No. 19-6225

IN THE

SUPREME COURT OF THE UNITED STATES

Marc Pierre Hall — PETITIONER - pro. se
(Your Name)

vs.

Warden Andrews — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S Court of Appeals 4th Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marc Pierre Hall # 11691-058
(Your Name)

POB 2000 USP Hazelton
(Address)

Bruceton Mills, WV. 26525
(City, State, Zip Code)

n/a.
(Phone Number)

Certified no. 70060100000692245293

Question(s) Presented

1. Petitioner respectfully requests the Supreme Court's Supervision of nonuniformed Circuit Courts regarding Statutory Interpretation and application of 28 USC 2255(e) Savings Clause for 28 USC 2241 writ of habeas corpus regarding fundamental errors and retroactive statutory Interpretive laws and whether Petitioner's case meets this Court's requirements.

2. Petitioner respectfully requests the Supreme Court's Supervision and Issue a (GRV - Grant, remand, vacate) to the district Court on the question of whether subject matter Jurisdiction was proper In light of United States v. Cotton, 535 US 625 (2002); Bailey v. United States, 516 US 137 (1995); Jones v. United States, 529 US 848 (2000), based on the records of trial.

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:

1. United States
2. U.S Attorney's office
3. U.S Appellate Judge Diane G. Motz (4th Circuit)

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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-B 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[✓] is unpublished.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 ______ 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[ ] is unpublished.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 May 20, 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: July 23, 2019, and a copy of the order denying rehearing appears at Appendix A.

[ ] 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

5th Amendment Due Process of Law - "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, Liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

STATEMENT OF THE CASE

Petitioner was convicted in Charlotte, NC by Jury (1995) on drug and related firearm charges, including statutory enhancement under 21 USC 860 school zones and 851. Petitioner was sentenced on April 23, 1996 to Life Count (1) drug conspiracy 21 USC 846; 60 months Count (10) 18 USC 924(c)(1); Count (11) Life 18 USC 924(c)(1) and 480 months Count (12) 18 USC 844(i) federal arson. Trial counsel John Boutwell timely challenged the indictment for error of Jurisdiction of Count (12) nonfederal offense. (Appx. G). The government proceeded on that indictment. (Appx. E). Jeopardy was secured. Our Bailey (1995 S.Ct) challenges were denied for Count (12) 844(i) arson charge. the district Court determined that Bailey did not apply to the arson statute. Upon conviction, the Jury did not determine substance type of Cocaine or cocaine base nor quantity under the school zone statute (Appx I) doubling penalty for 841 offenses. On direct appeal to the 4th Circuit Judges Butzner, Hall and D. Motz case no. 96-4365 affirmed 11/17/97, (Appx. D), by changing the evidence of trial of a government witness re: Count (12) arson nonfederal offense. In the 4th Circuit Appeals Court opinion, it stated that government witness Wesley Hunter testified that at the time of the firebombing (refering to the date of the offense as charged by the indictment of July 15, 1994; Appx. E, p.6); he was storing a Kilogram of cocaine and had a telephone at his residence that he used in furtherance of his drug business. (Appx. D, p.3, 2nd para, Lines 14-16). the government's witness did not testify to this evidence of "at the time of the firebombing". that effectively changed the conduct to meet the statute requirement. (Appx. F, Tr. Trns. excerpts government witness Wesley Hunter, pp. 162-178). Attorney James Gronquist was appointed to represent the direct appeal, who filed a brief and immediately withdrew prior to the appeal opinion decided. (Appx. H, DKT@ 19, 29, 35, 98, 100, 104, 108, 114). Upon the 4th Circuit's ruling, attorney Gronquist was sent a copy along with the U.S Attorney's office. Neither counsel for petitioner or the government moved to correct the appellate records, regarding the government witness testimony that structurally changed the case and denied fair trial. Because count (12) nonfederal offense was connected to count (1) drug activity as the reason for the arson regarding stolen drugs. Count (12) was connected to count (11) destructive device of molotov cocktales that arsoned the residence, and was displayed on the floor in trial before the Jury the entire trial.

