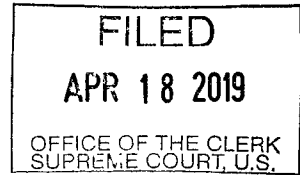


18-8983 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

Patrick Edwards — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Patrick Edwards #48131-424
(Your Name)

FCI, Po. Box 1000
(Address)

Oxford, Wz 53952
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Can a Sentencing Court Consistent with this Courts holding in *Gall v. United States*, insulate an erroneous Guideline Calculation by making a bare assertion, inconsistent with this courts holding in *Gall* by stating, that it would have imposed the same Sentence even if guidelines range was lowered?

II. Does a Sentencing Court violate the double Jeopardy clause of the Fifth Amendment of the United States Constitution by enhancing a defendant's Sentence for a specific offense characteristic that is the same as the crime in which the defendant is convicted.

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION	

INDEX TO APPENDICES

APPENDIX A	<i>Decision of the Seventh Circuit</i>
APPENDIX B	
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Beckles v. United States (citation unknown)	12
Blockburger v. United States	8
Grall v. United States	7
Mathis v. United States, 579 U.S. (2016)	11
Sen Bear v. United States (citation unknown) (8th Cir)	11
United States v. Vizcarra,	4, 10
United States v. Podhorn, 549 F.3d 582 (7th Cir. 2008)	2

STATUTES AND RULES

18 U.S.C. Section 922(g)	1, 4
18 U.S.C. Section 922(j)	1, 4, 9
18 U.S.C. Section 3553(a)	2, 3, 4, 11
28 U.S.C. Section 2255	11
U.S.S.G. 2K2.1(a)(6)(A)	1, 4
U.S.S.G. 2K2.1(a)(7)	4
U.S.S.G. 2K2.1(b)(4)(A)	2, 3, 5, 9
U.S.S.G. 2K2.1(b)(5)	2, 5
U.S.S.G. 2K2.1(b)(6)(B)	2, 5

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 _____; 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 _____.

☒ 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 March 2, 2019 (date) on February 28, 2019 (date) in Application No. 18 A 878.

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: The right to be free from
multiple prosecutions or punishment

STATEMENT OF THE CASE

On April 12, 2013, a cargo train parked in a rail yard in Chicago had approximately 104 firearms stolen from it. Mr. Patrick Edwards was one of the defendant's named in the indictment.

On August 6, 2013, Patrick Edwards (hereafter Mr. Edwards) was charged in a Superseding indictment with being a felon in possession of a firearm in violation of 18 U.S.C. Section 922(g)(1) (count 1); possession of a stolen firearm in violation of 18 U.S.C. Section 922(j) (count 2); and theft from an interstate shipment in violation of 18 U.S.C. Section 659. Mr. Edwards was later charged with the same offenses in a second and third Superseding indictment. Mr. Edwards pleaded guilty to counts One and two of the third Superseding indictment.

The United States probation office used the 2016 Guidelines Manual in the Presentence Investigation Report (PSR). The PSR found Mr. Evans Guideline range to be 151-188 months, base upon a criminal history score of 13 (Category VI) and a total offense level of 29. PSR, ¶ 105.

Under U.S.S.G. Section 3D1.2(c) the offense of felon in possession of a firearm and possession of a stolen firearm were grouped together. PSR, ¶ 17. Mr. Edwards began at a base offense level of 14 pursuant to U.S.S.G. Section 2K2.1(a)(6)(A), because he was prohibited from having firearms at the time of the offense. PSR, ¶ 19. Yet, the total offense level was more than doubled to a level 32 by a number of offense enhancements. See PSR ¶

Material to this petition for writ of certiorari, Mr. Edwards was enhanced 2(two) levels because the firearms in this case were stolen under U.S.S.G. Section 2K2.1(b)(4)(A). PSR, ¶ 22. The PSR also assessed Mr. Edwards a 4(four) levels enhancement for trafficking in firearms, pursuant to U.S.S.G. Section 2K2.1(b)(5). PSR, ¶ 23. The Court assessed Mr. Evans a 4(four)-point enhancement for possessing the firearms in connection with "another felony offense" under the first prong of U.S.S.G. 2K2.1(b)(6)(B). PSR, ¶ 25. The Probation Agent suggested that "the offense conduct charged in Count 2(two), the possession of stolen firearms, comprised of the same firearms charged in Count 1(one), represents another felony offense within the meaning of the guideline." After subtracting three points for acceptance of responsibility and timely notification, the PSR found Mr. Edwards' total offense level was 29. PSR, ¶ 33.

