

SUPREME COURT OF THE UNITED STATES

CASE NO.: 19-8469

VIENGXAY CHANTHARATH

PRO SE PETITIONER,

vs.

UNITED STATES

RESPONDENT(s).

PETITION FOR THE REHEARING OF AN ORDER DENYING

A PETITION FOR A WRIT OF CERTIORARI

UNDER RULE 44 AND RULE 39

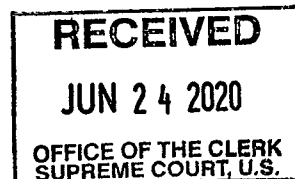
VIENGXAY CHANTHARATH

09163-041

UNITED STATES PENITENTIARY CANAAN

P.O.BOX 300

WAYMART, PA 18472.



IN THE SUPREME COURT OF THE UNITED STATES

VIENGXAY CHANTHARATH,)	
Petitioner,)	
vs.)	CASE NUMBER: <u>19-8469</u>
UNITED STATES OF AMERICA,)	
Respondent(s).)	
_____)	

PETITION FOR THE REHEARING OF AN ORDER DENYING
A PETITION FOR A WRIT OF CERTIORARI
UNDER RULE 44 AND RULE 39

Hereby, petitioner "Viengxay Chantharath" files his petition for the rehearing of this Court's Order denying his petition for a Writ of Certiorari under Rules 44 and 39 timely within 25 days as required by this Court. Petitioner legitimately seeks its Rehearing, with good faith and not for delay, for the grounds which are limited to intervening circumstances of substantial effect and these grounds were not previously presented as well:

Ground One: The U.S District Court denied the petitioner's §3582 Motion under FSA-2018 by misapplying its Title IV Section 404 instead of Section 401 which is relevant and applicable to his case "retroactively" subjected to collateral review based on §851 enhancement, not relevant to cocaine substance reduction as said Section 404. The misapplication of Title IV Section 404 instead of Section 401, FSA-2018:

- (1) the error was not intentionally relinquished or abandoned;
- (2) it was plain in the sense that it is clear or obvious, as

it described and prescribed in Section 401 and Section 404 as petitioner alleged below; and

(3) the misapplication of Section 404 instead of Section 401 of FSA-2018 Title IV upon petitioner to decide on his motion under §3582 affected his "Substantial Rights" to the Due Process Clause imposed by 5th Amendment of U.S Constitution which means demonstrating a reasonable probability that, but for the error, the outcome of the proceeding would have been different.

Here, A Section 401 Ends Mandatory Life Under §851

This Act replaces the concept of being enhanced for "felony drug offenses" with "serious drug felony"..instead of the mandatory life for two prior felony drug offenses, the act provides that after 2 or more convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years.

Here, A Section 404 Retroactively Applies The Fair Sentencing Act of 2010

Prior to the Fair Sentencing Act a person charged with an offense involved crack cocaine would serve 100 times more than a person charged with the same amount of powder cocaine. After the Fair Sentencing Act that number went down from 100:1 to 18:1. The Fair Sentencing Act was not originally deemed retroactive.

ARGUMENT:

1) These two Sections 401 and 404 under the same Title IV of FSA

prescribed and described the language totally different and distinct from each other: Section 401 implicated with §851 Enhancement for "felony drug offenses". It did not specifically indicate what kind of drug that the defendant was charged for;

2) Section 404 specifically made the "Fair Sentencing Act of 2010" involving specifically "crack cocaine" would charge a person with such offense 100 times more than a person charged with the same amount of powder cocaine. After the Fair Sentencing Act that number went down from 100:1 to 18:1. Originally, the Fair Sentencing Act was not deemed retroactive. Therefore, Section 404 made it retroactive under FSA-2018 for crack cocaine and powder cocaine, specifically.

3) Section 401, as described above, had nothing to do with a specific kind of drug charged offense. It involved with a §851 enhancement for "felony drug offenses", and it had nothing to do with the Fair Sentencing Act of 2010 originally made not retroactive. Only, it ended a mandatory life under §851 for two prior felony drug offenses. It did not say crack cocaine, powder cocaine, methamphetamine or others, but it said the drug charged offense under 21 U.S.C. § 841(a), generally.

