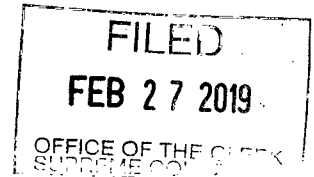


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ORIGINAL

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

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_



LONDON E. DUNBAR — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LONDON E. DUNBAR  
(Your Name)

FCI Terre Haute, PO Box 33  
(Address)

Terre Haute, IN 47808  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

**QUESTION(S) PRESENTED**

**SHOULD THIS COURT GRANT THIS PETITION TO DETERMINE WHETHER THE LOWER COURT'S REFUSAL TO ISSUE A CERTIFICATE OF APPEALABILITY IS AT CONFLICT WITH THIS COURT'S STARE DECISIS, MILLER-EL V. COCKRELL, 537 U.S. 322 (2003)?**

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

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

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

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 Jan 2, 2019.

☒ 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**

**FIFTH AMENDMENT TO THE US CONSTITUTION**

**SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION**



## STATEMENT OF THE CASE

On August 8, 2017, Petitioner filed a Petition for a Writ of Habeas Corpus, as authorized by 28 U.S.C. § 2255. In that Petition, Petitioner argued that his detention by the United States of America was unconstitutional because:

1. Petitioner's conviction for violating 18 U.S.C. § 922 g was and concomitant sentence as an Armed Career Criminal Act Offender was unconstitutional, because he no longer had the necessary predicate convictions under 18 U.S.C. § 924 e.

In the event, at the time of Petitioner's sentence, the Court and United States relied on prior drug conviction out of the State of Michigan, which were determined to be "serious" drug felonies, as defined by 18 U.S.C. § 924 e (1). At the time of those convictions, for violating MCL § 333.7408 (a) the maximum term did in fact exceed the ten year threshold prescribed by statute to qualify as a "serious" drug conviction.

However, subsequent to the instant conviction, the State of Michigan reduced the maximum term for the State Statute of Conviction to 2 years. See: MCL § 333.7408 (a).

## REASONS FOR GRANTING THE PETITION

THIS COURT SHOULD GRANT THIS PETITION TO DETERMINE WHETHER THE LOWER COURT'S REFUSAL TO ISSUE A CERTIFICATE OF APPEALABILITY IS AT CONFLICT WITH THIS COURT'S STARE DECISIS, MILLER-EL V. COCKRELL, 537 U.S. 322 (2003).

Federal prisoners should not be required to serve an illegal sentence for a single day, let alone years. See, e.g. **Glover v. United States**, 531 U.S. 198 (2001). This is so, as "even a minimal amount of additional time in prison" is prejudicial. *Id.*

Petitioner was convicted, by plea, for the offence of Felon in Possession of a Firearm, 18 U.S.C. § 922 g.

At the time of sentencing, Probation and the United States moved the court to find Petitioner an ACCA offender, as having suffered three (3) prior State of Michigan "serious drug offenses", which transmuted the maximum term under 18 U.S.C. § 924 to an 180 month term under the ACCA.

The three (3) identified prior "serious drug felony" predicates were identified in the Presentence Report, and relied on by the Court, were for violating **Michigan Compiled Laws, § 333.7401 (2)(a)(iv)**. Specifically, Petitioner was found to have suffered four (4) predicate convictions in October, 2010, which convictions were singled out as the basis for the ACCA term.

Petitioner subsequently moved for relief under 28 U.S.C. § 2255 because Michigan Compiled Laws § 333.7401 had been modified to the extent of reducing the maximum term to less than the 10 year statutory term which met the definition of

"serious drug felony" found at 18 U.S.C. § 924 (e) (2) (A) (ii).

Notwithstanding, the Court denied the Motions, finding in pertinent part, that Petitioner has suffered not-less-than five (5) other convictions, each of which qualified as ACCA PREDICATES.

The District Court effectively substituted different convictions, without any type of vetting and foreclosing *ab initio* Petitioner's opportunity to contravert or challenge same.

It is Hornbook Law, that unless the records and files in the proceeding conclusively show that a defendant is not entitled to relief, the Court "shall...grant a prompt hearing.." 28 U.S.C. § 2255 (b).

Because the records do not conclusively establish that any other of Petitioner's convictions were ACCA predicates, the Court was required to conduct a prompt hearing. *Campbell v. United States*, 686 F.3d 353 (6th Cir. 2012).

Nothing allowed the Court to simply assume that there were other convictions that qualified as ACCA predicates. See: *United States v. Lucas*, 2018 U.S. App. Lexis 15334 (6th Cir. 2018) [Requiring evidentiary hearing to determine viability of prior convictions for ACCA purposes.]

Petitioner has satisfied the standard required to obtain a **Certificate of Appealability**, as he has demonstrated that a reasonable judge could disagree with the district court's resolution of his constitutional claim, or that judges could conclude that the issue raised requires further review. *Miller-El v. Cockrell*, 537 U.S. 322 (2003); *Slack v. McDaniel*, 529 U.S. 473 (2000).

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_  
LONDON E. DUNBAR

Date: 2-26-2019