

19-5770

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Danny Lee Banks — PETITIONER
(Your Name)

Supreme Court, U.S.
FILED

AUG 14 2019

OFFICE OF THE CLERK

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Court Of Appeals For The Sixth Circuit

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

PETITION FOR WRIT OF CERTIORARI

Danny L. Banks

(Your Name)

USP Allenwood, P.O. BOX 3000

(Address)

White Deer, PA, 17887

(City, State, Zip Code)

RECEIVED

AUG 30 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

N/A

(Phone Number)

RECEIVED

AUG 19 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) DID THE APPEALS COURT AND DISTRICT COURT VIOLATE BANK'S FIFTH, SIXTH AND FOURTEENTH AMENDMENT RIGHTS BY UPHOLDING A SENTENCE THAT WAS BASED ON THE UNCONSTITUTIONAL RESIDUAL CLAUSE. JOHNSON V. UNITED STATES, 135 S. Ct. 2551 (2015), See Shepard documents Exhibits (A) and (B)
- 2) HOW DID THE APPEALS COURT AFFIRM BANKS 28 U.S.C. § 2255 MOTION OUTSIDE OF THE STATUTE THAT BANKS WAS CONVICTED TENN. CODE ANN. 39-2-103(A)(1982)REPEALED 1989

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:

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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

[X] reported at 19A0255n06 Case No. 18-5510; 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[] is unpublished.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

[X] reported at No. 16-CV-02275 U.S.Dist.; 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[] is unpublished.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[] is unpublished.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.

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JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 5/15/19.

No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 7/2/19, and a copy of the order denying rehearing appears at Appendix C.

[] 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).

UNITED STATES SUPREME COURT
Washington D.C 20543

DANNY LEE BANKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 18-5510

Writ of Certiorari Review

To Justice Ginsburg

Comes Now Danny Lee Banks Pro Se appearing as a self-represented litigant and proceeds In Forma Pauperis. Mr Banks respectfully concedes that he is not adequately trained or schooled in the practices of the law and ask this Honorable Justice to grant Banks liberal reading of these pleading to raise the strongest arguments that they may suggest. See Haines v. Kerner, 481 U.S. 519, 520 (1972)

ISSUE OF THE CASE

The lower courts decision was that the statute Banks was convicted of is divisible, which makes Banks Shepard Documents required under the modified categorical approach. A State conviction that rested upon an guilty plea the federal judge can look to the facts that the offender admitted at his plea colloquy to see what elements was admitted, to qualify under the (ACCA). The lower courts ignored Banks plea agreement and plea colloquy doing so violated Banks Due Process Right

CONSTITUTIONAL AND STATUTORY PROVISION INVOLED AMENDMENT V.

No person shall be held to answer for a capital or otherwise

Infamous crime, unless on a presentment or indictment of a Grand Jury. Except in cases arising in the Land or Naval Forces, or in the Militia when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, Nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VI

In all criminal prosecution the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed which District shall have been previously ascertained by law and to be informed of the nature cause of the accusation to be confronted with the witnesses against him to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defence.

AMENDMENT XIV

All persons born or naturalized in the United States and subject to the jurisdiction there of are Citizens of the United States and of the State whenein they reside. No States shall make or enforce any law which shall abridge the, privileges or immunities of Citizens of the United States nor shall any States deprive any person of life, liberty or property without due process of law nor deny to any person within its jurisdiction the equal protection of the law.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

FACTS OF THE CASE

On June 9, 1992 a federal grand jury in the Western District of Tennessee returned a four count indictment charging Banks with the following violations of 18 U.S.C. § 922(g)(1), Knowingly possessing a firearm as a convicted felon on November 26, 1991 (2) Knowingly possessing Ammunition as a convicted felon on November 26, 1991 (3) Knowingly possessing a firearm as a convicted felon on December 27, 1991 (4) Knowingly possessing Ammunition as a convicted felon on December 27, 1991 (CVECFN01). The United States subsequently dismissed count (3) and (4) related to the December 27, 1991 incident and proceeded to trial on counts (1) and (2) related to the November 26, 1991 incident (CRECF No. 747).

