

No. _____

19-8385

IN THE

SUPREME COURT OF THE UNITED STATES

TERM OF 2019 - 2020

ORIGINAL

ENRIQUE LOPEZ QUINTERO, — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA, — RESPONDENT(S)
OFFICE OF THE CLERK
SUPREME COURT, U.S.

FILED

MAR 31 2020

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

Enrique Lopez Quintero

(Your Name)

Federal Correctional Institution

(Address)

3600 Guard Road, Lompoc, CA 93436

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

1. Is a sentence imposed pursuant to a Type-C agreement, Fed. R. Crim. P. 11(c)(1)(C), is based on the defendant's United States Sentencing Guidelines range if the district court judge used that range as part of the framework to relied on in imposing the sentence or accepting the plea agreement?
2. If yes; Is a defendant who enters into a Fed. R. Crim. P. 11(c)(1)(C) plea agreement eligible for a sentence reduction under 18 U.S.C. §3582(c)(2) motion in the district court, if there is a later, retroactive amendment to the relevant Sentencing Guidelines range, even if the defendant is a career non-violent offender as this Court held in *Hughes v. United States*, 138 S.C. 1765, 201 L.Ed.2d 72 (2018)?

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:

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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 _____; 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 is unpublished.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 B to the petition and is

reported at U.S.A. v. Quintero, 2019 U.S. Dist. Lexis 1928; 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 is unpublished.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 March 10, 2020.

[] 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

STATEMENT OF THE CASE

Petitioner plead guilty pursuant to a Rule 11(c)(1)(C) agreement to drug charges in two cases amounting to a total of 89.9 grams of methamphetamine, and agreed that his Guideline Sentence calculation would be determined under the amount of drugs sold and the applicable Guidelines range pursuant to §2D1.1 of the U.S. Sentencing Guidelines (USSG).

After the Supreme Court handed down Hughes v. United States, 138 S.Ct. 1765, 201 L.Ed. 2d 72 (2018), Petitioner filed in the District Court a motion to reduce his sentence under 18 U.S.C. §3582(c)(2), based on the similarity of his case as in Hughes. Appx. E.

In its response, the Government failed to mention the impact of Hughes to Petitioner's case, relying only on Ninth Circuit Court's decisions overruled by Hughes, supra. The District Court also failed to weight the impact Hughes decision caused to Petitioner's case, and subsequently denied Petitioner's §3582(c)(2) motion for a reduction of sentence even though Amendment 782 of the USSG having been retroactively applicable. Appx. D.

Petitioner appealed to the Ninth Circuit. The Ninth Circuit Court set briefings and on April 8, 2019, Petitioner mailed his appellant's opening brief relying in Hughes and other Ninth Circuit Court cases that court had entertained in similar cases as Petitioner with prior drug convictions considered to be career offenders as Hughes's case mirroring Petitioner's circumstances. Appx. C. Subsequently, the Government respond in opposition and Petitioner, on August 31, 2019 filed his reply brief in the Ninth Circuit. Appx. B.

On a non-public memorandum, on March 10, 2020, a three judge panel of the Ninth Circuit Court of Appeals affirming the district court's decision denied Petitioner's appeal without evaluating neither of Petitioner's arguments based on Hughes's decision and the other Ninth Circuit Court previously decided by that court in similar cases as his, Hughes's and other non-violent drug cases deemed to be career offenders as Petitioner. Appx. A.

It should be noticed, however, neither the Government in its opposition alleged or mentioned the impact that the Supreme Court case in Hughes, supra, would make to Petitioner case or why, if his case would not apply to Petitioner's circumstances "mirroring" Hughes case as a defendant deemed to be a non-violent drug career offender. Subsequently, despite the fact that Petitioner brought to the District Court's attention the government's lack of adherence to the Supreme Court's Hughes' decision and lack of mentioning of it by the government, the District Court also failed to weight Hughes' impact on Petitioner's case, and subsequently the Ninth Circuit Court of Appeals followed suit. See Appxs. D & A.

