ORIGINAL

FILED
APR 30 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 19-8477

IN THE
SUPREME COURT OF THE UNITED STATES

Timothy Martin Kendrick ~ Petitioner

VS.

United States ~ Respondent(s)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eighth Circuit

Petition for Writ of Certiorari

TIMOTHY Martin KENDRICK
F.C.I. - JESUP
2680 HWY 301 SOUTH
JESUP, GEORGIA 31599
PH: FCI-JESUP (UNIT MGR.)

Questions Presented

1. Are there 5th, 6th, 8th, and 14th Amendments violated in any form due this petitioner's proceeding both pre- and post-conviction process?

2. Is it constitutionally sound to apply a determined quantity of a drug level using a variable Drug Table Chart during sentencing, then seperately grant relief to one type of drug while denying another type of drug using that identical Drug Chart that applies to the same sentence level?

3. Does Amendment 782 ("DRUGS minus 2, as advertised) refer to the Drug Table Chart regarding application to "triggered" statutory guidelines?

4. Does the Drug Table Chart refer to a specific drug type, a drug amount, or drug classification when applied to sentencing guideline levels?

5. Did the increased amount of drugs applied at sentencing (but not in the indictment or charges filed), violate constitutional rights when used in the statutory applications applied to petitioner's guideline level?

6. Wasn't Amendment 782 advertised to the public "DRUGS minus 2" to assist post-conviction relief to non-violent offenders and appease the public?

7. Don't the First Step Act formed to provide relief for substantially sentenced non-violent drug offenders who have "triggered" enhancements?

8. Is there an implied disenfranchisement of felons as a form of punishment and practice in violation of the 8th Amendment as an act of punishment regarding petitioner's repeated denials for post-conviction relief?

9. Is the Equal Protection Clause requirement violated during this petitioner's proceedings?

10. Is there an aggrivated threshold application of drug quantity under statutory provisions leading to an inference of gross disproportionality?

11. Did the judge violate the 8th Amendment when she failed to answer a exact duplicate question at trial by clearly established law?

12. Were the jury instructions sufficiently erroneous enough to confuse the jury, (violating the 14th Amendt.), during deliberation?

13. Did defense counsel fail to object to the occurrence of question number 11 during trial?

Questions Presented (Cont'd)

14. Was the jury prevented from making a reliable judgement during deliberation about guilt or innocense?

15. Did defense counsel attempt to identify in ANY way or form requested testings required that were applied by the judge during trial or direct appeal?

16. Were there instances at trial that spurred retaliation violating constitutionality due amendments referring to "notice of intent (plea)", superceding indictment, right to remain silent (Accept. of Resp.), and application of drug quantity due (attributable) this petitioner?

17. Did defense counsel fall so far as to reach "total abandonment" during representation that violated standard of reasonableness?

18. Was the "residual clause" used in petitioner's proceedings to enhance sentence constitutionally sound?

19. (In Prayer) Will this Court exercise authority to modify proper application of statutory provisions due this petition?

20. (In Prayer) Will this Court authorize a Certificate of Certiorari due this petitioner for post-conviction relief of sentence imposed.

List of Parties

All parties appear in the caption of the case on the cover page.

Related Cases

- United States v. Taylor, 815 F.3d 248, 249, (6th Cir. 2016)(citing U.S.S.G, Supp. C, Amends 782 + 788 at 64-74, 86-88.)
- United States v. Ferguson, 656 F. Appx. 772, 774 (6th Cir 2016)
- United States v. Cook, 870 F.3d 464, 468 (6th Cir. 2017)(quoting United States v. Payton, 617 F.3d 911, 914 (6th Cir 2010).
- United States v. Riley, 726 F.3d 756, 759 (6th Cir. 2013)
- United States v. Thompson, 714 F.3d 946, 950 (6th Cir. 2013)(noting that defendant's "status as a career offender essentially trumps the range under the guidelines.)
- United States v. Powell, No. 5:11-cr-75-JMH-1, 2019 WL 1521972, at *3 n.1 (E.D. Ky. April 8, 2019.)

Related Cases (Contd.)