Statement of The Case
(continued)

Further, numerous government witnesses testified as to count (12) activity from codefendants to expert witnesses of nearly (100) pages of (43%) page transcript, regarding the nonfederal offense. In (2000) the Supreme Court in Jones v. United States, 529 US 848 adopting Bailey v. United States (1995) 516 US 137 (active employment for 844(i) offenses), was not applied to this case as retroactive law and as preserved at trial under Bailey challenges (Appx. G), due to the falsified appellate records regarding count (12) activity and the private residence. All collateral appeals beginning (2001) on 2255 motion through numerous 2241 writ of habeas corpus to date, has been denied based on the falsified appellate records, that included this Court's initial certiorari review. Finally, on or about April 2017, Petitioner discovered the falsified records and requested the 4th Circuit to issue a FRAP 10(e) to correct the records. The Clerk of Court issued a rule 40(d). (Appx. J). Petitioner sought this action pursuant 28 USC 2241 and FRAP Rule 8(a)(c)(1) Injunction Pending appeal to correct records and retroactive Supreme Court law of Burrage v. United States, 517 US 204 (2014) for statutory drug enhancements, again the Jury did not determine quantity or substance for the school zone statutory enhancement. (Appx. I). The district court for Raleigh, NC. held that petitioner was not sentenced under 841(b). (Appx. C, p. 4, Lines 15-20); and denied to issue the writ and COA. The 4th Circuit Court of Appeals affirmed. (Appx. B). Petitioner sought Rehearing and Rehearing en banc that was denied July 23, 2019. (Appx. A). The case is once again before this Court to correct and supervise the 4th Circuit under fundamental error doctrine; retroactive Supreme Court law for statutory enhancements regarding 841(b) and 860 offenses of the same; and Circuit nonuniformity of 2255(e) and 2241 applicability. And whether this Court should revisit this case due to the initial certiorari was prejudiced by falsified appellate records and the affect on subject matter Jurisdiction below.

Reasons for Granting the Petition

1a. Circuit Courts nonuniformity; 28 USC 2255(e) statutory Interpretation; 28 USC 2241 fundamental errors; retroactive statutory Intepretive laws.

1a. the following Circuits are split on the issue of whether 28 USC 2255(e) savings clause is applicable to challenges to allegedly unlawful sentences or only to allegedly unlawful convictions. see Hill v. Masters, 836 f.3d 591, 596 (6th Cir. 2016)(concluding that the savings clause permits 2241 cases challenging fundamental sentencing errors, including sentences above a statutory maximum or mandatory guideline range); Brown v. Caraway, 719 f.3d 583, 588 (7th Cir. 2013)(same). (cf). McCarthan v. Dir. of Goodwill Industries Sun Coast Inc., 851 f.3d 1076, 1092 (11th Cir. 2017)(finding the savings clause applicable only to claims that are not cognizable or that cannot be remedied under 2255); In re Bradford, 600 f.3d 226, 230 (5th Cir. 2011)(finding the savings clause applicable only to claims of actual innocence).

The 4th Circuit has set forth the following test to determine whether 2255 is inadequate and ineffective to test the legality of a conviction: "- 2255 is inadequate and ineffective to test the legality of a conviction when: (1). at the time of the conviction, settled law of this Circuit or the Supreme Court established the legality of the conviction; (2). subsequent to the prisoner's direct appeal and first 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3). the prisoner cannot satisfy the gateKeeping provisions of 2255 because the new rule is not one of constitutional law. In re Jones, 226 f.3d at 333-34 (4th Cir. 2000) and if a section 2241 petition does not fall within this scope of 2255's savings clause, the district court must dismiss the "unauthorized habeas motion... for lack of Jurisdiction." Rice v. Rivera, 617 f.3d 802, 807 (4th Cir. 2010); United States v. Wheeler, 886 f.3d 415, 423 (4th Cir. 2018). Jones however addressed only when 2255 is inadequate and ineffective to test the legality of a conviction and did not expressly consider whether the savings clause could apply, to sentencing challenges or to fundamental errors in the appellate process that did not challenge neither conviction nor the sentence as in this case. In (2015) the 4th Circuit swung back around and aligned itself with Hill v. Masters, supra, and Brown v. Caraway, supra, in part. See United States v. Surratt, 797 F.3d 240, 244 (4th Cir. 2015) rehrg. en banc granted; (challenges to sentences in excess of a statutory maximum might be within the purview of the savings clause) Id. at 255-56. The 4th Circuit permitted 2255(e) savings clause in Miller v. United States, 735 F.3d 141, 145-46 (2013) (holding that Simmons announced a substantive rule retroactively applicable on collateral review).

