18-8133 ORIGINAL

No. _____

Supreme Court
FEB 15
OFFICE

IN THE

SUPREME COURT OF THE UNITED STATES

DARYL MINGO — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARYL MINGO
(Your Name)

P.O. Box 699
(Address)

Estill, SC 29918
(City, State, Zip Code)

None
(Phone Number)

FIRST QUESTION PRESENTED

When Congress enacted and amended 18 U.S.C. Section 924(C)(1)(A) periodically, did Congress give federal criminal courts discretion to make their own findings of guilty when accepting a Rule (11) Plea Colloquy factual basis without following Congressional statutory construction that governs 18 U.S.C. Section 924(C)(1)(A)?

Petitioner's federal information, Count II; Carrying a firearm in the commission of a drug trafficking offense, in violation of 18 U.S.C. Section 924(C)(1)(A).

Government's elements to Count II; Change of Plea hearing, page 19, lines 9-14. The elements of Count 2 are: First, the defendant committed a drug trafficking crime charged in Count 3 of the information. Second, the defendant knowingly carried and possessed a firearm. And Third, the defendant carried the firearm in relation to and possessed the firearm in furtherance of the drug trafficking crime.

Change of Plea hearing, page 19, lines 9-14 and page 20, lines 5-13, the Court Factual Basis. The Court, All right, very good. I looked into that, obviously, prior to coming in here today and found a number of cases that deal with the presence of a firearm--or the use or carrying of a firearm, rather, in connection with a drug trafficking offense and that the furtherance prong, in furtherance prong, was satisfied by the sale. I just wanted to make sure there was no disagreement going forward. Mr. Henderson: Yes Your Honor.

Sentencing Hearing, page two, lines 34-25 and page three, lines 1-2.

Count 2 of the information charging you with: Carrying a firearm in the commission of a drug trafficking offense in violation of Title 18, United States Code, Section 924(C);

Petitioner Mingo's question presented specifically address the government's oral pronoucements describing the elements of how I, the petitioner committed Count 2, 18 U.S.C. Section 924(C)(1)(A), (captioned) Carrying a firearm in the commission of a drug trafficking offense.

Please Note: the government used "and" not "or" under Count 2 description of the elements for the Court to establish a guilty plea factual basis, also, the Rule 11(f) factual basis for a guilty plea must be precise enough and sufficiently specific to show that the accused conduct on the occasion involved was within the ambit of that defined as criminal. Before a guilty plea can be validly accepted, the district court must insure that the conduct admitted by the accused constitutes the offense charged in the information. This factual basis must appear on the record. The purpose behind such a requirement is to protect a defendant who may plead voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the definition of the crime charged. McCarthy v. United States, 394 U.S. 459, 467, 89 S.Ct. 1166, 22 L.Ed. 418 (1969); United States v. Vonn, 535 U.S. 55, 58, 122 S.Ct. 1043, 152 L.Ed. 2d 90 (2002).

The text of Section 924(C) belies the view that the statute simply identifies alternative means for committing a single offense.

The two prongs of the statute are separated by the disjuntive "or" which, according to the precepts of statutory construction, suggests the separate prongs must have different meanings.

Court decisions require the government, under 18 U.S.C. Section 924(C), to present different proof to show using or carrying a firearm during and in relation to a drug trafficking crime from that required to show possession of a firearm in furtherance of a drug trafficking crime.

The district court when accepting the factual basis confused the elements of the two offense alternative means criminalized by 18 U.S.C. Section 924(C) by mismatching elements of the statutory prongs. Irregardless of the fact that petitioner, Mingo, entered into a plea agreement; this does not mean petitioner is entitled to less due process. Mingo's Rule 11 plea agreement was problematic because the government instructed it's elements of Section 924(C) based on the erroneous fact that Mingo committed crimes under the conjunctive "and" rather than the disjunctive "or."

Consequently, the Court established it's factual basis by impermissibly combining the conduct elements "use and carry" from 924(C) with the standard of participation "in furtherance." This resulted in Mingo pleading guilty to a nonexistent crime to which were not listed in the information. The elements in the above may not be mixed.

Where Congress included particular language in one section of a statute but omits it in another section of the same act, it is generally that Congress acts intentionally and purposely in the disparate inclusion or exclusion. Russello v. United States, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed. 2d 17 (1983); Dean v. United States, 556 U.S. 568, 573, 129 S.Ct. 1849, 173 L.Ed. 2d 785 (2009). Dean Court: The most natural reading of the statute, however, is that "in relation to" modifies only the nearby verbs "uses" and "carries." The next verb - "possesses" is modified by it's own adverbial clause, "in furtherance of." The adverbial phrase in the opening paragraph- "in relation to" and "in furtherance of" - modify their respective nearby verbs and that neither phrase extends to the sentencing factors such as Mingo's plea to where the factual basis were use, carry, and in furtherance to which is a nonexisting crime even under a voluntary plea.