Mr. Edwards was found to have a criminal history Score of 13 based on four Burglary-related convictions and a probation sentence for assault.

Mr. Edwards' attorney filed a Sentencing Memorandum challenging the Government's and the Probation officer's calculations of the guideline enhancements. First he argued that the "another felony offense" enhancement constituted impermissible double counting, and was insufficiently separate to count as "another felony offense". Mr. Evans also argued it was improper double counting to apply the stolen firearm enhancement under the fairness principles of *United States v. Podhorn*, 549 F.3d 582 (7th Cir. 2008). Lastly, Mr. Edwards challenged the 8(eight)-point enhancement for the total number of firearms (104), rather than a 4(four)-point enhancement for the number of guns he received (13(thirteen)). Mr. Edwards also challenged aspects

of his Criminal history calculation. Mr. Edwards also presented numerous 18 U.S.C. Section 3553(a) arguments as well as substantial mitigation.

The United States took no position of guideline magnitude. The Government focused on the 3553(a) factors of seriousness of offense, Mr. Edwards' history and characteristics, the need to protect the public and avoid unwarranted sentencing disparities.

On appeal, Mr. Edwards argued against the application of "the other felony" enhancement and the "stolen firearm enhancement." The court of appeals affirmed the district court's application of the enhancements concluding "In the context of guidelines sentencing, the term 'double counting' refers to using the same conduct more than once to increase a defendant's guidelines sentencing range. There are two types of double counting: (1) 'conduct that forms the factual basis for an element of the offense might also support a guidelines enhancement or adjustment, meaning that the conduct is counted once as part of the base offense and a second time through the application of an enhancement or adjustment;' and (2) 'particular conduct might support the application of more than one enhancement or adjustment.'" See Opinion of the Seventh Circuit at appendix "A" (hereafter, Appendix "A") Dkt. Ent. No. 58 at page 10. The court expressly held, "In *Vizcarra*, we acknowledged 'inconsistency' in our cases about double counting and clarified our jurisprudence. We issued a clear directive: [D]ouble counting is generally permissible unless the text of the guidelines expressly prohibits it."

As to the stolen firearm enhancement the court concluded "only Edwards argues the district court improperly applied Section 2K2.1(b)(4)(a) because Edwards pleaded

guilty to possessing a stolen firearm under 18 U.S.C. Section 922(j). He points out that the fact that such firearms were stolen was an element of [Section 922(j)], and therefore contends that the stolen firearm enhancement cannot apply because "the same facts, the same guns, and the same conduct are being used to unfairly twice penalize Mr. Edwards. We disagree. *Id.* at page 11.

The Court held that "Contrary to Edwards's view, *Podhorn* is inapplicable here. Application Note 8(A) does not apply for two reasons. First, in this case, Section 922(j) is not the only offense to which Section 2K2.1 applies. Rather, Edwards also pleaded guilty to possession of a firearm as a convicted felon under Section 922(g). Second, the base offense level was determined under Section 2K2.1(a)(6), and not subsection (a)(7). Thus, unlike in *podhorn*, Application Note 8(A) does not expressly prohibit application of the stolen firearm enhancement, and there is no impermissible double counting concern." Appendix "A" at 12, paragraph 2.

More on the stolen firearm enhancement the court articulated that Mr. Edwards "thus maintains that double counting may be impermissible even when not expressly prohibited by the Guidelines." And that, Mr. Edwards "Suggest that other circuits—which, as we said in *Vizcarra*, allow double counting unless the competing guidelines provisions address identical harms caused by the defendant's conduct"—provide a roadmap for this supposed exception."

The Court went on to hold that "Defendant's argument is not persuasive. Our holding in *Vizcarra* was clear, well-reasoned, and based on the text and structure of the Guidelines. Indeed, nothing in our subsequent case law suggest any sort of exception." And "Moreover, the

"Competing guidelines provisions" at issue here do not "address identical harms caused by the defendant's conduct." "To be sure, all three enhancements relate to the same stolen guns. However, the court imposed the three enhancements to address distinct conduct and harm." the Section 2K2.1 (b)(4)(A) enhancement applied because defendant possessed firearms that happened to be stolen (regardless of whether defendant's were involved in the theft of the firearms); the 2K2.1(b)(5) enhancement applied because defendant's trafficked firearms; and the 2K2.1(b)(6)(B) enhancement because the defendant's committed another felony offense, the burglary. Id. at 15. The Court concluded "in sum, the stolen firearm, trafficking, and other felony offense enhancements were all appropriate, there was no impermissible double counting, and the court did not err."

