

No. _____

19-6485

IN THE
SUPREME COURT OF THE UNITED STATES

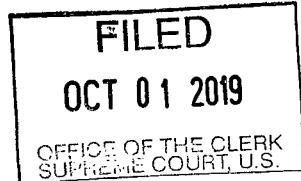
~~ORIGINAL
PETITION~~

Ryan Van Stevenson -- PETITIONER

VS.

United States Of America - RESPONDENT

ON A PETITION FOR A WRIT OF CERTIORARI TO



UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ryan Van Stevenson, Pro-Se

Reg. No. 18204-040

Federal Correctional Institution Elkton

PO Box 10

Lisbon, OH 44432

QUESTION(S) PRESENTED

1. Did the Court abuse it's discretion when it enforced an appellate waiver on an issue that was outside the scope of the appellate waiver's provisions?
2. Did the improper application of a sentencing enhancement without the presentation of any extrinsic evidence, and without proof by a preponderance of the evidence, violate Due Process?

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:

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Stern V. Marchall, 564 US 462	6
Romero v. International Terminal Operating Co, 358 US 354	6
United States v. Thom, 668 F.3d 374	6
United States v. Stevenson, 659 Fed. Appx. 221 (6th Cir.)	6
United States v. Caruthers, 458 F.3d 459 (6th Cir.)	7
United States v. Bowman, 634 F.3d 357 (6th Cir.)	7

STATUTES AND RULES

28 U.S.C. § 2253
28 U.S.C. § 2255

OTHER

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APPENDIX A - Opinion of the US Court of Appeals for the Sixth Circuit
(Denying COA Request)

APPENDIX B - Opinion of the US District Court for the Western District of MI
(Granted in part, Denied in part, COA Denied)

APPENDIX C - Petition for a Certificate of Appealability (Brief)

APPENDIX D - Petition for Rehearing (Brief)

APPENDIX E - Order Denying Rehearing

APPENDIX F - Prior Opinion of the Sixth Circuit (RE: Appellate Waiver)

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,
 is unpublished.

The opinion of the United States district court appears at Appendix B 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 _____.

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: 07/15/2019, and a copy of the order denying rehearing appears at Appendix E.

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

United States Constitution - Sixth Amendment: DUE PROCESS OF LAW
28 U.S.C. § 2253 - Certificate of Appealability

STATEMENT OF THE CASE

Stevenson filed a Motion under 28 U.S.C. §2255 that was granted in part and denied in part. At his resentencing, he preserved the issue for which he intended to request a COA. That issue was the improper application of an enhancement for a pattern of abuse that did not exist; and the application without due process of law. It was not supported by any extrinsic evidence, and did not meet the threshold for proof by a preponderance of the evidence. In fact, it was blindly and arbitrarily applied based on the Government's bald accusations and the failure of defense counsel to raise issue as directed by Stevenson.

The COA was denied not on it's merits, but instead an appellate waiver was enforced. The problem here is that the appellate waiver's scope did not include the constitutional due process claim that Stevenson raised and was therefore erroneous.

Due to the fact the appellate waiver did not apply, a fair jurist would have determined that further proceedings were in order, which is the standard to grant a COA. Then the appellate court could have properly addressed the merits of the due process claim.

The application of a 5 level enhancement without any evidence creates a higher than appropriate guidelines range and likely results in Stevenson spending an amount of time in prison than is greater than necessary. This violates his substantial rights.

REASONS FOR GRANTING THE PETITION

1. The US Court of Appeals for the Sixth Circuit applied an appellate waiver in error and to the detriment of the Petitioner's COA request.
2. The US District Court for the Western District of Michigan applied an enhancement without any evidence and certainly without meeting the standard of proof (by a preponderance of the evidence).
3. These issues not only violate the Constitutional principles of Due Process and fairness; but they also call into question judicial integrity. Indeed, allowing such errors to go uncorrected at the expense of a person's liberty would rightly make one question the judicial machinery itself.

Petitioner makes a claim that his due process rights were violated. As such, it is the express jurisdiction of the United States Supreme Court to address the claim. While public rights may be assigned to a non article III court for resolution, core private rights are only subject to adjudication in article III courts. Stern v. Marchall, 564 US 462.

A District Court is an inferior court to the United States Supreme Court. The District Court is a tribunal created by congress under Article 1, Section 8, Clause 9 of the United States Constitution and is therefore not an Article III court. Romero v. International Terminal Operating Co, 358 US 354.

Here, the Sixth Circuit Court of Appeals went against their own precedent and the law of the case when it indiscriminantly enforced an appellate waiver that did not cover the claim raised. The Sixth Circuit "enforce[s] appellate waivers according to their terms." United States v. Thom, 668 F.3d 374, 377-78 (6th Cir. 2012).

In the present case, the Sixth Circuit Court of Appeals states "he retained the right to appeal a sentence that exceeds the statutory maximum of the count of conviction or is based upon an unconstitutional factor" and the right to appeal "those objections preserved at sentencing that the court incorrectly determined the final guideline range." United States v. Stevenson, 659 Fed. Appx. 221, 227.

The Sixth Circuit Court of Appeals concurrence by Judge Merritt then continues to specifically recognize an enumerated appellate waiver exception where "the plea agreement allows the defendant to appeal any sentence that is 'unconstitutional'." Id.

This waiver is not ambiguous in that it specifically excludes claims based on an unconstitutional factor, such as the violation of due process as claimed here. But, even if the language were considered ambiguous, "plea agreements are to be

interpereted strictly, with ambiguities construed against the government." United States v. Caruthers, 458 F.3d 459, 470 (6th Cir.)

For further clarification, the Sixth Circuit "[applies] a contra-proverntem-like rule that ambiguities must be resolved against the government." See United States v. Bowman, 634 F.3d 357, 360-61 (6th Cir. 2011). Here, when we consider the term "unconstitutional factor" the lack of a definition could render it ambiguous. But, the ordinary dictionary definition of the term factor clearly shows a plain and ordinary meaning.

It is important to note that the resentencing memorandum in the District Court specifically indicated that a COA would be sought. The issue was preserved because defense informed the court that they believed the pattern enhancement was artificially raising the final guideline range. In addition, the enhancement was applied without due process. As such, the issue at hand actually meets both the enumerated exceptions to Stevenson's appellate waiver. So, why did the Sixth Circuit go against it's own precedent, interperetations, and the law of the case when it indescriminantly enforced the appellate waiver in denying the COA?

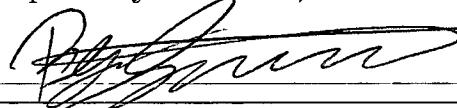
While Petitioner provides a compelling argument in regard to the violation of due process, those details can be found in Appendix C. Thus, Petitioner simply wishes for his case to be remanded to the Sixth Circuit Court of Appeals for the issuance of a Certificate of Appealability on the issue. The merits of the claims speak for themselves, and should certainly be considered without barring them based on an appellate waiver when the claims are outside the scope of that waiver.

For these reasons, Petitioner feels that his petition should be granted and he should be awarded any relief to which he may be entitled. Thank you.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 10/1/19