The Supreme Court's precedent case law is the law of the land and the Ninth Circuit Court of Appeals decision not to adhere to such decisions, and instead deciding Petitioner's case with precedent of its own circuit, which have been overruled by Hughes, is a disrespect of the law of the land and should be remanded to weight the impact Hughes make in this case - which is in the very similar circumstances as Hughes' case.

REASONS FOR GRANTING THE PETITION

This Court in Hughes, *supra*, held that "[T]he controlling issue here is whether a defendant may seek relief under §3582(c)(2) if he entered a plea agreement specifying a particular sentence under Federal Rule of Criminal Procedure 11(c)(1)(C). 201 L.Ed.2d at 81. The Supreme Court in Hughes, *supra*, referred to as a "Type-C agreement." *Id.*

In the instant case, Petitioner on the advice of his attorney who negotiated a plea deal entered into Type-C agreement with the government under Rule 11(c)(1)(C). In doing so, this Court in Hughes held that "[W]hen the Government and a defendant enter a Type-C agreement, the district court has three choices: It 'may accept the agreement, reject it, or defer a decision until the court has reviewed the presentence report.'" Rule 11(c)(3)(A)). Here, the district court accepted the agreement after it was satisfied that "the agreed sentence by the parties was within the applicable guideline range, and accepted to impose a 240 month sentence reached by the parties in the binding Type-C agreement.

The circumstances in Petitioner's case and those of the defendant in Hughes, *supra*, are so much identical that it is worth noting: In Hughes, the defendant was indicted on drug and gun charges for his participation in a conspiracy, and negotiated a Type-C agreement with the government. 201 L.Ed. at 81. Hughes agreed to plead guilty to two of the four charges (worst than here - being a felon in possession of a gun); and in exchange the Government agreed to dismiss the other two charges and 'to refrain from filing an information giving formal notification to the District Court of his prior drug felonies.' If the Government had filed the information, Hughes would have been subject to a mandatory sentence of life in prison. See 21 U.S.C. §§841(b)(1)(A), 851. *Id.*

At the sentencing hearing, the District Court accepted the agreement and sentenced Hughes to 180 months in prison, stating that "it would accept and approve the 'binding' plea agreement," calculating Hughes' Guidelines range as 188 to 235 months in prison. *Id.* The court stated that it had "considered the plea agreement [and] the sentencing guidelines, particularly the provisions of [§3553(a)]," and that it would "accept and approve the 'binding plea agreement.'" 201 L.Ed.2d at 82.

Two months after Hughes was sentence, the Sentencing Commission adopted amendment 782 to the Guidelines. USSG App. C, Amdt. 782 (Supp. Nov. 2012-Nov. 2016). The amendment reduced the base offense level by two levels for most drug offenses. The Commission later made amendment 782 retroactive for defendants who, like Hughes, already had been sentenced under the higher offense level. Amdt. 788. Under the revised Guidelines, Hughes' sentencing range is 151 to 188 months-about three to four years lower than the range in effect when he was sentenced. *Id.* Petitioner here is precisely in the same circumstances.

As Petitioner in the instant case, Hughes filed a motion for a reduction of sentence under §3582(c)(2). The District Court denied the motion, concluding that Hughes is ineligible for relief; and the Court of Appeals for the Eleventh Circuit affirmed. 849 F.3d

1008, 1016 (2017). Both courts concluded that the Freeman [v. United States, 564 U.S. 522, 131 S.Ct. 2685, 180 L.Ed.2d 519 (2011)], concurrence stated the holding in Marks, and that under the concurrence's interpretation Hughes was ineligible for a reduced sentence because his plea agreement 'did not expressly rely on a Guideline range.' 849 F.3d at 1015. This Court granted certiorari. 588 U.S. ___, 138 S.Ct. 542, 199 L.Ed.2d 422.

