18-9703 ORIGINAL

NO. 19 -

IN THE

SUPREME COURT OF THE UNITED STATES

MILTON TERRY KELTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petitioner for a Writ of Certiorari to the

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Milton Terry Kelton
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QUESTIONS PRESENTED

I. WHETHER THE HONORABLE JUDGE BRIAN C. WIMES AND THE U.S. ATTORNEY JAMES BOHLING UTILIZE TWO-INAPPLICABLE STATUTORY ENHANCEMENTS ENACTED BY THE UNITED STATES SENTENCING COMMISSION AFTER THE OFFENSE DATE OF SEPTEMBER 30, 1988. AMENDMENTS #66 AND #139 IN CALCULATION OF THE BASE OFFENSE USED TO DENY THE APPELLANT'S 782 MOTION FOR REDUCTION OF SENTENCE IN VIOLATION OF THE EX POST FACTO CLAUSE AND DUE PROCESS RIGHTS?

II. WHETHER THE HONORABLE BRIAN C. WIMES AND U.S. ATTORNEY JAMES BOHLING DISREGARD OR OVERSIGHT OF THE SUPREME COURT AND APPEALS COURTS PRECEDENTS FOR EX POST FACT CLAUSE (Plain Errors) AND APPELLANT'S RIGHTS TO HAVE THESE ERRORS CORRECTED CAUSED KELTON TO CONTINUE TO BE IMPRISONED UNDER AN INFIRMED UNCONSTITUTIONAL SENTENCE?

III. WHETHER THE HONORABLE BRIAN C. WIMES AND U.S. ATTORNEY JAMES BOHLING COMMIT A VIOLATION OF FEDERAL RULES OF CRIMINAL PROCEDURE 52(b)'S PLAIN ERROR RULE WHICH WAS RAISED BY APPELLANT IN HIS MOTION FOR REDUCTION OF SENTENCE. THAT BOTH OFFICERS OF THE HONORABLE COURT FAILED TO REVIEW OR CORRECT. BUT UTILIZED IT TO DENY APPELLANT'S 782 AMENDMENT MOTION. WITH FULL KNOWLEDGE THE WRONG SENTENCING MANUAL WAS USED TO PREPARE THE P.S.R.?

IV. WHETHER THE HONORABLE BRIAN C. WIMES AND U.S. ATTORNEY JAMES BOHLING UTILIZE BASE OFFENSE 42 INSTEAD OF 32 AS THE STARTING POINT IN DOING THE CALCULATION OF TOTAL OFFENSE LEVEL FOR THE IMPOSITION OF GUIDELINE RANGE FOR 782 AMENDMENT WHICH THE COURT DENIED STATING THE GUIDELINE RANGE REMAINED 360 - LIFE?

PARTIES TO THE PROCEEDINGS

Petitioner, Milton Terry Kelton ("Kelton"), was a criminal defendant in the United States District Court for the Western District of Missouri, in USDC Criminal No. 90-00010-01/16-CR-W-BCW. As Appellant in the United States Court of Appeals for the Eighth Circuit ("Eighth Circuit") in USCA No. 19-1471. Respondent, United States of America, was the Plaintiff in the district court, and the Appellee in the Eighth Circuit. Judge Brian C. Wimes, Western District of Missouri.

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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully submits this pe tion for a Writ Of Certiorari to review the judgment of the United States Court of Appeals for the Eight Circuit.

OPINION BELOW

The opinion of the United States Court Of Appeals for the Eighth Circuit is un published, United States v. Kelton, No. 19-1471 (8th cir.2019),is attached in the Appendix at 1a.

Denial of U.S. District Court,WESTERN District of Missouri.Attached at 3 a

JURISDICTION

[X] No petition for rehearing was timely filed in my case.

Defendant-Appellant appealed from the dist rict Court's judgment in a criminal/Civil case to the United States Court of Appeals for the Eighth Circuit. On March 12,2019 the Court of Appeals for the Eighth Circuit issued an order affirming Keltons Judgment. This Court has Jurisdiction pursuant to Title 28 U.S.C. § 1254(1).

CONSTITUTTIONAL PROVISIONS INVOLVED

FIFTH AMENDMENT OF THE U.S. CONSTITUTION

The fifth Amendment of the U.S. Constitution provides, in pertinent part: "...Nor shall any person be deprived of life, liberty or property without due process of law...."

SIXTH AMENDMENT OF THE U.S.CONSTITUTION

The Sixth Amendment of the U.S.Constitution provides. in pertinent par:
"...an to be informed of the nature and cause of the accusation;and to have the assistance of counsel for his defense..."

