No. 18-7949

ORIGINAL

Supreme Court, U.S.
FILED
JAN 17 2019
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

In re-Reginald Watson — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A **Extraordinary Writ of Mandamus**

1) US Court of Appeals for Eight Circuit 217CV180,
2) US District Court for Eastern District of Arkansas 412CR53.

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

PETITION FOR EXTRAORDINARY WRIT. **of Mandamus**

Reginald Watson
(Your Name)

USP Box 1000
(Address)

Leavenworth,KS 66048
(City, State, Zip Code)

n/a
(Phone Number)

QUESTIONED PRESENTED

QUESTION #1- Whether the District Court erred in dismissing Watsons 2241 motion for lack of jurisdiction?

QUESTION #2- Whether in light of Decamps v United States, or Mathis v United States or United States v Hinkle,Watsons prior conviction does not qualify him as a career offender?

LIST OF PARTIES

[XX] 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:

NOTICE, Opinions Below found in back of petition,2 pages.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT **of Mandamus**

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

OPINIONS BELOW

[xx] 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[ ] is unpublished.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 _____ 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[ ] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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

[x] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1/9/18 denied it on 2/20/18.

[ ] 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: 8/29/18, 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).

STATEMENT OF JURISDICTION

This is an appeal from the dismissal of a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 ("§ 2241 Motion"), on November 15, 2017. See CvDoc. 1.[1] Henson timely filed a Notice of Appeal on January 9, 2018. See CvDoc. 14. Subsequently, on February 20, 2018, the Eighth Circuit issued an Order granting Watson's Motion for In Forma Pauperis ("IFP"). This Court has jurisdiction pursuant to 18 U.S.C. § 3742(a) and 28 U.S.C. § 1291. Supreme Court has jurisdiction.

STATEMENT OF THE ISSUES

A. Whether the District Court erred in dismissing Watson's § 2241 Motion for lack of jurisdiction.

B. Whether, in light of *Mathis v. United States*, 136 S.Ct. 2243 (2016) and *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), Watson's prior convictions do not qualify as predicate convictions for the career offender Guideline requiring resentencing without the career offender enhancement.

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[1] "CvDoc." refers to the Docket Report in the United States District Court for the District of Eastern District of Arkansas, Helena Division in Civil No. 2:17-cv-00180-BSM, which is immediately followed by the Docket Entry Number. "Doc." refers to the Docket Report in the United States District Court for the District of Eastern District of North Carolina, Eastern Division in Criminal No. 4:12-cr-00053-F-1, which is immediately followed by the Docket Entry Number.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

On April 10, 2012, a grand jury sitting in the United States District Court for the Eastern District of North Carolina, Eastern Division, returned a three (3) count Indictment charging Watson. See Doc. 1. Count 1 charged Watson with Conspiracy to Distribute and Possess With Intent to Distribute 28 Grams or More of Cocaine Base ("Crack"), a Quantity of Cocaine, and a Quantity of Marijuana, in violation of 21 U.S.C. §§ 846 and 841(a)(1). *Id.* Count 2 charged Watson with Distribution of a Quantity of Cocaine Base, Heroin, and Marijuana, in violation of 21 U.S.C. § 841(a)(1). *Id.* Count 3 charged Watson with Distribution of 28 Grams of More of Cocaine Base and Marijuana, in violation of 21 U.S.C. § 841(a)(1). *Id.* The Indictment also contained an Allegation of Prior Conviction and Forfeiture Notice (pursuant to 21 U.S.C. § 853(p)). *Id.*

On June 4, 2012, an Arraignment Hearing was held and Watson entered a plea of guilt on Count 1 of the Indictment, pursuant to a written Plea Agreement. See Docs. 18, 19.

On November 7, 2012, Watson was sentenced to a term of 141 months' imprisonment, 5 years Supervised Release, a restitution of $2,370, and a Mandatory Special Assessment Fee of $200. See Docs. 25, 26.

On September 14, 2015, Watson filed a Motion for Sentence Reduction pursuant to 18 U.S.C. § 3582(c)(2) and Amendment 782, which the Court denied on September 17, 2015 because Watson's offense resulted from the application of the career offender guideline. See Docs. 33, 34.