Mr. Edwards also argued that the district court committed reversible error when it articulated that it would have imposed the same sentence regardless of the guideline disputes. Mr. Edwards explicitly asserted "that the sentencing court cannot insulate this erroneous guideline range from appellate review merely by asserting it would impose the same sentence regardless of the range. Although the court of appeals mentioned the claim in passing it did not issue a finding of fact or conclusion of law regarding the claim."

Mr. Edwards timely filed an extension of time to file his petition for writ of certiorari, that application for extension of time was granted on February 28, 2019, to up until March 03, 2019. As can be appreciated by this court, the order issued noticing Mr. Edwards of the extension did not reach Mr. Edwards until after the extended deadline. Consequently, Mr. Edwards wrote seeking a further extension, that request was denied with the

clerk articulating that Mr. Edwards had received the maximum time articulated by the court rules. Mr. Edwards avers however, that he believes that his request may have been consolidated with that of his co-defendant Mr. Terry Walker who had requested an extension by the court and was granted a 60(sixty) day extension. Mr. Edwards asserts that he did not request his petition be consolidated with Mr. Walker, nor was he given the maximum time allowed by this court's rules. And that, this petition for writ of certiorari should be allowed to be considered timely due to the fact that Mr. Edwards did not receive notice of the extended deadline until after the deadline had passed. Which Mr. Edwards asserts is an extraordinary circumstance.

REASONS FOR GRANTING THE PETITION

A) Mr. Edwards contends that there were hotly contested issues surrounding the application of certain guideline enhancement in this case, the application of which violate his, and many other defendant's right not to be punished twice for the same offense conduct pursuant to the 5th Amendment's double jeopardy clause. However, this court's holdings regarding both the double jeopardy clause and the application of the Sentencing Guidelines are being eroded by lower courts mere assertions that "they would have imposed the same sentence not-with-standing the guideline disputes.

I. UNITED STATES SENTENCING GUIDELINES

In *Gall v. United States* this court held that, "the district court should begin by correctly calculating the applicable Guidelines range. The Guidelines are the starting point and initial benchmark but are not the only consideration. If he decides on an outside-the-Guidelines sentence, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variation. He must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing.

In the instant case at bar Mr. Edwards claims that 2(two) specific offense characteristics were misapplied due to impermissible double

double counting an error that added six levels to Mr. Edwards base offense level altering the offense level from 23, Criminal History Category VI, to base offense level 29, Criminal History Category VII, the difference is a Sentencing Guideline range of 92-115 month imprisonment and 151-188 months imprisonment.

To the average person it seems that a sentence of 132 months imprisonment should leave Mr. Edwards elated as the sentencing exposure it appeared he was susceptible to was nearly 2 years higher. However, if the grounds asserted by Mr. Edwards at his sentencing hearing and on appeal are correct, that the sentencing enhancements applied by the district court constitute improper double counting, then the imposition of a sentence of imprisonment of 132 months is not in accord with this court's precedents, because the sentencing court is charged with specifically articulating the reasons for the variance.

II. The 5 Amendment to the United States Constitution guarantees defendant's the right to be free from multiple prosecutions or "punishments for a single criminal offense.

In *Blockburger v. United States* this court held that the government may prosecute or punish an individual for more than one offense stemming from a single course of conduct only when each offense requires proof of a fact that the other offenses do not require. *Blockburger* is the exclusive means by which courts determine whether cumulative punishments are allowed under the Double Jeopardy clause.

In the instant case at bar Mr. Edwards was

Convicted of being a felon in possession of a firearm pursuant to 18 U.S.C. Section 922(g); and possessing a stolen firearm pursuant to 922(j). and although these offenses were grouped pursuant to U.S.S. Cr. Section 3D1.2(c) they are both scored pursuant to U.S.S. Cr. Section 2K2.1. It is to be noted that these offenses are grouped because the offenses arised out of the "Same transaction."

Although Mr. Edwards avers that the "other felony" enhancement may be impermissible double counting, he expressly avers that the enhancement pursuant to 2K2.1(b)(4)(A) for possessing stolen firearms gives rise to cumulative punishment in violation of the Double Jeopardy clause, because the Substantive Crime "possessing stolen firearms" and the enhancement provision "possessing a stolen firearm" require the same proof, that ~~is~~ is, that Mr. Edwards possessed stolen firearms. The statutory possession of stolen firearms charge drove the initial base offense level and the guidelines enhancing the base offense level based on the exact same conduct constitutes impermissible double counting because of its Double Jeopardy ramifications.