4) It is very prejudicially inflicted Section 404 instead of Section 401 upon petitioner "Viengxay Chantharath" to deny Section 401 Retroactively made by FSA-2018 where the First Step Act "altered" the statutes 21 U.S.C. §841(a)(1)(b)(1)(A)-(B)-also (C). Because FSA altered those prior predicate drug convictions including the third current drug conviction that may qualify enhancement to 21 U.S.C. § 851. It is a "substantive change" that will be given "retroactive" application in this case.

5) Therefore, the U.S District Court misapplied Section 404 upon petitioner to deny his §3582 Motion based on the retroactive application

constituted a violation of the "Due Process Clause" imposed by 5th Amendment of U.S Constitution which is intervening circumstances of substantial effect prejudicially inflicted upon petitioner Chantharath.

Ground Two: Misapplication of FSA-Title IV Section 404 instead of Section 401 Fundamentally Produced The Civil And Federal Constitutional Rights violation Under 5th Amendment of U.S Constitution Where both Sections 401 and 404 created the Use of Wrong Federal Guideline Range because:

- (1) the error was not intentionally relinquished or abandoned;
- (2) the error was plain in the sense that it is clear or obvious;
- (3) the error affected petitioner's substantial rights, which means demonstrating a reasonable probability that, but for the error, the outcome of the proceeding would have been different.

ARGUMENT:

1) a federal criminal sentence derived from an incorrect application of Section 404 instead of Section 401 of Title IV FSA-2018 created an incorrect sentencing range, and often will, be sufficient to establish that the error affected the petitioner's substantial rights under plain-error review. See Molina-Martinez v. United States, 2016 BL 125404, U.S. ____, No. 14-8913 4/20/16.

2) Section 401, Title IV of FSA-2018 is a correct application to end a mandatory life of imprisonment under § 851 Enhancement process. Not as Section 404, Title IV of FSA-2018 is making the Fair Sentence Act 2010 implicated with "crack cocaine and powder cocaine" which was previously not made retroactive application, **but** retroactive under FSA (2018). The U.S District Court's decision, to deny the petitioner's Motion under §3582, based on this improper application of retroactive analysis is

mistaken and is a plain error under Rule 52b which this Court should conduct its rehearing of this case which could be an example for others facing the problem as petitioner did.

3) The First Step Act-2018 "altered" the statutes 21 U.S.C. §841 (a)(1)(b)(1)(A)(B)-also (C) which petitioner was charged with all two prior and third drug offenses and was convicted. Therefore, he was subject to a career offender of drug felony and the government sought to enhance him through the §851 process to have a mandatory life of imprisonment imposed upon him. Since the FSA-2018 altered the statutes under §841(a)(1)...it is a "substantive" change that will give retro-action application under Section 401, Title IV of FSA-2018 at no question.

Ground Three: Petitioner Viengxay Chantharath hereby certifies under the penalty of perjury in accordance with 28 U.S.C. § 1746 that his petition for the rehearing of this Court's Order denying his petition for a Writ of Certiorari is his good faith, not a delay tactic or excuse. It is his a real intent in good faith to challenge the U.S District Court and 8th Circuit Court denied his motion under §3582 is improper by misapplying Section 404 instead of Section 401 prejudicially inflicted upon him. This misapplication of Section 404, Title IV, FSA-2018 prejudicially denied the retroactive application to his case on collateral review. Therefore, this Court should set an example for other inmates who have this problem as petitioner facing right now.

CONCLUSION

Wherefore, based on the above mentioned arguments, petitioner prays that this Court will grant his petition for the Rehearing in the interest

of justice where the foundation of this country is the rule of law.
Respectfully submitted "timely within 15 days" as a letter dated on
June 24, 2020 from this Court which he received it on June 30, 2020.

Viengxay Chantharath

Viengxay Chantharath, pro se petitioner
#09163-041
United States Penitentiary Canaan
P.O.Box 300
Waymart, PA 18472.

CERTIFICATE OF SERVICE

I am Viengxay Chantharath certifying under the penalty of perjury
under § 1746 that I placed the correct and true copies of my petition
for the Rehearing under Rules 44 and 39 in the properly addressed
envelope with duly prepaid postage affixed on it and mailed to:

The Supreme Court of the United States
1 First Street, N.E.
Washington, D.C 20543

Respectfully mailed on July 1st, 2020.

Viengxay Chantharath

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**Additional material
from this filing is
available in the
Clerk's Office.**