This Court reversed the judgment of the Eleventh Circuit Court of Appeals. *Id.* at 71. The same should do in the instant case. Here, Petitioner is precisely in identical circumstances as the defendant in Hughes' case. Petitioner, as Hughes was facing a life sentence if he would not accept the binding plea agreement and the Government would had file an information given formal notification to the District Court of his prior drug felonies. As in Hughes' case here, the Government too stipulate in the agreement "that [defendant's] sentence should be calculated pursuant to the Sentencing Guidelines;" and that "[a]t criminal history VI, [defendant's] range would be 151-188 months," Base offense Level 32 under USSG §2D1.1(c)(4)." *Id.*, PLEA AGREEMENT AT 5 ¶7.

Here, as in the Hughes case, the Government too, recognizing the defendant's prior drug conviction violations "refrain from filling an information giving formal notification to the District Court of his prior felonies - in exchange for a plea of 240 months imprisonment negotiated by the defendant's attorney and the Government. *Id.*

After the Sentencing Commission adoption of Amendment 782, which reduced the base offense level by two levels for most drug offenses, and this Court decision in Hughes v. United States, 138 S.Ct. 1765, 201 L.Ed.2d 72 (2018), Petitioner too, as Hughes did, filed in the District Court for a reduced sentence under §3582(c)(2). The District Court denied the motion relying only on Ninth Circuit Court of Appeals precedent case law that most likely was overruled by this Court's Hughes' decision. In fact, neither the Government in its response nor the District Court in its denial of Petitioner's motion mentioned the Hughes case or impact that that case had created in a case as here pursuant to Type-C plea agreement under Rule 11(c)(1)(C), as this Court said a defendant may seek relief. Appx. D.

Subsequently, Petitioner appeal to the Ninth Circuit Court of Appeals. In Petitioner's opening brief to the Ninth Circuit, he asserted that this Court's Hughes decision had affected numerous drug cases that the Ninth Circuit had recognized in similar circumstances as Petitioner's and therefore the district court decision should be remanded to the district court for a reduction of sentence in light of Hughes, *supra*. Appx. C at 8.

Specifically, in appendix "C" at 8 Petitioner pointed out to the Ninth Circuit Court that circuit among others have recognized that the Hughes' decision had changed the landscape in reviewing a prisoner's Type-C agreement reversing the district courts decisions in United States v. Caracheo, 741 Fed. Appx. 476 (9th Cir. 208), and other prisoner's cases weighing similar circumstances as the defendant in Hughes and the instant case deemed to be career offenders. However, the Ninth Circuit Court without taking into

account Petitioner's Type-C agreement based the very similar circumstances as the Hughes' case, denied Petitioner's appeal relying on Ninth Circuit's precedent case law that most likely had been overruled by Hughes' decision by this Court, despite the fact that the Ninth Circuit panel recognizing his case might well be "based on" the Guidelines. Id.

Indeed, the panel in its Memorandum at 2 recognized that "Amendment 782 to the U.S. Sentencing Guidelines, which amended the drug quantity table in U.S.S.F. §2D1.1, - the very Guideline Section Petitioner had agreed to in his Type-C agreement his sentence would be calculated under - lowered the Guidelines range contained in his binding plea agreement. Id at 2. The panels said that "[e]ven assuming arguendo that Quintero's sentence was "based on" the Guidelines range calculated in his agreement, he would still not be eligible for a reduction because Amendment 782 did not lower the Guidelines range "applicable to" him." Id. at 2.

As noted supra, Petitioner does have prior drug convictions, - similarly as the Hughes' - but the prosecuting attorney in the binding Type-C agreement as in the defendant in Hughes' case, the prosecutor agreed to "refrain" from filing formal information under §851 notifying the district court of such priors to avoid a life sentence if he went to trial. Therefore, this Court is urged to reverse the Ninth Circuit's panel decision and it is respectfully requested that this Court remand his case to the lower courts to apply his lower guidelines applicable under the amount plead to in the agreement corresponding under U.S.S.G. §2D1.1 as both parties agreed under the plea agreement contract.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Enrique J. Quinto

Date: 3-31-2020