Reasoning in Bailey's Court concluded, courts exceed their powers if they sentence Mingo for an act Congress did not make a crime under Section 924(C)(1). Bailey Court, emphasized the important role that separation-of-powers doctrine plays in habeas - and therefore retro-activity analysis: under our federal system it is only Congress and not the courts which can make conduct criminal...Accordingly, it would be inconsistent with the doctrinal underpinnings of habeas review to preclude Mingo from relying on Bailey in support of his question presented pertaining to his guilty plea which was consti-tutionally invalid.

The separation-of-powers doctrine - and thus habeas corpus and the suspension clause conostitutionally require new substantive rules, including those like the Bailey Fix Act which are under the Bailey Rule and are statutory in nature, to be retroactively applicable and available for Mingo on collateral review. Bailey v. United States, 516 U.S. 137, 145-50, 116 S.Ct. 501, 506-09, 133 L.Ed. 2d 472 (1995). McCarthan v. Dir. of Goodwill Indus. Suncoast, 851 F. 3d 1076 (11th Cir. 2017).

Mingo's, plea colloquy factual basis acceptance demonstrated a non-extenting federal crime. The Court: I looked into that obviously, prior to coming in here today and found a number of cases that deal with the presence of a firearm -- or the use or carrying of a firearm. (Mingo would like to emphasize that use or carrying from the cases the Court previously looked into established elements for the record elements.) The Court, further rather in connection with reviewed cases elaborating conduct elements use or carry illegally with standard participation element in furtherance based on the sale of said firearm to which is a non-existing crime.

Moreover, when Mingo's attorney was asked for clarification on whether he disagreed, he stated "no." In the plea context, inaccurate advice that resulted from the attorney's failure to undertake a good faith analysis of "all of the relevant fact" and applicable legal principles establishes deficient performance under Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed. 2d 203 (1985); Caroway v. Beto, 421 F.2d 636 (5th Cir. 1970).

A plea, even one that complies with Rule 11, can not be knowing and voluntary if it resulted from ineffective assistance of counsel. An attorney's ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland; Hinton v. Alabama, 134 S.Ct. 1080, 1089, 188 L.Ed. 2d 1 (2014).

Furthermore, the District Court's failure to adequately explain the charge naturally raises doubts about the inquiry into the defendant's understanding of the charge. Routine question on the subject of understanding are insufficient and a single response by the defendant that he "understands" the charge gives no assurance or basis for believing that he does.

For example, Mingo was questioned as to whether he understood the charge, and he answered that he did. Mingo, was questioned as to whether he sold a .357 firearm and a little over a gram of heroin. Mingo was also asked whether he discussed the charges with his counsel to which he stated yes. These questions alone are inadequate.

The precaution set forth in case law and in legislation are sufficient to protect Mingo, who entered a guilt plea, regardless of whether Mingo admitted committing the crime. The plea was invalid because the elements of 18 U.S.C. Section 924(C)(1)(A) were improperly combined using modifies that did not use there nearby verbs from both distinct ways a petitioner could be charged under Section 924(C)(1)(A).

The factual basis acceptance of the plea of guilt was invalid because the crime was non-existing under Section 924(C)(1)(A). This Court addresses "rule of lenity" in the construction of criminal statutes. Whether a firearm was used, carried, or possessed is an element of the offense. (quoted Kennedy, J, joined by Roberts, Ch. J., and Stevens, Scalia, Ginsburg, Breyer, Alito and Sotomayor, JJ.)

The District Court's factual basis was established from the charging information, Count II, carrying a firearm in the commission of a drug trafficking offense. The government elements gave "and" not "or" to emphasize that Mingo committed not a single Section 924(C)(1)(A) offense but both distinct ways of committing a 18 U.S.C. Section 924(C)(1)(A).

How could the District Court take a position on using the appropriate methods to obtain a lawful conviction for Section 924(C) when the nearby verbs were not supported by the correct modifiers under Dean v. United States, 556 U.S. 568, 573, 129 S.Ct. 1849, 173 L.Ed. 2d 785 (2009).

Mingo, states the federal courts used batering to associate other federal circuits for reasoning. However, they failed to realize that their interpretation of the Miranda court was to find a elements place for bartering within the two ways a Section 924 (C) could be given.

