

18-8512

No. _____

Supreme Court, U.S.
FILED

MAR 08 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

DAREN KAREEM GADSDEN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAREN KAREEM GADSDEN

(Your Name)

F.M.C. BUTNER, P.O. BOX 1600

(Address)

BUTNER, N.C. 27509

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

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:

QUESTION(S) PRESENTED

In light of Rosales-Mireles v. United States, 138 S.Ct. 1897, 201 L. Ed. 2d 376 (2018), which states, "[f]ailure to correct plain error that affected a defendant substantial right would seriously affect the fairness, integrity, and public reputation of judicial proceedings" should this case be remanded back to the district court for resentencing.

Whether a multiplicitous sentence issue can be raised at any time.

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5-7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A U.S. Court of Appeals Opinion

APPENDIX B U.S. District Court Order

APPENDIX C *Petition For Rehearing*

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

<u>ROSALES-MIRELES v. UNITED STATES</u> ,	
138 S.Ct. 1897, 201 L. Ed. 2d 376 (2018).....	7

STATUTES AND RULES

18 U.S.C. § 3552.....	3,7
18 U.S.C. § 3553.....	3,7
18 U.S.C. § 3556.....	3,6
FED. R. CRIM. P. 32(e)(2).....	7
FED. R. CRIM. P. 32(h).....	7
FED. R. CRIM. P. 32(i)(3)(B).....	7
FED. R. CRIM. P. 52(b)	5

OTHER

U.S.S.G. § 2B1.1(b)(9)(A).....	6,7
U.S.S.G. § 2B1.1(b)(10)(C).....	7
U.S.S.G. § 2B1.1(b)(16)(A).....	5,6,7

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 January 23, 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: March 4, 2019, and a copy of the order denying rehearing appears at Appendix C.

☐ 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. § 3552(d) Disclosure of Pre-Sentence Report.

The court shall assure that a report filed pursuant to this section is disclosed to the defendant, the counsel for the defendant, and the attorney for the Government at least ten days prior to the date set for sentencing, unless the minimum period is waived by the defendant. The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.

18 U.S.C. § 3553(a)(6) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

18 U.S.C. § 3556 The court, in imposing a sentence on a defendant who has been found guilty of an offense shall order restitution in accordance with section 3663A [18 U.S.C.S. § 3663A], and may order restitution in accordance with section 3663 [18 U.S.C.S. § 3663]. The procedure under section 3664 [18 U.S.C.S. § 3664] shall apply to all order of restitution under this section.

STATEMENT OF THE CASE

Petitioner was indicted and sentenced in the U.S. District Court for the District of Maryland, Criminal Case No. CCB-11-0302. for Conspiracy to Commit Bank Fraud count (1); Bank Fraud counts (2-9); Aggravated Identity Theft counts (10-11); and Attempted Evidence Tampering counts (12-13).

Petitioner received 262 months imprisonment, \$1,100,000.00 restitution, \$100.00 Special Assessment and 5 years Supervised Release for count (1).

Petitioner received 262 months imprisonment, \$1,100,000.00 restitution, \$100.00 Special Assessment and 5 years Supervised Release each for counts (2-9).

Petitioner received 24 months imprisonment for counts (10-11), \$100.00 Special Assessment, and 3 years Supervised Release.

Petitioner received 240 months imprisonment for counts (12-13), \$100.00 Special Assessment and 5 years Supervised Release.

REASONS FOR GRANTING THE PETITION

Legal Standard

Courts of Appeals must correct errors pursuant to Rule 52(b), if that error is clear under the law, affects substantial rights and would seriously affect the fairness, integrity or public reputation of judicial proceeding.

Argument/Facts

The list of undisputed sentencing errors stated below committed by the U.S. District Court should have been corrected by the U.S. Court of Appeals.

Errors

(A) Multiplicitous Conviction and Sentence

It is impermissible to fractionate a single continuous offense growing out of one transaction and involving one period of time into several parts and denominate each part as a separate offense. These multiplicitous errors are obvious, clear and apparent on the face of indictment counts (2-9) are multiplicitous to count (1). Counts (2-9) are acts in furtherance of the scheme in count 1.

Example:

- I. Count 4 is the same act recited in count 1 paragraph 26.
- II. Count 6 is the same act recited in count 1 paragraph 29.
- III. Count 9 is the same act recited in count 1 paragraph 43.

The just action for this court would be to vacate the multiplicitous convictions and sentence and remand this case back to the U.S. District Court for the District of Maryland for resentencing.

(B) Erroneously applied enhancement 2B1.1(b)(16)(A) which increased

petitioner's offense level upward by two points, [USSG 2B1.1(b)(16)(A) states if "the defendant derived more than \$1,000,000.00 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels"]. In this case the U.S. government has conceded that \$1.1 million dollars was stolen during the conspiracy. The testimony at trial was that co-defendant William Darden obtained over \$80,000.00 and that co-defendant Tyeast Brown obtained over \$250,000.00 directly from the offense. By subtracting the \$250,000 Brown obtained and the \$80,000.00 Darden obtained, the math comes to a figure of \$770,000, way below the \$1,000,000.00 threshold needed for the enhancement of 2B1.1(b)(16)(A) to be applied to petitioner. Because of this erroneous application of this enhancement, petitioner's sentencing guidelines are incorrect.

(C) Erroneously applied enhancement USSG 2B1.1(b)(9)(A) which increased petitioner's offense level upward by two points, [USSG 2B1.1(b)(9)(A) states "if the offense involved a misrepresentation that defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency, increase by 2 levels"]. In this case there was no evidence presented at trial or sentencing ~~that petitioner made a misrepresentation that he was acting on behalf~~ of any of the above organizations just stated. The application of this enhancement is erroneous, making his sentencing guidelines incorrect.

(D) Violated 18 U.S.C. 3556 by ordering restitution in this case without stating which statutory provision it was using.

(E) Violate 18 U.S.C. 3553(A)(6) by never addressing petitioner's argument regarding sentence disparity.

(F) Violated 18 U.S.C. 3552(d), Fed. R. Crim. P 32(e)(2) by disclosing the presentence report to petitioner on the day of sentencing, November 26, 2013.

(G) In violation of Fed. R. Crim. P 32(i)(3)(B) by never addressing petitioner's argument and objection to the application of USSG 2B1.1(b)(10)(C), 2B1.1(b)(9)(A), 2B1.1(b)(16)(A), for a lower sentence and the ordering of restitution in this case.

(H) In violation of Fed. R. Crim. P 32(h) the District Court never gave petitioner notice that it was going to impose restitution in this case.

The U.S. Court of Appeals should have exercised its discretion and corrected these blatant, clear, obvious and undisputed sentencing errors stated above. In light of the holding in ROSALES MIRELES v. UNITED STATES, 138 S.Ct. 1897, 201 L.Ed.2d 376 (2018) which states that "Failure to correct plain error that affected a defendant's substantial rights would seriously affect the fairness, integrity, and public reputation of judicial proceeding, The Supreme Court should remand this case back to the U.S. District Court for the District of Maryland.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: JANUARY 28, 2019