STATEMENT OF THE CASE

A. The Proceedings Below:
On January 10,1990, a federal grand jury returned a 23-count indictment against Kelton and others alleging various narcotic offenses.(PSR 1,¶ 3.) The charges included: conspiracy to distribute cocaine, in violation of 21 U.S.C.§ 846; continuing criminal enterprise, in violation of 21 U.S.C. §848(a); Seven counts of distribution of cocaine, inviolation of 21 U.S.C.§ 841(a)(1) and (b)(1)(B); seven counts of interstate transportation in aid of racketeering enterprises, inviolation of 18 U.S.C. § 1952; two counts of use of interstate commerce facilities in murder for hire, in violation of 18 U.S.C. § 1958; and three counts of fraud by wire, in violation of 18 U.S.C. §§ 1343 and 2§;and one count of interstate transportation of stolen property, in violation of 18 U.S.C. §§2341 and 2.(PSR1,¶ 1.)

On January 16,1992, the propation officer filed the final revision of Presentence Report (PSR) with the Court.(PSR i). The PSR calculated Kelton's sentencing Guideline Range as 360 Month to Life; based on a

total offense level of 40 and a criminal history category of VI. (PSR 19,¶ 105). The PSR concluded that Kelton was likely responsible for the distribution of **50 to 150 Kilograms** of cocaine.(PSR 7-8, ¶36.) The PSR arrived at offense level 40 by adding a enhancement pursuant to U.S.S.G. § 3C1.1 for obstruction of justice for threatening a government witness and a codefendant (PSR 11,12,¶¶58,67), and then subtracting two levels pursuant to § 3E1.1(a) for acceptance of responsibility.

On January 16, 1992, the district court sentenced Kelton to concurrent sentences of Life on Counts One and Two, as all other counts concurrently.

On September 22, 2015, Kelton filed a pro se motion pursuant to 18 U.S.C.§ 3582(C)(2) and Amendment **782** (D.E. 125). The Court Denied Kelton's reduction of sentence Motion on December 11,2017. (D.E. 130). Kelton filed a Motion for reconsideration of the Court's order denying him a sentence reduction under § 3582(C)(2).

In his pro se motion for reconsideration, Kelton asks the court to reduce his original sentence pursuant to Amendment **782** of U.S.S.G. and 18 U.S.C. § 3582(C)(2).

1. § 3582(C)(2) REDUCTIONS, GENERALLY

If a court has found a reduction consistent with U.S.S.G § 1B1.10, it may then determine if¶ the authorized reduction is warranted, either in whole or in part, according to

the factors set forth in [18 U.S.C.] **3553(a)."** Dillion v. United states, 560 U.S. 817,826(2010).

"A sentencing court has discretionary authority, under 18 U.S.C.§ 3582(C)(2) and U.S.S.G. 1B1.1o, to reduce the term of imprisonment for a defendant.. who was sentenced based on a guideline range subsequently lowered by the Sentencing Commission." United States v. Byers, 561 F.3d 825,829 (8th cir. 2009)(quoting United States v.Whiting 522 F.3d 845,852 (8th cir.2008).

The government has asserted in a opposition response to the reconsideration motion that it's a successive § 3582 (C)(2) Motion after the denial of the first motion.

Petitioner Kelton contends that the Honorable Court (Judge Brian C. Wimes, nor the U.S, Attorney JAmes Rohling ever addressed the Issues in the motion before the court. Because, the **EX POST FACTO CLAUSE VIOLATIONS,** AND THE **11 PLAIN ERROR MISCALCULATIONS** THAT THE preparer of the PRS comitted in the revised final submission to the Court, utilized the wrong sentencing guideline manual.

They were totally ignored and overlooked by the Court and the assistant United States Attorney. Because thats the only way they could have come up with the rationale that Kelton has pointed out no fundamental change in the law that would justify a reconsideration of the Courts order denying the reduction request. When there were approximately 13 clear and plain errors committed by the PSR prepared that the court adopted.

Appellant Kelton was indicted in the western District of Missouri on January 10,1990 on a 22 Count Indictment. On april 5,1990 Kelton entered a NOLO CONTENDRE Plea to all 22-counts without benefit of a plea agreement. Because under the 1987 Sentencing Guideline Manual, the statutory Provision for 21 U.S.C. § 848(a), had a Base Offense Level of 32 for First Time Drug Offenders charged with § 848(a).

The appellants Date of Offense was September 30,1988, which was the date of the last overt act in the conspiracy case.

The sentencing range was 10 years to Life under criminal history category VI. And the Base Offense Level of 32, had a 210-262 Month sentence Range on the CCE (848)(a) of Count One.