- United States v. Wiseman, 932 F3d 411, 417 (6th Cir. 2019) petition for Certiorari filed No. 19-7341 (US Jan. 17, 2020)
- United States v. Denny, 2020 US DIST LEXIS 14647, (Jan 29, 2020)
- United States v. Kriri, 784 Fed Appdx. 953, (Aug. 29, 2019) (7th Cir.)
- United States v. Thorne, 2020 US DIST LEXIS 4291 (Jan. 10, 2020)
- United States v. Ellis, 868 F.3d 1155 (Aug. 24, 2017)
- Gashe v. United States, 2017 US Dist LEXIS 228027 (May 8, 2017)
- Sauceda v. United States, 2012 US DIST LEXIS 203791 (Feb. 28, 2012)
- United States v. Gashe, 2008 US DIST LEXIS 135044 (Feb. 19, 2008)
- Zafiro v. United States, 506 US 534, 538, 113 S.Ct 933, 122 L.Ed. 2d 317, (1993) ("preventing the jury from making a reliable judgement about a guilt or innocense ~ Rule 14)
- Dorsey v. United States, 567 US 260, 264, 132 S.Ct 2321, 183 L.Ed. 2d. 250 (2012)

- Alleyne v. United States, {2015 US App. LEXIS 65}, 133 S.Ct. 2151, 2163, 186 L.Ed. 2d 314 (2013)

- Lambright, 270 F3d at 1025

- Barefoot v. Estelle, 463 US 880, 893 n.4, 103 S.Ct. 3383, 773 L.Ed. 2d. 1090 (1983)

- Schriro v. Landrigan, 550 US 465, 423, 127 S.Ct. 1933, 167 L.Ed. 2d 836 (2007)

- US Court of Appeals, 738 F.3d 562; 2013 US. App. LEXIS 25604, No. 11-4292, Argued (Oct. 5, 2012), Filed (Dec. 24, 2013)(3RD Cir)

- Eichenlaub v. Township of Indiana, 385 F.3d 274, 282, (3rd Cir. 2004) (citations omitted)

- Court of Appeals, 357 F3d 469; 2004 US App. LEXIS 1296, No. 01-7500, Argued (May 9, 2003), Decided (Jan. 28, 2004)(4th Cir.)

- Stinson v. United States, 508 US 36, 42, 123 L.Ed. 2d 598, 113 S.Ct. 1913 (1993)(Quoting - Williams v. United States, 503 US 193, 201, 117 L.Ed. 2d 341, 112 S.Ct. 1112 (1992), {357 F.3d 485}

- United States v. Headrick, 963 F2d 777, 781 (5th Cir. 1992)

Related Cases (Contd.)

- United States v. Walker, 2020 US Dist LEXIS 29425 (Feb. 21, 2020)

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APPENDIX "C" - Eighth Circuit Court of Appeals, Timothy Kendrick, v. United States, No. 19-1217, PRO SE notice of Docket Activity, Filed (April 3, 2020).

APPENDIX "D" - U.S. Court of Appeals for the Eighth Circuit, No. 20-1738, United States of America v. Timothy Martin Kendrick, ORDER (April 21, 2020)
* (Please see Motion for Re-Application submitted with Motion of Complaint filed with Supreme Court Application of Certificate of Certiorari)

APPENDIX E - PRO SE Notice of Docket Activity, United States v. Timothy Kendrick, No. 20-1738, (April 21, 2020) (note: prosecution counsel changed
* while PRO SE petitioner is STILL without counsel Representation for questions OR legal rules.)

APPENDIX F - USA v. Timothy Martin Kendrick, No. 02-CR-2039-LRR, PRO SE Motion to Reduce Sentence (2ND Motion Denied) (misconstrued by US Court of Appeals. First denial, career offender, Second denial, FSA reasons, when petitioner's sentence WAS 2004, and drug amount "triggered" by aggrivated drug quantity not physically present at trial with all charged weights that were.) (3pgs.) (March 25, 2020)

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Jurisdiction

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right" 28 USC § 2253(c)(2). This requires that a petitioner "demonstrate that the issues are debatable among jurists of reason; that the questions are adequate to deserve encouragement to proceed further. Lambright, 270 F3d at 1025 (alteration in original)(quoting Barefoot v. Estelle, 463 US 880, 893 n.4, 103 S.Ct. 3383, 77 L.Ed. 2d 1090, (1983).

