBY — 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 EIGHTH CIRCUIT COURT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James Goolsby #21248-009

(Your Name)
United States Penitentiary Leavenworth

P.O.Box 1000

(Address)

Leavenworth, Kansas 66048

(City, State, Zip Code)

PRO SE

(Phone Number)

QUESTION(S) PRESENTED

I. WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS ABUSED ITS DISCRETION IN
REFUSING TO RECALL THE MANDATE ON THE DIRECT APPEAL TO PREVENT A MISCARRIAGE
OF JUSTICE?

- (A). The Eighth Circuit previously made the factual determination that Goolsby is factually innocent of the "Mandatory" Sentencing Guidelines "Official" Victim enhancement.
- (B). The United States Sentencing Guidelines reduced the Sentencing Guideline for the offense which Goolsby was convicted in a Retroactive Amendment, amounts to a unforeseen contingency.
- (C). The United States District Court has tried to give Goolsby every benefit of the reductions to reduce the "Mandatory" Guideline Life Sentence, but cannot do so in a 18 U.S.C. §3582(c)(2) proceeding under DILLION V. UNITED STATES, 560 U.S. 817 (2010) forbidding Courts from correcting misapplication of Guidelines in a §3582 proceedings.
- (D). This matter presents a unique or exceptional circumstance warranting a recall of the mandate, where Goolsby is serving a "LIFE" term in prison, with no remedy to have the illegal enhancement removed, so that the District Court could exercise its discretion to reduce the term of imprisonment to not less than 360 months, except the Court recall the mandate for the ministerial function of removing the illegal enhancement.

LIST OF PARTIES

~~xxx~~ 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 AUTHORITIES

Beckles v. United States, 137 S.Ct. 886 (2017).....	9
Calderon v. Thompson, 523 U.S. 538 (1998).....	8,10
Carranza v. United States, 794 F.3d 237 (2nd Cir. 2012).....	13
Cornell v. Nix, 119 F.3d 1329 (8th Cir. 1996).....	15
Dillion v. United States, 560 U.S. 817 (2012).....	8,9,12
Dretke v. Haley, 541 U.S. 386 (2004).....	8,9,13
Erickson v. Pardus, 551 U.S. 89 (2007).....	10
Gilbert v. United States, 640 F.3d 1293 (11th Cir. 2011)(En Banc).	11
Gondeck v. Pan AM World Airways Inc., 382 U.S. 25 (1965).....	15
Hicks v. United States, 198 L.Ed.2d 718 (2017).....	11
Knight v. United States, 37 F.3d 769 (1st Cir. 1994).....	9
McKay v. United States, 657 F.3d 1190 (11th Cir. 2011).....	13
Molina-Martinez v. United states, 194 L.Ed.2d 444 (2016).....	14
Narvaez v. United States, 674 F.3d 621 (7th Cir. 2011).....	14
Sawyers v. Whitley, 505 U.S. 333 (1992).....	10,14
Skilling v. United States, 561 U.S. 358 (2010).....	11
Smith v. Murray, 477 U.S. 527 (1986).....	14
Sun Bear v. United States, 644 F.3d 700 (8th Cir. 2011)(En Banc).	9,12,13
United States v. Goolsby, 209 F.3d 1079 (8th Cir. 2001).....	4,10
United States v. Young, 470 U.S. 1 (1985).....	10

STATUTES AND RULES

18 U.S.C. §3582(c)(2).....	passium
21 U.S.C. §841 ect al.....	4
28 U.S.C. §2241.....	9
28 U.S.C. §2255.....	passium

OTHER

Fifth Amendment of the United States Constitution.....	passium
United States Sentencing Guidelines §2D1.1.....	5
United States Sentencing Guidelines §3A1.2.....	15
United States Sentencing Guidelines §4B1.1.....	5
United States Sentencing Guidelines Amendment 706.....	11
United States Sentencing Guidelines Amendment 782.....	11

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	15

INDEX TO APPENDICES

APPENDIX A : DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.....	1-2
APPENDIX B : DECISIONS OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS.....	1-4
APPENDIX C : PETITION FILED IN THE UNITED STATES DISTRICT COURT BY JAMES GOOLSBY.....	1-3
APPENDIX D	
APPENDIX E	
APPENDIX F	

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 p. 1 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 27, 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: August 7, 2018, and a copy of the order denying rehearing appears at Appendix A p.2.