Mingo would ask that his conviction for 18 U.S.C. Section 924 (C)(1)(A) be vacated or be given oral arguments. Mingo sold heroin to an alleged question confidential source under a State of Florida Volusia county, Daytona Beach criminal case that was dropped -

Note the sale of the firearm came into question after the fact of the heroin. $600.00 was the negotiated price. Furthermore, the source had previously on numerous occassions purchased heroin without a firearm being involved nor did the source exchange being in his possession a firearm for Miranda's bartering. Mingo's case had nothing to do with bartering for the purpose of finding out what elements it would fall under Section 924(C). United States v. Miranda, 666 F.3d 1280, 1283-84 (11th Cir. 2012).

SECOND QUESTION PRESENTED

Did counsel, Larry Henderson's representation fall below normal representation when he failed to argue petitioner's sentence under 18 U.S.C. Section 922(g) and 18 U.S.C. Section 924(C)(1)(A) are multiplicitious.

United States v. Strickland, 104 S.Ct. 2025 (1984), Hill v. Lockhart, 106 S.Ct. 366, 369-371 (1985); Winthrop-Redia v. United States, 767 F.3d 1210, 1219 (11th Cir. 2014).

Petitioner, Mingo states counsel was ineffective because Congress intended to punish as "one offense" all of the acts of dominion which demonstrate a continuing possessory interest in a firearm. Had Congress intended possession alone a trigger liability under Section 924(C)(1), it easily could have so provided. This obvious conclusion is supported by the frequent use of the term possess in the gun-related conduct emphasizing e.g. Section 922(g).

Counsel failed to elaborate where there is no proof (evidence from the record) that possession of the same weapon is interrupted, the government may not arbitrary carve a firearm crime into separate offenses.

The 5th Amendment and Double Jeopardy Clause consider the practice to be unconstitutional. Futhermore, when these practices are considered the charging information is multiplicitious, because using a single firearm in more than one count such as Mingo's count I, Section 922(g), and Section 924(C)(1)(A), Count II; come from the same course of conduct.

The problem counsel failed to bring to the attention of the court, was Mingo's plea structure. First, Mingo under Section 841 (A)(1) from the record never trafficked heroin, Section 841(A)(1) demonstrated Mingo possessed heroin with intent to distribute heroin; not traffick. Moreover, Count I, Section 922(g) and Count II Section 924(C)(1)(A) crimes were established from the same possessory interest of a single firearm in question.

Mingo was prejudiced because Congress intended to punish both Section 922(g) and Section 924(C)(1)(A) as "one offense" from even the sale of said firearm under the heroin sale and firearm sales being independant transactions within one criminal episode. Note: The plea would have been less than (15) years, 180 months. Frye, 566 U.S. at 147.

[OUTCOME]

Amendment 599, would have under retroactively applicable circumstances shown. Federal Sentencing Guidelines, prohibit enhancing Mingo's sentence for Section 922(g) and Section 924(C)(1)(A). Because U.S.S.G. Section 2k2.1(b)(5) specific offense characteristice for carrying a firearm in the commission of a drug offense is not another felony from different elements than Section 922(g) elements.

In view of the Sentencing Commission to apply Section 924(C) enhancement from Count I, Section 922(g) conviction substantially would be the same conduct being criminalized twice. Had Counsel addressed these legal conclusions. A deaf ear would not have fell upon all parties of the court and would have rendered Section 924(C) to be excessive due to a single firearm. The outcome would have only rendered a (10) year, 120 month sentence. Mingo, would ask that oral arguments be granted if there is legal questions or Mingo would ask that his Section 924(C)(1)(A) be vacated.

THIRD QUESTION PRESENTED

WOULD COUNSEL LARRY HENDERSON BE INEFFECTIVE FOR ADVISING PETITIONER TO PLEAD GUILTY TO 18 U.S.C. SECTION 924(C)(1)(A)?

Petitioner states counsel Larry Henderson's performance was objectively unreasonable under prevailing professional norms. Counsel was asked whether he wanted to address the court pertaining to the Rule 11 factual basis and said nothing. Under the circumstances he should have known the factual basis elements given by the court were illegal and established a non-existing federal crime under Section 924(C)(1)(A). See, Strickland v. Washington, 466 U.S. 688, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984); Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 370, 88 L.Ed. 2d 203 (1985).