Petitioner originally filed a Motion for Relief of Sentence (via personal letter to District Court, approx 2016), under Amendment 782 once discovery was made. Petitioner was denied relief because petitioner was deemed a career offender and was told by court judge the denial was unappealable. (Honorable Magistrate Linda R. Reade, 8th District of Northern Iowa)

Under the First Step Act (2018) which supports Amendment 782 ("DRUGS MINUS 2" as advertised)(Amendment 782 established Nov. 2014, retroactively to "triggered" threshold) to all inmates who are non-violent drug cases deemed a career offender and was sentenced prior to 2010 under the guidelines. Petitioner was sentenced September 2, 2004, using statutory mandates and "SET" mandatory guideline ranges that were not advisory.

Using this experience, petitioner sent in a Motion (via Brief) to the U.S. Court of Appeals for the Eighth District who misconstrued the submitted petition, (not reviewing this petitioner's case, appearently), and referred the Complaint Motion for Reduction of Sentence BACK to the district court where the lower court then again denied the petition relief a second time for different reasoning. Being petitioner's drug case is methamphetamine and not "crack cocaine" as the issue, when, as my trial judge, (who called petitioner a "rolling stone" in court), and has denied every petition since, knew my drug amount was "triggered" by her application of added drug quantity (that had no "relevant conduct" to this case due this petitioner because petitioner's case only included petitioner and Kenneth Harms, Jr. Not the C.I. (confidential informant, here and throughout), not whom I sold my car to, not Detective Bill Herckleman. There was only petitioner, Harms, and Herckleman involved at petitioners day and a half trial,) when the lower courts, at anytime, could have addressed petitioner's improper sentence.

Upon District Courts' second denial, petitioner filed an Amendment to then verify to the District Court that the Drug Table Chart used in this case at sentencing has all drugs listed "in comparison" towards one another which places drug amounts at various guideline levels.

District Court, again, denied Motion for Reduction on second petition on March 24, 2020. (Case: 6:02-cr-02039-LRR-MRR, Document 128, Filed (March 25, 2020), 3pgs. (enclosed w/notice of filing.)

On March 29, 2020, petitioner wrote U.S. Court of Appeals, notifying this court petitioner's motion for relief had been mis-construed. (4 pages, handwritten, PRO SE)

On April 9, 2020, the U.S. Court of Appeals, No. 20-1738 entered judgement, ("summarily affirmed").

On April 14, 2020, petitioner mailed a Motion for extention of time, notice of appeal, and rehearing, referring to the outcome of filed Motion for Relief of Sentence. Where U.S. Court of Appeals directs for Re-hearing when the same issue could have been addressed the first time. This brings to point petitioner is being "stalled" for relief, leading to claim of cruel and unusual punishment because district court judge has attended <u>every</u> inquiry and issued every denial throughout petitioner's whole term of imprisonment. Refusing to, or without authority to make corrections to sentence due petitioner.

Lower courts have reviewed petitioner's request thrice now, which brings petitioner to this Court in application for the Great Writ.

The U.S. Court of Appeals has entered a decision in conflict with decisions of other US Court of Appeals on these same merits and has decided an important federal question in a conflicting way with a decision made by other districts that sanctioned such a departure by a lower court which calls for excersize of this Courts' supervisory power.

The U.S. Court of Appeals has decided an important question of federal law that applies to both pre-conviction sentencing and post conviction relief, addressing the Drugs Table Chart that regulates the guideline levels of sentence. This has not been, but should be, settled by this Honorable Court, which has the power and authority to rectify and clarify exactly what the "DRUGS MINUS 2," or Amendment 782 is, and how this Amendment is to be applied for and to all petitioners and applicants, including future motions for relief regarding their drug levels when applied to the guideline schedules.

Petitioner hereby produced obvious considerations which govern a review on Certiorari due this filed petition addressed to this level of authority. Proving jurisdiction is hereby correct, and in accordance with additionally enclosed Motion of Complaint towards lower courts' conduct. (Included with petition for COA, PRO SE, by my hand.)

Under Ewing v. California, 538 US 11, 36, 123 S.Ct. 1179, 155 L.Ed. 2d 108 (2003) (principle applies only in "the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality.) (quoting Rummell v. Estelle, 445 US 263, 285, 100 S.Ct. 1133, 63 L.Ed. 2d 382 (1980).

Under Nordstrom v. Ryan, 856 F.3d 1265, 1972 (9th Cir 2017) (A single incident of improper reading of a detainee's mail may give rise to a constitutional violation) (Nordstrom II") (citing Wolff 418 US at 577) relating to the misinterpretation of filed motions that appear to be keeping petition in lingo while being prevented to receive an accurate, due ruling based on recognizable previously applied similar rulings in sister courts.

