

NO.: 19-7624

IN THE SUPREME COURT OF THE UNITED STATES

JEROME SHAW-PETITIONER

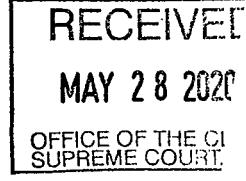
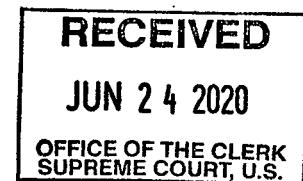
vs.

UNITED STATES OF AMERICA-RESPONDENT(S)

PETITION FOR THE REHEARING UNDER RULE 44 AND RULE 39

ON THE DENIAL OF A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR SECOND CIRCUIT
DOCKET NO.: 18-1598-CR

Jerome Shaw, pro se petitioner
Reg. No. 77940-054
United States Penitentiary Canaan
P.O. Box 300
Waymart, PA 18472.



SUPREME COURT OF THE UNITED STATES

JEROME SHAW,

Petitioner, ..

vs.

No.: 19-7624

UNITED STATES,

Respondent.

PETITION FOR THE REHEARING OF THE DENIED WRIT OF CERTIORARI

UNDER RULE 44 AND RULE 39

Pro se petitioner "Jerome Shaw" hereby proceeding in forma pauperis under Rule 39 and petitioning for the Rehearing under Rule 44 while he is currently incarcerated at USP Canaan respectfully files his petition seeking for the Rehearing of his denial Writ of Certiorari dated on 03 / 23 / 2020 in this Court.

As required by this Court to file this petition within 25 days after a Writ of Certiorari petition was denied, petitioner faced serious difficulty and extraordinary circumstance caused by Covid-19 pandemic lockdown at this facility for weeks and months where all inmates were remained in their cells and remained in their unit to prevent outbreak of such virus and transmission. As of today, the USP Canaan released its inmates to access the law library and typewriter to prepare some legal works. Hereby, petitioner Shaw had his opportunity to prepare this petition after 25 days expired.

Hereby petitioner asks this Court to revisit and conduct its Rehearing of this case number 19-7624 which he based on intervening circumstances of controlling effect and substantial ground not previously presented as the follows:

THE DUE PROCESS CLAUSE IMPOSED BY 5th AMENDMENT OF U.S CONSTITUTION WAS PREJUDICIALLY DEPRIVED BY THE U.S DISTRICT COURT WHEN IT WITHDREW THE PREVIOUSLY-CREDITED POINTS FOR ACCEPTANCE OF RESPONSIBILITY AS THE COURT AGREED AND GRANTED IT AT ITS PLEA HEARING.

SUPPORTING FACTS:

1. Shaw pled guilty to the four-count indictment with a Pimental letter that calculated a Guidelines range of 100 to 125 months. Both the Government and the PSR granted Shaw a 3-level credit for acceptance of responsibility. The Probation Department recommended a sentence of 120 months based on final offense level of 27 and a Criminal History Category of V under USSG §3E1.1(a) and §3E1.1(b), which finally the Probation Department calculated Shaw's Guideline imprisonment range as 120 to 150 months, and recommended 120 months term of imprisonment to be imposed upon Shaw.
2. Prior to sentencing, the Government requested that an above-Guidelines sentence be imposed as the PSR calculated and recommended. After the U.S District Court conducted its Fatico hearing, which Shaw never agreed and wished to withdraw his objection to the PSR and proceed immediately to sentence; however, the trial court withdrew Shaw's 3 Guideline points for acceptance of responsibility, because "We ended up having a full day hearing with live testimony in which Shaw disputed most of the burglaries," the U.S District Court judge said.
3. The government agreed, but Shaw's counsel objected that decision and reminded the U.S District Court that Shaw had not asked for a Fatico hearing and that he admitted committing all the crimes with which he was

charged. Subsequently, the trial court raised Shaw's offense level to 30 which it recalculated sentencing range was 151 to 188 months. At the sentencing hearing, it imposed 180 months term of imprisonment upon Shaw in reckless disregard of the term Shaw, PSR, and Government agreed upon and the Court itself granted it at its plea hearing.

II

INTERVENING CIRCUMSTANCES OF FATICO HEARING-CONTROLLING EFFECT

The Fatico Hearing was never agreed and requested by Shaw's Counsel instead his counsel asked the U.S District Court to immediately sentence as the Court offered Shaw such option before the Fatico Hearing initiated and simultaneously Shaw withdrew his objection to the PSR.

The Fatico Hearing was conducted by the Court's decision itself and revealed all prior burglaries listed in the PSR which were already calculated by the probation officer came up with Offense Level 27 of Category V suggested 100-125 months term of imprisonment. That's the acceptance of responsibility of 3 points downward of offense level was included and agreed upon by all parties (Shaw, PSR Officer, and Government) as well as the U.S District Court itself during the plea hearing.