Counsel "provided ineffective assistance of counsel because [he] never challenged the evidence they had on petitioner at all" and that counsel never sat down with [petitioner] to show petitioner the definition of or legal meaning behind Section 924(C)(1)(A). Counsel Larry Henderson's best advise was to take a plea and hope the judge and prosecutor have mercy on petitioner because of his

instant federal and prior offenses being serious.

Petitioner Mingo was charged by a federal information, Count II, 18 U.S.C. Section 924(C)(1)(A), carrying a firearm in the commission of a drug trafficking offense. The government during its opening statements charged petitioner with both separate and distinct Section 924(C)'s (1) carrying a firearm during and in relation to a drug trafficking offense "and" (2) possession of a firearm in furtherance of a drug trafficking. The word "and" gave two Section 924(C)'s under one count in the charging information, Count II, carrying a firearm in the commission of a drug trafficking offense.

Based on the government's elements given during the plea hearing. The district court formed its factual basis by illegally combining use or carry from during and in relation with in furtherance from possession. Note: These illegally used elements were established from the sale of heroin and a firearm in one criminal episode as independant transactions.

Counsel Larry Henderson was asked whether there was error with the factual basis elements to which he said nothing and allowed the district court to proceed with petititoner accepting a plea to a non-existing federal crime under 18 U.S.C. Section 924(C)(1)(A).

The factual basis requirement protect[s] a petitioner who may plead with an understanding of the nature of the charge, but without realizing that his conduct does not actually fall within the definition of the crime charged. See, United States v. Vonn, 535 U.S. 55, 58, 122 S.Ct. 1043, 152 L.Ed. 2d 90 (2002), quoting Strickland, 466 U.S. at 687, 689-90, 104 S.Ct. at 2064-66; Chandler v. United

States, 218 F. 3d 1305, 1315 (11th Cir. 2000)(en banc).

Court decisions require the government under 18 U.S.C. Section 924(C) to present different proofs to show "using or carrying a firearm during and in relation to" a drug trafficking crime from that required to show "possession of a firearm in furtherance of" a drug trafficking crime. Furthermore, the text of 18 U.S.C. Section 924(C) belies the view that the statute simply indentifies alternative means for committing a single offense. The two prongs of the statute are separated by the disjunctive "or" which according to the precepts of statutory construction suggests the separate prongs must have different meanings. See, Reiter v. Sonotone Corp, 442 U.S. 330, 339, 60 L.Ed. 2d 931, 99 S.Ct. 2326 (1979).

Here counsel said nothing and allowed the government to make the plea become problematic and confusing as "or" should have been used for the district court to make a determination of whether petitioner committed a single act under 18 U.S.C. Section 924(C)(1)(A). Courts test the presence of separate offenses by asking if each requires proof of an additional fact that the other does not.

Petitioner was prejudiced because counsel should have objected to the factual basis elements used to accept said plea, 18 U.S.C. Section 924(C)(1)(A). Counsel's error of not addressing the district court "actually had an adverse effect on the defense." In the plea context, inaccurate advice that resulted from the attorney's failure to undertake a good-faith analysis of all of the relevant facts and applicable legal principles establishes deficient performance under strickland.

Had petitioner been properly informed of how Count II, carrying a firearm in the commission of a drug trafficking offense, 18 U.S. C. Section 924(C)(1)(A); could be adjudicated, petitioner would not have entered into a plea because the factual basis to which the district court accepted said plea was a non-existing codified federal offense under 18 U.S.C. 924(C)(1)(A).

See, CHANGE OF PLEA - FACTUAL BASIS FOR ACCEPTING SAID PLEA, PAGE 20, LINES 6-13. The Court: I looked into that, obviously, prior to coming in here today and found a number of cases that deal with the presence of a firearms -- or the use or carrying of a firearm rather, in connection with a drug trafficking offense and that the in furtherance prong, was satisfied by the sale. I just wanted to make sure there was no disagreement going forward. Mr. Henderson: Yes, your Honor.

Counsel should have addressed the court that use or carrying of a firearm rather, in connection with a drug trafficking offense with the in furtherance prong, was not satisfied by the sale of the firearm nor was use or carrying lawfully associated either with in furtherance as these elements only brong forth error of a non-existing federal crime under 18 U.S.C. Section 924(C)(1)(A). The key words were rather, in connection joining the use or carrying with in furtherance prong is misrepresentation of law by the district court.

('"[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion'").

XIII.

The most natural reading of 18 U.S.C. Section 924(C)(1)(A) is that "in relation to" modifies only the nearby verbs "uses" and "carries". The next verb - "possesses" is modified by its own adverbial clause, "in furtherance of." See, Russello v. United States, 464 U.S. 16, 23, 104 S.Ct. 296, 78 L.Ed. 2d 17 (1983); Dean v. United States 556 U.S. 568, 573, 129 S.Ct. 1849 173 L.Ed. 2d 785 (2009).

