No. 19-5223

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

BOBBY MINNIS — PETITIONER/PRO SE
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BOBBY MINNIS FED REG NO: 73130-004
(Your Name)

BAKER COUNTY DETENTION CENTER
(Address)

P.O. BOX 1629 MCCLENNY FL 32063
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

Whether a federal district judge can make the internally contradictory oral pronouncement that a federal sentence is to be served concurrent with one of two perfectly concurrent state sentences, but only partially consecutive with the other state sentence, and then eight years later once that federal sentence was served concurrently by the defendant, change that sentence to partially consecutive with both those state sentences; citing FED. R. CRIM. P. 36., and what he claims he meant to say; doing so only after an *ex parte* conference with the Bureau of Prisons, which alerted him that the irreconcilable conflict that could only be legally amended through a 18 U.S.C. § 3582 (c) motion in the defendant's favor could be averted if such an illegal amendment was returned to the Bureau of Prisons without notifying the unaware defendant.

Whether coercive *ex parte* communications with U.S. judges intended to unfavorably affect resentencing of the accused require reversal.

Whether a Judge's original oral pronouncement controls, or whether his claimed intent controls.

Whether a Judge's claimed intent is amendable under FED. R. CRIM. P. 36.

Whether a Judge's coerced claimed intent allows the Court and the Bureau of Prisons to ignore the requirements of 18 U.S.C. § 3582 (c).

Whether amending a final judgment and oral pronouncement years later to a defendant's detriment and without his knowledge violates the due process and double jeopardy clause of the U.S. Constitution.

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:

THERE IS NO CORPORATE INVOLVEMENT.

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TABLE OF AUTHORITIES CITED

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 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 APRIL 12 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 STATUATORY PROVISIONS INVOLVED

18 U.S.C. § 3584 (a), States: "imposition of concurrent or consecutive terms. If multiple terms of imprisonment are imposed on a defendant at the same time, of is a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the term may run concurrently or consecutively, except that the term may not run consecutively for an attempt and for another offense that was the sole object of the attempt. Multiple terms of imprisonment imposed at the same time may run consecutively unless the court orders that the terms are to run concurrently"

18 U.S.C. § 3582 (c), states: "Modification of an imposed term of imprisonment. The court may not modify a term of imprisonment once it has been imposed except that: (1) in any case- (a) The court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) after considering the factors set forth in section 3553 (a) to the extent that they are applicable-."

FED. R. CRIM. P. 35, states: "Within 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error."

FED. R. CRIM. P. 36, states: "After giving notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission."

5th Amendment of the U.S. Constitution, double jeopardy and due process clauses, state: "- nor shall any person be subject for the same offense to be twice put in jeopardy,,, nor shall be ,,, without due process of law-."

STATEMENT OF CASE

On 8-14-08, the U.S. Government explained to Judge Huck in Miami district court that the federal sentence about to be imposed could not run consecutive to defendant Bobby Minnis' 2005 state sentence because it arose out of the same acts, [possibly citing 18 U.S.C. 3584(a)] therefore, and in spite of the objections of the prosecution and the defense, Judge Huck made the internally contradictory oral pronouncement that the defendant's federal sentence run concurrent with his 2005 state sentence, but partially consecutive to his 2008 state sentence, even though both state sentences were perfectly concurrent. [See: Appendix-C, documents # 28-29]

Then eight years later once that eight year federal sentence had been served concurrently, only then did the Bureau of Prisons realize that the court's internally contradictory sentence could not be served a second time, therefore, instead of submitting the required 18 U.S.C. 3582 (c) motion, mandated for correcting such irreconcilable conflicts, which would then compel the court to convert the imposed consecutive time to

probation, the B.O.P. initiated an illegal *ex parte* conference with Judge Huck and recommended that he amend the final judgment; citing FED.R.CRIM. P. 36 and claiming that he did not intend to orally pronounce that the defendant's federal sentence be served concurrently to his 2005 state sentence, who then amended the final judgment to state that the defendant's federal sentence was now to partially be served consecutively to both his state sentences, doing so without notice to the defendant, without appointing him counsel, and without affording him the opportunity to be present and object, nor even informing him of this substantive change to the sentence that he had already served concurrently.

