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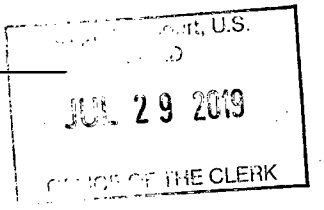

IN THE
SUPREME COURT OF THE UNITED STATES

QWINDEL JEROME PAGE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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PETITIONER / PRO SE

QUESTIONS PRESENTED

1. Whether The District Court And The Sixth Circuit Court Of Appeals Erred When They Denied The Petitioner A Certificate Of Appealability ("COA") Where The Petitioner Established (A) That Jurists Of Reason Could Debate The Correctness Of The District Court's Denial of 28 U.S.C. § 2255 Relief, And (B) The Petitioner Made A Substantial Showing Of The Denial Of A Constitutional Right?

2. Whether The Sixth Circuit, When Denying The Petitioner A COA, Applied An Overly Burdensome COA Standard In Direct Contravention Of This Court's COA Precedents Governing The Standards Of Review For The Issuance Of A COA Pursuant To 28 U.S.C. § 2253(c)(1)(B)?

3. Whether Jurists Of Reason Could Conclude Or Debate Whether The Petitioner's 28 U.S.C. § 2255 Claims Deserved Further Consideration Pursuant To A Grant Of A COA To Hear Claims That Possessed Substantial Merit?

LIST OF PARTIES INVOLVED

All the parties to this action appear in the caption of the cover page.

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IN THE
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PETITION FOR WRIT OF CERTIORARI

Comes now the Petitioner, Qwindel Jerome Page, Pro Se, and petitions the Court for a Writ of Certiorari to review the Judgment of the Sixth Circuit Court of Appeals.

OPINIONS BELOW

The Sixth Circuit's UNPUBLISHED Order denying the Petitioner's timely-filed Petition For Rehearing En Banc dated 01 May 2019 is reproduced

in full within the Appendix as Appendix A for the Court's convenience.

The Sixth Circuit's UNPUBLISHED Order denying the Petitioner's timely-filed Petition For Rehearing By Panel dated 15 April 2019 is reproduced in full within the Appendix as Appendix B.[1]

The Sixth Circuit's UNPUBLISHED decision denying the Petitioner a Certificate of Appealability ("COA") is reproduced within the Appendix as Appendix C.

The District Court's UNPUBLISHED Order denying the Petititioner's 28 U.S.C. § 2255 motion and miscellaneous relief is reproduced in full within the Appendix as Appendix D.

JURISDICTION

The Sixth Circuit issued its last dispositive Order (Appendix A) on 01 May 2019. The instant Petition is, therefore, timely-filed. This Court has jurisdiction over the instant Petition pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves an application of the Certificate of Appealability requirements of 28 U.S.C. § 2253(c)(1)(B), which states in relevant part:

"(1) Unless a circuit justice or judge issues a certificate of

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[1] The Petitioner filed a consolidated petition for rehearing (by Panel) and rehearing en banc. The Sixth Circuit bifurcated the petitions and, therefore, issued two (2) dispositive rulings on petition for rehearing.

appealability, an appeal may not be taken to the court of appeals from--
(B) the final order in a proceeding under [28 United States Code] section 2255."

Id. (2019 ed.)(Appendix E)

This case also involves an application of the statutory standard for the issuance of a certificate of appealability found at 28 U.S.C. § 2253(c)(2), which reads in relevant part:

> "(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of constitutional right."

Id. (2019 ed.)(Appendix E)

Also involved is the application of United States Sentencing Guideline ("U.S.S.G.") § 2D1.1, Application Note 04, entitled Determining Drug Types And Quantities, which reads in relevant part:

> "Types and quantities of drugs not specified in the count of conviction may be considered in determing the offense level. See [U.S.S.G.] § 1B1.3(a)(2)(Relevant Conduct). Where there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance. In making this determination, the court may consider, for example, the price generally obtained for the controlled substance, financial or other other records, similar transactions in controlled substances by the defendant, and the size or capability of any laboratory involved."

Id. (2013 ed.)(Appendix F)(modified for context).