The jury found Banks not guilty on count (1) and guilty on count (2) (CRECF No. 49-53). The United States Probation Office prepared a presentence investigation report. The PSR calculated Banks guidelines, sentencing range pursuant to the 1994 Edition of the United States Sentencing Commission Guidelines Manual (the USSG)(Id at 4) Banks base offense level was 24(Id) there was a two level enhancement for obstruction of justice. Banks committed prejury during his trial. Banks adjusted offense level subtotal was 26 according to the PSR. Banks was an Armed Career Criminal under the (ACCA) 18 U.S.C. § 924(E), subject to a sentencing enhancement (Id at 4-5). The PSR identified numerous prior felonies as ACCA-qualifying convictions (Id at 4). The (ACCA) enhancement resulted in a total offense level of 34. Banks recommended guideline range was 262-327 months and statutory maximum sentence was life Banks was sentenced on April 15, 1996 (CRCF No. 71). The Court

adopted the PSR factual finding and category and guideline sentencing range consistently with the PSR (CRECF No. 72). At Banks sentencing, hearing, the court found that Banks criminal history category did not reflect the seriousness of his prior criminal conduct United States v. Banks no. 96-5597, 1997 WL 561421 at 2 (6th Cir. Sept 9, 1997).

The Court departed upward and sentenced Banks to Life in prison. Banks appealed, challenging only the court's upward departure (Id at 3). On September 9, 1997 the United States Court of Appeals for the Sixth Circuit affirmed. Banks seeks relief under Johnson v. United States, 135 S.Ct 2551 (2015). On August 3, 2016, the Court ordered the United States to respond (CV,ECF No. 5). The United States responded on August 4, 2016 (CV. ECF No. 7). Banks relied on August 25, 2016 (CV. ECF No. 9). On September 20, 2016, the Court ordered the United States to file an additional response on September 26, 2016 (CV. ECF No 11). Banks filed a second reply on October 17, 2016 (CV. ECF No. 13) On January 17, 2017, Banks filed a motion for leave to Supplement the record with additional material on October 18, 2017 (CV. ECF No. 18), Both motions for leave to Supplement the record are Granted on July 10, 2017, Banks filed a motion to appoint counsel (CV. ECF No. 19), Both motion are denied as moot. On the 25th day of April 2018, District Court denied Banks 2255 in light of Johnson, also denied Certificate of Appealability and denied leave to appeal informa pauperis. United States Court of Appeals for the Sixth Circuit Granted a Certificate of Appealability and Granted motion to proceed informa pauperis and appointment of counsel filed on the 28th day of August 2018. After briefing the Appeal Court affirmed the district Court's judgment denying Banks 2255 motion. In Johnson this Court

held that the imposition of an increased sentence under the (ACCA) (residual clause) violates due process, 135 S.Ct. at 2563. In Welch this Court retroactively applied Johnson to ACCA cases on collateral review, 136 S.Ct. at 1268, See also In re Watkins 810 F.3d 375, 383-84 (6th Cir. 2015)

REASON FOR GRANTING THE PETITION

Banks petition to Honorable Justice Ginsburg shouls be granted cause the lower Courts made a Constitutional error by denying Banks 2255 motion without analysising the ~~required~~ Shepard Documents which contain, Plea Agreement and Plea Colloque. Banks States conviction assult to murder only qualifys under the Unconstitutional Residual Caluse. "Without Personal Injury" and "No Weapon Involved".

The plea Agreement also contain no Element to trigger the (ACCA) enhancement under Johnson v. United States, 135 S.Ct. The Element-based Approach remains the law and the lower courts have introduce inconsistency and arbitriness in the ACCA precedents decision by here declining to follow it's requitrement with the Taylor/Shepard approach which quells this Constitutional concern determing where a prior conviction is a predicate under the (ACCA).

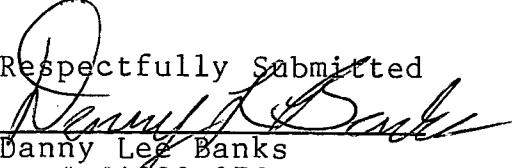
CONCLUSION

Therefore Banks does not have the three prior convictions needed for enhancement under the Armed Career Criminal Act (ACCA) and Banks Ask this Honorable Court to be resentenced without the (ACCA) which is a violation of his Sixth and Fourteenth Amendment rights under the Due Process Clause of the Constitution in light of Johnson v. United

States, 135 S.Ct. 2551 (June 26, 2015); Taylor v. United States, 495 U.S. 575, 600 (1990), See Also Shepard v. United States, 544 U.S. 13, 16 (2005) and Descamps v. United States, 133 S.Ct. 2276, 2293 (2013).

Dated: 8/5/1, 2019

Respectfully Submitted


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