Counsel should have explained the Dean Court language against the district court's factual basis to Section 924(C)(1)(A) for the reasons set forth in the above circumstances that consisted of petitioner accepting a plea to a non-existing crime due to the elements being improperly combined.

The Supreme Court concluded, courts exceeds their powers if they sentence a petitioner for an act that Congress did not make a crime under Section 924(C)(1)(A). In reaching this conclusion, the Supreme Court emphasized the important role that separation-of-powers doctrine plays in habeas- and therefore retroactivity- analysis: [U]nder our federal system it is only Congress, and not the courts, which can make conduct criminal.

Furthermore, counsel should have stated that irregardless of a plea and not going to trial. Due process prohibits a conviction under a plea. See, Bailey v. United States, 516 U.S. 137, 133 L.Ed. 2d 472, 116 S.Ct. 501 (1995), McCarthan v. Dir. of Goodwill Indus. Suncoast, 851 F.3d 1076 (11th Cir. 2017).

"Due Process" states the precautions set forth in case law in legislation are sufficient to protect a petitioner who enters a plea of guilty, regardless of whether that petitioner admits to committing the crimes.

XIV.

However, the Supreme Court has recognized that "judicial scrutiny of counsel's performance must be highly deferential," and that courts should ensure that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at that time. Petitioner ponders the question, was counsel Larry Henderson unaware of the statutory interpretation of 18 U.S.C. Section 924(C)(1)(A)?

Petitioner Mingo was prejudiced because counsel failed to show the district court formed an opinion to which became a non-existing crime by improperly combining elements from the government's inadequate description by statutorially charging petitioner with (2) two Section 924(C)'s under a single count II from a federal information. Counsel's error seriously affected[] the fairness, integrity or public reputation of judicial proceedings. See, McMann v. Richardson, 397 U.S. 759, 771 n.14, 90 S.Ct. 1441, 25 L.Ed. 2d 763 (1970); United States v. Olano, 507 U.S. 725, 732, 113 S.Ct. 1779, 123 L.Ed. 2d 508 (1993); United States v. Ternus, 598 F.3d 1251, 1254 (11th Cir. 2010).

Had counsel addressed the district court when asked whether the factual basis was accurate, petitioner's strong presumption of truthfulness would not have been in question. The failure to adequately explain the charge legal elements to which establishes the factual basis acceptance of said plea naturally raises doubt about the inquiry into the petitioner's understanding of the charge, especially under the circumstances of illegally combining elements from both separate and distinct ways petitioner could plead to 18 U.S.C.

Section 924(C)(1)(A). The court has repeatedly held that "routine questions on the subject of understanding are insufficient, and a single response by the petitioner that he "understands" the charge gives no assurance or factual basis for believing that he does.

Petitioner Mingo was asked whether he understood the charge and answered that he did. To the question whether he "did something the law forbids him to do or failed to do something which the law demands that you do," Mingo answered "yes". The district court also asked the petitioner whether he understood that he was charged with carrying a firearm in the commission of a drug trafficking offense from the sale of a firearm. The district court nor counsel prior to the plea hearing from the record explained the legal ramifications of how the sale of a firearm established improperly combined elements fro the government charging petitioner with (2) 924(C) using one key word "and" to separate both Section 924(C) under count II, carrying a firearm in the commission of a drug trafficking offense.

These measures are inadequate as counsel Larry Henderson had he addressed these facts as error amongst the district court petitioner would have been provided the opportunity to plead to a lesser amount of time or punishment.

Petitioner can not make assumptions to what actions would have been taken, but the referenced illegalities concerning Mingo the petitioner would have been discussed upon the court and vacated 18 U.S.C. Section 924(C)(1)(A) as its factual basis acceptance was not a codified federal crime under the plain language of 18 U.S.C. Section 924(C)(1)(A). Yes, the outcome would have been in question, but petitioner should have been given the lawful right under the 6th

Amendment to receive a lesser sentence as it was warranted without a costly trial. Petitioner states 120 months instead of 180 months would have been entertained by the district court. See, Missouri v. Frye, 566 U.S. 134, 132 S.Ct. 1399, 182 L.Ed. 2d 379 (2012).

Petitioner Mingo would ask that the 18 U.S.C. Section 924(C)(1)(A) be vacated or be provided a sound attorney to argue the facts of his case as deemed necessary.