☐ 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

This case involves 18 U.S.C. §3582(c)(2) which provides in relevant parts:

"(c) Modification of an imposed term of imprisonment- The Court may not modify a term of imprisonment once it has been imposed except that-
(c)(2) in the case a Defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. §994(o), upon motion of the defendant.....the court may reduce the term of imprisonment after considering the factors set forth in section 3553(a), if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

This Case also involves 28 U.S.C. §2255(a) provides:

" A prisoner in custody under sentence of a Court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or otherwise subject to collateral attack, may move the Court which imposed the sentence to vacate, set aside or correct the sentence."

This Case also Involves the Fifth Amendment of the United States Constitution which provides in relevant parts:

"No person shall...be deprived of life, liberty or property without due process of law."

STATEMENT OF THE CASE

A. Factual Background.

On May 14, 1999, a jury convicted James Goolsby ("Mr. Goolsby") of conspiracy to distribute more than 50 grams of cocaine base under 21 U.S.C. §846, and possession with intent to distribute more than 50 grams of cocaine base under 21 U.S.C. §841(a)(1) and acquitted him on other charges. On September 21, 1999, Mr. Goolsby was sentenced to LIFE in prison over objections to the multiple enhancements applied in the Presentence Investigation Report ("PSR"). Mr. Goolsby filed a timely notice of appeal on September 27, 1999.

On Appeal Mr. Goolsby, argued that the district Court abused its discretion in denying his motion for a mistrial, that he was entitled to a new trial, that the district court's drug quantity was erroneous, that his sentence was improperly enhanced because he assaulted a corrections officer during his escape from federal custody while awaiting sentencing, improperly enhanced for reckless endangerment, and that his sentence was improperly enhanced for an Official victim enhancement.

The Eighth Circuit Court of Appeals disagreed with all but Mr. Goolsby's final argument, stating that an Official victim enhancement under United States Sentencing Guidelines §3A1.2 was improper because the victim was not a victim under the offense of conviction. United States v. Goolsby, 209 F.3d 1079 (8th Cir. 2008) However, because a "MANDATORY LIFE" SENTENCE WAS STILL REQUIRED AFTER THE ENHANCEMENT WAS REMOVED, THE eighth Circuit held the error was harmless. *Id.* 1082. The judgment of the District court was affirmed on April 19, 2000. *Id.*

B. Proceedings Under 28 U.S.C. §2255.

On May 29, 2001, Mr. Goolsby filed a timely motion to vacate his

sentence pursuant to 28 U.S.C. §2255. It was denied on March 14, 2002. The District Court denied a Certificate of Appealability, and the eighth Circuit Court of Appeals affirmed. See, United States v. Goolsby, Appeal No. 02-2311 (8th Cir. Dec. 5, 2002).

C. Proceeding pursuant to 18 U.S.C. §3582(c)(2).

On April 6, 2009, Mr. Goolsby, filed a motion to reduce his sentence pursuant to §3582(c)(2), under Retroactive Amendment 706 to the United States Sentencing Guidelines also known as the crack cocaine guideline reduction. The District Court found that: "The Presentence Report indicates that Goolsby was directly connected to 6.5 kilograms of cocaine base. Based on that drug quantity, the guideline calculation started with a base offense level of 38. Because of his two prior felony convictions for crimes of violence and three prior felony controlled substance offenses. Goolsby qualified as a career offender under the guidelines. His base offense level was based on the drug quantity table since it was higher than the career offender base offense level of 37. See U.S.S.G. §4B1.1, §2D1.1. The base offense level was increased by 11 additional points for an official victim adjustment (3 points) role in the offense adjustment (4 points); obstruction of justice adjustment (2 points); and reckless endangerment during flight (2 points). Based upon a total offense level of 49 and a criminal history category VI, the guideline imprisonment was life. The Statutory maximum term of imprisonment was also life.."