The defendant only learned of this resentencing when the State Department alerted him to this unusual activity. Then once the defendant objected *Pro se,* the court finally responded with the ludicrous claim that: "[U]nder FED.R.CRIM.P. 36, the court has the authority to change its clerical error to clarify its intent", [doc #48; 2-3] and yet, there was no difference between the original oral pronouncement and the original written judgment; no clerical error to correct.

Later, the Eleventh Circuit Court Appeals admitted that the oral pronouncement was that the defendant's federal sentence be served concurrently to his 2005 state sentence and that the oral pronouncement must control , but then sided with the court and stated that it was actually the court's claimed "intent" which controls. [See; appendix-A page-5]

This erroneous conclusion is directly contradicted by most every previous district, appellate, and Supreme Court decision ever made, but has recently become the argument pushed by the Bureau of Prisons and the U.S. Attorney's office, which is why a clear decision by the Supreme Court is needed for the good of the entire nation.

REASONS FOR GRANTING THE WRIT

A. Setting of several precedents, which are detrimental to life, liberty, and the rule of law guaranteed by the U.S. Constitution

(1)A district court's authority to modify a sentence is limited by statute. *U.S. V. Phillips*, 597, F.3d 1190, 194-95 [11th cir 2010], therefore, the holding of the southern

district and the eleventh circuit in this case; namely that: A judge may at any time modify his original oral pronouncement under Fed. R. CRIM P. 36, just as long as he claims an "intent' and claims that his spoken words can be defined as a "clerical error", sets an outrageous precedent that now threatens the constitutional freedoms of thousands. The court's rationale is that a judge's claimed "intent" supersedes the actual words spoken as the means for correcting an internally contradictory sentence, and that Rule 36 authorizes to make any substantive change to the final judgment well after the allotted "14 days" permitted by FED. R. CRIM. P. 35, and yet, the court actually admits that it original oral pronouncement stated that the defendant's "97 months" of federal imprisonment was "to run concurrent" with the defendant's 2005 state sentence, which it originally pronounced in an attempt to avoid pronouncing an illegal sentence under 18 U.S.C. §3584 (a).

(2) what is more, any correction more than just a scribal error that is discovered beyond the "14 days" provided by FED. R. CRIM. P, 35 can only be performed once the Bureau of Prisons submits the required motion under 18 U.S.C. §3582 (c), which must only favor the

accused, [SEE: *Benson V. U.S.*,332 F.2d 288, 291 N.6 [5th cir 1964] *accord, Gorman V. U.S.* 323 F.2d 51, 53 [5th cir 1963][1] which is why the B.O.P. has instituted this unconstitutional practice of illegal *ex parte* consultations with the nation's judges.

(3) In document # 48; 2-3; [See: appendix-C] the court actually stated that: "[U]nder FED. R, CRIM. P. 36; the court has the authority to change its clerical error to clarify its intent", referring to its oral pronouncement as a "clerical error", and because it used this deceptive terminology, the Eleventh Circuit took the position that there was a scribal error in the final judgment, but then erroneously concluded that it was the court's "intent" which "controls" not what was actually stated in the original oral pronouncement., and yet, the Eleventh Circuit actual admitted as well that the court's original oral pronouncement was that the defendant's federal sentence be served "concurrent" to his 2005 state sentence, [See: appendix-A, page #5] therefore, even the Eleventh Circuit court's decision is contradictory.

[1]Resolution of contradictory sentences can only be made in the defendant's favor, no matter what intent is claimed.

(4) However, even if there had been a scribal error in the written judgment to correct pursuant RULE 36; that rule itself imposes an obligation to give appropriate notice; while the due process clause of the fifth amendment of the U.S. Constitution requires affording the accused the opportunity to be present and to object before sentencing, but instead, the court set an outrageous precedent by first conducting a protracted *ex parte* consultation with the Bureau of Prisons without ever once even informing the defendant of its intent or decision.

