19-5995

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Jason L. Clark – PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Eighth Circuit Court Of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason L. Clark-Reg. No. 17832-045
(Your Name)

Forrest City Correctional Complex/Med, P.O Box 3000
(Address)

Forrest City Arkansas, 72336
(City, State, Zip Code)

Non Applicable (N/A)
(Phone Number)

QUESTION(S) PRESENTED

DOES A GUILTY PLEA BAR A CRIMINAL DEFENDANT FROM LATER COLLATERAL ATTACK ON HIS CONVICTION ON THE GROUND THAT THE STATUTE OF CONVICTION VIOLATES THE CONSTITUTION

LIST OF PARTIES

[x] 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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STATUTES

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,
[x] is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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[ ] is unpublished.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[ ] is unpublished.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 May 9, 2019.

[ ] 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: July 17, 2019, 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

Sixth Amendment of the United States Constitution Appendix D page 1

18 U.S.C. 924(e) in part. Appendix D pg. 2.

28 U.S.C. 2255 provisions. Appendix D. pg. 3.

28 U.S.C. 2253 provisions. Appendix D. pg. 5.

STATEMENT OF THE CASE

1.) On November 15, 2016, in the Western District of Missouri, the Petitioner along with others were charged in a twenty eight (28) count indictment, involving firearms and drug trafficking offenses. The Petitioner was specifically, charged under counts 6, 8, 11, 12, 13, 14. See District Court Docket (D-Dkt-1).

2.) On march 21, 2017, the Appellant entered a plea of guilt based on a plea agreement with the Government. D-Dkt-37

3.) The plea agreement included a waiver of right to appeal sentence, directly or collaterally, on any ground except claims of ineffective assistance of counsel, prosecutorial misconduct. or an illegal sentence." D-Dkt-37.

4.) On September 6, 2017, the Petitioner was sentenced to 235 months term of imprisonment. D-Dkt 58.

5.) On September 12, 2017, timely notice of appeal was submitted, however, the Eighth Circuit enforced the plea agreement waiver. Finding no non-frivolous issues for appeal outside the scope of the waiver. See United States v. Clark, 720 Fed. Appx. 813 (8th Cir. 2018).

6.) The matter before this honorable Court pertains to 28 U.S.C. 2255 motion that was submitted in the District Court, involving the challenge of the constitutionality of the statutes of the Petitioner's conviction. See Civil Docket (Civ. Dkt. 21)

6.) Subsequently, the claim of Ineffective Assistance of counsel was also raised. The Petitioner's motion was followed by the Government's "Response," and that of the Petitioner's "Reply." See Civ. Dkt 21.

7.) On December 17, 2018, the District Court by Court Order, deter mined that "based on ... valid waiver, relief denied on grounds (1)-(3), claims that specificallyy, pertained to (1) 21 U.S.C. 851(e) prodeeding to establish prior convictions, being in violation of the "Doctrine of Seperation of Powers," and conflicts with ...section 2255; (2) determining whether state offenses qualify as prior conviction to be used as grounds for sentencing enhancement; (3) 924(e)(2)(A)(ii) at Title 18, (definition of serious drug offense) is unconstitutionally vague and allows for arbitrary enforcement of the law. District Court Order (Dist. Crt. Ord. page 1.)

8.) The District Court also denied the claim of Ineffective Assistance of Counsel, denied Evidentiary Hearing and also denied issuing a Certificate Of Appealability. See Dist. Crt. Ord. pg.2-3.

9.) The Petitioner sought redress in the United States Eighth Circuit Court of Appeals. Specifically, asserting that Certificate of Appealability should issue because the District Court misapplied the Government's waiver. Appellate Case No.19-1170, page 6. (App. No.)

10.) The three judge panel, determined that "review of the original file of the district court,"

revealed that application for a certificate of appealability is denied, the appeal is dismissed. See case No. 19-1170.

11.) The Petitioner further sought reconsideration "En Banc," asserting that the three judge panel erroneously sanctioned the District Court's misapplication of the Government's waiver, and contending that counsel's failure to adequately inform him amounted to a miscarriage of justice, and that counsel's failure to invoke the categorical and modified categorical approach regarding prior predicates during the time that he enters plea agreement establish "cause" which resulted in an unauthorized sentence establishing prejudice. See Petitioner's Motion for reconsideration (Mot. Recon.) page 8-9.

12.) On July 17, 2019, the petition for rehearing was denied and at the direction of the Eighth Circuit Court of Appeals, petition for rehearing by the panel was denied. See Order Case No. 19-1170, July 17, 2019.