STATEMENT OF THE CASE AND RELEVANT PROCEDURAL HISTORY

In 2013 a jury convicted the Petitioner of conspiring to possess oxycodone with intent to distribute, possession of oxydone with intent to distribute, and conspiracy to commit money laundering. At least one count charged a specified amount of oxycodone, while others did NOT charge a specified amount. Accordingly, the "charge offense" reflected in the indictment did NOT adequately reflect the scale of the offense and, therefore,

the sentencing Court was compelled to "approximate" the drug amounts and types attributable to the Petitioner for purposes of sentencing. See U.S.S.G. § 2D1.1, Application Note 04 (Appendix F); See also United States v. Russell, 595 F.3d 633, 646 (6th Cir. 2010).

Relying on the Sixth Circuit's holding in Russell, the sentencing Court used this "approximation" method to fix the sentence on both the money laundering Count and the underlying drug Counts.

Based upon the sentencing Court's Application of Russell and U.S.S.G. § 2D1.1, Application Note 04, the Petitioner was sentenced to a term of two-hundred and forty (240) months' imprisonment.

Following the conclusion of the Petitioner's direct review of his conviction and sentence, the Petitioner filed with the Court of Conviction his 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence. The Petitioner's § 2255 motion raised the claim that, inter alia, his Counsel was ineffective for failing to correct errors committed by the District Court when making its U.S.S.G. § 2D1.1, Application Note 04, "approximations" pursuant to Russell and based on the amount of money said to have been laundered. See Appendix C.

The crux of the Petitioner's claims of error in this regard stemmed from the fact that U.S.S.G. § 2D1.1, Application Note 04, required the District Court to conduct its drug type and weight "approximations" subject to the limitations of U.S.S.G. § 1B1.3(a)(2) -which, itself, places limitations, based on the "groupability" of offenses, that preclude the conduct underlying a non-groupable offense from being used to determine drug weights and types attributable to the Petitioner for pruposes of sentencing.

Because the Guidelines expressly provided that the Petitioner's money laundering Count was NOT "groupable" with his drug Counts, the Petitioner

asserted that the sentencing Court committed error when it used the amount of "laundered funds" to ascribe an increased drug weight approximation where the Court's findings could NOT pass muster under U.S.S.G. § 1B1.3(a)(2).

In answer to the Petitioner's request for substantive relief and in response to his request for a COA, both the District Court and the Sixth Circuit maintained that the District Court did not err in making its approximations due to its holding in Russell -its authoritative holding purporting to implement Application Note 04 to U.S.S.G. § 2D1.1.

In response, the Petitioner pointed out that, while Russell purports to implement Application Note 04 to § 2D1.1, it does NOT do so faithfully as the "approximations" permitted by Russell, inexplicably, fail to include the threshold limitations of U.S.S.G. § 1B1.3(a)(2) that are expressly incorporated into Application Note 04. Compare Russell (excerpted as Appendix G)(omitting threshold requirements of § 1B1.3(a)(2)), with U.S.S.G. § 2D1.1, Application Note 04 (Appendix G)(including threshold requirements of § 1B1.3(a)(2); See also Petition For Rehearing And Rehearing En Banc (USCA6 Case No. 18-5995).

Having raised and been denied review of these issues on Petition For Rehearing And Rehearing En Banc, the instant petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit follows.

REASONS FOR GRANTING THE WRIT

I. Certiorari Should Be Granted Where The Petitioner Has Made Both A Substantial Showing Of The Denial Of A Constitutional Right And That Jurists Of Reason Could Conclude Or Debate Whether The Petitioner's Claims Should Have Been Resolved Differently By The District Court

(a) Pursuant To This Court's Holding In Glover v. United States, 531 U.S. 198 (2001), The Petitioner's Claim Is Substantive

As noted supra, the Petitioner claimed that his Counsel was ineffective for failing to correct and object to errors resulting in a miscalculation of his Sentencing Guideline Range that resulted in an increased sentence.

Such a claim, as established, constitutes a substantial showing of the denial of a Constitutional right. See Glover v. United States, 531 U.S. 198 (2001).

(b) The Petitioner Proved His Claim And, Therefore, He Made Both A Substantial Showing Of The Denial Of A Constitutional Right And A Showing That Jurists Of Reason Could Conclude Or Debate Whether The Petitioner's Claim Should Have Been Resolved Differently

Several points of law and fact are NOT in dispute in this case that demonstrate the debatability of the Petitioner's claims.

