

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Tyrone Anderson — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Eighth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Tyrone Anderson

(Your Name)

FCC Yazoo City, MS, P.O. Box 5000

(Address)

Yazoo City, MS 39194

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Petitioner presents the question whether his trial counsel provided ineffective assistance of counsel as required by the Sixth Amendment to the Constitution where trial counsel permitted the District Court to subject petitioner to a career offender enhancement, USSG §4B1.1, without having any transcripts of petitioner's alleged prior state convictions?

Petitioner contends that the state law convictions were entered in violation of due process of law; and also contends that this Court's decision in *Strickland v. Washington*, ____ U.S. ____ (____) was inappropriately applied by the Court of Appeals leading to an unreasonable result.

Had the Court of Appeals correctly applied well-settled precedent the district court's career offender enhancement, §4B1.1, would have been overturned and petitioner's sentence reduced.

Petitioner's argument is that his trial counsel's professional performance was severely below the standard of a competent lawyer by not effectively challenging application of the §4B1.1 career offender enhancement; and petitioner suffered, and continues to suffer prejudice resulting from trial counsel's unconstitutional negligence.

LIST OF PARTIES

- [x] 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 CITED

CASES

		PAGE NUMBER
1.	<u>Strickland v. Washington</u> U.S. ____ (____)	5, 6
2.	<u>Townsend v. Burke</u> 334 U.S. 736 (1948)	5, 6, 7

STATUTES AND RULES

OTHER

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APPENDIX A Opinion of the Court of Appeals, U.S. v. Tyrone Anderson, Case no. 17-3304 affirming the judgment of the district court.

APPENDIX B August 15, 2018 order of the Court of Appeals denying a petition for panel rehearing.

APPENDIX C September 19, 2017 judgment of the District Court sentencing petitioner to a term of imprisonment of 200 months.

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 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 C 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 5, 2018 see appx. A

[] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: August 15, 2018, and a copy of the order denying rehearing appears at Appendix B.

[] 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

1. The Sixth Amendment to the Constitution of the United States.
2. USSG §4B1.1(a): career offender enhancement.

STATEMENT OF THE CASE

On August 5, 2015 a grand jury indicted petitioner charging him with two counts of violating 21 USC §§841(a)(1) and 841(b)(1)(A), conspiring to intentionally possess with the intent to distribute methamphetamine, in amounts of 50 grams of more. On March 10, 2017 petitioner entered a Rule 11 negotiated guilty plea agreement in which he pleaded guilty to count 1 of the indictment. On September 19, 2017 petitioner was sentenced by the District Court, Appx. C, to a 200 months term of imprisonment. The District Court found, erroneously, that petitioner was a career offender based on two prior state convictions which had been entered in violation of due process of law, and thus, the District Court erroneously calculated a guideline range of 262-327 months based on the purported career offender enhancement of §4B1.1(b).

Petitioner was appointed appellate counsel who filed a notice of appeal.

Appellate counsel rather than effectively representing petitioner on appeal and presenting meritorious issues with respect to the erroneously applied §4B1.1(b) career offender enhancement to the court of appeals, appellate counsel filed an Anders brief against petitioner's interests, and did not address the merits of whether or not the district court correctly sentenced petitioner pursuant to USSG §4B1.1(b) career offender enhancement.

On July 5, 2018 the Court of Appeals affirmed the judgment of the District Court, Appx. A; and on August 15, 2018 the Court of Appeals denied petitioner's request for panel rehearing, Appx. B.

REASONS FOR GRANTING THE PETITION

Petitioner contends that this Court should grant this petition for relief and vacate and set aside the judgments of the Court of Appeals, Appx. A, and the District Court, Appx. C, and remand with instructions for the District Court to resentence without the §4B1.1(b) career offender enhancement.

Because, first, the District Court committed a clear error of law in sentencing petitioner based on null and void ab initio state law convictions. The record in the District Court shows that it lacked a complete certified transcript of the state proceedings -- which would have confirmed to the District Court both state convictions were entered in violation of petitioner's right to due process of law. Thus, lacking the complete transcripts of the state convictions and therefore the ability to make a fair and accurate determination of whether or not petitioner's rights had been protected by the state courts, the District Court, as a matter of law, committed clear error; and its judgment and decision conflicts with this Court's legal standard and reasoning in its decision in Townsend v. Burke, 334 U.S. 736, 740-41 (1948).

In Townsend, Id. at 740-41 this Court held that every accused in a criminal proceeding had the absolute right to be sentenced with correct and accurate information; and a sentence based on "materially untrue" and inaccurate information was fundamentally inconsistent with and violated due process of law.

Petitioner's primary contention is that the District Court's judgment, Appx. C -- affirmed by the Court of Appeals, Appx. -- which imposed the §4B1.1(b) career offender enhancement was based on fundamentally "materially inaccurate" information: the state courts' judgments, extrinsic information, are required to be accurate and valid for use in a federal court proceeding, are not ipso facto deemed accurate by the federal court, however. Rather, the federal courts to ensure due process of law is followed is required to do more than robotically accept any document presented by the respondent, without any investigation of the veracity and validity of the hearsay document; and then impose a drastic increase and departure from due process.

In the District Court sentencing proceedings the question is exactly, What process is due to the accused with respect to state convictions records when the district court lacks certified transcripts of the state court proceedings? is the salient question. Clearly, the respondent should have the burden of proof and production when requesting the district court to increase the sentence of a defendant based on extrinsic information; and the respondent's failure to present the District Court with any certified transcripts of the state court proceedings, the process due to assure the material accuracy of extrinsic evidence has not been met by any standard. especially due process of law.

The respondent when pressing for and asserting increased penalties for petitioner, the career offender §4B1.1(b) enhancement, the federal court has an heightened duty to ascertain the accuracy of any document it intends to use to inflict the increased penalty; else such carelessness and reckless proposition in regard to correct procedure in a federal court is untenable, intolerable, and most certainly unconstitutional.

Petitioner further asserts that his appellate counsel's filing of a frivolous Anders brief in the court of appeals without presently any challenge to the respondent's use of "materially inaccurate" state court convictions, which caused him prejudice by increasing the penalty imposed by the District Court, was a fundamental miscarriage of justice; and specifically constituted ineffective assistance of appellate counsel in violation of the standard set in Strickland, Id. (appellate and trial counsel's professional performance was deficient -- there was no strategy component in not challenging the state courts' proceedings; and petitioner was certainly prejudiced by the increase in his sentence pursuant to §4B1.1(b)).

Petitioner's appellate and trial counsels both were required by the Constitution's Sixth Amendment to challenge any document or record the District Court intended to use to increase petitioner's penalty. The District Court's record is not in dispute: the District Court lacked certified transcripts of the state court

proceedings; and therefore lacked surety the state court proceedings were conducted in compliance with due process of law. And without that required assurance of due process in the state courts' proceedings, the District Court, trial, and appellate counsels all breached their constitutional duty owed petitioner.

Petitioner is respectfully requesting that this Court grant his petition to proceed in forma pauperis; reverse and vacate the judgment of the Court of Appeals, and remand with instructions for the District Court to resentence petitioner without the §4B1.1(b) career offender enhancement; and grant any further relief the Court deems just and proper.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Tyrone Anderson

Date: October 22, 2018