Similarly, several Circuit Courts have held that section 2255 may be inadequate or ineffective in limited circumstances, including those involving certain "<u>fundamental statutory interpretation errors</u>". Specifically, Courts have agreed that a prisoner must demonstrate that 3 circumstances are present to establish that section 2255 is inadequate or ineffective in a particular case. See Reyes-Requena v. United States, 243 F.3d 893, 903-04 (5th Cir. 2001); Wofford v. Scott, 177 F.3d 1236, 1244 (11th Cir. 1999); In re Davenport, 147 F.3d at 609-612 (7th Cir. 1998); Triestman v. United States, 124 F.3d at 378-80 (2d Cir. 1997); In re Dorsainvil, 119 F.3d at 251-52 (3rd Cir. 1997). The 3 circumstances are similar to Jones, supra and Wheeler, supra.

In this case, the district court as affirmed by the 4th circuit held that though petitioner was not arguing his sentence or conviction (Appx. C, p.3, L.17), <u>that the conduct of which petitioner was convicted remains criminal and the saving clause does not help him</u>. (Appx. C, p.4, L. 12-13), citing conviction only law of In re Jones, 226 F.3d 328, 333-34, (4th Cir. 2000); Rice v. Rivera, 617 F.3d 802, 807 (4th Cir. 2010); and United States v. Wheeler, 886 F.3d 415, 423 (4th Cir. 2018) (Appx. C, p.4, L.4-7).

Reasons for Granting the Petition

The 4th Circuit decisions on which the lower courts relied did not suggest that a conviction for noncriminal conduct is the only fundamental error that would satisfy section 2255(e). The Courts in Jones, Rice v. Rivera, and Wheeler did not consider the availability of savings clause relief for any other type of challenge. Such as the appellate error discussed later, that challenged neither the conviction or sentence. The lower Courts erred in interpretating the savings clause to limit relief to situations in which the defendant's claim is that he was convicted for noncriminal conduct. See Illinois v. Lidster, 540 US 419, 424 (2004)("[G]eneral language in Judicial opinions [should be read] as referring in context to circumstances similar to the circumstances then before the court and not referring to quite different circumstances that the court was not considering."). Similarly, the Rice court, 617 F.3d 802 (4th Cir. 2010) stated that "section 2255 can be deemed inadequate or ineffective only if subsequent to the prisoner's ... first section 2255 motion, the substantive law has changed such that the conduct of which the prisoner was convicted is deemed not to be criminal." Id at 807 (quoting Jones, 226 F.3d at 333-34). Rice focussed on the "timing" of the change in the substantive law, not on whether the substantive change could pertain to fundamental error in the appellate process that did not challenge the sentence or conviction. Still these rulings conflict with the Hill v. Masters, 836 F.3d 591, 596 (6th Cir. 2016) (concluding that the savings clause permits 2241 cases challenging fundamental sentencing errors, including sentences above a ~~statutory~~ maximum or mandatory guideline range); Brown v. Caraway, 719 F.3d 583, 588 (7th Cir. 2013)(same). The Jones, Wheeler and Rice Courts seemed to realign themselves with the court in the 5th Circuit-In re Bradford, 600 F.3d 226, 230 (2011)(finding the savings clause applicable only to claims of actual innocence). In actuality, the

Reasons for Granting the Petition

4th Circuit has not addressed whether a fundamental error at the appellate stage may be applicable to the savings clause.

The savings clause's text, which permits resort to section 2241 where section 2255 is inadequate or ineffective to challenge the prisoner's "detention". 28 USC 2255(e) (supp. v. 2011) indicates that savings clause relief is not limited to collateral attacks on convictions. Other subsections of section 2255 expressly impose a conviction only limitation, which indicates that Congress did not intend the savings clause to be limited to conviction based claims. See 28 USC 2255(h)(i) (supp. v. 2011)(authorization by the appellate court to filing a second-successive 2255 motion for persuasive new evidence showing that the factfinder would not have found guilt of the offense). If Congress intended to restrict the savings clause to claims challenging only the "offense" or "the conviction", Congress would have used the words "offense" or "conviction" in the savings clause as it did in section 2255(h)(1). The lower courts erred in concluding that the savings clause does not permit petitioner to seek relief under 2241 purely because his challenge is not conviction based or based on a fundamental error in the appellate process in which significantly affects liberty interest, and is part of the "detention", that implicates due process. It therefore should extend to [ALL] critical stages of the "detention" process, encompassing the conviction, sentence and first direct appeal under finality. The question therefore should be asked what constitutes the "detention" under this statute's purview. The response should reflect the "critical stages" of the criminal process to finality that incorporates conviction, sentence and first direct appeal to which 2255(e) and 2241 application of fundamental errors applies. Because it is the Supreme Court's precedents in United States v. Fausto, 484 US 439 (1988)(holding that Courts must carry out the "classic Judicial task of reconciling many laws

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enacted over time, and getting them to "make sense" in combination".).

