

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

VIENGXAY CHANTHARATH — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE EIGHTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

VIENGXAY CHANTHATRATH #09163-041

(Your Name)

UNITED STATES PENITENTIARY CANAAN

(Address)

P.O.BOX 300 WAYMART, PA 18472.

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

I. Whether the First Step Act (FSA-2018) "altered" the statutes: 21 U.S.C. § 841(a)(1)(b)(1)(A)-(B) also (C) for the prior drug convictions that qualified a notice §851 enhancement. Section 401, Title IV of FSA-2018 "substantially" changed above statutes; therefore, it is retroactively applying to cases on collateral reviews, is it correct?

II. Section 401, Title IV of FSA-2018 ended the mandatory life enhancement imposed on Petitioner who was classified to be a career offender by §851 application due to his two prior drug convictions and third drug conviction charged him under §841(a)(1) same; thus Section 401 made it retroactively eligible for him under FSA-2018, not Section 404 which the U.S District Court relied upon and denied his §3582(c) petition, is that correct?

III. Section 404, Title IV of FSA-2018 is retroactively applying to the Fair Sentencing Act of 2010 which previously was not. The statutory languages of both Sections 401 and 404 is clearly defined that Petitioner's case is retroactively eligible to apply a benefit from FSA-2018 under Section 401, not 404. Therefore, the U.S District erroneously applied Section 404 upon petitioner herein is not correct?

TABLE OF AUTHORITIES CITED

Penry v. Linaugh, 482 U.S. 302 (1989): A "new rule" is one that breaks new ground or imposes a new obligation on the government, and is not dictated by precedent existing at the time a conviction becomes final. Id.

The First Step Act (FSA)) "altered" the statutes 21 U.S.C. §841(a)(1)(b) (1)(A)(B) also (C). Because the FSA altered those prior predicate convictions that may qualify enhancements to 21 U.S.C. §851 and other enhancements, it is a "substantive" change that will be given retroactive application.

Schrirro v. Summerlin, 542 U.S. 348, 352-353 (2004): A new rule is "procedural" if it regulates the manner of determining a defendant's culpability, "substantive" rules or "stautory" changes that "alter the range of conduct or class of persons the law can punish."

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AND ORDER (02/26/2020) DENIED REHEARING PANEL & EN BANC.

APPENDIX B : COPIES OF 8TH CIRCUIT COURT'S JUDGMENT TO AFFIR THE
U.S DISTRICT COURT'S DENIAL ORDER.

APPENDIX C : COPIES OF CHANTHARATH'S PANEL REHEARING AND EN BANC
PETITION DATED ON 01/14/2020.

APPENDIX D : COPY OF U.S DISTRICT COURT'S ORDER TO DENY MOTION TO
REDUCE SENTENCE UNDER FSA DATED ON 12/16/2019.

APPENDIX E : COPY OF CHANTHARATH'S MOTION TO REDUCE HIS SENTENCE
UNDER FSA DATED ON 10/25/2019.

APPENDIX F : COPY OF PETITIONER'S 7th SUPERSEDING INDICTMENT FILED
ON 09/07/2011.

APPENDIX G : COPY OF PETITIONER'S NOTICE OF INTENT TO SEEK INCREASED
PUNISHMENT UNDER § 851 FILED ON 10/19/2011.

APPENDIX H : COPY OF U.S DISTRICT COURT'S FINAL JUDGMENT DATED ON
01/30/2012.

APPENDIX I : COPY OF U.S DISTRICT COURT'S SENTENCING HEARING TRANS-
CRIPT DATED ON 01/30/2012.

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:

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, B, C 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 D 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 _____; 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.

1.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was XXXXXXXXXXXXXX. See Appendix-B attached herewith
01/06/2020

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: XXXXXXXXXXXX 3/05/20, and a copy of the order denying rehearing appears at Appendix A.

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 PROVISION INVOLVED

21 U.S.C. § 841(a)(1)(b)(1)(A)-(B) also (C)

First Step Act (FSA-2018) Title IV: Sentencing Reform Section 401, and 404.