A) The Court of Appeals for the Seventh Circuit has Sanctioned a departure by the lower Court that allows for Outright Violations of the Double Jeopardy clause, as to call for this Courts Supervisory power

The national importance of these issues cannot be over stated. Everyday in this country a Sentencing Court Utilizes the United States Sentencing Guidelines to start their inquisition in to the appropriate sentence for the defendant standing before them. However,

This Court's directives to the lower courts on the application of the Sentencing Guidelines are unworkable and allow for arbitrary enforcement by the lower courts. The Seventh Circuit's own precedent illustrates the point. In Vizcarra, the court "acknowledged inconsistency in our cases about double counting and clarified our jurisprudence." The court held "[D]ouble counting is generally permissible unless the text of the guidelines expressly prohibits it."

Based on the Seventh Circuit's precedents there is no such thing as an improperly calculated ~~improperly~~ ^{Sentencing} guideline range not even when the application of a specific enhancement appears directly contrary to a Constitution Amendment. Imagine evidence being seized in violation of the Fourth Amendment and suppressed but the subsequent arrest of the defendant is found to be lawful because the facts that gave rise to the subsequent arrest are sufficiently attenuated from the illegally seized evidence, but then at the sentencing hearing for the defendant he is enhanced pursuant to 280 grams of cocaine base that was suppressed, however, the government proves possession with the intent to distribute by a preponderance of the evidence, and the district court allows the enhancement because circuit's precedent says that the guidelines commentary notes do not expressly prohibit the enhancement.

Not to veer off topic, but, consider the career offender provision, we know that the categorical approach applies to the determination of whether a prior conviction is a proper predicate for enhancement purposes, we also know that the modified categorical approach can only be applied against statutes that list alternative possible ~~elements~~ of the statute. However, consider the government and lower courts playing fast-and-loose as if they can't

interpret this court's holding on the issue, see *Mathis v. United States*, 579 U.S. — (2016) at 31 p. 13, and a defendant's attorney fails to object, which has become standard appointing procedure and the defendant is sentenced to nearly two times what he would have received, but he waived his statutory right to directly appeal the sentence because of his childish faith that the court would "do the right thing" to end up on collateral review being told that ordinary questions of guideline calculations are not cognizable on 2255. See *Sun Bear*, (Citation Unknown) (8th Cir.). The error here is also of Constitutional magnitude, the district court applying the modified categorical approach to every fact pattern of any statute regardless of divisibility assessing the brute facts to determine whether a Presentence report's (not reliable) narrative of a prior conviction satisfy an enumerated offense, violating a defendant's Fifth Amendment right to be sentenced pursuant to accurate information, hence the categorical approach (in the guideline context).

Mr. Edwards asserts that the United States Sentencing Guidelines are being used to circumvent Constitutional protections of defendants by the lower courts and that the courts of Appeals are using a standard less criteria to affirm the forementioned Constitutional abuses.

This court holds that a sentencing court must start by fashioning the properly calculated guideline range and criminal history score, and then instructs the sentencing court to wholly disregard the ranges if they want to, so long as the sentencing court acknowledges the 18 U.S.C. 3553(a) factors.

Now the sentencing courts blatantly miscalculate the

the guidelines ranges tells a defendant that if he disagrees appeal and insulates his erroneous arbitrary sentence by asserting, "On yeah, I would have imposed that same sentence even if you were correct about the guideline disputed, a defendant appeals and the appeals court creates a ~~departure~~ departure from this court's long established rules.

In *Beckles v. United States*, this court held that arbitrary sentencing is perfectly fine so long as it's in the guidelines context. Mr. Edwards asks this court, "is arbitrary sentencing in the guidelines context just as ok when it also violates the defendant's rights pursuant to the Double Jeopardy clause?"

Mr. Edwards also asks this court can a lower court prevent review of such a claim by articulating that it would have imposed the same sentence anyway?

If the answer to the latter is yes then what's the need for the sentencing guidelines and if the answer to the former is yes, then what need is there for the Constitution. Because defendants have rights in criminal proceedings we call out for this court's Supervisory powers, for this court to use those Supervisory powers to redefine the limits of the court's utilization of the sentencing guidelines in regard to the defendant's Constitutional right to ~~for~~ fundamentally fair proceedings.

Executed On 4/17/2019

Patrick Edwards

Patrick Edwards

Reg No. 48131-424

Federal Correction Institution

P.O. Box 1000

Oxford, WA 98952

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patrick Edwards

Date: 4/17/2019