Regarding jury instructions and the magistrates authority range at trial, the determination is whether the instruction, when read in the context of the jury charges as a whole, is sufficiently erroneous to violate the Fourteenth Amendment? Francis v. Franklin, 471 US 307, 309, 105 S.Ct. 1965, 85 L.Ed 2d 344 (1985). (Francis, 471 US at 323-24 & n.9; discussing the subject in depth.) (It may not be judged in artificial isolation but must be considered in the context of the instructions as a whole and the trial record.)

Petitioner challenges the refusing to correct a sentence or award post-conviction relief in wholly qualifiable application to a possible post-conviction sentence relief opportunity which has not been, but needs to be clearly established by law, amounts to an aggravated enhanced sentence that is "grossly disproportionate to the crime."

Statutory Provisions

1. Amendment 782 ~ The United States Sentencing Commission adopted and made retroactive Amendment 782 which lowered the sentencing drug tables (plural)(emphasis added) by two levels.

2. Mandatory Guidelines (1986) ~ Establishes penalties for drug offenses and prior convictions according to the type of prior convictions and the quantity of drugs, (Drug Chart Tables), {2020 U.S. Dist. LEXIS 5}, involved. Dorsey v. United States, 567 US 260, 266, 132 S.Ct. 2321, 183 L.Ed 2d 250 (2012), cocaine powder and cocaine base were treated differently but does not exclude other drug offenses used for mandatory minimum penalties under the 1986 Drug Act established.

3. Fair Sentencing Act (2010) ~ Amended 21 U.S.C. §841 by increasing the amount of drug required to "trigger" mandatory minimum sentences. (In this reference "crack cocaine," but petitioner has that identical "triggered threshold" increase applied using the identical Drug Chart Table level application, only using a different drug catagory. (See Dorsey v. United States, 567 US 260, 268-70, 132 S.Ct. 2321, 183 L.Ed 2d 250 (2012), §404(b),

132 Stat. at 5222; see also Beamus, 943 F3d at 791. (The First Step Act "allows courts to apply §2(a) of the First Step Act, retroactively to the Drug Table Charts.) Hence the idea sold to the public "DRUGS minus 2".

4. First Step Act (2018) - Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. Sister courts agree with petitioner's application for Motion for Reduction of Sentence under Amendment 782 applies to "triggered threshold" statutory applications mandating mandatory minimum's drug cases. Not specifying a drug type used in case, but referencing the drug level applied to the guidelines during sentencing. (21 U.S.C. §841(a)(1), 21 U.S.C. §841(b)(1)(C) (2004) used in petitioner's case.)

5. 21 USC § 851 - Drug quantity attributable defendant "triggers" threshold drug amount which raises to a higher weight applied, engaging mandatory minimum statutes.

6. 21 USC §841 - Prior convictions used, but undeclared, during trial were applied under the "residual clause". Prosecution refused to specify which prior convictions were to be used all the way to petitioner's testimony. Allowing an element of surprise at trial by the prosecution where the defense counsel could not prepare. Then catagorizing the accused and admitted by the petitioner's priors under the "residual clause", which, since then, has been completely "struck down" and "abolished."

Additionally, petitioner's priors used at trial was also an undevisable Cal. Penal Code §459, disqualified under Descamps & Mathis, and the prior drug conviction was for "Possession of" and not "Distribution of."

In furtherance, the District Court then changed the trial priors used to Felony Eluding during appeal under the "residual clause," when the Felony eluding/Simple Drug Possession out of Oregon were of one case and not two seperate cases. Deemed necessary under Federal rules in application with federal law.

Then to complete this argument, not only are all these charged priors district court used struck down and void since trial, but they are also misdemeanors in Oregon in which petitioner only served 41 days county time for, not state time.