The Honorable Court ordered a PSR and the Appellant Languished in the segregation unit of leavenworth Federal Prison for 24 months and 7 days awaiting sentencing.

On January 16,1992, Probation Officer Ruthann Bean filed the final revised version of the PSR with the court. Probation Officer Bean Utilized the Guideline manual in effect on January 16,1992. Which was the wrong manual and this error created Three PLAIN ERRORS of Ex Post Facto Clause violations, and eleven (11) Miscalculation of the sentencing guideline ranges in Keltons case. Errors pursuant to Federal Rules of Criminal Procedure 52(b).

All Plain errors that affected the substantial rights of appellant kelton that are particularly egregious, that rise to exceptional circumstances. Which meet the Fourth Prong of the rigorous standards of the Plain Error Rule review. Satisfying the Plain Error Standard is difficult.

The courts have held that Rule 52(b) is only satisfied when four requirements are met:(1). there is an error.(2).the error is plain,(3)the error affects the fairness and integrity or public reputation of Judicial proceedings(4) the error seriously affects substantial rights.

Henderson v.United States,588 U.S. 266, 272, 133 S.Ct. 1121, 185 L.Ed 85(2013). Kelton asserts that the Ex Post Facto Clause violations that took place in his proceedings under the Two-Amendments to the Statutory Provisions of § 848(a) after the Date of Commission of Offense September 30,1988. Which raised Appellant Keltons Base Offense level were inapplicable.

The sentencing commission enacted both Amendment #66and Amendment # **139 After the Offense date.** Amendment # 66 was enacted on October 15, 1988;and Amendment # 139 was enacted on November 1, 1989. Amendment # 66 raised the Base offense level up to **36.** And Amendment # 139 raised the base offense level up to **38**,for CCE and included Commentary where if the Base offense level from the **2D1.1** Drug Quantity Table was lower than 38, then a Four(**4**) Level additional enhancement could be applied. Also these amendments Raised the Mandatory Minimum from **10 years up to 20 years** instead of ten. Appellant Keltons Indictment was under the 10 years to life in Guideline manual for **1987.**

EX POST FACTO CLAUSE VIOLATIONS IN COUNTS FIFTEEN AND SIXTEEN OF THE INDICTMENT STATE:

Between September 1, 1988 and September 30th, 1988, said dates being approximate. Defendant Keltonand Co-defendants herein knowingly and intentionally iad and abet, procure and caused another to travel in interstate Commerce from the State of California to Kansas, City, Mo. in the Western District of Missouri, with the intent to carry on and facilitate the carrying on of unlawful activity, that is the Business enterprise involving controlled substances to wit: the possission of Cocaine, a schedule I I Controlled substance with intent to distribute said substance, and thereafter did attempt with the others to carry on such unlawful activity; all in violation of Title 18 U.S.C.§ code section 1952 and 2.

The presentence Investigation report stated definitively that **Two-Kilo's**, were involved in Both Counts Fifteen and Sixteen. September 30th, being the Date of the Last Overt Act in Keltons CCE and Conspiracy Case.

The United States Sentencing Guideline Manual in use and effect on that date was the **1987 version of the Guideline Manual** of the USSC. And

And the Continuing Criminal Enterprise statute had a 10 year to life maximum sentence exposure and the maximum Base Offense level was **32 for** First Time Drug Offenders that were charged with 848(a).

Then on October 15, 1988 the Commission enacted Amendment # 66 that elevated the Base Offense Level to **36**, which was Four(4) level higher than authroized for the offense that occurred before October 15, 1988. If the Court had read the Statute and Provisions of the Guidelines for **21 U.S.C.§ 848(a)**, Its clear in the commentary that No enhancement apply to the statute for Role in the Offense. Therefore, Keltons Base Offense Level couldn't be elevated above Base Offense Level **32** as a first time Offender of the § 848(a) Statute for Drugs.

Given the fact that no drugs Amount was on the face of the Indictment for the 848(a) charge or found by a Jury or admitted to by Kelton. The Maximum Sentence exposure of the CCE Count was Only Twenty-Years under the cathall provision of 21 U.S.C.§ 841(b)(1)(C) (0-20) years maximum Term). Plus , the mandatory sentencing scheme under which Kelton was sentenced was ruled to

be unconstitutional by the United States Supreme Court.

But to add insult to injury and further create Errors in the proceedings.
On November 1, 1989 the United States Sentencing Commission enacted another Amendment to the CCE 848(a) statute. Amendment # 139, which elevated the base offense level up to 38. And it also raised the mandatory minimum up to 20 years.

