19-6775

NO._____

ORIGINAL

_____

IN THE SUPREME COURT OF THE UNITED STATES

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JAMES MARIONE BUTCHEE #217364, PETITIONER

VS.

U.S DISTRICT COURT FOR THE DISTRICT OF NORTH DAKOTA-FARGO/

UNITED STATES OF AMERICA EIGHTH CIRCUIT APPEALS, RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO:

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner: JAMES MARIONE BUTCHEE

Address: M.C.F; 1000 Lake Shore Drive Moose Lake, MN 55767

Phone: N/A

QUESTIONS PRESENTED

- The Federal Minimum Mandatory sentence for Career offender clause [21 USC 841(b)] is at question in this petition, Do having one violent felony and one Controlled substance conviction qualify citizens to be a career offender knowing that the felonies are five years apart?

- Did the Court give Mr. Butchee a upward departure base of misrepresentation of the Career offender clause, which give an example of how the career offender clause is to be use, Is the Federal and States misinterpreting the (or) that is in the career offender clause?

- Do the (or) between the words violent offense "and" controlled substance meant to bring these crimes together to form a career offender out of Citizens?

- Did the Federal Judge, prosecutor and assistance attorney miscalculate Mr. Butchee offense level base off misinterpretation of the career offender clause?

- Did Mr. Butchee attorney show evidence of ineffective counsel by not telling Mr. Butchee that he does not qualify as a career offender base off his criminal history 2255 relief?

Are the Federal and States prosecutors misinterpreting the career offense clause by using the word "or" to combine two felonies such as one violent crime and one controlled substance to form a career offender in Mr. Butchee case?

RELATED CASES

UNITED STATES v. Mills, 375 F. 3d 2004; UNITED STATES v. Mau, 958 F. 234, 236 (8th Cir. 1992); U.S v. Gray, 581 F. 3d 749 (8th Cir. 2009); Beane v. U.S. 589 F. Appx. 805 8th Cir.2014,

Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); U.S. v. Davidson, 437, F.3d 737 8th Cir. 2006; U.S v. Lewis 609 F. Appx 890 (8th Cir. 2015); **United States v. Lewis, 477 Fed. Appx. 79 (4th Cir.2012)**

U.S v. Lynch, 477 F. 3d 993 (8th Cir 2007)

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. List of all parties to the proceeding in the court whose judgment is the subject of this petition is as follow:

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

OPINIONS BLOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petitioner and is:

[X] Reported at UNITED STATES v. James Marione Butchee No. 18-3498 Aug.2019

[ ] Has been designated for publication but not yet reported; or

[X] Is Unpublished.

The opinion of the UNITED STATES district court appears at Appendix B to the petitioner and is:

[ ] reported at

[X] Has been designated for publication is not yet reported; or

[ ] unpublished

JURISDICTION

[X] for cases from Federal courts:

The date on which the United States Court of Appeals decided my case was August 22, 2019

[X] No petition for rehearing was timely filed in my case.

The Jurisdiction of this court is court under 28 U.S.C.S 1257

18 U.S.C.S. Appx. 4B1.1CAREER OFFENDER

Federal law also allow for a sentencing enhancement as a career offender if the present offense is a felony that is either a crime of violence (for example carjacking) or a controlled substance offense (for example, possession of a controlled substance with intent to distribute) and the defendant has at least two prior violent he can get the enhancement with his current violent charge (or) if the defendant has two prior distribute conviction then his third conviction can get he an enhancement.

In this clause there is an example that should how the career offender clause is to be use: If the present offense is for possession of five or more grams of meth with intent to distribute, and the defendant has two prior drug distribution convictions, his sentencing range would likely be 262-327 months or 21 to 27 years in federal prison.

(a) A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of convict is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony conviction of either a crime of violence or a controlled substance offense.

Under this statutory clause a defendant need two prior convictions of the same offenses to qualify as a career offender meaning two crimes of violent (or) 2 controlled substance, same or similar in this case defendant have one of each 1 violent and 1 controlled substance he do not qualify as career offender with 5 year time period in between each conviction.

STATEMENT OF THE CASE

2017 Petitioner was charged with Conspiracy to possess with the intent to distribute a Controlled substance. Petitioner enter into a plea deal for 138 months believing that he was a career offender Minnesota case 27-cr-14-33880 pursuant to 5G1.3, 18 USC 3584 and USC 3553.

In 2017 Petitioner was coercer into a plea deal by his appointed attorney who did not tell Petitioner that he was not a career offender, by allowing Petitioner believe that he is a career offender and could face more prison time if he goes to trial. It was his lawyer job to check the federal prosecutor plea deal to make sure that Petitioner was getting the best deal.