On October 10, 2017, Watson filed a § 2241 Motion. However, on November 15, 2017, the Court issued an Order dismissing Watson's § 2241 Motion for lack of jurisdiction. See CvDocs. 1, 13.

On January 9, 2018, Watson filed a Notice of Appeal re: dismissal of his § 2241 Motion. See CvDoc. 14. On February 20, 2018, Watson's Motion for IFP was granted.

B. Statement of the Relevant Facts

1. Offense Conduct

In or about November 2009 and continuing until on or before November 2, 2011, in the Eastern District of North Carolina and elsewhere, Watson did knowingly and intentionally combine, conspire, confederate, agree and have a tacit understanding with others to distribute twenty-eight (28) grams or more of cocaine, Schedule II controlled substances, a quantity of heroin, and a quantity of marijuana, Schedule I controlled substances in violation of 21 United States Code, Section 841(a)(1). See Doc. 1 at 1.

2. Plea Proceeding

On June 4, 2012, an Arraignment Hearing was held before Senior Judge James C. Fox in Wilmington. See Doc. 18. Watson entered a plea of guilt on Count 1 of the Indictment; and Counts 2 and 3 to be dismissed at sentencing pursuant to Plea Agreement. See Doc. 19. Watson was advised of rights, charges and maximum penalties. The case was referred to Probation Office for the preparation of the PSR.

3. Sentencing Proceedings

On November 7, 2012, a Sentencing Hearing was held before Senior Judge James C. Fox in Wilmington. See Doc. 25. The Court sentenced Watson as a career offender, to a term of 141 months' imprisonment, 5 years Supervised Release, a restitution of $2,370, and a Mandatory Special Assessment Fee of $200. See Doc. 26. Counts 2 and 3 of the Indictment were dismissed on the motion of the United States. No direct appeal was filed in this case.

4. Postconviction Proceeding

On October 10, 2017, Watson filed a § 2241 Motion, arguing that the Court misclassified him as a career offender, in light of *Mathis* and *Hinkle*. However, on November 15, 2017, the Court issued an Order dismissing Watson's § 2241 Motion for lack of jurisdiction. See CvDocs. 1, 13.

On January 9, 2018, Watson filed a Notice of Appeal re: dismissal of his § 2241 Motion. See CvDoc. 14. On February 20, 2018, Watson's Motion for IFP was granted.

C. Statement of the Standard of Reviews

Appellate review of a defendant's sentence is limited to determining whether the sentence is "reasonable." *United States v. Battiest*, 553 F.3d 1132, 1135 (8th Cir. 2009) (citing *Gall v. United States*, 552 U.S. 38, 51 (2007)). Determining reasonableness includes consideration of any procedural errors made during the sentencing process as well as the substantive reasonableness of the sentence itself. *United States v. Mosby*, 543 F.3d 438, 440 (8th Cir. 2008). As relevant in Watson's case, a district court commits procedural error by failing to provide an adequate explanation for the sentence imposed. *Gall*, 552 U.S. at 51. Where the defendant fails to explicitly object at the sentencing hearing to the lack of explanation provided for the sentence imposed, this Court applies plain error analysis. *United States v. Linderman*, 587 F.3d 896, 899 (8th Cir. 2009).

"*De novo* review requires an appellate court to review the case anew, without any formal deference to the decision below .... *Brown*, supra note 2, at 359. *De novo* review is typically applied to conclusions of law as opposed to factual determinations." *Id.* Under this standard, the appellate court reviews the district

court's legal conclusions *de novo*, giving no deference to the lower court's decision while taking the facts in the light most favorable to the nonmoving party. *Id.* Although the appellate court owes the district court no deference, "[i]ndependent appellate review necessarily entails a careful consideration of the district court's legal analysis, and an efficient and sensitive appellate court at least will naturally consider this analysis in undertaking its review." *Salve Regina College v. Russell*, 499 U.S. 225, 232 (1991).

ARGUMENT

As a preliminary matter, Watson respectfully requests that the Court be mindful that "a *pro se* complaint should be given liberal construction, we mean that if the essence of an allegation is discernible ... then the district court should construe the complaint in a way that permits the layperson's claim to be considered within the proper legal framework." See *Solomon v. Petray*, 795 F.3d 777, 787 (8th Cir. 2015); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (same); and *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (same).