The Court under the direction of Probation Officer Ruthann Bean Lowered Petitioner Kelton Base Offense level down to 36 by lowering the Drug quantity at the sentencing hearing on Jan. 16, 1992. Then the Amendment # 139 Four level enhancement for base offenses lower than 38 was used to add the adjustment up to Offense Level 40. Then Two level were added for the Obstruction Of Justice enhancement taking Kelton froma Maximum of 32 Offense authorized above the Maximum legally applicable to 42 and the Court imposed a Illegal sentence of Life. The appellants Base Offense level was raised from 32 up to 42, Ten Levels. Which is a Ex Post Facto Clause Violation committed.

Defendant Keltons sentence exposure and maximum offense level was elevated by use of the erroneous Offense level of 42 that was established by use of two inapplicable Guideline amendments that were enacted after the Offense date of September 30,1988.

These two amendment egregiously caused the offense level to be raised ten(1)levels. AS results of these Plain error ex post facto clause violations, Kelton was subject to not one , but two different Illegal enhancements of the statutory provision of § 848(a).

Sentencing Guidelines Procedure

The courts typically apply the guidelines in effect at the time of sentencing if an amendment added after the defendant's conduct is "retroactive," or is only intended to clarify application of a guidelines and was not intended to make any substantive changes to the guidelines or their commentary. However, the guidelines are governed by the limitations of the **ex post facto clause**, U.S. Const. art. I, § 9. Thus, if the guidelines in effect at the time of sentencing will produce a sentence harsher than those in effect at the time the crime was committed, a violation of the **ex post facto clause** occurs.

The court, under U.S. Sentencing Guidelines Manual § 1B1.11, is required to apply either the Sentencing Guidelines in place on the date of sentencing, or the Sentencing Guidelines in place on the date that the offense of conviction was committed, whichever yields the least harsh result.

U.S. Sentencing Guidelines Manual § 1B1.11 provides that the court is to use the Guidelines Manual in effect on the date that the defendant is sentenced, unless the court determines that this would violate the **Ex Post Facto Clause** of the United States Constitution, in which case it is to use the manual in effect on the date that the offense of conviction was committed. Because an amendment to a Sentencing Guideline has the potential to increase a defendant's punishment for a crime committed prior to the amendment, the Ex Post Facto cCause is violated if a defendant is sentenced under the Guidelines in effect at the time of sentencing when those Guidelines produce a sentence harsher than one permitted under the Guidelines in effect at the time the crime is committed.

The courts have held that for purposes of Plain error, a sentencing error is plain if its contrary to the Supreme Court or Circuit Court precedent. Which is clearly the case here because under the Lindsey v.Washington 301 U.S. 397,401 (1937), INS.St.Cyr,533 U.S. 289,325(2001) (citing) Lindsey for removal of the possibility of a sentence of less than the maximum[operated to the defendants] detriment).

In Lindsey v. Washington, 301 U.S. at 401, the court held that a change in the Statutory Sentencing Provisions could not be applied retroactively even though the new provision didn't increase the maximum sentence, but only made it mandatory. (Lindsey established that one is not barred from challenging a change in the Penal code on Ex Post Facto grounds simply because the sentence received under the new provisions were not more onerous than that what he might have received under the old provisions). Lindsey v. Washington, also held that Ex Post Facto clause looks to the standard of punishment that is prescribed by a [law] rather than to the sentence actually imposed. It is this reason than an increase in the possible Penalty is Ex post Facto.. Regardless of the length of the sentence actually imposed. 301 U.S. at 401(Underlines Emphasis Added). Lindsey also held that a sentencing law violates the U.S. Constitution if it's effect is to make Mandatory what was before only the maximum sentence.

SEE. Weaver v. Graham, 450 U.S. at 32 N.17(1981). United States v. Alfaro, 336 F.3d 876,883(9th cir.2003) Held [tofall] within the Ex Post Facto Clause Prohibition. Two critical elements must be present:First the Law must be Retrospective, that is it must apply to events occurring before it's enactment. And second, it must Disadvantage the Offense Affected by it. Miller v. Florida, 484 U.S. 423,430(1987).

