NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2018

RAYMOND AMERSON - Petitioner,

V.

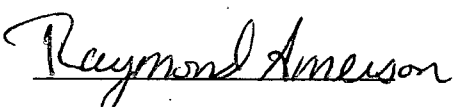
UNITED STATES OF AMERICA - Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,



Raymond Amerson (PRO SE)

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U.S. Penitentiary

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QUESTIONS PRESENTED

The petition is an opportunity for this Court to clear up issues related with the ALL WRITS ACT pursuant to UNITED STATES v. MORGAN, 346 U.S. 502 (1954). Thus, the two questions presented are:

[1] Whether an ALL WRITS ACT Petition pursuant to 28 U.S.C. § 1651 (Audita Querela) fills the GAP where a Defendant [does not] have no other appropriate vehicle to pursue a CLARIFICATION of the application of RELEVANT CONDUCT (§ 1B1.3(a)(1)(B)) under the United States Sentencing Guidelines, turns on whether UNITED STATES v. MORGAN, 346 U.S. 502 (1954) still stands as the supreme Law of the Land?

[2] The SECOND question is, did the district court have jurisdiction under the ALL WRITS ACT (28 U.S.C. § 1651 [Audita Querela]) to open up the original Criminal Action Case Judgment based on a CLARIFYING AMENDMENT (790), to correct the misapplied sentence under RELEVANT CONDUCT (§ 1B1.3(a)(1)(B))?

LIST OF PARTIES

All Parties appear in the caption of the case on the cover page

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The petitioner, Raymond Amerson, through PRO SE (hereinafter "Mr. Amerson"), respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit that was entered on February 26, 2018 in Case No. 17-3191, .

OPINION BELOW

On February 26, 2017, a panel of the Court of Appeals entered its ruling affirming the denial of Mr. Amerson's 28 U.S.C. § 1651. Mr. Amerson filed a Petition under the All Writs Act (Audita Querela) to the District Court that sentenced him, --the Eastern District of Missouri-- on June 23, 2017. The district court denied Mr. Amerson's § 1651 (Audita Querela) and published its opinion under: AMERSON v. UNITED STATES, 2017 U.S. Dist. LEXIS 152816 (E.D. Mo., Sept. 20, 2017).

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

The opinion of the United States District Court appears at "Appendix B" to the petition and is published under: AMERSON v. UNITED STATES, 2017 U.S. Dist. LEXIS 152816 (E.D. Mo., Sept. 20, 2017).

JURISDICTION

The Court of Appeals entered its judgment on February 26, 2018, and summarily affirmed the district court's

judgment. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ALL WRITS ACT (Audita Querela) provision of 28 U.S.C. § 1651

[OTHER]:

CLARIFYING AMENDMENTS OF THE U.S. SENTENCING GUIDELINES

STATEMENT OF THE CASE

On or around June of 1993, following a nine-month trial involving eight defendants, Mr. Amerson was convicted of one count of conducting an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. § 1962(c), one count of conspiring to do the same in violation of 18 U.S.C. § 1962(d), and two counts of committing violent crimes (conspiracy to commit murder, and attempted murder) in aid of

a racketeering enterprise in violation of 18 U.S.C. § 1959. He was sentenced to life imprisonment under the PRE-BOOKER era Mandatory Guidelines under the FIRST DEGREE MURDER guideline (§ 2A1.1), pursuant to §§ 2E1.1 and 2E1.3's [CROSS-REFERENCE]. See, UNITED STATES v. LEWIS BEY, et al., No. 4:91-CR1 (E.D. Mo.).

Mr. Amerson filed a Notice of Appeal. The United States Court of Appeals for the Eighth Circuit affirmed the conviction. UNITED STATES v. DARDEN, 70 F.3d 1507 (8th Cir. 1995).

On March of 1997, Mr. Amerson filed a motion for relief under Rule 33 in the closed criminal case. In addition, three of his co-defendant, Jerry Lewis Bey, Michael Williams El, and Carlton Darden Bey, filed a variety of motions seeking relief from their convictions or sentences or a new trial. On November 27, 2000, the Court denied all relief under all espoused legal arguments. Additionally, in the Memorandum and Order, the Court explicitly noted that relief was also being denied under 28 U.S.C. § 2255, as well as the other grounds being raised. On Appeal, the Eighth Circuit denied an application for Certificate of Appealability and dismissed the appeal. AMERSON BEY v. UNITED STATES, No. 01-1429 (8th Cir. Jan. 8, 2001). On July 25, 2002, Amerson sought reconsideration of the Court's November 27, 2000 Memorandum and Order. The district court denied that motion. See, AMERSON BEY v. UNITED STATES,, No. 4:91CR1 (E.D. Mo. - July 29, 2002).