The aggrivating factors of constitutional violationed desparity is when the lower courts refused to acknowledge the liberal application of Oregons State Statutes, and then used surrounding states of Iowa "Felony Fleeing §Or. Rev. Stat. 811.540§ in applying the "violent Crime" method, which allowed their "fictitious priors" to aggrivate this term while simultaneously ignoring where the actual conviction occurred. Mandating extreme prejudice towards petitioner and a multitude of constitutional violations every red blooded american owns, in which my dad, an ex-marine served for. (Vietnam)

Constitutional Provisions

1. 6th Amendment - Errors so serious that proceedings of due process is not functional as guaranteed by the Sixth Amendment.
(Strickland v. Washington, 466 US 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) (defendant must show both that the counsels' performance was deficient and that the deficient performance prejudiced his defense)

2. 8th Amendment - Under Ewing v. California, 538 US 11, 36, 123 S. Ct. 1179, 155 L. Ed. 2d. 108 (2003) (principle applies only in the rare case in which a threshold comparison of the crime committed and the sentence imposed leads to an inference of gross disproportionality) (quoting Rummell v. Estelle, 445 US 263, 285, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980).

3. 14th Amendment - "Cruel and unusual punishment" (whether the instruction, when read in the context of the jury [party] charges as a whole, is sufficiently erroneous to violate the 14th Amendment. Francis v. Franklin, 471 US 307, 309, 105 S. Ct. 1965, 85 L. Ed. 2d 344 (1985). (Francis, 471 US at 323-24 & n.9; discussing the subject in depth) (It may not be judged in artificial isolation but must be considered in the context of the instructions as a whole and the trial record.

4. 5th Amendment - right to remain silent was violated when petitioner's Acceptance of Responsibility for relief of sentence was made during testimony and then used against this petitioner when an unrelated and totally irrelevant aggrivated drug amount (which was applied at sentencing by the trial judge and inquired about during deliberation by the jury,) was used as an aggrivated amount to add to "trigger" above a particular threshold that engaged a mandatory minimum provision. Defense counsel did not advise the judge could use "non-case" relevant conduct admission nowhere mentioned up to and including pre-trial, indictment, or numbered charge, to drastically increase sentence, increase the sentencing levels by multiple levels, and refuse to grant any Acceptance of Responsibility departure, all against the whole defensive opposition to prosecution where defense counsel not only failed to object to during trial, but seemingly totally and completely abandoned defendant during trial until a later date of defendant's sentencing hearing.

Quite the opposite, in fact, defense counsel failed to "object" to the use of undisclosed priors to be used against this petitioner during his admission of his own conduct after examined by prosecution. Defense counsel remained silent on cross, but stated "prosecution won't disclose what they are going to use." all the way through and up to trial. Petitioner was informed any activity could be added regarding Hammons & Herkleman's involvement only. Because involvement was already charged, petitioner admitted his limited role while knowing Hammons.

5. 6th, 8th, and 14th Amendments - Ineffective Assistance of Counsel; neglecting to provide counsel; cruel and unusual punishments;

Counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed by the Sixth Amendment. (Fell below an objective standard of reasonableness under prevailing proffessional norms) Strickland, 466 US at 687-88, Strickland v. Washington, 466 US 668, 687, 104 S.Ct. 2052, 80 L.Ed. 2d 674 (1984) (defendant must show both that the counsel's performance was deficient and that the deficient performance prejudiced his defense.)

Defense counsel did not argue there was no testability to aggrivated drug amount at sentencing; did not argue during Direct Appeal aggrivated drug amount was not applicable to this case; defense counsel failed to "object" when judge did not answer jury's second inquiry of "attributable drug amount due defendant" through established law when the second question was not only identical, but the same piece of paper containing the same question; defense counsel failed to "object" to multiple sentence mandatis; defense counsel failed to "object" to the introduction of a "sealed identity" introduced by prosecution (who was a C.I.) to the jury while defendant was attempting to earn Acceptance of Responsibility earnings, (but was verbally warned by the judge at PRETRIAL not to bring up this "C.I." during trial by either prosecution or defense; and defense counsel stated plea bargain was for 30-50 years and not months. Defendant even had defense counsel double check to make sure there was no misunderstanding.

The Fourteenth Amendment challenge to claim is that "cruel and unusual punishment" accrues when POWELL is granted relief due to a "triggered" drug amount threshold that was not made available to the jury by faulty address of the magistrate to the jury's inquiries. Alleyne v. United States, the Supreme Court held that "facts that increase {2015 U.S. App. LEXIS 65} mandatory minimum sentences must be submitted to the jury." 133 S. Ct. 2151, 2163, 186 L. Ed. 2d 314, (2013). (Which I would hope includes deciding "attributable quantities" with a jury's submitted facts) At the time of petitioners trial (2004) the Drug Table Chart was an element of the offense that must be submitted to the jury and proven beyond a reasonable doubt. There was obvious doubt to some issue the jury had during deliberation being the identical inquiry was made twice within minutes of one another. Meaning their inquiry was unanswered and improperly addressed because it still took the jury four hours to find a verdict when the defendant admitted to all the accusations during trial. regarding defendants conduct.