Here, the 848(a) Statute Provisions of the Amendments of Both #66 and # 139 that were enacted on October 15, 1988 and November 1, 1989 were applied erroneously to offenses that took place before September 30th, 1988. Thereby qualifying for the first requirement for an Ex Post Facto Clause Violation. United States v. Alfaro,336 f.3d at 883, also stated" A Removal of Discretion[in Sentencing] disadvantages an Offender for Ex Post Facto purposes, citing Lindsey v. Washington, 301 U.S. 397(holding that a statute that makes mandatory what was before only the maximum sentence violated the Ex Post facto Clause); United States v. Johns, 5 F 3d, 12671272(9th cir. 1993) Holding that the loss of a valuable opportunity to have a lessoer sentence imposed does violate Ex post Facto Clause); Murtishaw v. Woodford, 255 F.3d 926,965(9th cir. 1999) relying on Lindsey and Johns, holds that]Taking] discretion away from the sentencing Court violated the Ex Post Facto Clause).

Here the 848(a) Statute used to impose the sentence took the discretion away from the sentencer. Which the Supreme Court held violates Ex Post Facto Clause. This meets the Supreme Courts Requirement for a Ex Post Facto Clause Violation. Under Lindsey, and INS v. Cry, Keltons Sentence under the TWO-MORE ONEROUS New § 848(a) Amendments to the Statute in (# 66 and #139) of the United States Sentencing Guidelines used to impose a LIFE SENTENCE cause the Removal of the Possibility of a sentence Less than [LIFE]. And it was possible for Kelton to receive as low as Ten(10)years and up to 20 Years based on the Guidelines Offense Level 32 under the §841 (b)(1)(C) (0-20 years maximum. The **PSR** elevated the standard of Punishment of the Mandatory Minimum Sentence under § 848(a) to **20 years,** which is more onerous than the ten(10) years Mandatory Minimum Authorized by law at the time of the Last overt act on September 30, 1988. In deed Clearly the Amendmed harsher 1992 Version of the Sentencing Guidelines Manuals Base offense level of 42 that exposed Kelton was not authorized.

Other Circuits Agree: United States v, Boer, 394 f.3d 569,574(7th cir.2004); Preter v. United States Parole Comm. 767 F.2d, 1230, 1239(7th cir. 1985)(it is true that Kelton might have been sentenced to 20 years under the sentencing guidelines for CCE § 848(a) absent the two Amendments.

But the Ex Post Facto Clause looks to the Standard of Punishment prescribed by the Statute, rather than the sentence actually imposed). United States v. Tykarsky, 446 f. 3d 458,480(3d. cir.2006)(ex post facto Violation Occurs even when the Laws Minimum Punishment is not greater than the Old Laws minimum punishment. Citing Miller v. Florida, 482 U.S. at 432, 433(citing lindsey v. Washington, 301, U.S. 397, 401(1937)(Spura); Shepard v. Taylor,556 f.2d 648,654(2d cir.1977).

The Ex Post Facto Clause is violated even when the maximum statutory penalty for a crime remains the same, unchanged. Lerner v. Gill, 751 f.2d ,450,455(1st cir.1985), **Rejecting Date of the Indictment as Relevant date for Ex Post Facto Analysis: and United States v. Paskow, 11 f.3d, 873,877(9th cir. 1993)(** the principle in lindsey then is that in the determination of the disadvantagement to the defendant, a Court must focus on the change on the defendants eligibility to receive a lesser sentence than the New Law may permit, and regardless of whether the defendant would actually have received the less sentence.

The United States Supreme Courts decision in Rosales-Mireles v. United States, decided that even though a defendant failed to raise and objection at the time of sentencing. When the sentence Imposed was incorrectly computed and calculated mistakenly. Even with the strigent Plain Error Rule with it's High Bar for defendants who seek

relief for a mistake that they failed to raise at trial. Like the Kelton Case they have a right to ask the appellate Court for a discretionary review. Every Court but the Fifth Circuit has said that Obvious guideline errors that probably resulted in a defendant serving a longer sentence, are ones that seriously affect the fairness, intergity and public reputation of the judicial proceedings, as required under the Plain Error Rule. Kelton aserts thathis Miscalculations of the statutory sentences under the guidelines falls under the purview of the Plain Error Rule.

SCOTUS Says

Sentence Calculation Errors Should be Fixed

The case is *Rosales-Mireles v. United States*, 2018 BL 214344, U.S., No. 16-9493, 6/18/18.

A mistaken calculation under federal sentencing guidelines that is plain and affects a defendant's rights should be corrected, the U.S. Supreme Court held June 18.

Such a mistake will "in the ordinary case, as here, seriously affect the fairness, integrity, or public reputation of judicial proceedings," the court said in an opinion by Justice Sonia Sotomayor.

The decision, which reversed the U.S. Court of Appeals for the Fifth Circuit, resolved a circuit split.