FOURTH QUESTION PRESENTED

How can petitioner's Florida prior controlled substance convictions used to enhance his sentence be denied retroactive applicability under Mathis Court when similarly situated petitioners in other circuits, including the Eleventh Circuit's sister circuit, the Fifth Circuit, are granted retroactive applicability?

Petitioner's Florida controlled substance convictions were improperly classified under ACCA status, (a) Case No. 90-of-6345, Sale and Delivery of a controlled substance, (b) Case No. 11-cf-31027, Sale of cocaine with also a burglary... (c) Case No. 96-cf-30210.

The controlled substance offenses in the above under state statute are "mis-match" with federal law where in the state law is "over-broad" in regard to comparable federal statutes which were used under criminal history in reference to petitioner's claim.

A "serious drug offense" under the ACCA is (i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substance Import and Export Act (21 U.S.C. 951 et. seq.), or chapter 705 of title 46, for which a maximum term of imprisonment often years or more is prescribed by law;

or (ii) an offense under state law, involving manufactoring, distributing, or possession with intent to manufacture or distribute, a controlled substance (as defined in Section 102 of the Controlled Substance act (21 U.S.C. 802), for which a maximum term of imprisonment often years or more is prescribed by law. Id. Section 924(e)(2)(A)(i)-(ii).

There is general agreement among the federal circuits that the Armed Career Criminal Act's (ACCA) definition of a serious drug offense is broader than the U.S. Sentencing Guidelines definition of a drug trafficking or a controlled substance offense because of the ACCA's use of the term involving. Likewise, drug trafficking convictions did not qualify as serious drug offenses under the ACCA because they did not require an intent to distribute the cocaine. Mathis v. United States, 136 S.Ct. 2243, 195 L.Ed. 2d 604 (2016).

Petitioner assert that it's proven that Florida sales and deliveries of a controlled substance are broader than the ACCA's definition of a serious drug offenses.

However, the Eleventh Circuit Court of Appeals stated the statute need not exactly match the specific acts listed in the ACCA definition. United States v. White, 837 F.3d 1225, 1233 (11th Cir. 2016), United States v. Smith, 775 F.3d 1262, 1268 (11th Cir. 2014).

Petitioner's sale and delivery of a controlled substance and sale of cocaine convictions criminalizes a "greater swath of conduct than the elements of the relevant [Guidelines] offense." This "mismatch of elements" means that Mingo's above prior convictions including burglary are not offenses under said relevant [Guideliines]. These priors in the above can not serve as predicate offenses under the ACCA provision.

Petitioner has noticed that the 11th Circuit United States Court of Appeals have made decisions applying Mathis Court to Florida burglary statute primarily involve de novo review. As a conceptual matter these cases "still stand" for the proposition that the burglary statue is indivisible.

However, when the 11th Circuit reviewed petitioner's Florida prior controlled substance convictions, its denial stated, "This Court has held that the language of the state statute need not 'exactly match' the specific acts listed int the ACCA definition." It also added that petitioner Mingo's assertion was foreclosed by binding circuit precedent.

Petitioner states failure to provide relief would result in a miscarriage of justice because the sentencing enhancement was a "grave" error. Periodically other circuits have addressed their statutory interpretation "not exactly match" as grounds not to use prior controlled substance cases for enhancement under the ACCA, Mathis Court. United States v. Hinkle, 832 F.3d 569, 574 (5th Cir. 2016).

Petitioner makes it clear that when dealing with statutory construction under Florida controlled substance offenses. Florida's legislation under "Session Law" automatically refutes the 11th Circuit decisions under, United States v. White, 837 F.3d 1225, 1233 (11th Cir. 2016) and United States v. Smith, 775 F.3d 1262, 1268 (11th Cir. 2014).

Florida Session Law contrarily does not impose federal jurisdictional enhancements under the ACCA in Florida criminal cases

when prior convictions determine relevant sentencing factors under Florida guidelines for punishment purposes. Furthermore, the Florida three tiered scheme has not anomalously treated a Florida trafficking conviction more [leniently] under the ACCA than a sales and delivery of a controlled substance or sales of cocaine. Such an anomalous result would thwart the ACCA's purpose.

Florida Session Law: State judicial decisions have shown why the Mathis Court shall be retroactively applicable to Florida prior controlled substance offenses. Decisions have illustrated how this would stop the 11th Circuit from circumventing the phrase, "not exactly match" the specific acts listed in the ACCA definitions, as grounds to deny petitioners such as Mingo a constitutional right to have his Florida prior controlled substances declared broader than the ACCA's definition of a serious drug offense.