Petitioner is not challenging the plea deal he just challenging if he was a career offender, which the federal prosecutor use to give Petitioner an upward departure. Do so may have miscalculated Petitioner offense level, because the federal prosecutor are misinterpreting Career offender clause. By think that one violent and one controlled substance equal a career offense.
If this is truth then Petitioner offense level would be 26 accordance to; U. S v. Lynch, 447 F. 3d 993 (8th Cir. 2007); and this a 2255 ineffective counsel issue. But 2255 is not the augment, but counsel should have caught this matter United State v. Lewis, 477 Fed. Appx. 79 (2012).

Petitioner understand that he agree to the plea deal the question Petitioner is asking, were he a career offender at the time of the plea deal? And did he deserve the prison time of a career offender if he do not qualify as a career offender base off his criminal history.

REASON FOR GRANTING THE PETITION

The petitioner pleads guilty to Conspiracy to distribute a controlled substance even when he knew that the prosecutor had no evidence to support their claim.

Petitioner plead to the chargers because he was told that he could not win at trial by his appointed attorney Stormy Vickers whom convince the petitioner that he was a career offender at the request of the federal prosecutor order.

Mr. Vickers knew the petitioner criminal history as well as the federal prosecutor both knew that petitioner criminal history did not have; two prior convictions for Controlled substance, in his criminal history to qualify him as a career offender.

Instead the appointed attorney and the federal prosecutor use one violent of domestic abuse conviction and one 5th degree possession of marijuana to qualify the petitioner as a career offender United States v. Lewis, 477 Fed. Appx. 79 2012.

Due to this misinformation petitioner offense level was rise to 32 which is should have been starting at an offense level of 20 with a 6 point enhancement. With subtracting 3 points for petitioner owning up to the crime petitioner point should have been 23 which would place the petitioner at a Category V.

This would have made the petitioner prison time 84-105 months, and not 138 months due to this misinformation on behalf of the federal prosecutor and the appointed attorney. The petitioner receives an upward departure due to miscalculation of his offense level.

The Reason this petition should be granted is because of injustice of the laws is happening base on misinterpretation of States statutes worldwide. The prosecutors of this Country are getting away with misstating the statutes to win conviction and that is the case in petitioner petition.

This question was asked in the appeal to the eight circuits and that responded with no answer to this question. Does the petitioner qualify as a career offender base off his criminal history? 18 USCS Appx. 4B1.1 Career offender

By laws and statutes a petitioner must start at a criminal history points VI (13 or more). By petitioner criminal history points he do not have two prior controlled substance convictions meaning that he do not qualify as a career offender.

Petitioner criminal history points should have start at Criminal history Category V with an offense level 20 to 23 prison time to be 63-78 or 84-105, **U.S v. Lynch, 447 F.3d 998 (8th Cir. 2007)**.

This misinterpretation cause a miscalculation of petitioner prison time causing an upward departure due to ineffective of counsel 2255, and ineffective of counsel is the root of the problem, but it is not the main issue in this petition; United State v. Lewis, 447 Fed. Appex. 79 2012

CONCLUSION

The Petitioner in this petition is not asking to the court to overlook the plea deal, the issue is was the plea deal fair knowing that the federal prosecutor and the federal state lawyer misstated the career offense act to hand out upward departure to petitioner.

We ask that the court look at Petitioner criminal history points and see if petitioner qualify as a criminal offender and do his criminal history points qualify the petitioner to fit in criminal history category VI.

The petitioner is asking the court if the Federal prosecutor and the federal state public defender is quoting the career offender clause correctly, because it stated that petitioner needed two prior convictions of controlled substance to qualify for career offender; United States v. Mills, 375 F. 3d 2004; United States, Mau, 958 F. 234, 236 (8th Cir. 1992); U.S v. Grey, 581 F. 3d 749 (8th Cir. 2009); Beane V. U.S 589 F. Appex.805 (8th Cir. 2014.

Petitioner understand that he made a plea deal to the chargers under pressure from his federal appointed lawyer who advisory him that he was a career offender and petitioner know that he was not a career offender.

Evidence in transcripts show evidence of conspiracy to false imprisonment of many citizens with these three friends against a stranger court system, where the federal appointed public defender were there only to help the federal prosecutor win a plea deal.

The petition for writ of certiorari should be granted is to misinterpretation of the statutes career offender in order to hand an upward departure.

Respectfully submitted, James Burtchaé

Date: 11/17/2014