A. The District Court Erred in Dismissing Watson's § 2241 Motion for Lack of Jurisdiction.

Title 28 United States Code, Section 2241 confers jurisdiction on district courts to issue writs of habeas corpus in response to a petition from a state or federal

prisoner who "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a) and (c)(3). A petition for habeas corpus under 28 U.S.C. § 2241 must be filed in the district of confinement. *Nichols v. Symmes*, 553 F.3d 647 (8th Cir. 2009). A federal prisoner must challenge the legality of his detention by motion under 28 U.S.C. § 2255, but may challenge the manner or execution of his sentence under 28 U.S.C. § 2241. *Deroo v. United States*, 709 F.3d 1242 (8th Cir. 2013).

In Watson's § 2241 Motion, Watson asserted factual innocence of his sentence enhancement due to a change of law. As such, Section 2255 is inadequate or ineffective because of: (1) the existence of new interpretation of statutory law in *Descamps* and *Mathis*, (2) which was issued after Watson had a meaningful time to incorporate the new interpretation into his direct appeals or subsequent motions, (3) that is retroactive, and (4) applies to the petition's merits such that it is more likely than not that no reasonable trier of fact would have enhanced his sentence. See *Wooten*, 677 F.3d at 307–08.

Watson's sentence was driven by his sentencing enhancement pursuant to U.S.S.G. § 4B1.1. This enhancement virtually increased his sentence. As such, because he is actually innocent of said enhancement, he should be resentenced to a significantly less harsh sentence.

In order for Watson to proceed under 28 U.S.C. § 2241, he must must show that his remedy under § 2255 is inadequate or ineffective by satisfying four conditions: (1) "the existence of a new interpretation of statutory law," (2) "issued after the petitioner had a meaningful time to incorporate the new interpretation into his direct appeals or subsequent motions," (3) that is retroactive, and (4) applies to the petition's merits such that it is "more likely than not that no reasonable juror would have [enhanced his sentence]". *Hill,* 836 F.3d at 595.

Watson meets the above requirements as follows:

Descamps and *Mathis* are both new interpretations of statutory law, which were issued after Watson had a meaningful time to incorporate the new interpretation into his direct appeal or subsequent motions. In *Hill,* the government conceded that *Descamps* was retroactive. In *Holt v. United States,* 843 F.3d 720 (7th Cir. 2016), the Court held that substantive decisions such as *Mathis* presumptively apply retroactively on collateral review. See, e.g., *Davis v. United States*, 417 U.S. 333, 94 S.Ct. 2298 (1974); *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

These cases apply to the petition's merits such that it is "more likely than not that no reasonable juror [or trier of fact] would have [enhanced his sentence]". *Hill,* 836 F.3d at 595.

B. **In Light of *Mathis v. United States*, 136 S.Ct. 2243 (2016) and *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), Watson's Prior Convictions Do Not Qualify Him as a Career Offender Requiring Resentencing Without the Career Offender Enhancement.**

In this case, the District Court erred in determining that Watson was a career offender within the meaning of U.S.S.G. § 4B1.1, which provides:

> A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense.

In light of *Descamps v. United States*, 133 S.Ct. 2276, 186 L.Ed.2d 438 (2013), atson is not a career criminal, and his sentence violates due process of Law and constitutes a complete miscarriage of justice.

The district court classified Watson as a career offender under U.S.S.G. § 4B1.1 because of his prior convictions. Watson contends that his—Possession with Intent to Deliver Crack Cocaine, Case No. 2005-05-07-1566, in violation of South Carolina Code of Laws: Title 44 Health Code—should not have been classified as a "controlled substance offense" for the purpose of § 4B1.1(a)(3) because the elements of that South Carolina crime differ from the definition in § 4B1.2(b).

SECTION 44-53-370. Possession with Intent to Distribute.

Prohibited acts A; penalties. (a) Except as authorized by this article it shall be unlawful for any person:

(1) to manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue;
(2) to create, distribute, dispense, deliver, or purchase, or aid, abet, attempt, or conspire to create, distribute, dispense, deliver, or purchase, or possess with intent to distribute, dispense, deliver, or purchase a counterfeit substance.