First, it's undisputed that the Petitioner's sentence was fashioned by the application of U.S.S.G. § 2D1.1, Application Note 04, and the Court's "approximations" of drug weights under the Sixth Circuit's holding in Russell.

Second, it is undisputed that the Petitioner's sentence was increased as a result of those approximations on all Counts.

Third, it is undisputed that the Petitioner's sentencing Counsel did NOT object to the application of Russell's holding with respect to U.S.S.G. § 2D1.1, Application Note 04, and the omission of any threshold limiting principles of U.S.S.G. § 1B1.3(a)(2) that are otherwise expressly incorporated into Application Note 04.

Thus, where the Guidelines themselves expressly qualify that the Petitioner's money laundering offense is NOT "groupable" with his underlying drug offenses, and where Russell permits Court's to conduct approximations

of drug amounts attributable to the Petitioner without reference to the threshold limitations of U.S.S.G. § 1B1.3(a)(2),[2] the Petitioner demonstrates the debatability of his claims by virtue of the fact that Russell instructs courts to conduct approximations that are erroneous as a matter of law, errors of law that have admittedly been rendered in his case based upon both the District Court's and Sixth Circuit's reliance upon Russell to deny him both substantive 28 U.S.C. § 2255 relief and the issuance of a certificate of appealability under 28 U.S.C. § 2253.

That is, where Application Note 04 (Appendix F) expressly incorporates § 1B1.3(a)(2) as a threshold limitation on the Court's drug weight approximations, and where § 1B1.3(a)(2) only allows consideration of "conduct" that is groupable under U.S.S.G. § 3D1.2**(d)**, application of § 1B1.3(a)(2) would NOT permit the Court to consider "laundered funds" from the money laundering Count because Amendment 634 expressly qualifies the money laundering offense is "groupable" under only U.S.S.G. § 3D1.2**(c)** -and thus NOT relevant conduct to be considered pursuant to Application Note 04 and § 1B1.3(a)(2).

With all these things in his quiver, the Petitioner has made a substantial showing of the denial of a constitutional right and has, further, shown that jurists of reason could conclude or debate whether his claims should have been resolved differently. Having made this showing, the instant petition makes the case that the Sixth Circuit applied an overly burdensome COA standard in direct conflict with this Court's binding precedents.

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2 Russell, provided within the Appendix as Appendix G, reveals that the Sixth Circuit's citation to U.S.S.G. § 2D1.1, Application Note 04, fails to cite ANY limitation or application of U.S.S.G. § 1B1.3(a)(2). Compare, Appendix F, U.S.S.G. § 2D1.1, Application Note 04.

II. This Court Should Grant Certiorari Because The Sixth Circuit Applied An Overly Burdensome Standard For The Granting Of A COA In Direct Conflict With This Court's Binding Precedents

This Court's precedents are clear: a COA involves only a threshold analysis and preserves full appellate review of potentially meritorious claims. Thus, "a prisoner seeking a COA need only demonstrate 'a substantial showing'" that the district court erred in denying relief. See Miller-El v. Cockrell, 537 U.S. 322, 327 (quoting Slack v. McDaniel, 529 U.S. at 473, 484 (2000)). This "threshold inquiry" is satisfied so long as reasonable jurists could either disagree with the district court's decision or "conclude the issues presented are adequate to deserve encouragement to proceed further." Id. at 327, 336. A COA is not contingent upon proof "that some jurists would grant the petition for habeas corpus. Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that the petitioner will not prevail." Id. at 388.

In sum, the touchstone for granting a COA is "the debatability of the underlying constitutional claim, not the resolution of that debate." Id. at 342.

Applying this standard, the Sixth Circuit's denial of a COA in this case contravenes this Court's precedents and, therefore, this Court should grant certiorari to secure and maintain the uniform application of its COA precedents where the Petitioner in this case was denied a COA despite making a substantial showing of the denial of a constitutional right and that jurists of reason could conclude or debate whether the Courts erred in denying a COA in this case.

CONCLUSION

Wherefore, the Petitioner respectfully requests that this Court grant his petition for a Writ of Certiorari on this 29 day of July, 2019.

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