The District Court continued: "when the crack cocaine guideline amendment is applied to a drug quantity of 6.5 kilograms of cocaine base level 38, to which the same additional 11 points must still be added.."

The District Court found that, "The crack cocaine reduction, when it applies

cannot reduce a defendant's offense level by more than 2 points. even assuming Goolsby was given the maximum benefit of a 2 point reduction to his offense level, his total offense level would be 45 and the recommended guideline sentence would be the same-life imprisonment." See (Appendix B, pages 2); United States v. James Goolsby, 2009 U.S.Dist. LEXIS 36636 (E.D.Ark April 16, 2009).

Mr. Goolsby filed a notice of Appeal on April 29, 2009. The Eighth Circuit Court of Appeals affirmed the District Courts final judgment. United States v. Goolsby, Appeal No. 09-1990 (8th Cir.)

D. Second Motion to Reduce Sentence pursuant to 18 U.S.C. §3582(c)(2).

On May 8, 2018, Mr. Goolsby, filed a motion to reduce Sentence pursuant to §3582, pursuant to Retroactive Amendments 591, 706, 711, 715, 750, and 782, all relating to calulating the sentence and the crack cocaine guideline reductions. In addition Mr. Goolsby, requested the District Court to consider a reduction under the "Holloway Doctrine." Mr. Goolsby moved to withdraw that motion on May 14, 2018 (Appendix C pgs. 1-3) So, that Mr. Goolsby can petition the United States Court of Appeals to allow the District Court to remove the 3 level enhancement that the Appellate Court found was applied in error. Teh District Court Granted Mr. Goolsby's motion (Appendix B pg 4).

E. Motion to Recall Mandate In the Appeals Court.

On May 29, 2018, Mr. Goolsby filed a Motion to Recall Mandate to Remand for Performance of a Ministerial act to prevent a miscarriage of justice.

The cause of Mr. Goolsby's motion was to remand the Case to the District Court to perform a ministril function of removing the 3 level enhancement imposed under the "then mandatory sentencing guidelines", that the panel deemed harmless error, now in light of retroactive changes in the law and sentencing guidelines, prevents the District Court from reducing the sentence from "LIFE" to a term of 360 months.

The Government Opposed the Appellate Court remanding the case for the removal of the 3 levels that was found to be in error, so that the District Court could exercise its finction under §3582.

On July 27, 2018, the United States Court of Appeals, without a opinion or reason denied the motion to recall the mandate. (Appendix A page 1). A timely motion to rehear was filed and denied.

This matter is proper before this Court of Certiorari.

REASONS FOR GRANTING THE PETITION

Your petitioner James Goolsby, ("Mr. Goolsby") avers that this petition for Writ of Certiorari should be Granted for several reasons. First, The Eighth Circuit, and without reason, clearly abused its discretion, contrary to Calderon v. Thompson, 523 U.S. 538 (1998), refusing to recall its mandate of the Direct Appeals in this "extraordinary case" to prevent injustice. Where Mr. Goolsby is serving a "Life" sentence with no other vehicle to have removed a 3 level enhancement that the Appellate Court itself found that Mr. Goolsby did not commit.

Second, This case request that this Court address a question of exceptional importance, that the Court eluded in Dretke v. Haley, 541 U.S. 386, 393-94 (2004), as to what constitutes a "miscarriage of justice" in the non-capital context, where Mr. Goolsby is serving a "life" sentence based in part on a "Official Victim" enhancement under the "Mandatory" Sentencing Guideline, that the Appellate Court found that there was "No Official Victim" involved, resulting in the sentence being illegally enhanced under the "mandatory" sentencing, in violation of due process. A sentence imposed based on a non-exist act. This due process violation lead to the finding of "false facts" by the Sentencing Court, as to represent a Fundamental miscarriage of justice. As this same error is the cause of the District Court inability to reduce the sentence to at least 360 months.