(5) The only remedy for correcting an internally contradictory sentence after it had been served for the court and the Bureau of Prisons is an 18 U.S.C. 3582 (c) motion by the Bureau of Prisons, and even the Eleventh Circuit' own previous ruling in *U.S. V. Davis*, 329, F.3d 1250, 1255 [11th cir 2003], decided that since the defendant satisfied the less onerous of the two mutually elusive conditions comprising his internally contradictory sentence he must be released. After all, previous court rulings make is abundantly clear that the original oral pronouncement of "concurrent" as to the defendant's 2005 state sentence rendered that federal sentence complete

when those eight years had been completed. [SEE: *Coleman V. Gen. Motors*, 296, F.3d 443, 446 [6th cir 2002], *U.S. V. Yarbrough*, 677, FED. Appx. 893 [5th cir 2017]

(6)As was decided in *U.S, V. Sanders*, 247 F.3d 139,142 [4th cir 2001], the district court's jurisdiction ended when the "14 days" provided by FED. R.CRIM. P. 35, to make any changes had expired, so that the judgment became "final" and "presumably valid." Even the Eleventh Circuit previously ruled that when: "two portions of the oral sentence are in irreconcilable conflict," the district court's attempt to correct it as an "alleged clerical error," "is without effect." *U.S. V. Khoury*, 901 F.2d 975, 978 [11th cir 1990]. In *Khoury,* the Eleventh Circuit even added: " It is incumbent upon a sentencing Judge to choose his words carefully," but in its affirming decision in this present case that the so-called "intent" of the judge is said to "control" and not what the Judge actually said, it has opposed almost every court in the land. Despite this erroneous premise, even many other Florida court decisions have denied RULE 36 relief where: "There is no discrepancy between the oral sentence and the written judgment." [See: *U.S. V. Blount*, no: 3:06-cr-296-J-33TEM, 2011 WL 840,845 *1 [Fl 2001], and in this present case

the original oral pronouncement and written judgment were exactly the same until the court amended the final judgment eight years later.

(7) This unconstitutional and illegal practice is being promoted by the Bureau of Prisons and supported by the office of the U.S. Attorney, despite how in this case the court changed the defendant's federal sentence to the illegal sentence that it originally sought to avoid by pronouncing such contradictory term, and did so in an illegal manner, which differs from the original oral pronouncement, and which violates the defendant's Fifth Amendment due process rights and protection against double jeopardy. Even the Eleventh Circuit has previously ruled that a sentence which differs from the original oral pronouncement is invalid. [See: *U.S. V. Chavez,* 205, F.3d 1305,[11th cir 2000], therefore, a thinking person may wonder what unseen influence has now also prompted the circuit court to deviate.

B. Conflicts with decisions of other courts

(8)This Supreme court of the United States of America recently recognized in 2012 that the law provided a clear

path for the Bureau of Prisons to follow once it realized that it could not give effect to both provisions of an internally contradictory sentence, stating that the Bureau of Prisons could move in favor of the defendant pursuant 18 U.S.C. 3582 (c). [See: *Setzer V. U.S.*, 566, U.S. 231, 243-44 [2012], however, the bureau is not authorized to initiate backroom resentencing conferences with federal judges so as to instruct the court on how to circumnavigate the law and the U.S. Constitution. This insidious practice must end immediately before the entire justice system is corrupted.

(9) In direct contrast to the Eleventh Circuit's ruling, the Fourth Circuit ruled in *U.S. V. Sanders*, 247 F.3d 139, 142 [4th cir 2001], that a district court's jurisdiction ends when the time for appeal expires. Also, "The only sentence that is legally cognizable is the actual oral pronouncement made in the presence of the defendant." [Fed. R. CRIM. P. 36 N.7; citing: *U.S. V. Martinez*, 506 F.2d 620 [NY 1974], *U.S. V. Bergnann*,836 F.2d 1220 [Alaska 1988]]
. And as the court admits, in the defendant's presence the district court original orally pronounced that his federal sentence was only to run "concurrent" to his 2005 state

sentence. [See: appendix-C, documents #28 & 29 and appendix-A, page #3].

(10)Similarly, by amending the defendant's' final judgment without notice or adversarial briefing, the court deviated from the binding decisions of the former Fifth Circuit in; *Rutledge V. U.S.*, 146 F.2d 199 [5th cir 1944] and other Florida courts. [See: *Mehl V. State*, 16 So 3d, 2009 Fla App Lexis 13753 [Fl 4th DCA 2009], *Ashley V. State*, 850 So 2d 1263, 2003 Fl Lexis 13 [Fl 2003].