Note: 44-53-460 Reduced sentence for accommodation offense: delivery/distribution was only for accommodation to another individual and not for profit or to induce addiction Misdemeanor: <6months and/or <$1,000.

Section 4B1.2 or the Guidelines defines a controlled substance offense as follows:

> an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense. U.S.S.G. § 4B1.2(b).

Relevant as a pillar of the holding by the United States Supreme Court is the Court's discussion of the statute's divisibility, or lack of it. The topic has come to be known as the "means-versus-elements" question, see *Mathis*, regarding the issue of

whether a predicate prior conviction under the career offender must qualify as such under the elements of the offense simpliciter, without extending the modified categorical approach to separate statutory definitional provisions that merely establish the means by which referenced elements may be satisfied rather than stating alternative elements or versions of the offense. The Court determined that a categorical approach verses a modified approach, regarding the elements must be employed. The Sixth Circuit has established as a precedence all the aforementioned Supreme Court jurisprudence, i.e. *Descamps* and *Mathis*, adopting in agreement with such. Thus, Watson does not have the required predicate offenses, convictions, which qualify him under the career offender guideline; Watson is not a career criminal, and his sentence violates due process of law and constitutes a complete miscarriage of justice, as he is today factually innocent of his career offender conviction.

The question in this case is whether the South Carolina statutes under which Watson was convicted are "divisible." *See, e .g ., Descamps v. United States*, 133 S.Ct. 2276, 2281 (2013). A statute is "divisible" when it "sets out one or more elements of the offense in the alternative—for example, stating that burglary involves entry into a building *or* an automobile." *Id.*

As the Supreme Court explained in *Descamps*:

> "[i]f one alternative (say, a building) matches an element in the generic offense, but the other (say, an automobile) does not, the modified categorical approach permits sentencing courts to consult a limited class of documents, such as indictments and jury instructions, to determine which alternative formed the basis of the defendants prior conviction."

Id. As such, the definition of "possession" in sections S.C. Code Ann. § 44-53-445/370 sets forth different offenses. Therefore, "Possession" can be actual or constructive. "Actual" possession is having the drug on your person or in your hand. "Constructive" possession is a little trickier: do you have domain and control over the substance. Constructive cases tend to come up in cases where a drug is found in a common area of a house or in a car. The State must prove beyond a reasonable doubt that a person intended to possess the controlled substance. Mere presence isn't enough. However, multiple people can have possession of the same drug. "Manufacture" includes the packaging or repackaging of the substance or labeling or relabeling of its container as well as the production, preparation, propagation, compounding, conversion or processing of a controlled substance by any means. "Sell" and "deliver" under the statute refers to the transfer for compensation ("sell") or the actual or constructive transfer to another person ("deliver").

Because the statute is divisible, our next step is to apply the "modified categorical approach." *Howard*, 742 F.3d at 1347. Under the modified categorical

approach, we consult any *Shepard* documents that the Government submitted to determine which version of the crime Watson was convicted of. The Government submitted the charging document, the plea agreement, the judgment of conviction, and the PSR. The first three documents are *Shepard* documents. From these documents, we are only permitted to conclude that Watson possessed a controlled substance. See e.g., *Curtis Johnson*, 559 U.S. at 138, 130 S.Ct. at 1269-70 ("[N]othing in the record" permitted the court to conclude that the conviction "rested upon anything more than the least of these acts."); *Moncrieffe v. Holder*, ___ U.S. ___, 133 S.Ct. 1678, 1684, 185 L.Ed.2d 727 (2013) ("[W]e must presume that the conviction rested upon nothing more than the least of the acts criminalized...") (quotations and alterations omitted).

A divisible statute is one that "comprises multiple, alternative versions of a crime." *Id.* at 2284. The difficulty of this situation is that the sentencing court must determine which version of the crime the defendant was convicted of, without engaging in the type of fact finding that the Sixth Amendment requires be done by a jury. The Supreme Court's solution to this difficulty is to allow the sentencing court to refer only to *Shepard* documents to determine which version of the crime the defendant was convicted of. *Shepard* documents include "the charging document,... a plea agreement or transcript of colloquy between judge and defendant in which the

factual basis for the plea was confirmed by the defendant, or ... some comparable judicial record of this information." *Shepard*, 544 U.S. at 26, 125 S.Ct. at 1263.