21 U.S.C. §851.

STATEMENT OF THE CASE

In 1999 Petitioner Chantharath was arrested, indicted, and he pleaded guilty (no trial) on the §841(a)(1) drug offense with no gun involved in the criminal Case no. 99-369 JRT/FLN filed in the U.S District Court for the district of Minnesota, charged with possession with intent to distribute methamphetamine.

On May 11, 2000 the U.S District Court imposed 57 months term of imprisonment upon Chantharath and he served that term completely. In 2004 Chantharath was arrested, indicted, and pled guilty for his second drug charged offense under 21 U.S.C. §841(a)(1) with possession to intend to distribute Methamphetamine in Criminal Case No. FE-CR003962 filed in the Iowa district court for the Lyon county under State Iowa Drug Laws.

On April 4, 2005 the Iowa District Court imposed 18 months term of imprisonment upon Chantharath and he served that term completely. On March 2010 Chantharath at third time was arrested, indicted and found guilty by the trial jury of possession with intent to distribute Methamphetamine under Section 841(a)(1) same for all three times. However, this third drug offense under §841(a)(1) same, the government filed its Notice §851 with intent to enhance the sentence as a career offender under Chapter 4 enhancement, paragraph 7.

This "third" drug charged offense, Chantharath should be sentenced to 37 months term of imprisonment, but because of §851 Notice filed, the U.S district court imposed a life sentence upon him without a parole. See Appendices G, H, and I attached herewith.

After FSA-2018 issued and signed by President Trump, Chantharath without a delay seeking this opportunity to apply for his sentence

reduction under Title IV: Sentencing Reform, Section: 401 Ending Mandatory Life under §851. The First Step Act (FSA-2018) altered the statutes 21 U.S.C. §841(a)(1)(b)(1)(A)-(B) also (C). Since it substantively changed the statutes as said above, it is subject to be retroactive applicable to cases on collateral reviews in this case. Therefore, Chantharath's motion for sentence reduction under Section 401 should be qualified as a retroactive application.

REASONS FOR GRANTING THE WRIT

1. Section 401 of Title IV under FSA-2018: ending mandatory life under §851 is not defining any type of drugs (cocaine or methamphetamine or any kind of drug) charged offenses for all three drug convictions which is subject to a notice §851 enhancement for a mandatory life term of imprisonment. Erroneously U.S District Court denied Chantharath's Motion to reduce sentence dated on 12/16/2019 as see in Appendix-D attached herewith, "Because Chantharath was convicted of a methamphetamine offense, he is not eligible for a reduction of his imprisonment under the First Step Act," by applying Section 404, not 401 at its ruling.
2. This U.S district court's denying order contradicted to Section 401, Title IV of FSA 2018 as stated above. Therefore, it is very clear between Section 404 and 401 which implicated in this case. So this Supreme Court of the United States needs to clarify this issue for an example for the circuit courts to follow when the statutory languages between Section 401 and 404 within the FSA-2018 clearly presented in term of "retroactive or not retroactive" applicable to cases on collateral reviews.
3. Section 401, Title IV language above never classified what kind of drugs subject to be eligible for a retroactive application or not. But, differently Section 404 "made to replace the Fair Sentencing Act 2010" which previously not eligible for petitioners to retroactively apply for. Herein, Chantharath's case should be eligible under Section 401 retroactively applying for such FSA-2018's benefits, not Section 404 which the U.S District Court relied upon to decide his petition under §3582.

CONCLUSION

WHEREFORE, based on the above reasons, Petitioner Chantharath hereby prays that this U.S Supreme Court will grant his writ of certiorari in a respect of justice and conflict presented herein.

Dated: 05/02/2020

Respectfully submitted,

Viengxay Chantharath

VIENGXAY CHANTHARATH, pro se

Reg.No. 09163-041

United States Penitentiary Canaan

P.O.Box 300

Waymart, PA 18472.

CERTIFICATION

I am Viengxay Chantharath hereby certifying that the foregoing statement and facts stated by me in this petition is true and correct.

Dated: 05/02/2020

Respectfully submitted,

Viengxay Chantharath

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