Thus, on June 23, 2017, Mr. Amerson raised an objection to his sentence under the ALL WRITS ACT in form of a Writ of Error Audita Querela [after] an UNANTICIPATED CIRCUMSTANCE AROSE POST-JUDGMENT that made the continuing enforcement of his judgment unfair. Mr. Amerson argued in his All Writs Act Petition (Audita Querela) pursuant to 28 U.S.C. § 1651, that under the ALL WRITS ACT he was entitled to raise a [CLARIFYING AMENDMENT] from the U.S. Sentencing Commission, that would show that at the time of his Sentencing Proceeding, the district court had erroneously misinterpreted the application of the RELEVANT CONDUCT GUIDELINE pursuant to current CLARIFYING AMENDMENT 790 of the U.S.S.G. (§ 1B1.3(a)(1)(B)).

Mr. Amerson had no other appropriate vehicle, motion, and/or petition to raise the CLARIFYING AMENDMENT to the Honorable District Court. Mr. Amerson's claim in his ALL WRITS ACT Petition was [not] based on a "NEW RULE OF CONSTITUTIONAL LAW, made retroactive to cases on collateral review; [nor] was it based on a NEW RETROACTIVE AMENDMENT that was listed in § 1B1.10(d). Thus, a § 2255 and/or § 3582(c)(2) was "INADEQUATE or INEFFECTIVE" to raise this claim to the Honorable district court.

Mr. Amerson's challenge was based on the U.S. Sentencing Commission's [CLARIFYING AMENDMENT 790] that CLARIFIED the procedures that a district court must make [before] applying "RELEVANT CONDUCT" (§ 1B1.3(a)(1)(B)). A

procedure that has long been MISUNDERSTOOD by many Federal Courts.

In his Petition, Mr. Amerson argued that although CLARIFYING AMENDMENT 790 was not listed in § 1B1.10(d) of the U.S.S.G., he could still raise a claim to the district court under the ALL WRITS ACT, because if an amendment is not listed in U.S.S.G. § 1B1.10, the "Sentencing District Court" and/or the "Reviewing Court of Appeals" can still give RETROACTIVE EFFECT to amendments that are CLARIFYING (as opposed to substantive). See, UNITED STATES v. KISSICK, 69 F.3d 1048, 1052 (10th Cir. 1995) (quoting UNITED STATES v. CAPERS, 61 F.3d 1100 (4th Cir. 1995)).

Mr. Amerson argued that this above mentioned rule, app lied when a sentencing court was faced with a presenting CLARIFYING AMENDMENT that postdates the particular edition of the guidelines Manual used at sentencing. "Such an Amendment CHANGES NOTHING concerning the legal effect of the guidelines, but MERELY CLARIFIES what the Commission deems the guidelines TO HAVE ALREADY MEANT." See, UNITED STATES v. SMAW, 22 F.3d 330 (D.C. Cir. 1994).

Nevertheless, the district court [IGNORED] the above mentioned case law, and Denied Mr. Amerson's All Writs Act Petition (Audita Querela) pursuant to 28 U.S.C. § 1651, stating the following:

"In this case, because Amerson is seeking modification of his sentence due to an amendment to the Sentencing

Guidelines, the proper avenue to seek relief is 18 U.S.C. § 3582. Because 'a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling,'...

"Amerson argues that a writ of audita querela is available because 18 U.S.C. § 3582 and 28 U.S.C. § 2255 are inadequate or ineffective. Amerson writes that his challenge is not based on a new rule of constitutional law made retroactive to cases on collateral review or upon a Guidelines Amendment that is listed in § 1B1.10, and argues: '[T]hus, a § 2255 and/or § 3582(c)(2) is 'INADEQUATE or INEFFECTIVE' to challenge his sentence and/or to request a sentence reduction.'...

"The Court disagrees. Amerson's argument is flawed because it attributes blame to the wrong source. Amerson true impediment is the fact that Amendment 790 is not retroactive, not the remedies of § 3582 and/or § 2255. In other words, Amerson's attempt to gain relief is not hampered by the § 3582 and/or § 2255 remedies themselves, it is hampered because Amendment 790 is not retroactive..."

Id. See AMERSON v. UNITED STATES, 2017 U.S. Dist. LEXIS 152816 (E.D. Mo. - Sept. 20, 2017).

Thus, Mr. Amerson's ALL WRIT ACT Petition under "Writ of Error Audita Querela" SHOULD have been heard and a determination should have been made under the ALL WRITS ACT

provision of 28 U.S.C. § 1651, because the Court ERRED in that an AMENDMENT from the U.S.S.G., can only be heard when it's RETROACTIVE on a Motion under 18 U.S.C. § 3582(c)(2). The district court and Court of Appeals ERRED in this matter.