13.) The Petitioner now seeks to be granted certiorari regarding the conflicting findings reached by the lower Courts.

REASONS FOR GRANTING THE PETITION

In summation, the Eighth Circuit Court Of Appeals was asked two federal question. One (1) Whether a Certificate of Appealability issues (where three claims submitted in a section 2255 motion, pertained to sentences in excess of the statutory maximum and the District Courtforecloses determination on material facts based on waiver, and Two (2) where counsel failed to determine whether prior offenses qualify for imposing statutory sentencing enhancements and district court failed to address that material fact should Certificate of Appealability issue." The finality of it's review amounted to rubber stamping it's adoption of the District Court's dicision with a statement that; "the Court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed." The application of the law put forth to determining the federal questions remain a mystery and this grants the Supreme Court (The Highest Court) the ability to exercise it's supervisory power to instruct the lower courts because what the Appellate Court has adopted conflicts with current law even eighth circuit precedent. When the Petitioner's 2255 motion states a valid claim of the denial of a constitutional right, consideration should be given in some form as to whether a jurist of reason would find it debatable whether the district court was correct. Slack v. McDaniel, 529 U.S. 473, 484 (2000). The Petitioner maintains that claims pertaining to a vague law or one in violation of the "Seperation of Power Doctrine," does not fall within scope of a plea waiver and that constitutional claim warrant relief.

DOES A GUILTY PLEA BAR A CRIMINAL DEFENDANT FROM LATER COLLATERAL ATTACK ON HIS CONVICTION ON THE GROUND THAT THE STATUTE OF CONVICTION VIOLATES THE CONSTITUTION

Because in conjunction with misapplication of a plea waiver, guilty plea was not voluntary expression of the defendant's choice, done with sufficient awareness of the relevant legal circumstances and likely consequences, relief should be granted;

This question was again recently answered in Class v. United States, 200 L.Ed 2d 37, as it pertained to the application of a plea waiving or that it bars appeals on many claims. The Court explained that "Fifty years ago this Court directly addressed a similar claim (a claim that the statute of conviction was unconstitutional). And the Court stated that a defendant's plea of guilty did not...waive his previous [Constitutional] claim." Haynes v. United States, 390 U.S. 85, 87, n. 2, 88 S.Ct. 722 (1968). The Class, Court also turned to Blackledge v. Perry, 417 U.S. 21, (1974), in reference to habeas relief on the ground that Perry, should be barred from raising his constitutional challenge. But this Court held that it did not. A year and a half later this Court in Menna v. New York, 423 U.S. 61, (1975) ---------- repeated what it had said and held in Blackledge. These holdings reflect an understanding of the nature of guilty pleas which in broad outline, stretches back nearly 150 years. The Court makes it's original reference to a statement given in the "Opinion," by the honorable Justice Harlan,

that; "plea of guilty did not, of course, waive his previous [constitutional] claim." Haynes at 390 U.S. at 87, n. 2. In more recent years the Court reaffirmed the Menna-Blackledge, doctrine and refined it's scope. See United States v. Broce, 488 U.S. 563 (1989) ("a guilty plea does not bar a claim on appeal, where on the face of the record the court had no power to enter the conviction or impose the sentence.") in the instant case the constitutional claims are consistent with Petitioner knowing, voluntary and inteligent admission that he did what the indictment alleged, nor do the Petitioner's claims focus upon case related constitutional defects that "occurred prior to entry of the plea Blackledge, 417 U.S. at 30; they could not for example, have been cured through a new indictment, cases of reference make clear that a defendant's guilty plea does not make irrelevant the kind of constitutional claims that the Petitioner sought to make. In sum, the claims that were raised in the Petitioner's 28 U.S.C. 2255 motion and that the District Court procedurally denied redress did not fall within any of the types--that the Petitioner's plea agreement forbids him to raise on direct appeal or by collateral attack. They challenge the Government's power to criminalize (by enhancement) Petitioner's (admitted) conduct. They thereby call into question the government's power to constitutionally prosecute him. Broce, supra, at 575 (quoting Menna, supra at 61-62, n. 2.) A guilty plea does not bar direct appeal or collateral attack under these circumstances. For instance, Petitioner's first claim raised in his 2255 motion of question, was based on the contention that "21 U.S.C. 851(e) violates the "Doctrine of the Seperation of Powers," and that it conflicts with 28 U.S.C. 2255." The provisions of 21 U.S.C