Third, the Court should exercise its supervisory power to decide an important question of law, in light of a Retroactive Amendment to the United States Sentencing Guidelines, that reduced the Offense level for the Offense

of conviction, that makes the 3 level enhancement for the non-existent offense a non-harmless error, which the District Court should be allowed to ignore to make an informed decision on whether Mr. Goolsby should spend the rest of his life in prison for a drug offense in which no one was injured, or entitled to a sentence of at least 360 month in the Courts informed discretion.

Fourth, review should be granted to decide a question of exceptional importance as to whether A District Court has the authority to ignore the mandate in 18 U.S.C. §3582(c)(2) and *Dillion v. United States*, 560 U.S. 817 (2012), in this exceptional case, to ignore a 3 level enhancement, that the Appellate Court found to be non-existent, and that is no longer harmless in light of a retroactive amendment to the sentencing guidelines.

In closing, this Court should consider these questions collectively as this matter presents a unique and exceptional case, in the sense that Mr. Goolsby, like countless other defendants that were sentenced under the "mandatory" sentencing guidelines, where it was previously determined that a "mandatory" enhancement "is" illegal. Is a recall of the mandate warranted to perform the ministerial function of removing an illegal enhancement, where defendants like Mr. Goolsby, has no other remedy under 28 U.S.C. §2255 or 28 U.S.C. 2241 to have the 3 level enhancement removed so that the District Court can perform its function under §3582 to reduce the "Mandatory life" sentence that was imposed, as courts have uniformly held that error in the calculation of the sentencing guidelines does not present a claim cognizable under §225 or §2241. See, *Sun Bear v. United States*, 644 F.3d 700, 704 (8th Cir. 2011)(En banc); *Knight v. United States*, 37 F.3d 769, 771-74 (1st Cir. 1994), forclosing review unless this Court decide the issue that it did not decide in *Dretke v. Haley*, supra, and left open in *Beckles v. United States*, 137 S.Ct. 886, 890 (2017).

ARGUMENT

Mr. Goolsby, request that the Court construe his pro se pleading to a less demanding standard than pleadings drafted by trained lawyers. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

- I. The Eighth Circuit deviated from the standard for Recalling a mandate in the presence of extraordinary and compelling circumstances to prevent injustice.

The standard for recalling a mandate is strict and should be only exercised in "extraordinary" circumstances, the sparing use of the power demonstrates that it is one of last resort, to be held in reserve against grave unforeseen contingencies. *Calderon v. Thompson*, 523 U.S. 538, 550 (1998). This Court has held that when a Federal Court of Appeals recalls its mandate, the court abuses its discretion unless it acts to avoid a miscarriage of justice. *Id.* 558. This miscarriage of Justice involves actual innocence, rather than legal innocence and is a "narrow exception". *Id.* (citing *Sawyer v. Whitley*, 505 U.S. 333, 339 (1992)). In the Text of a Direct Appeal in applying the plain or harmless error standard the Court explained in *United States v. Olano*, 507 U.S. 725 (1993), that the discretion conferred by Rule 52 should be employed "in those circumstances in which a Miscarriage of Justice would otherwise result. *Id.* 507 U.S. at 736, citing *United States v. Young*, 470 U.S. 1, 15 (1985)

- A. The Eighth Circuit previously determined Mr. Goolsby is "factually Innocent" of a Official Victim enhancement.

The United States Court of Appeals found in the Direct Appeal that there was no "Official Victim" for purposes of applying a 3 level enhancement to to enhance Mr. Goolsby's sentence under the statutory mandatory sentencing Guidelines. See *United States v. Goolsby*, 209 F.3d 1079, 1082 (8th Cir. 2001).