Under USSG § 1B1.10(2) (eligibility for a section 3582 (c)(2) reduction is "triggered" only by an amendment listed in subsection (c) that lowers the applicable guideline range.) U.S.S.G. § 1B1.10, cmt. n. 1 (emphasis added) {2004 US App. LEXIS 43}

None of these points which defense counsel attacked or addressed in Direct Appeal, Trial, or in attention to any post conviction inquiries due this petitioner per defense counsel, Mr. Charles H. Nadler, defense atty. out of the Northern State of Iowa.

Statement of the Case

Petitioner, Timothy Martin Kendrick, Reg. #09128-029, (here and throughout), hereby comes before this Honorable Supreme Court of Justice, PRO SE, regarding Amendment 782 (Drugs Minus 2, as advertised to the public), in combined relation and reference to the First Step Act and Fair Sentencing Act which both effect 21 USC § 841 and 21 USC § 851 statutes effectively relating to Amendment 782 application for all post-conviction relief who fit qualified criteria. This petitioner has already been denied twice by the district court, (1) being determined a career offender and unappealable; (2) denied due to drug offense(s) relating directly to the Drug Table Chart where petitioner who wholly qualifies for Amendment 782 relief as a non-violent drug offender which contains a "triggered threshold" that engages mandatory minimum regimes, that are to be retroactively applicable (prior 2010 sentencing) and claims improper proceduring from the lower courts which are unfair and unjust denials and include multiple constitutional violations due in denial of post conviction relief.

Petitioner has filed timely in the district court on all motions submitted throughout, (filed PRO SE,) for sentencing relief in the 8th Circuit where lower courts denied post conviction relief repeatedly.

The District Court first denied petitioner relief because petitioner is classified as a career offender and stated request was unappealable under the statutory mandates, (referring to approx 2015-16 filing by personal letter, PRO SE.)

The District Court then denied the second Motion (where petitioner intended to "appeal" the first denial in the US Court of Appeals but had the Court of Appeals misconstrue the intent because of lack of proper review to its' claim), due to the drug used in the offense, but completely ignored the fact that the Amendment applied to "triggered" threshold amounts to the guidelines. (Hence the meaning "DRUGS MINUS 2-LEVELS)," which become aggravated only on the Drug Table Chart of the guidelines, and by superceding indictment.

Upon receipt of the Motion recently filed in the US Court of Appeals, the court misunderstood intent and referred (the "construed" motion) back to the district court. (March 19, 2020, Appendix A).

On March 24, 2020, the lower court DENIED the "NEW MOTION" sent by the Court of Appeals because petitioner's drug in case is "methamphetamine" and not "crack cocaine." (See Appendix F, (March 24, 2020 - 3pgs.)

On April 4, 2020 petitioner sent a Motion of Clarification and Amendment to the district court (Timothy Kendrick v. United States, No. 19-1217.) (Appendix C)

On April 9, 2020, the Judgement of "SUMMARILY affirmed" was entered by the US Court of Appeals. (United States v. Timothy Martin Kendrick, No. 20-1738, Case No. 6:02-cr-02039-LRR-2) (April 9, 2020) (Appendix B)

Petitioner, PRO SE, understood he had 14 days to file Notice of Appeal, (not exempting mailing periods,) from the date of Judgement, So petitioner shot a multiple request Motion for Notice of Appeal, Extention of Time to Appeal, and Notice for Re-hearing. The Court of Appeals only granted in part the re-hearing. (See Appendix D) (USA v. Timothy Martin Kendrick, No. 20-1738, (April 21, 2020). Yet the Court of Appeals failed to address the Notice of Appeal. Which is why I enclosed a requested motion to this Honorable Court because the two lower courts are playing "ping-pong" with myself being the ball. The record reflects absolute negligence and direct non-concern with this petitioner's claims at hand. Therefore, this Court is my next and hopefully last stop for fair attention to matter at hand, the Supreme Court Justice.

