

19-8235

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

JUSTIN K. EATON

— 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 EIGHTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JUSTIN K EATON

(Your Name)

MEDICAL CENTER FOR FEDERAL PRISONERS  
P.O. BOX 4000

(Address)

SPRINGFIELD, MO 65801

(City, State, Zip Code)

NOT APPLICABLE

(Phone Number)

FILED

FEB 06 2020

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SUPREME COURT, U.S.

Eaton was convicted of distribution of child pornography based on F.B.I. agents downloading files from his computer without his knowledge. Amendment 801 to U.S.S.G. §2G2.2 makes clear that knowledge is required and his enhancement is infirm. Eaton's §3582 petition was dismissed without addressing his Constitutional claims to the failure to make 801 retroactive.

Questions Presented

- (1). Since the Sentencing Commission is to serve a similar function to interpreting guidelines as this Court does in interpreting statutes under Braxton v U.S., 500 US 344 (1991) must its interpretations be given retroactive effect as well?
- (2). Do Dillon v U.S., 562 US 817 (2010) and Beckles v U.S., 197 LED 2d 145 (2017) allow a §3582 petitioner to raise constitutional challenges to the decision to make or not to make an amendment retroactive?

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In The  
United States Supreme Court  
Petition For Writ Of Certiorari

Opinions Below

The 8th Circuit's denial of reduction under 18 U.S.C. §3582(c) in case number 19-1798, is included at Appendix A to this petition. It is unknown if the case has been published or not.

The Western District Of Missouri's denial of the §3582(c) petition is included at Appendix B, and appears to be unpublished.

Jurisdiction

The 8th Circuit Court Of Appeals decided this case on 12/23/2019. No petition for rehearing was filed.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Statutory Provision

18 U.S.C. §3582(c) **Modification of a term of imprisonment.** The Court may not modify a term of imprisonment once it has been imposed except that -- (2) in the case of a defendant who has been sentenced to a term of imprisonment that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. §994(o)... the court may reduce the term of imprisonment after considering the factors set forth in section 3553(a) to the extent that they are applicable if such reduction is consistent with applicable policy statements issued by the Sentencing Commission.

### Statements Of The Case

Justin Eaton was originally arrested by Clay County for possession of child pornography. Prison was deemed inappropriate and Eaton was instead sentenced to probation. For 18 months, Eaton successfully complied with his probation, including exemplary compliance with his sex offender therapy.

On December 16, 2014, federal authorities indicted Eaton for conduct relating to the same offense he had been charged with in the state. Because he used a peer-to-peer sharing program in obtaining the pornography, F.B.I. agents had been able to obtain it from him without his knowledge. Under precedent at the time, this qualified as distribution. Having already pled to the state offense, Eaton had little choice but to plea.

Originally, the plea called for a range of 120-144 months. However, at sentencing, the judge decided to depart upwards from the agreed range to 168 months. The only reason given for this was that the Government "had more experience with these types of cases". Given that the Government wanted a lesser sentence, however, this factor makes no sense.

Eaton timely appealed, but was denied. A subsequent §2255 motion challenging the distribution enhancement was likewise denied.

After his proceeding concluded, the Sentencing Commission passed Amendment 801, altering the child pornography guidelines to include a requirement of knowledge for distribution enhancements. Though the amendment was not made retroactive, Eaton filed a motion under 18 U.S.C. §3582(c)(2) arguing that Constitutional considerations required making it retroactive, even in the absence of the explicit action of the Commission.

Without addressing the underlying Constitutional issues, the Western District dismissed the suit, as the Sentencing Commission had not made the Amendment retroactive. Eaton appealed.

### Reasons To Grant The Writ

I. Since the Sentencing Commission is to serve the same capacity in interpreting guidelines as the Supreme Court does with statutes, its decisions should have similar retroactive effect.

In Braxton v U.S., 500 US 344, 348 (1991), this Court explained its general "hands-off" policy to interpretation of the Guidelines by noting that Congress had generally left this task to the Sentencing Commission. Where the Supreme Court would resolve Circuit splits on the meaning of statutes, the Commission would perform a similar function with the Guidelines.

When this Court interprets a statute, it is not issuing a new rule of law. Rather, it is merely stating, or discovering, what the law has always meant. As such, statutory interpretation cases are generally retroactive, Rivers v Roadway Express, Inc, 511 US 298, 32-13 (1994). If the Sentencing Commission plays a similar role, then it would seem to indicate that the Commission's rulings would be retroactive as well.