The application of the "Official Victim" enhancement is the equivalent of Mr. Goolsby being sentenced for a non-existent offense. As there was no "Official Victim" involved in this case. This improper designation, in his sentence extended it "beyond that authorized by the mandatory sentencing scheme" and thus undermined the fundamental legality of the sentence.

B. The Retroactive Change in the Sentencing Guidelines reducing the range for the offense for which Mr. Goolsby was sentenced amounts to a unforeseen contingency.

Mr. Goolsby, aver that retroactive Amendment 706 and 782 to the United States Sentencing Guidelines was a unforeseen contingency by the Eighth Circuit Court of Appeals when it applied the harmless error analysis. No one thought that the Sentencing Commission would reduce the sentencing ranges for Drug Offenders in 2001.

The error in light of the retroactive change not foreseen by the Eighth Circuit's panel, can no longer be deemed harmless, as explained by Justice Gorsuch in *Hicks v. United States*, 138 S.Ct. 2152, 2169 (2018), "when curing the error will yield a different outcome, but also in cases where we think there's a reasonable probability that will happen." citing *Skilling v. United States*, 561 U.S. 358, 414 (2010).

In light of the retroactive law, Mr. Goolsby, absent the erroneous enhancement would not face a "mandatory" life sentence.

C. The District Court tried to stretch the maximum benefit of the retroactive reductions to reduce Mr. Goolsby's sentence but such is prohibited by §3582(c)(2) and the Supreme Court's decision in *Dillon v. United States*.

The United States District Court for the Eastern District of Arkansas, had tried to give Mr. Goolsby, the maximum benefit of the retroactive Amendments to give him relief from the mandatory "Life" sentence but cannot consider removal of errors made in the original calculation of the sentence

imposed.

The Eighth Circuit having determined that Mr. Goolsby offense did not involve a "official Victim", and that it was error to apply that enhancement, but that the error was harmless. Now in light of the retroactive change in the law and Sentencing Guidelines, petitioner has no other forum to obtain relief or for the District Court to exercise its discretion of whether it would give Mr. Goolsby any sentence other than life, that was no a option during the original sentencing. Because as interpreted by this Court that when congress enacted 18 U.S.C. §3582(c)(2), to provide prisoners the opportunity to obtain relief from retroactive changes in the Sentencing guidelines. Does not allow the District Court to remove or correct a error made during the original sentencing proceedings. Dillion v. United States, 560 U.S. 817 (2010).

- D. This matter presents a unique or exceptional case warranting a recall of the mandate where Mr. Goolsby is serving a "life" time imprisonment with no legal remedy to have the illegal enhancement removed, so the the District Court can perform its function.

Mr. Goolsby, present ~~that~~ his case presents a unique case where his has filed with the Eight Circuit Court of Appeal and the District Court to reduce his life sentence in light of retroactive reduction in his sentencing range, but due to a erroneous 3 level enhancement that the Eighth Circuit found that Mr. Goolsby, did not commit acts to warrent the enhancement, and that was deemed harmless in 2001, is no longer harmless. in light of retroactive changes in the sentencing guidelines.

Now this error has arisen, to be a thorn in the side of Mr. Goolsby, who have no other vehicle to have the enhancement removed or reconsidered absent the Eighth Circuit recallings its mandate and remanding the matter for the District Court to perform the ministril act of removing the enhancement so that it can considere whether it would reduce the sentence.

The Courts below has taken a unified stance that a sentence imposed as a result of a miscalculation of the sentencing guidelines is not subject to review in a §2255 proceeding. *Sun Bear*, supra, 644 F.3d at 704 (collecting cases), or in a §2241 proceeding, *Gilbert v. United States*, 640 F.3d 1293 (11th Cir. 2011) (En Banc).

Mr. Goolsby cannot use §3582(c)(2) to have the District Court to correct the error error in recalculating the sentence in light of a retroactive amendment. *Dillion*, supra, 560 U.S. at 817.