The Supreme Court is respectfully requested to supervise this statutory confusion regarding the savings clause application for fundamental errors regardless if the fundamental error occurred at the conviction, sentence or appeal level as these three makeup the criteria of "detention" and finality. This Court's precedents in Singleton v. Wulff, 428 US 106, 121, 49 Led2d 826, 96 S.Ct. 2868 (1976) (holds that Rules of practice and procedure are devised to promote the ends of Justice, not to defeat them. A rigid and undeviating Judically declared practice under which courts of review would invariably and under all circumstances decline to consider all questions which had not previously been specifically urged would be out of harmony with this policy). further, this Court held that the fundamental error doctrine declares that orderly rules of procedure do not require sacrifice of the rules of fundamental Justice. see Hormel v. Helvering, 312 US 552, 557, 61 S.Ct. 719, 721, 85 Led 1037 (1941).

The Rules of fundamental Justice has been sacrificed in this case and cases that rules of procedure are blocking access to the writ 2241 for fundamental errors in critical stages of the "detention process" of conviction sentence and direct appeal. which makeup "detention" finality. see Harris v. Nelson, 394 US 286, 291 (1969) (habeas corpus

Reasons for Granting the Petition

review affords.... Courts to cut through barriers and procedural rules).

This case establishes such fundamental errors below that qualify 2241 writ of habeas corpus through section 2255(e) savings clause. May the Supreme Court supervise and establish the correct statutory interpretation of 2255(e) savings clause and 2241 writ of habeas corpus for fundamental errors in the "detention"; and establish that "detention" for purposes of the savings clause includes the conviction, sentence and direct appeal process under finality. That rules of practice and procedure do not apply to such fundamental errors or statutory intepretive errors made retroactive on collateral review. May the Supreme Court test this case under such criteria and/or correct the case as deemed appropriate.

finally, Rules of practice and procedure has been the lower courts "tool" to put up barriers and block access to the Great Writ. This Court has not decided a rules of practice and procedure case it believed since Harris v. Nelson (1969), or not since the 20th Century. May the Supreme Court respectfully supervise the Circuits regarding Rules of practice and procedure for fundamental errors as requested above and duly test the following fundamental errors as follows.

REASONS FOR GRANTING THE PETITION

1b. Fundamental error in the appellate proceedings.

The Supreme Court has clearly established that Courts of appeals must decide appeals based on evidence adduced at trial. See Cole v. Arkansas, 92 Led 644 (1948); Presnell v. Georgia, 439 US 14 (1978).

The conflict with laws of the Supreme Court follows:

The records that were falsified by the 4th Circuit Court of appeals in the opinion of the Court, case no. 96-4365 dated November 17, 1997, (p.3, 2nd para., Lines 14-16) states:

> "He testified that at the time of the firebombing he was storing a Kilogram of cocaine and had a telephone at his residence that he used in furtherance of his drug business". Also supporting such with law on (p.4, 2nd thru 3rd para. passim) (Appx. D).

However, the trial transcripts testimony of government witness Wesley Hunter (tr. trns. pp. 162 - 178) (Appx. F) clearly shows that he did not testify to the statement in the opinion of the court as above. In fact, the trial transcripts clearly show that his conduct occurred and stopped in "April" of 1994. Some (4) months prior to the date of offense of July 15, 1994 as referred to by the appellate court opinion above. See (Tr. Trns. pp. 165; 173; 174; 177; 178 Appx F; also see Appx. G, tr. trns. pp. 319 of U.S attorney shappert; 323).

Upon requesting the 4th Circuit Court to correct the record by motion pursuant FRAP 10(e), the Clerk of Court denied issuing a local rule 40(d). (Appx. J).