While such clarifying amendments may not be common, they have great significance to those who would be affected by them. Here, the clarification of §2G2.2 by Amendment 801 would require the Government to show Eaton knowingly distributed. Below, the Government acknowledged that, under the new understanding of §2G2.2, Eaton probably wouldn't receive the 5 point enhancement. (The parties dispute whether he would get the 2 point enhancement.) This leaves us either with an offense level 32, with a range of 135-168 months, or an offense level 30, with a range of 108-135 months.

The consequences of deprivation of liberty can be far more severe than those in which the entire charge is vacated. In Bailey v U.S., 516 US 317 (1995) for instance, the dismissal of the charge for use of a firearm led to the vacation of a 60 month sentence.

In Toviave v U.S., 761 F3d 623 (2014) the 6th Circuit likewise dismissed a case as not falling under federal authority as per Bond v U.S., 189 LED 2d 1 (2014) leading to the vacation of the conviction.

Here, the increase of 20-80 months based on the incorrect understanding of what constituted distribution significantly disadvantaged Eaton to an extent equal or greater to sentences for entire substantive crimes. And, but for this understanding, Eaton would likely have pled out to the lesser crime of possession.

The ease of correcting enhancements of this sort speaks in favor of applying the same rule to the Sentencing Commission as to the Courts. When the defendant has a sentence which is based on a fact later held to be false, there is no societal interest in permitting it to stand. The sentence should not rest on such a basis.

Montgomery v Louisiana, 193 Led 2d 599, 617 (2016) As this Court recently acknowledged, forcing a man to spend years in jail on an error that is so simple to correct does not advance the cause of justice. Rather, it diminishes confidence in the system, Rosales-Mireles v U.S., 201 Led 2d 376, 388 (2018).

The lower Court never addressed this. It remains unresolved and worth of this Court's review.

II. Constitutional claims should be able to be raised in the §3582 proceedings as a result of Dillon, Peugh, and Beckles.

In Dillon v U.S., 562 US 817 (2010), this Court addressed a claim that leaving U.S.S.G. §1B1.10 mandatory violated the 6th Amendment, as interpreted by U.S. v Booker, 543 US 220 (2005). Though the defendant lost, it is telling that no one even suggested he could not bring the claim. All parties seemed to accept that the challenge was appropriate.

Three years later, the Court granted that the *ex post facto* clause had force in the advisory guidelines, Peugh v U.S., 186 LED 2d 84 (2013). Then in 2017, in Beckles v U.S., 197 LED 2d 145, this Court heard a vagueness challenge to the career offender guidelines. Though the defendant lost, the Court acknowledged that Constitutional challenges, even due process claims, could be raised regarding application of the Guidelines, at 155-56.

The ability to raise constitutional challenges, and to address deficiencies in the §3582 process - perceived or real - would seem to logically imply that a petitioner can raise an attack to the refusal of the Commission to make a clarifying amendment retroactive. If the failure to do so would raise Constitutional questions, that decision should be worthy of review.

Amendment 801 addresses a constitutional problem with U.S.S.G. §2G2.2. Though this Court has held that a conviction for transportation or distribution of child pornography requires a scienter, see U.S. v X-Citement Video, Inc, 513 US 64, 69-70 (1994) many Circuits had been using §2G2.2 to evade this requirement. Now, under Amendment 801, Courts may no longer rely on the use of peer-to-peer programs to establish distribution; they must show that the defendant knowingly engaged with another person.

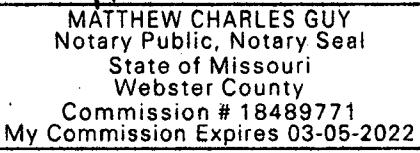
In the average case where this enhancement was applied, this will not be the case. The police or FBI, as here, will have accessed the defendant's computer without his knowledge. The record will adequately reflect this, as, even in the absence of specific findings, the reliance on the use of peer-to-peer software will usually signify that no other evidence existed in the record, while the ease of resolving these claims will not overly burden the courts, the savings from the reductions in sentences will be sizeable. And the human cost is worth noting as well.

Using the "discretionary" guidelines to achieve an end constitutionally forbidden when applying the statute itself diminishes the public perception of the integrity of the courts, as it appears courts are deliberately circumventing the constitution. The correcting of these practices is a step in the right direction, but for the thousands who have had their sentences unconstitutionally enhanced it is not enough. Were it because of a statutory issue, they would be entitled to relief. Because it is a guideline, they are not.

Such arbitrary distinctions may make sense to judges and lawyers, but to average people they do not. This legal nicety will be lost on them, Gamble v U.S., 204 LED 2d 332, 365 (2019). Review is warrented to see if Constitutional questions can demand retroactive application under §1131.10.

### Conclusion

For the reasons listed within, Certiorari should be granted.



Respectfully submitted,

this 1 day of April, 2019,



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