This puts Mr. Goolsby in a situation with no other procedural remedy, which makes a recall of the mandate necessary and the perfect procedural remedy for the Appeals Court to allow the District Court to perform the "ministerial" function of removing the enhancement for a non-existing offense, Cf. *Carranza v. United States*, 794 F.3d 237, 241 (2nd Cir. 2012), and to prevent a miscarriage of justice.

Although, this Court has refused to decide whether the miscarriage of justice exception applies to the non-capital sentencing context, *Dretke v. Haley*, supra, and did not resolve the issue of whether a Challenge to the Sentencing Guidelines is cognizable on §2255 in *Beckles*, supra.

Yet, the issue concerning a miscarriage of justice in the non-capital sentencing context is not clear. Mr. Goolsby avers that in the context of a recall of the mandate. The miscarriage of justice exception should apply in the non-capital sentencing context, where the defendant shows that he is factually innocent of the conduct or underlying crime that serves as the predicate for the enhanced sentence. *McKay v. United States*, 657 F.3d 1190, 1198-99 (11th Cir. 2011).

As this Court has held in *Smith v. Murray*, 477 U.S. at 527, that a fundamental miscarriage of justice occurs when "the alleged error undermined the accuracy of the guilt or sentencing determination". *Id.* 539. *Smith*, allows a claim that the sentencing determination was "inaccurate" in that the trial court considered false or misinformation of a constitutional magnitude in applying the "Mandatory" sentencing guidelines. The Court in *Sawyer v. Whitley*, 505 U.S. at 333, 112 S.Ct. at 2514, described *Smith*, *supra*, as "emphasising that the miscarriage of justice exception is concerned with actual as compared to legal innocence.. which requires a showing that the "alleged constitutional error either precluded the development of true facts or resulted in the admission of false ones. *Id.* 112 S.Ct. at 2519, citing *Smith*, 477 U.S. at 537 and 538.

In this case Mr. Goolsby's mandate should have been recalled, because he has been improperly designated to have violated the "Official Victim" enhancement under the then-mandatory sentencing guidelines. Mr. Goolsby should be entitled to relief from that enhancement because, as a result of the improper designation, his sentence extended "beyond that authorized by the sentencing scheme, requiring an "Mandatory" life sentence depriving the District Court of any discretion in light of the retroactive Amendment, and thus undermined the legality of his sentence. *Narvaez v. United States*, 674 F.3d 621, 630 (7th Cir. 2011).

Mr. Goolsby, preserved his rights in 2000, when he objected to the enhancement error, that has not surfaced again to represent a defect, irregularity, or variance that affected his substantial rights. Mr. Goolsby absent the error no longer faces a "Mandatory" life sentence, and without the enhancement provides the District Court with a option that did not otherwise exist. *Molina-Martinez v. United States*, 194 L.Ed.2d 444, 457-59 (2016). This Court should not ignore that a lifetime imprisonment under a mistaken legal

ruling is a quintessential miscarriage of justice". Cornell v. Nix, 119 F.3d 1329, 1333 (8th Cir. 1996).

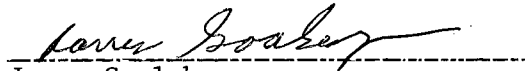
The Court of Appeals found that Mr. Goolsby did not violated the "Official Victim" guideline under the "then mandatory" United States Sentencing Guidelines provision 3A1.2, because Mr. Goolsby proved that there was no "Official Victim" involved.

The Government nor the United States Court of Appeals for the Eighth Circuits interest in the finality of the judgment should be so strong, that it would not allow a District Judge to perform the ministerial act of removing a enhancement for which Mr. Goolsby is actually innocent of, so in a subsequent proceeding, the District Court could remedy an injustice, and review the "Life" sentence under 18 U.S.C. §3582(c)(2) and consider resentencing Mr. Goolsby to a sentence that is just and proper under law. Gondeck v. Pan AM. World Airways, Inc., 382 U.S. 25, 26-27 (1965).

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully Submitted,



James Goolsby

Date: 8/22/2018