

19-5871

No. 18-3014

ORIGINAL

FILED

AUG 26 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Patrick Jones

(Your Name)

— PETITIONER

vs.

United States Of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Seventh Circuit

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

PETITION FOR WRIT OF CERTIORARI

Patrick Jones #09530-089

(Your Name)

Federal Correctional Complex - Medium - P.O. Box 3000

(Address)

Forrest City, AR 72336

(City, State, Zip Code)

N/A

(Phone Number)

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QUESTION(S) PRESENTED

- 1) Did the district court error in increasing Havis base offense level based upon its belief that the commentary to § 4B1.2 appropriately includes attempted crimes in the Guidelines definition of "controlled substance offenses?"
- 2) Should the sentencing commission "invoke the general interpretive authority via commentary... to impose such a massive impact on a defendant with no grounding in the guidelines themselves?"
- 3) What constitutes a "Substantial Step" in controlled substance offense under federal law?
- 4) Can preparatory action constitute an attempt under federal law?
- 5) Does the Tenn. statute by providing an offer to sell constitute a controlled substance offense within the meaning of the guidelines?
- 6) Can Tenn. statute be use to uphold a federal conviction, when the federal code or guidelines does not includes an important element (Sale)?

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:

Patrick Jones
Petitioner

v.

United States of America
Respondent(s)

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CASES

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"United State v. Hinkle, 832 F.3d 569, 574 (5th Cir. 2016)"
Stinson v. United States, 508 U.S. 36, 42 (1993)
United States v. Rollins, 836 F.3d 737, 742 (7th Cir. 2016)
Will v. Mich. Dep't of State Police, 491 U.S. 58, 63 n.4 (1989)
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United States v. Winstead, 890 F.3d 1082, 1092 (DC Cir 2018)
Evans, 699 F.3d at 867
"United States v. McKibbin, 878 F.3d 967 (10th Cir. 2017)"
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STATUTES AND RULES

Tenn. Code Ann. § 39-17-417

Tennessee Supreme Court interpreted a new statute that redefined the state's law of attempt. See 916 S.W. 2d at 910-12. Tennessee broadened attempt liability through the adoption of the "substantial step" test. *Id.* at 911-13; see Tenn. Code Ann. § 39-12-101(a)(3)

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 _____ to the petition and is

☒ reported at The Supreme Court Of The United States; 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 _____ 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 June 27, 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

Upon filing this Appeal, Petitioner wasn't aware of any related case or cases raising related issues pending in the court, any district court or the Supreme Court. Recent the Sixth Circuit Court of Appeals ruled in Havis argument that his Tennessee drug conviction (Tenn. Code Ann. § 39-17-417(a)(2)) doesn't constitute a controlled substance offense under the Guidelines U.S.S.G § 4B1.2(b) and determined that the district court erred in increasing Havis base offense level upon its belief that the Commentary to § 4B1.2 appropriately includes attempted crimes in the Guideline definition of controlled substance offense and that the commentary is not binding to § 4B1.2 Guidelines to expand the definition of "controlled substance offenses". Petitioner pray that the Court take in consideration of the Havis ruling. Because, Petitioner argument is based on the same Tenn. Code Ann. § 39-17-417 convictions for unlawful possession of a controlled substance with intent to sell that does not qualify as a controlled substance offense under the United States Sentencing Commission Guidelines and the federal law section 4B1.2 of the Guidelines was a mismatch to apply enhancement sentence upon Petitioner.

STATEMENT OF THE CASE

Jones was enhanced upon prior offenses that were not controlled substance offenses for sentencing purposes. In order for Jones to have been properly adjudicated a career offender and therefore, receive an enhanced sentence of 186 months in prison, he had to have been previously convicted of at least two prior felony conviction that is either a crime of violence or a controlled substance offense. Jones was enhanced based on two prior convictions for unlawful possession of a controlled substance with intent to sell under Tenn. Code Ann. § 39-17-417 that does not qualify as a controlled substance offenses under the United States Sentencing Commission Guidelines.

Such commentary is not entitled to controlling weight if it is plainly erroneous or inconsistent with the text of the guideline it interprets." *United States v. Rollins*, 836 F.3d 737, 742 (7th Cir. 2016) (en banc) (quoting *Stinson*, 508 U.S. at 45).

Petitioner respectfully requests that this court grant him resentencing without the career offender designation and to be immediately released.

REASONS FOR GRANTING THE PETITION

Petitioner has raised substantial showing of denial of Constitutional Right on improperly enhanced sentence. Because section 39-17-417 criminalizes an offer to sell, while federal definition of a Controlled Substance Offense does not include such an offense, the state sell of a controlled substance offense is broader than the guidelines definition of a controlled substance offense. The Tenn. statute 39-17-417, make it a crime for defendant to knowingly possesses a controlled substance with intent to manufacture, deliver or sell the controlled substance. This "mismatch" of elements means that Petitioner conviction for unlawful possession of a controlled substance with intent to sell under Tenn. statute 39-17-417 is not controlled substance offense under the Guideline. Courts (5th Cir., 10th Cir., 4th Cir.) have determined because offering to sell is not part of the definition of a controlled substance offense in the guidelines and it could not serve as a predicate offense under the Career Offender Guidelines provision. In light of the Supreme Court's decision in *Mathis v. United States*, concluded that Hinkle conviction for delivery of a controlled substance is not a "controlled substance offense" within the meaning of the Guidelines, therefore the career offender enhancement did not apply. Tenth Circuit, offer to sell is not included in §4B1.2(b), unless the criminalized activity amounts to an attempt to distribute controlled substances. That means in essence that §4B1.2(b) includes only bona fide offer to sell, because such activity can be considered an attempt to distribute. But §4B1.2(b) does not includes non-bona fide offers to sell because "offer" itself is not listed in §4B1.2(b) and a non-bona fide offer cannot be considered an attempt to distribute. The Supreme Court ruling in *Havis* (6th Cir.), that his Tenn. drug conviction 39-17-417(a)(2) doesn't constitute a controlled substance offense under guidelines 4B1.2(b). The same ruling should apply to petitioner Tenn. § 39-17-417 offense. The question should be decided without full consideration of the factual or legal bases adduced in support of the claims.

Furthermore in reference to *Mathis v. United States*, the federal government has been using "Low Level drug offenders" convictions to enhance a total different type of conviction. The federal offense is targeted at mid to high level offenders. The federal offense is for peoples that is shipping, import/export, or smuggling drugs. Two different class of offender.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Patrick Jones

Date: 8-26-2019