Hence, this Petition for Writ of Certiorari follows:

REASONS FOR GRANTING THE WRIT

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[1] The FIRST question whether an ALL WRITS ACT Petition pursuant to 28 U.S.C. § 1651 (Audita Querela) fills the GAP where a Defendant [does not] have no other appropriate vehicle to pursue a CLARIFICATION of the application of RELEVANT CONDUCT (§ 1B1.3(a)(1)(B)) under the United States Sentencing Guidelines, turns on whether UNITED STATES v. MORGAN, 346 U.S. 502 (1954) still stands as the supreme Law of the Land.

In UNITED STATES v. MORGAN, 346 U.S. 502, 98 L.Ed.2d 248, 74 S.Ct. 247 (1954), this Honorable Court held that courts still have authority to issue writs of CORAM NOBIS or AUDITA QUERELAS in collateral [CRIMINAL PROCEEDINGS]. Id. at 506-510. It further held that the enactment of 28 U.S.C. § 2255 [DOES NOT BAR] federal courts from considering common law writs, to wit:

"The contention is made that § 2255 of Title 28, U.S.C., providing that a prisoner 'in custody' may at any time move the court which imposed the sentence to vacate it, if, 'in violation of the Constitution [o]r laws of the United States,' should be construed to cover the entire field of remedies in the nature of coram nobis in federal courts. WE SEE NO COMPELLING REASON TO REACH THAT CONCLUSION." Id. "We know of nothing in the legislative history that indicates a different conclusion. WE DO NOT THINK THAT THE ENACTMENT OF A § 2255 IS A BAR TO THIS MOTION...." Id. at 511.

THUS, this Honorable Court should determine if MORGAN still stands as the supreme law of the land.

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[2] The SECOND question is, did the district court have jurisdiction under the ALL WRITS ACT (28 U.S.C. § 1651 [Audita Querela]) to open up the original Criminal Action Case Judgment based on a CLARIFYING AMENDMENT (790), to correct the misapplied sentence under RELEVANT CONDUCT (§ 1B1.3(a)(1)(B))?

In the case at bar, Mr. Amerson [could not] use a § 2255 because the CLARIFYING AMENDMENT issued by the U.S. Sentencing Commission was not a "NEW RULE OF CONSTITUTIONAL LAW" under the 28 U.S.C. § 2255(h)(2)'s proceedings.

Moreover, an 18 U.S.C. § 3582(c)(2) motion, could not be submitted to the district court, because in order to submit a § 3582(c)(2), an Amendment MUST be a new substantive change that applies RETROACTIVE and that is listed in § 1B1.10(d).

Nevertheless, if an Amendment IS NOT listed in U.S.S.G. § 1B1.10, case law states that a "SENTENCING COURT" and/or "REVIEWING COURT" may still give RETROACTIVE EFFECT to amendments that are "CLARIFYING (as opposed to substantive.)" See, UNITED STATES v. KISSICK, 69 F.3d 1048, 1052 (10th Cir. 1995) (quoting UNITED STATES v. CAPERS, 61 F.3d 1100 (4th Cir. 1995)). Amendment 790 did NOT effect any policy change, but, only "restructure[d] the guideline and its commentary to set out more clearly the three-step analysis the court applies in determining whether a defendant is accountable for the conduct of others in a jointly undertaken criminal activity under [U.S.S.G.] § 1B1.3(a)(1)(B)." THIS WAS NOT A CHANGE IN THE LAW; IT WAS A CLARIFICATION OF THE EXISTING LAW that applies Retroactive.

HENCE, this Honorable Court should GRANT Certiorari and resolve the issue on whether MORGAN stands as good law, and on whether the district court should have corrected the misapplied and misinterpreted application of RELEVANT CONDUCT under U.S.S.G. § 1B1.3(a)(1)(B), as no other vehicle existed in order to bring this matter to the Sentencing Court.

RELEVANT CONDUCT in this country has been

unfortunately misapplied to 90% of Federal Inmates. Not only has it been misapplied by not properly applying it under § 1B1.3(a)(1)(B) as clarified by the Sentencing Commission, but, it has received the most critical attention. However, a recent ruling by this Honorable Court, may indicate that such a controversial practice may finally be coming to an end.

At sentencing, federal judges consider "RELEVANT CONDUCT" for purposes of calculating the Guidelines, which may include UNCHARGED CONDUCT, otherwise inadmissible-at-trial evidence, and even acquitted conduct. Twenty years ago, in UNITED STATES v. WATTS, 519 U.S. 148 (1997) (per curiam), this Honorable Court controversially ruled "that a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that conduct has been proved by a PREPONDERANCE OF THE EVIDENCE."

