

18-8148

No. \_\_\_\_\_

Supreme Court, U.S.

FILED

JAN 16 2019

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

Johnathan Hawthorne — PETITIONER  
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals (11th Cir.) Florida

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

PETITION FOR WRIT OF CERTIORARI

Johnathan Hawthorne #61149-004

(Your Name)

U.S.P. Coleman #1, P.O. Box 1033

(Address)

Coleman, Florida 33521

(City, State, Zip Code)

N/A (Inmate)

(Phone Number)

ORIGINAL

## QUESTION(S) PRESENTED

- I. Whether the "New Law" of the First Step Act, sign into law on Dec. 18, 2018 made this an appeal "Pipeline" case, that fall under the First Step Act new law legal protections. When Petitioner direct appeal was denied on Nov. 28, 2018, and the new law of the First Step Act enacted on Dec. 21, 2018?
- II. If the above question of law a "yes", then the First Step Act "new law" state: 1) Priors used for Armed Career Criminal Act enhancement must be "not" older then (15) years - and 2) A jail sentence of one year and a month must be had for any prior or cannot be used to enhance a sentence under the ACCA of title 18: 924(E)(i). Does these two new laws apply to this case at Bar? Requiring resentencing as only legal cure.
- III. Whether **Rutledge vs United States** (S.ct.) at 517 U.S. 292 (1966) which states: "Sentence excessive based on greater punishment than the legislature intended, was violated in this case at Bar, which is a due process of law violation?
- IV. Was **Burgett vs Texas** (S.ct.) at 389 U.S. 109 (1967) which states: Sentence illegally enhanced based on prior convictions, which were unconstitutional violated in this case at Bar? Requiring the due process of law protection, and a resentence as a non-armed career offender?

## LIST OF PARTIES

- 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:

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### OTHER

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is  
 reported at U.S. Court of Appeals (14th Cir) Order Attached; 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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov. 28, 2018 (11th Cir.)

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**

Due process of law 6th and 14th Amendments equal protection of law Title 18:922(g)  
Felon in possession of gun Title 18:924(G)(i) enhancement of a sentence to Arm Career  
Offender Act. The First Step Act "New Law" pass Dec. 21, 2018 (Interviewing New Law)  
on direct appeal "Pipeline case" apply

## STATEMENT OF THE CASE

- I. Whether the intervening "New law" of the First Step Act 2018, passed on Dec. 21, 2018. When signed by the president of the United States , apply to this Supreme Court Petitioner. When his direct appeal was denied in Nov. 2018, and his appeal process "not" final until (90) days later, by S.ct. Certiorari decision which will be Feb. 2019. Thus he has a "Pipeline" issue and retroactively, not a question. The law of the "First Step Act" apply to him.
- II. The First Step Act "limits" legally the age of prior state crimes to (15) years for use to enhance using the Armed Career Offender Act of Title 18:922(g) and 924(E)(1)... allow enhancement of 18:922(g) (10) year max sentence to (15 - Life) due to three priors on the criminal defendant record if they are "not" (15) years old.
- III. The court of appeals for the Eleventh Circuit (Florida). Denied Petitioner issue that he is Not a Armed Career Offender due to the age of his priors. Stating a (29) year old (11th Cir.) case decision of... **United States vs Green** 904 F.2d 654 (11th Cir. 1990), which states .. "No! temporal restrictions on predicate prior felonies. See Appendix (d) page 51-53 of the government appeal brief.

Statement Of The Case Facts

In August 2015, a Southern District of Florida Grand Jury returned a single count indictment charging [Johnathan Hawthrone] with possessing a firearm and ammunition having previously been convicted of a felony, in violation of Title 18 U.S.C. § 922(g) and 924(E)(1).

On August 22, 2016, Hawthrone proceeded to a two day trial, where a jury convicted him of the charged offense. The court subsequently sentenced Hawthrone under title 18:924(E)(i) the enhanced sentence of a 18:922 gun count, which has a (10) year maximum, but enhanced by 924(E)(1) Armed Career Criminal Act to (15 - Life). The judge sentence Hawthrone to 40 years. He enhance the 15 year minimum by 25 more years using the preponderance of evidence for a state crime, [uncharged, unindicted] Federally, and still pending resolution in state court, which after the Federal trial and sentence for this present 18:922(g) & 924(E) gun count, the state <sup>CASE</sup> was "dismissed" 100%.