However after the Fatico Hearing was conducted, the U.S District Court removed the 3 points for acceptance of responsibility out of the PSR's recommendation by saying that: "We ended up having a full day hearing with live testimony in which Shaw disputed most of the burglaries." Therefore, the controlling effect of 3 points for acceptance of responsibility adding to the original offense level 27 of category V Guidelines range 100-125 months increased to the offense level 30 of Category V Guidelines Range 151-188 months.

Because of Fatico Hearing triggered the U.S District Court's decision to remove the 3 points for acceptance of responsibility out and add it up to the Offense Level 27 due to "We ended up having a full day hearing with live testimony..."

Because of Fatico Hearing, the U.S District Court rejected the PSR calculated a 2-level reduction for acceptance of responsibility, pursuant to USSG § 3E1.1(a), and an additional 1-level reduction, pursuant to USSG § 3E1.1(b) because Shaw gave timely notice that he intended to plead guilty, culminating in an offense level of 27, the same level that had been calculated in the Pimental letter. The Shaw's Guideline imprisonment range as 120 to 150 months, and recommended 120 months' imprisonment.

Acknowledging the defense objection to a Fatico hearing, the trial court offered Shaw the option of taking an immediate 20-year sentence without the hearing or proceeding to a Fatico Hearing. Under those conditions, defense counsel agreed to proceed an immediate 20-year sentence without the Fatico hearing. But the trial ignored Shaw's choice; however, the Fatico hearing proceeded and ended up with offense level 30 in category V Guideline range 151-188 months.

After Fatico Hearing was concluded, the U.S District Court imposed 180 months term of imprisonment upon Shaw greater than all parties expected and agreed upon a 120 month term of imprisonment recommended by the PSR officer. Thus, a direct and proximate result from the U.S District Court's Fatico hearing, Shaw suffers 60 months term more than he deserved and agreed upon at the original plea recommended by the PSR Officer.

Because of Fatico hearing as a controlling effect in this case caused by the trial court ignoring Shaw's decision to proceed without it, the U.S District Court applied USSG Guidelines Range 151-188 months instead of USSG Guidelines Range 100-125 months in Category V same. Therefore, the trial court's "Fatico" hearing changed the Guidelines range prejudicially inflicted upon Shaw in a reckless disregard of his request to proceed without it and in a violation of the "Due Process-Sentencing Clause" imposed by 5th Amendment toward the "Cruel and Unusual Punishment" Clause strictly prohibited by 8th Amendment of U.S Constitution.

CONCLUSION

Wherefore, based on the above mentioned controlling effect caused by the trial court's Fatico hearing prejudicially inflicted upon Petitioner Jerome Shaw, hereby petitioner asks this Supreme Court of the United States to revisit his petition for a Writ of Certiorari and to take its reconsideration of the controlling effect as allegedly stated above in the interest of justice where the foundation of this country is the rule of law.

Respectfully executed and submitted on 05/14/2020



JEROME SHAW, pro se petitioner
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CERTIFICATION

I am Jerome Shaw "pro se petitioner" hereby certifying that I presented all facts relating to the controlling effect of Fatico hearing prejudicially inflicted upon me and I am asking this Court for its reconsideration to revisit this case and determine the circumstances of controlling effect as allegedly stated in this petition under Rule 44 and Rule 39 is in my "good faith and for not delay intent". Respectfully I executed this certification under § 1746 penalty of perjury that all facts and statement made by my is true and correct.

Respectfully executed on 05/14/2020



Jerome Shaw, pro se petitioner
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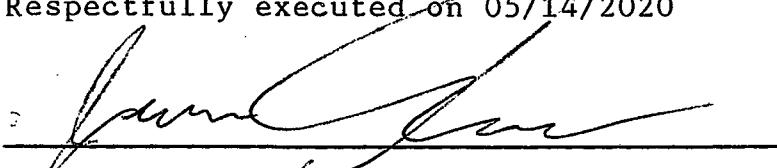
CERTIFICATE OF SERVICE

I am Jerome Shaw "Petitioner" hereby certifying that before
5:00pm as of today date 05/17/2020, I placed my true and correct copies
of my Petition Under Rule 44 and Rule 39 in the properly addressed
envelope with duly prepaid postage affixed on it and mailed to:

SUPREME COURT OF THE UNITED STATES
1 First Street, N.E.
Washington, DC 20543

I am Jerome Shaw verifying that the statement made by me in
this Certificate of Service is true and correct under § 1746.

Respectfully executed on 05/14/2020



JEROME SHAW, PRO SE PETITIONER
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APPENDIX-G

COPY OF THE SECOND CIRCUIT COURT's DENIAL OPINION DECIDED ON 10/31/19.