This fundamental error in the appellate Court structurally changed the trial and denied fair trial under due process of law. Because in the trial court, Count (12) nonfederal offense only became a federal offense by the appellate court changing the evidence of trial. The dates of the witnesses testimony actually established the statutory jurisdiction of the district court pursuant 18 USC 844(i). The Supreme Court in

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Jones v. United States, 529 US 848 (2000) established that section 844(i) offenses are subject to Bailey v. United States, 516 US 137 (1995) ("Active Employment") in regards to private residences. When the appellate Court changed the testimony of government witness Wesley Hunter regarding the dates of his conduct of "April 1994" to "July 15, 1994", of storing a Kilogram of cocaine and using a telephone at his residence in furtherance of his drug business, (Appx D, p.3, para. 2, L. 14-16), the appellate court effectively changed the conduct of the offense from a nonfederal crime to a federal crime, to include changed the subject matter Jurisdiction of the district court as established by the Supreme Court in United States v. Cotton, 535 US 625, 630 (2002) (The Court held that Jurisdiction today means- "the courts 'statutory' or constitutional power to adjudicate a case...") (Citing Steel Co. v. Citizens for A Better Environment, 523 US 83 (1998)). The Cotton Court also held that (" defects in subject matter jurisdiction requires correction regardless of whether the error was raised in district court, ... and may be raised at anytime"). Further, this subject matter Jurisdictional fundamental error changed the framework of the case and was prejudicial structural error that denied fair trial under due process of law. Because Count (12) nonfederal offense was connected to:

Reasons for Granting The Petition

1). Count (1) stolen drugs as testified for reason of the arson; 2). Count (11) firebombs material that the government displayed on the floor of the court the entire trial; 3). Further, numerous expert and other witnesses testified to count (12) nonfederal offense of nearly (100) pages of trial transcripts of a (436) page transcript.

Additionally, count (12) nonfederal offense prejudiced the right to first appeal and the appellate court's fabricated records caused preclusion of claim on direct appeal, the initial certiorari and over (23) collateral appeals that adopted the appellate record over a course of nearly (25) years! See Smith v. Murray, 477 US 527, 538 (1986) (defining "objective impediments" for issuance of writ of habeas corpus); Harris v. Nelson, 394 US 286, 291 (1969) (habeas corpus review affords federal courts the "ability to cut through barriers of form and procedural rules").

In light of these facts, whether this subject matter Jurisdictional fundamental error triggers section 2255(e) savings clause for an actual innocence claim and warrants this Courts supervision for issuance of a (GRV)-Grant, remand and vacate for Jurisdictional hearings below.

Reasons for Granting the Petition

1C. Fundamental Error of Retroactive Statutory Interpretive Law

The 4th Circuit is in conflict with the Supreme Court's decision in Burrage v. United States, 517 US 204 (2014), regarding the retroactive laws applicable to statutory enhancements, citing Tucker v. United States, 889 F.3d 881, 884-85 (7th Cir. 2018); United States v. Sica, 676 Fed. Appx. 81, 86-87 (2d Cir. Jan. 24, 2017) (unpub.) cert. den., 138 S. Ct. 181 (2017); Borjas-Hernandez v. United States, No. 3:12-8368, 2014 WL 1572803 at *14 (S.D. W. Va April 17, 2014) (unpub.) (Appx. C, p. 4, Lines 15-20); for the position that Burrage is restricted to 841(b) offenses. This is incorrect. Because Burrage applies to fundamental error in both the conviction and sentence for lesser and Greater statutory enhancement offenses.

The Burrage Court offered a new way to think about drug conspiracy offenses involving [aggravating elements] "that enhances a defendant's sentence". Id. Burrage is retroactive statutory interpretive law. See Harrington v. Ormond, 900 F.3d 246 (6th Cir. 2018); Santillana v. Upton, 846 F.3d 779 (5th Cir. 2017); Krieger v. United States, 842 F.3d 490, 499-500

(7th Cir. 2016); and for purposes for motions under 2255(e) for 2241, it makes no difference that the Supreme Court itself has not held that Burrage applies retroactively. The ruling requiring retroactivity to be determined by the Supreme Court comes from Tyler v. Cain, 533 US 656, 121 S.Ct. 2478, 150 Led 2d 632 (2001), a case that interpreted the statute's limitation under 2244(b)(2) on second or successive petitions brought by state prisoners under 2254. Id. at 661-62. Further, the Supreme Court holds that decisions that ("narrow the scope of a criminal statute by interpreting its terms", apply retroactively to cases on collateral review). See Schriro v. Summerlin, 542 US 348, 351, 124 S.Ct. 2519, 159 Led 2d 442 (2004) (Citing Bousley v. United States, 523 US 614, 620-21, 118 S.Ct. 1604, 140 Led 2d 828 (1998).

