

No. _____

18-9604

IN THE
SUPREME COURT OF THE UNITED STATES

Reitilly Fuentes Ramos

— PETITIONER

(Your Name)

vs.

United States of America

— RESPONDENT(S)

ORIGINAL

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals/Eleventh Circuit

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

PETITION FOR WRIT OF CERTIORARI

Reitilly Fuentes Ramos

(Your Name)

Allenwood LSCI
PO Box 1000

(Address)

White Deer, PA 17887

(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED

MAY 22 2019

United States Court of Appeals
For The Federal Circuit

RECEIVED

JUN 5 - 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

FILED
MAY 30 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether the District Court calculated Mr. Fuentes-Ramos's Sentencing Guidelines when it applied a two-level enhancement pursuant to USSG §2D1.1(b)(1) due to the presence of a pellet gun assumed to be in connection with a controlled substance transaction. Court should decide if a pellet gun is included in the above-quoted section as a "dangerous weapon."

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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:

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 1 to the petition and is
[X] reported at No. 18-11916-AA; 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[] is unpublished.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 1 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[X] is unpublished.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[] is unpublished.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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 03/21/2019.

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

21 USC §84(a)(1)

USSG §2D1.1(b)(1) cmt.n.11(A)

USSG §2D1.1(b)(1)

USSG §2D1.1(b)(1)

USSG §1B1.1 cmt.n.1 (2016)

5th, 6th, 8th Amendments to US Constitution

) *Span*

STATEMENT OF THE CASE

On November 17, 2017, Mr. Fuentes Ramos was charged in a four-count Indictment with possession with intent to distribute methamphetamine, in violation of 21 USC §841(a)(1). Counts I, II and IV alleged that the offense involved 50 grams or more of methamphetamine. Count III alleged a quantity which does not involve a mandatory minimum sentence.

On January 31, 2018, Mr. Fuentes Ramos entered a guilty plea to Count I of the Indictment. Mr. Fuentes Ramos' case was referred to the United States Probation Office for preparation of a Presentence Investigation Report ("PSR").

On March 7, 2018, the United States Probation Office disclosed the initial draft of Mr. Fuentes Ramos' PSR. The PSR provided for a two-level enhancement to Mr. Fuentes Ramos' base offense level pursuant to USSG §2D1.1(b)(1) "because the offense involved a dangerous weapon."

On April 26, 2018, Mr. Fuentes Ramos appeared before the district court for sentencing. Mr. Fuentes Ramos objected to PSR ¶ 15 which provided for a two-level enhancement to his advisory sentencing guideline calculation because the offense involved a dangerous weapon. Mr. Fuentes Ramos reiterated that the two-level enhancement for a dangerous weapon disqualifies him for receipt of the safety valve adjustment to the calculation of his guidelines. Mr. Fuentes Ramos noted that the two-level enhancement coupled with disqualification from the safety valve adjustment altered his advisory guideline range from 70 to 87 months (with safety valve) to a range of 120 months without the safety valve. The government responded that the dangerous weapon enhancement was applied appropriately to the guideline calculation.

The district court applied the 2-level enhancement when it determined from the testimony that it was not clearly improbable that the weapon was

connected with the offense. The district court then determined that the applicable guideline range was 120-135 months. Mr. Fuentes Ramos was then sentenced to the custody of the Bureau of Prisons for a term of 120 months. This term is followed by a term of supervised release of five years and a special assessment of \$100 was imposed. This appeal ensued.

The U.S. government failed to present evidence of the dangerousness of a pellet gun. It is important that the agents failed to secure or get the gun as evidence because they assumed correctly that it was not a firearm or a dangerous weapon. A pellet gun is something that even teenagers might have and it is not even used to hunt birds, perhaps only small lizards. The US Government has exceeded its authority to include a pellet gun as a dangerous weapon. Congress exceeded its authority if it really included a pellet gun as a dangerous weapon, but it is the position of Defendant that it was never the intention of Congress to include a pellet gun as a dangerous weapon and above all, to include it as a weapon in connection to drug trafficking to enforce the selling of drugs as the statute provides. The enhancement of the guidelines for using a firearm or dangerous weapon in connection with drug trafficking does not contemplate a pellet gun.

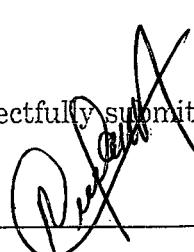
REASONS FOR GRANTING THE PETITION

This Court should rule that a pellet gun is not a firearm or dangerous weapon and should not be used to enhance Defendant according to the guidelines.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 05-07-2019