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19-6798

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

COREY EUGENE GILL — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

COREY EUGENE GILL

(Your Name) **REG. NO. 11587-112**
U.S. PENITENTIARY
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LEAVENWORTH, KS 66048

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ORIGINAL

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Aug. 22, 2019)

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§ 4B1.2(a)
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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 A to the petition and is

reported at No. 18-35315; 2019 U.S. App. LEXIS 25244
[] 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[] is unpublished.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 2018 U.S. Dist. LEXIS 28928; 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[] is unpublished.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[] is unpublished.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[] is unpublished.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 Aug. 22, 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

THE LOWER COURTS ERRED IN DENYING PETITIONER'S § 2255(f)(3) UNDER MATHIS v. UNITED STATES, 136 S.Ct. 2243 (2016), BECAUSE MATHIS IS A SUBSTANTIVE RULING THAT APPLIES RETROACTIVELY IN **INITIAL 28 U.S.C. § 2255 AND 28 U.S.C. § 2241**; AND BECAUSE HIS PRIOR NEVADA CONVICTION CAN NO LONGER BE HELD A CRIME OF VIOLENCE UNDER MATHIS. THUS, THE LOWER COURTS ERRED IN FINDING THAT PETITIONER'S 28 U.S.C. § 2255(f)(3) WAS UNTIMELY FILED, AND THIS HONORABLE COURT SHOULD THEREFORE GRANT A "CERTIFICATE OF APPEALABILITY."

QUESTION(S) PRESENTED

[1] WHETHER THE LOWER COURTS ERRED IN HOLDING THAT THE DECISION OF THIS HONORABLE COURT IN MATHIS v. UNITED STATES, 136 S.Ct. 2243 (2016), COULD NOT BE LITIGATED FOR THE FIRST TIME ON A 28 U.S.C. § 2255(f)(3) MOTION.

STATEMENT OF THE CASE

On May 10, 2011, Petitioner pleaded guilty to seven counts of bank robbery in violation of 18 U.S.C. § 2113(a).

UNITED STATES v. CORY EUGENE GILL, No. CR11-77-RAJ, Dkt.

Nos. 5-6, 2011 U.S. Dist. LEXIS 160651 (W.D. Wash. May 10, 2011). During sentencing, the Court determined that Petitioner qualified as a career offender under § 4B1.1 of the 2010 United States Sentencing Guidelines ("U.S.S.G.") because his bank robbery convictions and his two previous bank robbery convictions were "crime of violence," a term defined by U.S.S.G. § 4B1.2(a). Based on this determination, the Court found that the appropriate sentencing guideline range was 151 to 188 months.

GILL, Case No. CR11-77-RAJ, Dkt. No. 14 at 3-5. The Court sentenced Petitioner to three concurrent terms of 50 months to be served consecutively with a 108-month sentence previously imposed by the Northern District of Texas for a bank robbery in Irving, Texas, which amounted to an effective prison term of 158 months. GILL, Case No. CR11-77-RAJ, Dkt. # 14 at 30.

On June 15, 2016, Petitioner filed a § 2255 petition challenging the Court's determination that he qualified as a career offender under § 4B1.1. Petitioner's Motion was based on the holding of JOHNSON v. UNITED STATES, 135 S.Ct. 2551, 192 L.Ed. 2d 569 (2015) ("JOHNSON II"). In JOHNSON II, this Honorable Court held that imposing an increased sentence under the residual clause of the Armed Career Criminal Act ("ACCA")

violated the Constitution's guarantee of due process. *Id.* Petitioner was sentenced under the residual clause of U.S.S.G. § 4B1.2(a), which the Court found was identical to the residual clause under ACCA. GILL, CV16-933RAJ, Dkt. #14 at 3.

On February 7, 2017, the Honorable District Court had granted Petitioner's Motion, finding that Petitioner was erroneously sentenced as a career offender. Nevertheless, shortly after the Court's Order, the Supreme Court decided BECKLES v. UNITED STATES, 137 S.Ct. 886, 197 L.Ed.2d 145 (2017). In BECKLES, the Supreme Court held that the U.S.S.G., including § 4B1.2(a)'s residual clause, are not subject to vagueness challenges under the Constitution's due process clause. *Id.* The Government filed a stipulated motion requesting that the Court consider its February 7, 2017 Order. On March 17, 2017, the Court vacated its prior Order in light of BECKLES, and granted Petitioner's request to withdraw his original § 2255 petition. *Id.* Dkt. #17.

On May 10, 2017, Petitioner filed his instant § 2255 under MATHIS v. UNITED STATES, 136 S.Ct. 2243 (2016), after the Court had GRANTED Petitioner's request to withdraw his original § 2255 Petition when the Court vacated its February 7, 2017 Order in light of BECKLES. Thus, Petitioner filed his initial Motion under 28 U.S.C. § 2255(f)(3).

Nevertheless, the District Court held that Petitioner's Motion was not timely filed as MATHIS had not established a new rule of constitutional law. However, the District

ERRED and this Application for a Certificate of Appealability. follows:

REASONS FOR GRANTING THE PETITION

[1] WHETHER THE LOWER COURTS ERRED IN HOLDING THAT THE DECISION OF THIS HONORABLE COURT IN MATHIS v. UNITED STATES, 136 S.Ct. 2243 (2016), COULD NOT BE LITIGATED FOR THE FIRST TIME ON A 28 U.S.C. § 2255 (f) (3) MOTION.

In Petitioner's § 2255(f)(3), he argued that in light of MATHIS, his enhanced sentence pursuant to U.S.S.G. § 4B1.2(a), that was based on his NEVADA ROBBERY Conviction, was no longer a crime of violence. However, the District Court concluded that MATHIS, had "not established a new rule of constitutional law" and thus could not be used in a 28 U.S.C. § 2255(f)(3) Motion. As such, this was an ERROR.

In HOLT v. UNITED STATES, 843 F.3d 720 (7th Cir. 2016), a case that has been misinterpreted by many lower courts, held that although petitioner could not proceed with a Second or Successive § 2255(h)(2) under MATHIS, because MATHIS was not a "new rule of constitutional law," he could nevertheless proceed with a § 2241.

Furthermore, the SEVENTH CIRCUIT held in HOLT'S that while his case was pending with them, they had held in UNITED STATES v. HANEY, 840 F.3d 472 (7th Cir. 2016), that the version of the Illinois burglary statute under which he had been convicted was indeed not a "violent felony," because it

did not satisfy the definition of "burglary" used in MATHIS for indivisible statutes.

Hence, the SEVENTH CIRCUIT held that the development of MATHIS and HANEY led the parties in HOLT to file supplemental briefs on the question whether MATHIS and HANEY applied **RETROACTIVELY** on collateral review under 28 U.S.C. § 2255. THE UNITED STATES GOVERNMENT [CONCEDED] THAT THEY DID, because such substantive decisions such as MATHIS presumptively applied **RETROACTIVELY** on collateral review. See, HOLT, 843 F.3d at 721-722 (quoting DAVIS v. UNITED STATES, 417 U.S. 333, 94 S.Ct. 2298, 41 L.Ed.2d 109 (1974)); MONTGOMERY v. LOUISIANA, 136 S.Ct. 718, 193 L.Ed.2d 599 (2016).

Therefore, Petitioner's argument deserves close scrutiny based on the fact that he is actually innocent of his Career Offender Status, and because this argument is indeed "DEBATABLE AMONG JURISTS OF REASON."

CONCLUSION

WHEREFORE, this petition for a writ of certiorari should be GRANTED.

Respectfully submitted,


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