The Fifth Circuit said the error didn't seriously affect the fairness, integrity, or public reputation of judicial proceeding, because it didn't "shock the conscience," serve as an indictment of the justice system, or seriously question the judge's competence or integrity.

The federal plain error rule sets a high bar for defendants seeking relief for a mistake they failed to raise at trial. But the Fifth Circuit set that bar too high, the justices said.

The "shocks the conscience" standard isn't part of the plain error rule, it explained. "The court repeatedly has reversed judgments for plain error on the basis of inadvertent or unintentional errors of the court or the parties below," it said.

The decision affirms that the plain error rule "means what it says, and does not involve some dramatically higher showing of error."

It is beyond question that the Circuit court and Supreme Court Precedent were ovrlooked, and defendants sentence clearly violated the Ex Post Facto Clause, and its an Illegal and Unconstitutional sentence per se. The law at the time of the offense and date are identified by the trial testimony of codefendants, Grand jury Minutes of Kim Harrison and other conspirators. Who all gave September 30, 1988 as the date of the last overt acts. There was no conspiratorial conduct after September 30, 1988 in furtherance of the 848(a) CCE presented at the trial. The date of the Indictment as a END Date was not relevant for the Ex Post Facto Analysis, Lerner v. Gill 751,f.2d 450,456(7th cir.1985) (Rejectd the Date Of Indictment as a relevant date for the ex post facto clause analysis.

Under Lindsey v Washington, and Weaver v. Graham, Requires that the more onerous Illegal sentence of Life and the Miscalculated 40 year sentences under the 1992 Guideline manual for those counts in the Indictment Inclusive of Amendment# 66 and # 139 be vacated and corrected, because they all violate Ex Post Facto Clause of the United States Constitution.

The Kelton Case is a Travesty of justice and a manifest injustice, because he should have been released 10 years ago. And definitely was eligible for Reduction of Sentence under the 782 Amendment Motion that Judge Brian C. Wimes failed to use the Corect starting point for the Two-Level

Probation Officer Ruthann Beans errors have caused the Honroable court to impose and illegal sentence that calls for correction.

It was the Plain errors committed by Ms. Bean that inadvertenly misled both Judge Howard F. Sachs and Judge Brian C. Wimes, causing the mistake regarding the sentence originally and the mistake regarding the eligibility of Kelton to get Time served under the 782 Amendment after a plenary full resentencing.

Had Judge Brian C. Wimes been cognizant of the Ex Post Facto Clause violations done by Probation Officer Bean, and her use of the wrong guideline manual in the January 16, 1992 Sentencing. The Court could have correctly adjudicated the 782 **Amendment Motion before it.**

By virtue of Ms. Beans infringement of the Plain Error Rule and Ex Post Facto Clause, Kelton is still under the penalty of an Illegal Life Sentence and seven 40 years sentences that are infirmed.

THIRD EX POST FACTO CLAUSE VIOLATION ENHANCEMENT UNDER AMENDMENT # 311

The statutory provisions for 18 U.S.C. § 1958 on the Dates of the Offenses in February 1989 and March 16,1989 that alleged in the indictment in Counts Seventeen and eighteen. When commission of the crimes occurred had a maximum sentence of three(3) years. On April 5, 1990 when appellant entered a plea of Nolo Contendre. All conduct pursuant to Keltons specific offenses related to the murder for hire solicitation were covered by U.S.S.G. §2A1.5. Which accounts for instances where acts necessary for completion of the crime solicited had not occured.

And attempt to commit other than an assault, where no bodily injury occurs is 18 U,S.C. 113(a), and it carries a maximum sentence of three(3) years imprisonment (18 U.S.C. 1113), base offense level 20.

AMENDMENT # 311 TO 18 U.S.C. § 1958

18 U.S.C. § 1958 Use Of Interstate Commerence facilities in the Commission of Murder for Hire. The Statute was Amended and the Penalty Provisions were elevated by Amendment # 311 by the Sentencing Commission.

If the Offense resulted in an attempted murder or assault with intent to commit murder(which would yield a base offense level of 38) or **U.S.S.G. Manual**§ 2A1.1. If the offense resulted in the death of the victim (which would yield a base

offense level 43). U.S.S.G. Manual §2A1.5(C). (a) Whoever travels or causes another to travel in interstate commerce or causes another to use the mail or any facility of commerce(Phone) with intent to commit murder in violation of the laws of any State or the United States. Shall be imprisoned for not more than ten(10)years and fined under this title or both; and if personal injury results, shall be fined under this title and imprisoned for not more than Twenty years, or both.

And if death results, shall be punished by Death or life imprisonment, or shall be fined not more than $ 250,000 or both.

