

No. 19-7965

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Cedric Edney — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

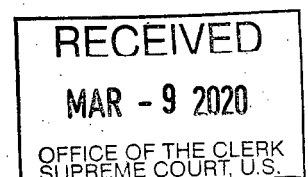
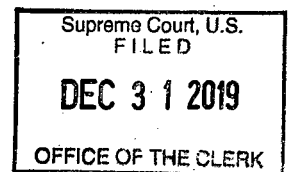
PETITION FOR WRIT OF CERTIORARI

Cedric Edney
(Your Name)

P.O. Box 9000
(Address)

Seagoville, Texas 75159-9000
(City, State, Zip Code)

N/A - Federal Prison
(Phone Number)



QUESTION(S) PRESENTED

Did the Fifth Circuit Err in deciding as an issue of first impression, that Texas offenses of Distribution of controlled substances and possession with intent to distribute a controlled substance can serve as predicate controlled substance offenses pursuant to U.S.S.G. Section 4B1.2(B). which stands in stark contrast with decisions of this Court, informing the proper applications of the categorical approach described in *Taylor v. United States*, 495 U.S. 575(1990). And modified categorical approach clarified in *Mathis v. United States*, 136 S.Ct. 2243 (2016).

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)

Petitioner, Cedric Edney was the defendant in United States District Court for the Northern District of Texas, Case No. 3:14-cr-366-N(01). And appellant in United States Court of Appeals for the Fifth Circuit in USCA Case No.: 18-11498.

(2)

Respondent, United States of America was the named respondent in the United States District Court for the Northern District of Texas and Appellee in the United States Court of Appeals for the Fifth Circuit in Case No.: 18-11498.

RELATED CASES

Petitioner Cedric Edney, A Federal Prisoner Proceeding Pro Se, filed a 28 U.S.C. Section §2255 Motion To Vacate, Set Aside, or Correct Sentence Based on United States v. Hinkle, 832 F.3d 568 (5th Cir. 2016) and United States v. Tanksley 845 F.3d 347 (5th Cir. 2017).

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APPENDIX A	Final Judgment of the United States Court of Appeals for Fifth Circuit Affirming the District Courts Judgement - Date - 9-3-19
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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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STATUTES AND RULES

21 U.S.C. Sect. 841(A)(1)
18 U.S.C. Sect. 922(G)(1)
18 U.S.C. Sect. 924(R)(2)
28 U.S.C. Sect. 1254

OTHER

Texas Health and Safety Code Sect. 481.112(A)

U.S.S.G. Provision:

Sect. 4B1.1

Sect. 4B1.2

JURISDICTION

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 9-3-2019.

☒ 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: N/A, 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 January (date) on 13-2020 (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 N/A.
A copy of that decision appears at Appendix .

☐ A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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 _____ 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 _____ N/A _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ N/A _____ 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.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Sentencing Guidelines

U.S.S.G. Section 4B1.1 Career Offender

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 conviction 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 convictions of either a crime of violence or a controlled substance offense.

<u>Offense Statutory Maximum</u>	<u>-----Offense Level</u>
(1)Life-----	37
(2)25 Yrs or more-----	34
(3)20 Yrs or more but less than 25 yrs-----	32
(4)15 Yrs or more but less than 20 yrs-----	29
(5)10 Yrs or more but less than 15 yrs-----	24
(6)5 Yrs or more but less than 10 yrs-----	17
(7)More than 1 Yr but less than 5 yrs-----	12

STATEMENT OF THE CASE

In the presentencing Report Prepared by the United States Probation Officer Prior to Petitioner sentencing. Petitioner was deemed a career offender within the meaning of U.S.S.G. section 4B1.1. Based in Part on Petitioner's Prior Convictions for felony offense of possession with intent to deliver cocaine pursuant to section 481.112(A) of the Texas Health and Safety Code. On December 14, 2015, Petitioner was sentenced to 60 months imprisonment as to drug count and 120 months as to the gun count to run consecutively. Petitioner career offender enhanced sentence was affirmed by the Fifth Circuit, after it had ruled that prior Texas delivery convictions no longer qualify under the Federal Controlled Substance Act, because it is broader than substance Act. In Texas, for example, delivery includes an offer to sell. Tanksley, 845 F.3d 347 (5th Cir. 2016).

REASONS FOR GRANTING THE PETITION

Petitioner Asserts and maintains the fact, that this Fifth Circuit relying on the reasoning in Mathis v. United States, 136 S. Ct. 2243(2016) and it's own decision in United States v. Hinkles, 832 F.3d 569(5th Cir. 2016). This Fifth Circuit Court of Appeals decided in United States v. Dantana Tanksley, 15-11078(5th Cir. 1/18/2017) that Tanksley's prior conviction for possession with intent to deliver a controlled substance pursuant to section 481.112(A) did not qualify as a controlled substance for enhancement purposes under U.S.S.G. Section 4B1.1 and accordingly vacated Tanksley's sentence and remanded the case for resentencing.

Accordingly, and based on the supreme Courts reasoning in Mathis and the Holding in Tanksley, Petitioner Prior convictions for possession with intent to deliver does not qualify as a controlled substance offense under U.S.S.G. section 4B1.1 and 4B1.2 and should not have been used to enhance petitioner to career offender status and increased his total offense level and sentence. Therefore Petitioner prays that this highly Honorable Court will grant this petition and correct this egregious error by the Appeals Court.

In concluding, as was made plain by the Supreme Court in Taylor, A Court must use the categorical approach for sentence enhancement, so that it can determine the nature of a prior conviction by examining the stature under which the conviction was attained. See Taylor v. United States, 110 S. Ct. 2143. See also Shepard v. United States. 1255 S. Ct. 1254. Accordingly, petitioner will maintain this one true fact concerning this case, which is the fact that the Fifth Circuit Court and the District Court fell under the categorical approach for sentence enhancements. The Fifth Circuit and the District Court never made an inquiry or any effort to determine the nature of petitioners prior convictions by examining the status under which the convictions was attained. See Taylor v. United States, 110 S. Ct. 2143(1990) also, Shepard v. United States, 125 S. Ct. 1254(2005). For the reasons stated above this Court should GRANT the petition to correct the Fifth Circuits misapplication of this Court precedent and it's own precedent in this matter.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Cedric Edney *Cedric Edney*

Date: 2-27-2020