("[T]o find that a state statute creates a crime outside the generic definition -- requires a realistic probability, not a theoretical possibility, that the state would apply its statute to conduct that falls outside the generic definition of a crime."). Gonzales v. Duenas-Alvarez, 549 U.S. 183, 193, 127 S.Ct. 815, 166 L.Ed. 2d 683 (2007).

Note, under our federal system, it is only Congress and not the 11th Circuit that can make conduct criminal ... Accordingly, it would be inconsistent with the doctrinal underpinnings of even the Supreme Court not to retroactively apply statutory interpretation of case law, such as the Mathis Court, to Florida controlled substance offenses used as priors to enhance a sentence. This is especially true when the directions from the Supreme Court state otherwise.

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 subject of this petition is as follows:

Baker, Hon. David A., United States Magistrate Judge;

Bentley, A lee, III, former United States Attorney;

Boggs, Emmett Jackson, Jr., Assistant United States Attorney;

Byron, Hon. Paul G., United States District Judge;

Elm, Donna Lee, Federal Public Defender;

Henderson, Larry G., Federal Public Defender's Office;

Kahn, Conrad B., Federal Public Defender's Office;

Lopez, Maria Chapa, United States Attorney;

Muldrow, W. Stephen, former Acting United States Attorney;

Ravenel, J. Bishop, Assistant United States Attorney;

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Florida Session Law- Contolled Substance Offenses

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18 U.S.C. Section 924(C)(1)(A)

18 U.S.C. Section 924(e)(2)(A)(i)-(ii)

21 U.S.C. Section 841(a)

5th Amendment, United States Constitution

6th Amendment, United States Constitution

Due Process

Double Jeopardy Clause

Ineffective Assistance of Counsel

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 K to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix H to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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 11/20/2018.

[X] 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: _____, 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. § 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

18 U.S.C. Section 922(g)

18 U.S.C. Section 924(C)(1)(A)

18 U.S.C. Section 924(e)(2)(A)(i)-(ii)

21 U.S.C. Section 841(a)

5th Amendment, United States Constitution

6th Amendment, United States Constitution

Due Process

Double Jeopardy Clause

Ineffective Assistance of Counsel

STATEMENT OF THE CASE

On March 25, 2016 Petitioner Mingo filed a motion to vacate set aside, or correct sentence (2255) criminal case No. 6:15-cr-63-Orl-40TBS with attachment: Memorandum in Support. Petitioner filed three, (3) grounds as followed:

GROUND ONE

WHETHER PLEA INVOLVING 18 U.S.C. Section 924(C)(1)(A) WAS INVALID?

Petitioner stated he never used or carried a gun in furtherance of a drug trafficking offense.

GROUND TWO

COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE OBJECTION TO DOUBLE JEOPARDY VIOLATION AND HIS ACTIONS PREJUDICED PETITIONER.

Counsel Larry Henderson was unaware that concurrent and consecutive sentences for Section 922(g) and Section 924(C)(1)(A) from one criminal episode involving one firearm were multiplicious due to the sentence structure of the plea agreement.

GROUND THREE

PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL AND WAS PREJUDICED WHEN ADVISED TO ACCEPT PLEA UNDER SECTION 924(C)(1)(A).

Counsel Larry Henderson advised Petitioner that selling a firearm and heroin in a single episode constituted factual basis for a conviction.

On April 4, 2016 the District Court gave an ORDER directing the government to file a response to the Petitioner's motion to vacate, set aside, or correct sentence within sixty days. On June 20, 2016 the government filed a motion for 60 day extension of time to file response with also on June 21, 2016 a modification was also filed. These motions on June 23, 2016 were granted by the District Court.

On August 22, 2016 the government filed its response in opposition refuting Petitioner's three, (3) grounds stating he was not entitled to relief for various reasons. Petitioner on September 12, 2016 filed a motion for leave to file a reply to the government's response. He the Petitioner was granted permission to file a reply within (60) days on September 28, 2016. On October 5, 2016 Petitioner filed said reply refuting the government's response as unconstitutional pertaining to the above three, (3) grounds.

Unfortunately, on December 19, 2016 Petitioner filed a motion for leave to file an amended 2255 motion to vacate. Note also, on January 12, 2017 a notice of persuasive authority was filed referenicng that Section 924(C)(1)(A) could not be given under the factual basis of said plea because use or carry in furtherance is not a codifed federal crime under Section 924(C)(1)(A).

On January 26, 2017 Petitioner was granted 30 days to file an an amended motion to vacate. The amended motion only added a Fourth Ground due to this Court's reasoning in Mathis Court.