Under *Shepard* and *Descamps*, a sentencing court may not rely on a PSR from an unrelated proceeding in place of a *Shepard* document. It is not a charging document, a plea agreement or colloquy, or a comparable judicial record. See *Shepard*, 544 U.S. at 26, 125 S.Ct. at 1263. To allow the use of the PSR in the manner advocated by the Government would be inconsistent with the Court's holding in *Descamps* that, "when a defendant pleads guilty to a crime, he waives his right to a jury determination of only that offense's elements; whatever he says, or fails to say, about superfluous facts cannot license a later sentencing court to impose extra punishment." See *Descamps*, 133 S.Ct. at 2288.

In re Williams, 826 F.3d 1351, 1356 (2016) (prior convictions for a "felony drug offense" are "not even arguably affected by *Johnson*'s holding regarding the ACCA's residual-clause definition of a violent felony."). Though there are no *Shepard* documents in the record to elucidate the history of this conviction, S.C. Code Ann. § 44-53-370(b)(2) provides that a person convicted of possession with intent to distribute cocaine, a Schedule II controlled substance, "is guilty of a felony and upon conviction, for a first offense must be imprisoned not more than five years or fined not more than five thousand dollars, or both."

In *Mathis v. United States*, 136 S.Ct. 2243 (2016), the Supreme Court set forth how a court determines whether a statute is divisible and therefore whether, in employing the modified categorical approach, documents pertaining to the prior conviction may be used to ascertain if that conviction comes within a federal definition of an offense or has the elements of an enumerated offense. The decision in *Mathis* plainly and unmistakably leads to the conclusion that the definition of "possession" in section 481.002(8), as authoritatively interpreted by the Texas Court of Criminal Appeals sets forth various means of committing an offense and does not set forth in the disjunctive separate offenses. See *Lopez v. State*, 108 S.W.3d 293, 299 (Tex. Crim. App. 2003) (citing *Rodriguez v. State*, 89 S.W.3d 699, 701 (Tex. App.—Houston [1st Dist.] 2002, pet ref'd)).

The Supreme Court's decision in *Mathis* dealt with the Armed Career Criminal Act (ACCA), not the federal enhancement sentencing. However, the primary focus of the Court's decision in *Mathis* was how to determine whether a statute is "divisible" and therefore whether the modified categorical approach can be used to determine, when a statute defines more than one offense, of which offense a defendant was convicted. *Id.* The decision in *Mathis* clarified when and how the modified categorical approach is applied in the context of federal sentencing. With exceptions not relevant to this appeal, courts generally used the categorical and

modified categorical approaches in applying the federal sentencing Guidelines. See, *e .g .*, *United States v. Najera–Mendoza*, 683 F.3d 627, 629 (5th Cir. 2012) (citing *United States v. Miranda–Ortegon*, 670 F.3d 661, 663 (5th Cir. 2012)). The *Mathis* decision is controlling regarding the methodology of the modified categorical approach, and courts must now apply its holdings, even if they are contrary to prior precedent of this court.

The decision in *Mathis* instructs that there is a difference between alternative elements of an offense and alternative means of satisfying a single element. See *Mathis*, 136 S.Ct. at 2250. Elements must be agreed upon by a jury. *Id.* at 2256. When a jury is not required to agree on the way that a particular requirement of an offense is met, the way of satisfying that requirement is a means of committing an offense not an element of the offense. *Id.* At issue in *Mathis* was an Iowa burglary statute that proscribed entry into or onto locations that included a building, a structure, land, water or an air vehicle. *Id* . at 2250; *see also,* Iowa Code§§ 702.12, 713.1. Because generic burglary does not proscribe burglary of vehicles, the Iowa offense was overly inclusive; it included conduct that was not generic burglary. *Mathis,* 136 S.Ct. at 2250. The sentencing court looked to the documents pertaining to Mathis's prior convictions, which revealed that Mathis had burgled structures not vehicles, and the district court concluded that the sentencing enhancement under the

ACCA applied. The Eighth Circuit affirmed, holding that whether the itemized list of places "amount[ed] to alternative elements or merely alternative means to fulfilling an element, the statute is divisible, and we must apply the modified categorical approach." The Supreme Court disagreed and reversed the Eighth Circuit because the Iowa Supreme Court has held that the Iowa statute sets forth "alternative method[s] of committing [the] single crime," and an Iowa "jury need not agree on which of the locations was actually involved." *Mathis*, 136 S.Ct. at 2250 (quoting *State v. Duncan*, 312 N.W.2d 519, 523 (Iowa 1981)).