The 4th Circuit held that petitioner was not sentenced to section 841(b), (Appx A-C; C-p.4, L.15-20), to Justify denial of Burrages applicability.

First, a look at the Jury verdict for how the petitioner was convicted for [aggravating elements] has to be determined. See United States v. Richards, 2014 US Dist. Lexis 165874 (8th Cir. 2019) (Citing Burrage, and applying Apprendi to facts that establish a statutory enhancement that increased both the minimum and maximum sentences). Also see United States v. Robinson, 732 Fed. Appx. 405 (6th Cir. 2018) (whether enhancements were statutory or

Reasons for Granting the Petition

Guideline for purposes of Burrage). Here looking at the Jury verdict, (Appx. I, p. 435, Lines 14-21), was ambiguous as to the [aggravating elements] of quantity and substance (cocaine or cocaine base). Though the verdict did decide schoolzones a 21 USC 860 Greater offense.

Second, the 841(b) is a lesser offense of 860. see United States v. Freyre-Lazaro, 3 F.3d 1496 (1993 11th Cir). Even the double-Jeopardy laws in reference only, hold that section 860 is the greater offense of 841(b). see United States v. Fraizer, 89 F.3d 1501, 1504-05 (11th Cir. 1996); United States v. Fenton, 367 F.3d 14, 24 (1st Cir. 2004); United States v. Carpenter, 422 F.3d 738, 747 (8th Cir. 2005); United States v. Jackson, 443 F.3d 293, 301 (3d Cir. 2006). The statute itself refers the court back to 841(b) to determine the underlying statutory sentence or penalty, and then instructs the court to "double the penalty". see 21 USC 860. there is no way to determine the 860 statutory enhancement or greater offense penalty if 841(b) is not utilized.

Third, because of the Jury verdict ambiguity as to the [aggravating elements] of substance type (cocaine or cocaine base) and quantity, petitioner was subjected to fundamental error under Burrage. The petitioner's sentence should have been corrected under the savings clause 2255(e) permitting the 2241 writ

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under the catch all provision of section 841(c)(5 yrs to 40 yrs) of 5 grams of crack or 280 grams of cocaine, the statutory trigger under retroactivity of law. That penalty provision would then be subject to the school zone Greater offense enhancements of double the penalty of the catch all provision, resulting in a 10 year statutory school zone penalty or sentence on count (1). [1]

This "legal error" is a "fundamental defect" redressable under the savings clause. See Dority v. Roy, 131 S.Ct. 3023 (No. 10-8286) and the imposition of an erroneous mandatory minimum sentence is likewise a "fundamental error" without authority of Congress. See Chapman v. United States, 500 US 453, 465 (1991)(Sentencing Court may impose any sentence that has been authorized by statute). Also, the imposition of a mandatory minimum sentence based on "legal error" significantly affects petitioner's liberty interest in a way that implicates due process. The resulting sentence outside of this Courts decision in Burrage, represents an unjustified loss of liberty and per se préjudice. See Hicks v. Oklahoma, 447 US 343, 346-47 (1980)(The Court held that a similar error under state law violated due process).

Footnote [1]: Petitioner was sentenced to Life on count (1). He has served nearly 25 years under fundamental error. Without anyway to redress his Burrage claim due to practice and procedural rules that sacrafice fundamental Justice. Hormel, supra.

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finally, what further qualifies Burrage, which the lower courts are inconsistent with, is that petitioner meets the three circumstances required for 2255(e) savings clause for issuance of 2241 Writ of habeas corpus, as follows: i). That at the time of petitioner's sentence, the statute section 841(b)(1) ~~et~~ seq. was being applied differently by the 4th Circuit to include at time of direct appeal and initial 2255 in (2001). Second, in 2255(h) petitioner must show that he cannot qualify a second or successive motion 2255. Ibid. This is met as well. Because 2255(h) provides two qualifying criteria. (i). a prima facie showing that the petitioner relies on a new retroactive rule of constitutional law or (ii). on new factual evidence of actual innocence. (28 USC 2255h, supp. V. 2011). The record clearly shows petitioner's initial 2255 was adjudicated in (2001), and that Burrage is neither a rule of constitutional law or new factual evidence of actual innocence. So, petitioner qualifies in this area also. finally, petitioner must show a "fundamental error" in the criminal process. Above, clearly shows that the courts below used the wrong standard of the "lesser and Greater offenses" for [aggravating elements]. Which satisfies the third prong of "fundamental error".