The ten(10) year sentences imposed on both Counts Seventeen and Eighteen on Kelton were both Ex Post Facto Clause violation. Because Amendment # 311 was enacted after the Offenses were committed on Nov. 1,1990. But Ruthann Bean the Probation Officer who prepared the PSR used the wrong Guideline manual in calculation of the Sentencing range and statutory provisions. The **1987 Guideline Manual** was the one in effect at the time of the commission of the offenses applicable to Keltons case. And the stautory maximum sentence was Three(3) years. This error like the other **11 errors** were all plain Error Rule violations that caused sentences in excess of the maximum authorized.

ARGUMENT

In question # one presented Appellant Kelton wishes to seek review of the Judgment order from the District Court entered by the Honorable Judge Brian C. Wimes on December 11, 2017; and the Judgment Order of the Eight Circuit Cours of Appeals on March 12,2019 Case No# 19-1471. Affirming the Denial of appellants **782** Motion, where No right might exist to appeal or petition for discretionary review, or where the right has been lost by failure to take timely Action.

Milton Terry kelton respectfully petitions thai Court to Issue Writ Of Certirari to review the Judgments of Both Judge Brian C. Wimes Dated December 11, 2017 denying Motion for Reduction Of Sentence. And in support of this Petition shows the Following:

Appellant Kelton was subjected to a Miscarriage of Justice through the imposition of a Unconstitutional sentence of Life without Parole where the wrong Guideline manual was used by the Probation and Parole officer who prepared the PSR. Which inadvertenly caused the Honorable Court to adopt a PSR with **(3) three Ex Post Facto Clause Violations, and 11 (eleven) miscalculated guideline sentences** that were Plain Errors.

In question # 2 the petitioner asserts that the Honorable Courts Judge Brian C. Wimes and the Assistant U.S. Attorney Mr. James Bohling utilized the wrong starting point for the calculation of the Base Offense level for the 21 USC § 848(a) count in the 782 Motion for reduction of sentence. Because two Amendmments to the Statutory Provisions pursuant to the Sentencing commissions enactment of # 66 and # 139 Amendments. Called for a 10 level enhancement from Offense level 32 up to a level 42. Which constituted an Ex post facto clause Violation due to the more onerous punishment(Life Without Parole) than the correct prescribed Stautory Provision in Guideline Manual for 1987 for First Time Offenders of the § 848(a) Statute. Amendment # 66 was enacted and became effective on October 15, 1988 and Amendment # 139 was enacted on November 1, 1989, Both dates being after September 30, 1988 when the Last overt act of the Conspiracy was committed and the date of offense.

In Question # 3 the Appellant asserts that had the Honorable Judge Brian.C. Wimes used the Offense level 32 as the starting point for calculation of the Base Offense level after a Downward adjustment for Amendment 782 . Without the 10-levels of the two enhancements of# amendments # 66 and # 139. The Guideline Sentencing Range would have been Base Offense level 30 minus 2 for U.S.S.G § 3E1.1 for acceptance

(28) Criminal History Category VI(**140-175 Months).**
And the Court could have imposed TIME SERVED and IMMEDIATE RELEASE as requested by the appellant.

In Question # 4 presented appellant asserts that Both Judge Wimes and Assistant U.S. Attorney James Bohlings disregard and oversight of the Supreme Court and the Appeal Courts Resedents for Ex Post Facto Clause violations(Plain Errors), and Appellants rights to have these erros corrected. Because the reconsideration request by the appeallant explicitly raised or reiterated the fact that the court and U.S. attorney has failed to address the ex post facto clause Issues and Miscalculations of the sentencing guidelines, and wrong Manual used to do the PSR, and the Illegal enhancements used to elevate the Base Offense level up to 42 and impse a Life sentence. The appellant asserts that based on the failure of the court to review the factual basis presented for his 782 **Motion. Inclusive of the** expost facto clause violation and misapplication of the sentencing guideline by use of the wrong maunal in the original sentencing, and the courts failure to do a Full Plenary resentencing of the appllant, resulted in a miscarriage of Justice, and a defendant being sentenced above the statutory maximum in violation of the Constitutional protections prohibiting Ex Post facto Clause Violations.

REASON FOR GRANTING THE PETITION

As a preliminary matter ,Kelton respectfully requests that this Honrable Court be mindful that pro se litigants are entitled to liberal construction of their pleadings. Estelle v. gamble, 429 U.S.,97, 106 (1976), and Haines v. Kerner, 404 U.S., 519, 520(1972).