In *United States v. Hinkle*, 832 F.3d 569 (5th Cir. 2016), defendant Hinkle appealed his sentence, contending that the district court erred in determining that he was a career offender within the meaning of U.S.S.G. § 4B1.1(a). Hinkle argued that neither of his prior Texas convictions, one for burglary and the other for delivery of a controlled substance, constituted a predicate offense under the career-offender guidelines provision. The Court's decision turned upon whether the particular Texas statutes at issue were divisible such that a court may use the modified categorical approach to determine whether a defendant convicted under Texas law of knowingly delivering a controlled substance was convicted of delivery by one of the particular means proscribed under Texas law. In light of the Supreme Court's recent decision in *Mathis v. United States*, 136 S. Ct. 2243 (2016), the *Hinkle* Court concluded that

his conviction for delivery of a controlled substance is not a "controlled substance offense" within the meaning of the Guidelines, and therefore, the career-offender enhancement did not apply based on the record presently before the Court. The Court vacated Hinkle's sentence and remanded for resentencing without the career offender Guideline enhancement.

The definition of "deliver" in section 481.002(8) in conjunction with section 481.112(a) sets forth different offenses, such that delivering a controlled substance by "offering to sell" it is a separate and distinct offense from delivering a controlled substance by "transfer[ing], actually ..., to another a controlled substance." Hinkle contends that the various definitions of "deliver" in section 481.002(8) of the Texas statute are not elements of separate offenses but are various means of committing the offense of "deliver[ing] ... a controlled substance." The Government contends that the Texas indictment can be used to "narrow" the offense of which Hinkle was convicted to the offense of "deliver[ing] ... a controlled substance" by "transfer[ing] [it] actually ... to another." Both rely on *Descamps* in support of their respective positions.

In *Hinkle*, under the categorical approach, the government conceded that a conviction of delivering a controlled substance "by offering to sell" that substance, the crime would not come within the definition of a "controlled substance offense" under § 4B1.2.

Here, Watson contends that the South Carolina law should be treated the same way. The key phrase in § 4B1.2(b) is "manufacture, import, export, distribution, or dispensing". As with most other recidivist enhancements, these words are applied to the elements of the crime of conviction, not to what the accused did in fact. See, e.g., *Mathis v. United States*, 136 S. Ct. 2243 (2016).

In the same manner, Watsons' Possession with Intent to Deliver conviction is not a "controlled substance offense" and does not qualify as predicate offenses under the career offender guideline. Further, without Watson's career offender enhancement, his Guideline imprisonment range would be significantly less harsh. More so, Watson would be eligible to receive a 2-level reduction pursuant to U.S.S.G. Amendment 782.

CONCLUSION

Petitioner Watson,feels the District Court errored,by sentencing him as a Career Offender;when his prior convictions did not qualify him for such enhancement,in turn violating his rights.

Petitioner Watson later brought a 2241 motion to argue the same,under three new cases,Descamps v USA,Mathis v USA,USA v Hinkle,and that District Court also errored,by denying his 2241 Motion,mainly for stating lack of jurisdiction.

Its clear Watson did not file a Direct Appeal,nor did he file a 28USC2255.Clearly two avenues were lost by this.Watson did note,he was Pro-Se,citing **Haines v Kerner** to be held to LESS standards than normal attorneys are held to,this makes any errors,filing dates,wrong motions or petitions proper for him as Pro-Se.

The courts must accept his filings under Haines v Kerner,and construe them accordingly for whatever the movant is trying to argue.

Petitioner Watson asks the United States Supreme Court to review his **Mandamus** and Grant it,so as Watson can be resentenced without the career offender enhancement. When Watson does not qualify,it violates his Constitutional rights.

Request is to be resentenced.

Submitted by, Lloyd Watson

Dated Jan,1 2019