The priors used to enhance the sentence was:

- 1) Possession/Intent to deliver sell cocaine #(F94015919A) on the presentence report at page (12) item #36 The crime was committed 5/12/94 (age 21) with a sentence of 364 jail days, suspended to a drug treatment program & no jail time.
  
- 2) Possession/Intent deliver sell cocaine #(F94012893A) on the presentence report at page (12) item #35. This crime was committed on 4/17/94 (age 21) with a sentence of 364 days suspended to a drug treatment program & no jail time. "Both" of the above **Consolidated** for sentence with **zero** jail time and a drug program instead of jail for a crack addict.

Statement Of The Case Facts cont.

- 3) Resisting officer/violence on the presentence report #(F92034777) at page 10 item #31. The crime was committed on 10/10/92 (age 20) sentence was 1 year probation "no jail time".
- 4) Attempted Murder/Burglary with assault case #(F14026107) (Pending in state court) city/state Miami ... 11/21/14 (age 42) page 22 on the P.S.I. Report item #59. This above state case was "pending" in State Court. The federal government came with a writ and got me out the state, charged me with this present 18:922(g) 924(E)(1) gun count. Took me to trial which I lost, then enhance my sentence under 18:924(E)(1) from a 10 year max for a 922(g) gun count, too (15 - Life), then used the above "unresolved" pending state case charge to enhance my federal sentence to (40) years illegally. This open Florida State case stemming from the same incident as this case at Bar. #(F14-026107) Arrest by the state was used to classify this defendant as an career criminal under the ACCA. In doing so the Federal Court reasoned that while #(F14-026107) stems from the same incident as the case at Bar, the defendant has not sustained any convictions in #(F14-026107). The State case was (dismissed /acquited) **after** his federal sentencing with a 25 year enhancement for the above state dismissed/acquited case according legally this ACCA strike used "cannot" legally count towards enhancement. The Court "erred" using the above for a Armed Career Criminal strike.

Statement Of Facts cont.

To recap... 1,2,3, of the above strikes used to enhance my sentence are over 20 years old. When my direct appeal was denied in Nov. 2018 for the issue of being a non-career offender, under 18:924(E)(1) due to age of the priors does "not" matter. Intervening "New Law" voted into law by congress and signed by the president of the United States into law on Dec. 21, 2018. While my conviction is on appeal made me a "Pipeline case" and in the window of the new law protection, as it apply to me. My appeal process "not" final til the (90) day window to file a Writ Of Certiorari, to the United States Supreme Court which I am doing now. The First Step Act states priors more then (15) years old "do not count" towards a Career Offender enhancement of sentence. Thus my maximum sentence legally possible is Title 18:922(g) Felon in possession of a gun (ten years offense maximum). The Armed Career Offender enhancement of (15 - Life) must legally fall.

Also the 4th prior strike used "cannot" legally be used for (ACCA) enhancement as no prior conviction or jail sentence from the state of Florida exist. The charges were (dismissed/acquitted). Plus the Federal Government used "pending" "unresolved" state charges to increase my my sentence illegally. After Federal sentencing. The State Court dropped all charges, but these dropped charges increased my sentence 25 more years.

Statement Of The Case Facts cont.

Finally, the jail sentences for all four of my priors were "not" over 1 year and a month. Thus legally the age of the priors and jail sentences do not allow a ACCA enhancement Federal. The First Step Act states the two above.

## REASONS FOR GRANTING THE PETITION

New intervening law of the First Step Act signed on Dec. 21, 2018. One month after petitioner lost his direct appeal in the (11th Cir.) Court of Appeals on Nov. 28, 2018. Allow 90 days to file a petition for a Writ Of Certorari, which will be Feb. 28, 2019. Well within this case at Bar (S.ct.) Certorari window. My conviction/sentence and Appeal process "not" final until a denial of Writ Of Certorari. Thus legally I have a (in the Appeal process) "Pipeline" case that the two NEW laws of the First Step Act apply to me. Legally rendering me a non-Armed Career Offender, under Title 18:924(E)(1) sentence enhancement. The new law state:

- 1) Priors must not be older then (15) years to use to enhance to Career Offender. All my priors (20) years old
  
- 2) The prior crimes must be sentenced to over a year and a month. All my priors sentences were under a year and a month. I am NOT a Armed Career Offender.

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
Johnathan Hawthorne (Pro se)

Date: Jan. 14th 2019