The Eightth Circuirt Erred in Affirming
Keltons Judgment and denying Petition for Reduction Of Sentence under § 3582 (c)(2) for the following reasons:

NOTE: The Two- Amendments enacted after the Date of Offense September 30, 1988, that were utilized as enhancements applied to the Title 21 U.S.C. § 848(a) Statute violated the Ex Post facto Clause of the United States Constitution.

Amendment# 66 was enacted on Cotober 15, 1988 by the USSC and it raised the Statutory Base Offense level from **32 for First Time Offenders of §848(a) up to Base Offense level 36.**

Amendment # 139 was enacted on November 1, 1989, by the USSC, and it further raised the Stautory provisions Base Offense level up to **38, in** clusive of commentary that added an additional (4) Level enhancement if the Drug quantity table under **2D1.1's drug Quantity rendered a Base Offense level Lower than 38.**

The probation and Parole Office who prepared Keltons PSR used the wronq quideline manual in her final revised version. Instead of using the **1987** Sentencinq Guideline Manual. Which was applicable and effective on the date of the commission of the offense in the Kelton Case. That had an end date for Offense of September 30.1988. Ms. Bean used the 1992 Guideline Manual that was in effect on Januarv 16. 1992 durinq the Sentencinq hearinq. Which was an ex post facto clause violation.

FACTS: Kelton was wronqfullv sentenced in violation of the United States Supreme Court Precedent under two (2) Illeqal inapplicable Amendments to Title 21 U.S.C. § 841(a)(1) and 848(a). Statutory provision. Under the wronq Guideline manual that contained Three(3) Ex Post Facto Clause violations and 11(eleven) Miscalculations of the USSG's Guidelines. (All were Plain Errors).

See. **Exhibit "A". a Copy of Amendment # 66 From the 1987 Sentencinq Guideline Manual.**

See **Exhibit "B". a Copy of Amendment # 139 fron the 1992 Guideline Manual. Both of which were enacted after September 30.1988 and are not applicable to the Kelton Case.**

The PSR filed with the Court on Januarv 16,1992 subjected the appellant to sentences thatall fall under the Plain Error Rule of **52(b).** Because the recommendation

sentence which the court adopted on January 16,1992 at the sentencing hearing. and imposed and Illegal and unconstitutional sentence that exceed the maximum authorized at the time of the commission of the offense. The 360 to Life mandatory sentencing guideline range recommended by the PSR. Exceeded the 10 year mandatory minimum of the face of the Indictment that Kelton Pled to on April 5, 1990.

See. Exhibit "C". a copy of the cover Page of theIndictment with the statutory Range of sentence for Count One (1) 848(a) CCE. And the Mandatory Minimum is Listed on there as Ten(1) years. not Twenty(20) years that Kelton was sentenced under. See. Exhibit "D". a copy of the Cover Page of the Presentence Investigation Report. with the wrong Mandatory Minimum of Twenty years on it. And also the wrong dates for when it was prepared and revised.

It was prepared on January 16 1992 not April 27. 1990.

SEE, EXHIBIT "D"

11- MISAPPLICATION OF THE GUIDELINE SENTENCES II). In counts 3-5-7-9-11-13-15 of the Indictment's § 841 (a)(1) charges. The probation officer Ruthann Bean made Eleven Plain Error Miscalculation for the sentencing Guideline Ranges under 2D1.1 Drug Quantity Table:

All Seven of the Sentence Calculations were Plain Error. Every count 3 thru 15 had a 14 year and seven month maximum sentence.

Count - 3 500 grams but less than 5 kilos
Count - 5 50 grams but less than 5 Kilos
Count - 7 50 grams but less than 5 Kilos
Count - 9 50 grams but less than 5 Kilos
Count -11 50 Grams but less than 5 kilos
Count -13 50 Grams but less than 5 kilos
Count -15 500 Grams but less than 5 kilos

Each sentence of Forty Years was illegal and a Plain Error created by Ms. Beans miscalculation of the guideline sentencing range(Base Offense levels).

Counts- 17 and 18 were both Imposed with Ex Post Facto Clause Violations. Because the Amendments were enacted after the September 30, 1988 Date of Offense. These two Sentences Constituted Two more Plain Error Rule Violations under the Ex Post Facto Clause.
As was Count- 1 which was also Miscalculated and raised to **360 to Life erroneously in the PSR.**

CONCLUSION

Wherefore, Petitioner Respectfully prays that the Court will Issue Its WRIT OF CERTIORARI to the Supreme Court to permit review of the Judgment Order and a Grant of the Relief sought or whatever the Court deems Fair and Just.

Milton Terry Kelton

Respectfully Submitted
Milton Terry Kelton
86501-132