(11) Likewise, the southern district and Eleventh Circuit's rulings in this one case are in direct contrast to other rulings of the Fifth Circuit: " Where there is doubt or ambiguity [a criminal sentence] must be read in a light most favorable to the accused." [See; *Benson V. U.S.,* 332, F.2d 288, 291 N.6 [5th cir 1964]. Accor; *Gorman, V. U.S.,* 323 F.2d 51, 53 [5th cir 1963].

(12) Also, the court's erroneous decisions directly contradict the Sixth Circuit's ruling that a court cannot alter a final judgment once jurisdiction has ended. *Rupinski V. U.S.*, 4 F.2d 17, 18 [6th cir 1925]. In fact, the 1944 advisory committee even cited *Rupinski* as the basis for FED. R. CRIM. P. 36, which relied upon three outstanding Supreme Court rulings: " No principle is

better settled," it was said *in Sibbald V. U.S.,* 12 PET [(37 u.s.)] 488, 492 [(1838)], " or of more universal application, that no court can reverse or annul its own final decrees or judgments, for errors of fact or law, after the term in which they have been rendered, unless for clerical mistakes-."

(13) This is why the Eleventh Circuit's ruling is in direct opposition to the decisions of almost every relevant court decision thus far. As was stated by the Seventh Circuit: "Rule 36 is limited to errors that are clerical in nature; typically where the written sentence differs from the oral pronouncement," but does not include correcting "judicial mistakes", adding: "The oral sentence controls", not the court's professed intent years later after the sentence has been served. [See: *U.S, V. Johnson*, 571 F.3d 716, 718 [7th cir 2009]. The Seventh Circuit also disagrees with the Eleventh circuit by stating: "Rule 36 cannot be used to enlarge the time provided by rule 35 (a) [14 days] for fixing judicial gaffes." *U.S. V. McHugh*, 528 F.3d 538, 540 [7th cir 2008]; accord; *U.S. V. Werber*, 51 F.3d 347 [2nd cir 1995]. [Stating: "[R]ule 36 is not a vehicle for the violation of the court's unexpressed sentencing expectations, or for the correction of 'errors made by the court itself."].

(14) In fact, the Supreme Court established the unconstitutional nature of this Eleventh Circuit decision as far back as "1873" when it stated: "[T]he court,,, could render no second judgment against the prisoner. It's authority was ended. All further exercise of it in that direction was forbidden by the common law, by the constitution, and by the dearest principles of personal rights." *Ex Parte Lange*, 18 Wall (85 U.S.) 163 (1873).

C. Importance of the question presented

(15) An insidious precedent is creeping into the justice system that must be corrected, namely, that: the Bureau of Prisons is free to conduct private conferences with the nation's judges and counsel them on how to implement specious rationale and misleading misnomers so as to be able to circumnavigate the express laws of our civil society for the sole purpose of denying the accused of their beloved constitutional rights in an apparent attempt to increase their inmate population. As the Supreme Court once expressed so long ago, this question involves "the dearest principles of personal rights," as well as, " the Constitution." I.D. *Ex Parte Lange.* Courts simply cannot

be permitted to collude with prison authorities out of public view on how to keep the accused incarcerated despite the law and to the detriment of constitutional freedoms. Nor can they be permitted to alter or even broaden final judgments and oral pronouncements under the guise of authority they claim to have pursuant to FED. R.CRIM.P. 36. Nor can they be allowed to do so beyond the constraints stipulated at FED.R.CRIM. P. 35. [See: U.S.V. Wilson, 649, Fed Appx 827 [5th cir 2016], U.S. V. Flores, 664 Fed Appx 395 [5th cir 2016]

CONCLUSION

The Court should grant certiorari.

I hereby certify under penalty of perjury in compliance with 28 U.S.C. 1746, that the foregoing was deposited in institutional mail on 6-20-19, with prepaid first class postage prepaid. RESUBMITTED ON 7-8-19

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