The Supreme Court is respectfully requested to supervise this grave miscarriage of Justice, that involves "fundamental error" of statutory interpretation and application of this Court's laws.

Petitioner respectfully request a (GRV) - Grant, remand and vacate to issue to the district court to correct count (i) under Burrage. This would afford due process of law, guide the circuits as to Burrage's applicability to "conviction and sentence" fundamental errors and the applicability of the savings clause 2255(e) and issuance of the great writ 2241.

May the Court instruct the district court that count (i) should be corrected under the catch all provision 841(c) statutory trigger and apply section 860 school zones statutory enhancement to reflect a corrected sentence of 10 years under the statute for Count (i), in light of the evidence of verdict ambiguity of aggravated elements pursuant this Court's holding in Burrage.

Reasons for Granting The Petition

1d. fundamental Error; Right To first Appeal; Due process

F.R. Crim. P 44(a) holds that an indigent defendant is entitled to appointed counsel from initial appearance through appeal. See Martinez v. Court of Appeal, 528 US 152, 160 (2000) (The 6th amendment does not include any right to appeal. As we have recognized [t]he right to appeal, as we presently know it in criminal cases is purely a creature of statute. Any right to counsel in an appeal must be grounded in the equal protection and due process clauses).

On or about May 29, 1996, Attorney James E. Gronquist was appointed to represent the direct appeal in this case. (Appx. H, p.4, DKT@7). Attorney Gronquist finally files petitioner's brief after numerous extensions and a misfiling on or about November 13, 1996. (Appx. H, p.5, DKT@35). Before the Court ruled, Attorney Gronquist files motion to withdraw as counsel. (Appx. H, p.6, DKT@98). Petitioner objects informing the court that he is entitled to counsel on direct appeal and that no counsel would be present. (Appx. H, p.6, DKT@100; p.7 DKT@104). On November 7, 1997, the 4th Circuit Court of appeals granted

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Counsel's motion to withdraw from appeal prior to its ruling without reappointing counsel. (Appx. H, p.7, DKt@ 108). See this Court's precedents in Penson v. Ohio, 488 US 75, 85 (1988) (Court erred in denying indigent defendant representation during appeal as of right after counsel withdrew, because defendant lacked representation during decision making process); United States v. Cronic, 466 US 648, 659 n.25 (1984) ("The Court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding."); Mickens v. Taylor, 535 US 162, 166 (2002) (prejudiced presumed when assistance of counsel "denied entirely or during a critical stage of the proceeding").

The appellant was entitled upon the Court withdrawing counsel prior to the decision rendered on November 17, 1997 (Appx. H, p.7, DKt@ 114), to have counsel of choice or reappointed for the decision making process. See Powell v. Alabama, 287 US 45, 53 (1932) ("[A] defendant should be afforded a fair opportunity to secure counsel of his own choice"); United States v. Gonzalez-Lopez, 126 S.Ct. 2557, 2563 (2006) (right to choose counsel violation even if erroneously appointed counsel was effective because

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Choice and quality of representation are distinct rights); Pa. v. Finley, 481 US 551, 554 (1987)(right to appointed counsel applies to first appeal of right); Penson v. Ohio, supra. Further, actual or constructive denial of counsel presumed to result in prejudice. Strickland v. Washington, 466 US 668, 692 (1984).

This "fundamental error" by the 4th Circuit Court of appeals permitted the Court's "structual and fundamental error" of changing the evidence of trial and falsified records to go uncorrected that precluded claim of Jurisdictional nexus challenges; Right to first Appeal denied; and the unreasonable determination of the facts, fair trial and any actual innocence claim for the nonfederal offense. Because by the Court of appeals changing the dates of the government's witness conduct from "April 1994" to "July 15, 1994, it effectively changed the subject matter Jurisdiction of the court making the nonfederal offense federal, in violation of due process of law. Because this Court's decisions in Jones v. United States, 529 US 848 (2000) adopting Bailey v. United States, 516 US 137 (1995) ("Active employment") criteria for 18 USC 844(i) offenses of private residences, stood as a nonfederal crime on the true records of trial for actual innocence, and subject matter Jurisdictional error, pursuant United States v. Cotton, supra.