Nevertheless, this Honorable Court's recent decision in NELSON v. COLORADO, 137 S.Ct. 1249 (2017) regarding a restitution matter has now brought [tension] between NELSON and WATTS. At issue in NELSON was whether a reversal of a conviction by an appellate court on direct or collateral review entitles a defendant to reimbursement of any restitution the defendant --in this case, defendants-- may have paid pursuant to the sentence imposed for the now-vacated conviction.

Under Colorado's Exoneration Act, "an innocent person

who was wrongly convicted" could recover any restitution, costs, fees, or fines paid as a result of the conviction, provided the "conviction has been overturned for reasons other than insufficiency of evidence or legal error unrelated to actual innocence." NELSON at 1254. Furthermore, the defendant-claimant had to prove his actual innocence by clear and convincing evidence. See id. at 1255.

This Honorable Court held that Colorado's Exoneration Act violated DUE PROCESS. "[O]nce those convictions were erased [for any reason], THE PRESUMPTION OF THEIR INNOCENCE WAS RESTORED." Id. (emphasis added; citing JOHNSON v. MISSISSIPI, 486 U.S. 578, 585 (1988) (After a "conviction has been reversed, unless and until [the defendant] should be retried, he must be PRESUMED INNOCENT of that charge.")). Accordingly, as the defendants in NELSON were now innocent SIMPLICITER, the State held no right to retain the restitution, costs, fees or fines paid by them.

Hence, the tension between NELSON and WATTS, therefore, is the effect of an acquittal. WATTS held that an acquittal is irrelevant for purposes of sentencing because it is not a finding of innocence. In stark contrast, NELSON held that an acquittal absolutely is relevant BECAUSE OF the reversion to a PRESUMPTION OF INNOCENCE --so relevant in fact as to preclude any penalty being sustained subsequent to the acquittal.

As this Honorable Court observed in NELSON, "[t]he

vulnerability of the State's argument that it can keep the amounts exacted so long as it prevailed in the court of first instance [and thus met some burden of proof] is more apparent still if we assume a case in which the sole penalty is a fine. On Colorado's reasoning, an appeal would leave the defendant emptyhanded; regardless of the outcome of an appeal, the State would have no refund obligation." NELSON, 137 S.Ct. at 1256.

Arguably, this Court's NELSON (7-1) decision, may have effectively OVERRULED this Court's per curiam decision in WATTS. After all, it is very difficult, if not impossible, to square the reasoning of NELSON with that of WATTS. As this Court observed in NELSON, "once... the presumption of their innocence was restored," a state "MAY NOT presume a person, adjudged guilty of no crime, nonetheless guilty enough for monetary exactions," including costs, fees, and restitution. Id. at 1255-56.

THUS, the same surely holds true where liberty, as opposed to property, is at stake. NELSON entails not only that a defendant may not be penalized for acquitted conduct under RELEVANT CONDUCT, but also that defendants may not be punished for dismissed or even UNCHARGED CONDUCT. This is so, as it has been emphasized in NELSON, the [Presumption of Innocence] is to be given weight; a State may NOT engage in an end-run around the Constitution (DUE PROCESS) by characterizing at sentencing (acquitted, dismissed, or uncharged) facts that are actually elements of a [s]eparate offense as mere sentencing factors. To do so eviscerates the

PRESUMPTION OF INNOCENCE.

HENCE, Mr. Amerson's ALL WRITS ACT Petition under CLARIFYING AMENDMENT 790, of the application of "RELEVANT CONDUCT" under the Guidelines, should have been Granted to properly correct the erroneous application of 1B1.3(a)(1)(B), at the very least until WATTS gets overturned by this Court pursuant to NELSON.

As stated above, CLARIFYING AMENDMENT 790 can only be raised under the All Writs Act, because [Sentencing Courts] and [Reviewing Courts] can still give RETROACTIVE EFFECT to amendments that are CLARIFYING (as opposed to substantive). See, UNITED STATES v. KISSICK, 69 F.3d 1048, 1052 (10th Cir. 1995) (quoting UNITED STATES v. CAPERS, 61 F.3d 1100 (4th Cir. 1995)). This CLARIFYING AMENDMENT was not a change in the law; it was a clarification of the EXISTING LAW.

For this reasons, this Honorable Court should GRANT Mr. Amerson's Writ of Certiorari to answer the important questions above.

CONCLUSION

WHEREFORE, this petition for writ of certiorari should

be Granted.

Respectfully submitted,

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