After the amended motion was filed on March 7, 2017, an order was given directing the government to file a response within (90) days. On Juné 5, 2017 the government filed a response in opposition. Note, on Juné 15, 2017 the District Court mooted the original 2255 with memorandum. Thereupon, Petitioner filed a motion for leave to file a reply to government's response. On June 26, 2017 the District Court granted Petitioner (60) days to reply. Petitioner on August 11 2017 put forth the original (3) grounds with four grounds refuting the government's response.

On June 21, 2018 an order by the District Court denying Petitioner's motion to vacate/set aside/correct sentence under Petitioner's amended 2255 was issued. Furthermore, on July 2, 2018 Petitioner filed a motice of inquiry to Judge Byron pertaining to confidential information relating to said plea-breach. Subsequently, on July 6, 2018 Petitioner filed a notice of appeal. Petitioner on July 2, 2018 failed to include a permission to appeal in forma pauperis.

Consequently, on July 16, 2018 Petitioner filed said forma pauperis to appeal in the District Court. On July 26, 2018 Petitioner filed an application for certificate of appealability in the United States Court of Appeals for the Eleventh Circuit due to the District Court not previously issuing a certificate of appealability. The District Court then denied forma pauperis, Federal Rule of Appellate Procedure 24(a) on August 24, 2018.

Therefore, on September 11, 2018 Petitioner requested appeal in forma pauperis and affidavit.

Petitioner's first question presented addressed the fact that the District Court and the 11th Circuit Court of Appeals established their findings under misrepresentation of law pertaining to a plea factual basis to which Petitioner pled to a non-existing federal offense.

The second question presented revolves around whether counsel Larry Henderson was ineffective because one firearm in one criminal episode duplicitiously under a plea sentence gave a consecutive and concurrent sentence for Section 922(g) and Section 924(C)(1)(A)?

The third question presented, whether Petitioner's failure to state he would have insisted on going to trial due to counsel Larry Henderson's erroneous advice justifies that he unconsitutionally under the 6th amendment right filed to re-negotiate a less severe punishment or sentence under the same plea, Frye Court.

The fourth question presented, Petitioner questions the purpose of Mathis v. United States, 136 S.Ct. 2243, 195 L.Ed. 2d 604 (2016). Why aren't Florida prior controlled substance offenses eligible for retroactive applicability under Mathis Court when the Eleventh Circuit Court of Appeals stated the statute need not exactly match the specific acts listed in the ACCA definition?

Petitioner states he made a substantial showing of the denial of a constitutional right, 28 U.S.C. Section 2253(C)(2), and demonstrated within his application for a certificate of appealability that jurist of reason could conclude the one-through-four questions presented are adequate to deserve encouragement to proceed further.

Buck v. Davis, 137 S.Ct. 759, 773, 197 L.Ed. 2d 1 (2017).

Petitioner states that he has set out the facts, materials, and four questions to consider. Incorporated and also provided are detailed first instances from the District Court's denials up to the denial of the 11th Circuit Court of Appeals.

REASON FOR GRANTING THE PETITION

The petition should be granted because it demonstrates the interest of the Court constitutional legal questions that conflict with the denials from the United States District Court, Middle District of Florida, Orlando Division and United States Court of Appeals, for the Eleventh Circuit.

Their denials warrant a manifestation of justice due to the misrepresentation of law and how their statutory interpretation has constructively abused adminstrative authority by not following Congressional Declarative construction of the enactment of federal laws.

The granting of said petition in the above would constitute in a entirety impartial justice under ethical equality which set forth a good-faith principal that must and shall be acknowledged under due process entitlements without bias or scrutiny under political ramification.

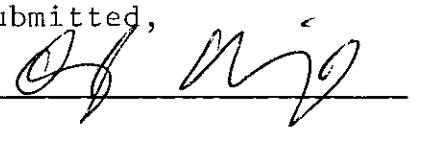
CONCLUSION

As can be clearly seen petitioner's sentence was aggravated by several factors. He was denied adequate legal representation due to an incompetent attorney advising erroneous and misleading information. In addition, the elements of petitioner's crime were impermissibly mismatch resulting in petitioner's plea having an invalid, flawed factual basis. furthermore, he was denied retroactive applicability under Mathis Court when similarly situated petitioners were granted relief.

Petitioner is requesting relief in the form of sentencing without the enhancement. The forementioned aggravating factors represent mitigating circumstances warranting and meriting relief.

The petition for writ of certiorari should be granted.

Respectfully submitted,



Date: 02/15/2019