851(e) clearly states that; "No person who stands convicted of an offense under this part [21 U.S.C. 841 et.seq.] may-----challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction." 21 U.S.C. 851(e). However, with the exception of the limits set in 851(e), all prior predicates are subject to the categorical or modified approach-----with regards to statutory enhancements and a determination is reached as to whether the statutory enhancement is lawful or unlawful based on advanced principles uniformally established by trial and error in the Courts. See Descamps v. United States, 133 S.Ct. 2276 (2013); Mathis v. United States, 136 S.Ct. 2243 (2016). Also ----Moncrieffe 133 S.Ct. at 1684 ("a state offense is a categorical match with a generic federal offense only if a conviction of the state offense "necessarily involved...facts equating to [the] generic [federal offense].") Not to run afoul of the platform established, but as the Petitioner informed the District Court that; "by use of the 2255 vehicle Congress established that a prisoner may move the Court that imposed a sentence in violation of the Constitution or laws of the United States for relief. Yet 851(e) says otherwise. It conflicts with redress customarily allowed when implicated as a miscarriage of justice. It is a wrong to allow the Government to go back 30 years to dig up a prior predicate, then shield their far reaching, when regardless that by the law under the Controlled Substance Act (CSA), the predicate may now be found to be a misdemeanor offense. The honorable Gorsuch J., in Sessions v. Dimaya, No. 15-1498, gave a thurough rendition on the arbitrary enforcement of law and notable is the reference that he made to

A. Hamilton, thats found in the Federalist No. 78, at 466, warning that; "while liberty can have nothing to fear from the judiciary alone, it has everything to fear from the union of the judicial and legislative powers." Hand-in hand, the judiciary and that of the Congressional legislature have jointly enforced a federal statute that conflicts with the rudimentary concept of criminal justice, "[D]ue Process." Congress framing a law that judicially has no pertinent guidelines and delegating authority to administrators, prosecutors, juries and judges to make ad hoc decisions implicates "Union," of the two branches, where the law is upheld in the Courts, when it should otherwise be found to be a malady. See Kolender v. Lawson, 461 U.S. 352, 357-358 (1983) This was the claim that the District Court actually turned a blind eye. The Second claim in the Petitioner's 2255 motion, is encapsulated by the first, to the extent that it relates to how prior predicates are determined under the Petitioner's legal circumstances. Where the Petitioner was also sen tenced under 18 U.S.C. 924(e)'s, "Armed Career Criminal Act," (ACCA), he asserted the 1996 version of his conviction for "Possession with intent to distribute (Mo. Rev. Stat. 195.211(2) and (3) and the 1997 version of "Mere Possession," (Mo. Rev. Stat. 195.202) did not qualify as ACCA "serious drug offense," nor under 18 U.S.C. 851 as prior predicates. See Moncrieffe v. Holder, 569 U.S. 184, ("State offenses constitute felony punishable under the CSA, only if it proscribes conduct punishable as a felony under that federal law.") Also see Carachuri-Rosendo, 130 S.Ct. 2577 ("Our more focused categorical inquiry is whether the record of con viction of the predicate offense necessarily establishes conduct that the CSA, own it's own terms, makes punishable as a felony."). Adequate examination of the prior predicates mentioned above, evidences that the

Petitioner's sentence involving 18 U.S.C. 922(g) offense, is in exeess of the statutory maximum, inviolation of the Constitution and the laws of the United States of America. The third claim submitted by the Petitioner is also in congruence with the former---claims, yet, asserting that 18 U.S.C. 924(e)(2)(A)(ii) is unconstitutionally vague law, and that Congress left room for those provisions to be circumvented and sub ject to the preference of the judiciary, instead of placing emphasis on it's meaning. Citing Sessions v. Dimaya, No. 15-1498 ("vague laws invite arbitrary power... leaving the people in the dark about what the law demands and allowing prosecutors and the Courts to make it up.") (Justice Gorsuch concurring). The Petitioner's contentions turned to the very definition given in 924(e)(2)(A)(ii) which states; "As used in this subsection--(A) the term "serious drug offense" means--(i) an offense under the Controlled Substance Act (21 U.S.C. 801 et. seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et. seq.), or chapter 705 of title 46 [46 U.S.C.S. 70501 et. seq.], for which a maximum term of imprisonment of ten years or more is prescribed by law; or (ii) an offense under state law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law." Where the Courts have declined to enforce the plain reading of the provisions, opting to ignore the specifics given by Congress when directing; "as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law," the pro-