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Further, the "fundamental error" of attorney Gronquist pursuant to Strickland's performance clause for Ineffective Assistance of Counsel (IAC).

First, Attorney Gronquist failed to inform the appellate court as to appellant's right to have counsel reappointed or counsel of choice for the decision making process, due to being withdrawn prior to ruling, or to inform his client of such. (Appx. H, p. 6, DKt@ 98), (Appx. H., p. 7, DKt@ 108). See Penson v. Ohio, 488 US 75, 85 (1988)(Court erred in denying indigent defendant representation during appeal as of right after counsel withdrew, because defendant lacked representation during decision making process). See Strickland v. Washington, 466 US at 690 (court must "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance"). Counsel of appeal therefore abandoned his duty to protect appellant's liberty interests, at a critical stage of the criminal process, or proceeding. See Mickens v. Taylor, 535 US 162, 166 (2002)(prejudiced presumed when assistance of counsel denied entirely or during a critical stage of the proceedings); Cronic, 466 US 648, 659 n.25 (1984) ("The Court has uniformly found constitutional error without any showing of prejudice when counsel was either

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totally absent, or prevented from assisting the accused during a critical stage of the proceeding.").

Second, attorney Gronquist upon being informed by the 4th Circuit Court of appeals with a copy of the opinion, counsel failed to take available remedies to correct the records that defeated his own challenges to the Jurisdictional nexus of the nonfederal offense. Counsel did not utilize FRAP 10(e); or recall of mandate or requested reappointment for correction of falsified records in which the court changed the government's witness testimony of trial. When this Court's precedents was clearly established on the issue, See Cole v. Arkansas, 92 Led 644 (1948); Presnell v. Georgia, 439 US 14 (1978)(holding that Courts of appeal must decide appeals based on evidence adduced at trial). That resulted in an unreliable or fundamentally unfair outcome in the proceeding; appeal affirmed without counsel and based on falsified records. See Strickland, 466 US at 687. That also precluded claim of Jurisdiction; was an unreasonable determination of the facts of trial; denied fair trial because count (12) nonfederal offense was connected to: (a). Count (1) stolen drugs as testified for reason of the arson to the private residence; (b). Count (11) firebombs material that the government displayed on the floor of the court the entire trial prejudicing the Jury with nonfederal offense evidence; (C) numerous expert and other witnesses testified to count (12) nonfederal offense of nearly (100) pages of trial transcripts of a (436) page transcript, in front of the Jury; in violation of due process of law for fair trial. Strickland, 466 US at 687 (Counsel's deficient performance prejudiced the defendant resulting in an unreliable or "fundamentally unfair" outcome in the proceedings).

Had counsel pointed the error(s) out to the Court or his client appellant, timely challenges to the Court using the trial transcripts (Appx. F, G, pp. 162-178; 319, 320; 323) supported as evidence adduced at trial that the appeal record was erroneous, extrinsic to the trial records and prejudicial, and affected initial certiorari.

As a result, the appellant Hall has been denied over (25) collateral appeals who adopted the erroneous records of the appellate court for nearly (25) years!

The Supreme Court is respectfully requested to supervise and declare this type of "fundamental error" or error(s) are cognizable on 2241 through the 2255(e) savings clause for Ineffective Assistance of counsel and fundamental errors of the appellate court.

finally, the Supreme Court is respectfully

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to determine the subject matter Jurisdiction in the courts below based on the true records of the trial transcipts. (Appx. F, G passim). And in light of the true record, is subject matter Jurisdiction affected in accord with this Court's precedents in United States v. Cotton, supra. regarding the statutory or constitutional power to adjudicate the case; and whether this type of subject matter Jurisdiction violation or error, may be raised at anytime, through the "Fundamental error" Jurisdiction of 2255(e) savings clause for 2241 Great Writ.

May the Court supervise these fundamental errors and statutory confusion between the Circuits.

Respectfully Submitted,
this day 9/16/19

CONCLUSION

This case represents erroneous ~~statutory~~ interpretation and conflict between the circuits regarding 2255(e) savings clause for fundamental errors. It also represents a conflict of this Court's precedents in the 4th circuit and a fundamental miscarriage of justice.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 9/16/19