vision fails to make clear that such would be based on state legislature's definition of "serious drug offense," for it's attachment of lengthy penalties that carry a maximum term of imprisonment of ten years or more. Even when including; "an offense under state law, involving manufacturing, distributing or possessing with intent to manufacture or distribute a controlled substance," the provision in the next breah turns back to what is defined under federal law, which certainly includes specific drug quantities as elements of the offense in determining "for which a maximum term of ten years or more is prescribed by law." (federal law) The provision does not give people of common intelligence fair notice of what the law demands of them. See Connally v. General constr. Co, 269 U.S. 385 (1926); also see Collins v. Kentucky, 234 U.S. 634, 638 (1914). Congress handed the responsibility of defining 924(e)(2)(A)(ii), to judges and that argument must not be barred by a plea-waiver. Furthermore, Fed. Rule Crim. P. Rule 11(a)(2), "has no application" to the "kinds of constitutional objections" that may be raised under the Meanna-Blackledge doctrine. In any event, in the instant case, the 28 U.S.C. 2255 proceedings do not fall within the scope of the Government's plea waiver, procedural denial based on the waiver was in error, particularly where those claims pertained to an illegal sentence and doing so amounts to a miscarrige of justice. United States v. Broce, 488 U.S. 563 (1989). However, looking to the entirety of the Petitioner's legal representation when deciding to enter his plea of guilt which involved the plea waiver, counsel's errors must be considered to reaoh a finding regarding raising claims, not raised on appeal, the factors to consider is custumarily "cause and prejudice," See United States v. Frady, 456 U.S. 152 (1982) Bousley v. United States, 523 U.S.

614, 622 (1998) and when you examine counsel White Jr.'s affidavit,you find the bald statement that; "Now it seems as though Mr. Clark is saying that counsel should have objected to his underlying record as not substantiating, his being an armed career offender. While my belief is his understanding of that process differs from my own, and that he is not correct in his assessment of that record, I believe that the Probation Officer's calculations would have been accepted by the Court anyway." But the District Court record omits, what he based that belief on, nor does his affidavit state specifically "what makes the Petitioner an ACCA offender," by his assessment of the underlying record. The Petitioner was never informed by counsel regarding the status of his prior convictions, based on the precedent law, counsel has not shown that he was informed on the subject, he made no reference in the District Court adversarily as to their relevance, the subject is never broached by counsel in the Courtroom, nor did he make his client aware of how those prior convictions made him an ACCA offender. Guilty pleas must be voluntary, with their attendant waivers made knowingly, intelligently and with sufficient awareness of the relevant circumstances and likely consequences. United States v. Ruis, 536 U.S. 622 (2002). Also see Adams v. United States, 317 U.S. 269 (1942). ("Criminal defendants typically may waive their rights, as long as they do so voluntarily and with knowledge of the general nature and consequences of the waiver.); Hill v. Lockhart, 474 U.S. 52 (1995). ("Counsel must give objective advice before the presumption of effectiveness will be applied. Mr. White Jr.'s conduct at the minimum deprived the Petitioner the a-

wareness to make a choice based on the specifics of his legal circumstances, which allows for a finding in the District Court for his prior convictions to be substantiated as actually qualifying as ACCA offenses. Counsel's conduct failed to conform to the degree of skill, care, and diligence of a reasonably competent attorney. Strickland, 466 U.S. at 687. His infractions prevented the Petitioner from adversarily opposing or receiving a thurough evaluation on the use of his prior convictions as prior ACCA predicates. But for counsel's error, a determination is reached during the District Court proceedings, and counsel's claim that the Petitioner had no non frivolous claims on direct appeal would not have existed. Furthermore, the ACCA penalty is not implemented and if by law a finding was reached otherwise after those facts, it then could be said that "the Government's evidence was put to the test. Ineffective assistance of Counsel goes hand-in-hand, with why the plea waiver should not have been enforced by the District Court and the Appellate Court panel adopted a decision so out of line with normal judicial stan dard., that it can only be reconciled by the United States Supreme Court excercising it's supervisory power to instruct the Eighth Circuit Court of Appeals on the matter.

CONCLUSION

Because in conjunction with misapplication of a plea waiver, and Counsel's errors, guilty plea was not voluntary expression of the Petitioner's choice, nor done with sufficient awareness of the relevant legal circumstnaces, relief should be granted.

CERTIFICATE OF SERVICE

I, Jason L. Clark, duly certify that the aforementioned was sent United States pre-paid post to; The Clerk, Supreme Court of the United States, Washington, D.C. 20543

DECLARATION

I, Jason L. Clark duly swear under the penalty of perjury that the aforementioned is true and correct to the best of my knowledge and the laws of the United States of America. Sworn pursuant to 28 U.S.C. 17 46.

Respectfully Submitted

_____
Date

Jason L. Clark

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