Petitioner requests, without further postponement, runaround, or delay to determine if relief should be granted this petitioner as outlined herein?

Relief should be, by applied law, whether deserving or not, granted this petitioner under the First Step Act of 2018, which supports Amendment 782 established November 2014, retroactively to "triggered" threshold, non-violent drug cases. To all inmates as promised to the public who are drug cases deemed as statutory provisions, non-violent, and was sentenced before 2010 under the guidelines. (Petitioner was sentenced Sept. 2, 2004.)

However, this petition dives deeper than just the First Step Act, (FSA, here and throughout), as petitioner will show and entertwine the applications of: FSA, Amendment 782, Drugs Quantity Table levels as applied to the guidelines, mandatory minimum regimes (21 USC §841 and 21 USC §851), and the Guideline criminal history bracket, all retrospectively to the Guideline Sentencing Chart, and simultaneously applicable, which includes a "triggered" threshold similar and in reference to <u>United States v. Powell</u>, only variance is the drug and level applied. In this case the drug level was increased by the judge which "triggered" the threshold mandatory minimum by applying an amount of drugs not related to any persons involved in petitioner's immediate proceedings (at the time), in any indictment or charges, and unclarified to the jury when the jury recognized intent (which is why they inquired as they did.) The judge used "ghost dope", an undetermined weight and not physically present to the threshold "trigger" without answering the jury in accordance with established law: an identical question: "Were they to determine amount of drugs attributable due defendant?"

Petitioner is denied Amendment 782 relief of sentence when the low guideline term (as sentenced, "mandatory", but now "advisery") is higher than the mandatory minimum term, and yet could still be lowered, so this petitioner, at a minimum, could receive relief of an unconstitutionally set drug tabled guideline level and unfair execution of sentence parallel to Powell which also "triggered" enhancements by drug weight illegally applied. Even though the drug in case is different the charted principle applying guideline level is identical. Just like the "residual clause" used for career offenders and ACCA[5] (Armed Career Criminal Act, here and throughout) was used for with enhancement purposes, but has now been "struck down" and "completely abolished". (Also applied in petitioner's case.) Both these references mandated application of the Drug Chart used ~~for the~~ sentencing level coinciding with the Criminal History Category determined by prior history equating a guideline level of schedule that is recommended for sentencing purposes which was then also "mandatory," but since has been deemed "advisory." Constituting multiple constitutional violations which have no time limitations when one goes through the burden of a trial in order to preserve all of their rights that are altered through pleas.

On September 2, 2004, petitioner was sentenced under "mandatory" regimes where he received 3 seperate sentences. One, if guidelines were found constitutional, 262 months; Two, if guidelines were found unconstitutional, 262 months; and three, should Blakely be found unconstitutional, 87 months. In 2009, Blakely was overturned, and all petitioner's inquiries were ignored when asked "Who's to decide on which sentence applies at what time? Therefore, petitioner hereby states these multiple sentences are hereby unconstitutionally sound as well.)

Under the mandatory regime which ordered a minimum sentence of 20 years, (240 months), and under §841 and §851, (10 years each), where the magistrate states she was "prohibited from issuing a sentence below the 20 yr. mandatory minimum, or she would, but she was bound by law," this petitioner, under the guideline range base of 262 months was then issued, (which proves how frivolous and principled my proceedings were instead of judiciary) under a mozy of mandatory mandates.

The mandatory guidelines since then has now been deemed "advisory," but not retroactive. (Though petitioner requests the court to consider applying the Amendment 782 and future Acts or Amendments retroactive. (Perhaps retroactivity to both articles involving non-violent crimes should be considered?)

None-the-less, Amendment 782 is deemed retroactive and applicable to only inmates that are "crack cocaine" offenses by these lower courts I'm bound in. Yet other district and court of appeals are granting relief to methamphetamine cases such as mine. Sister courts are recognizing the "triggered" threshold applied using the Drug Table Chart as it was advertised and presented to the public. These lower courts lean onto their own interpretation. Petitioner hereby challenges this ruling of interpretation ordered against this petitioner because of the applicationed use of the Drug Chart Table in addition to the advertisement to the public of interest labeling these regimes F.S.A. and Amendment 782, (or "DRUGS MINUS 2"), which implies and means all the drugs listed on the Table Chart that mandates the guideline level used at any sentence. "Crack Cocaine is just one of the various drugs used on this chart.

To ignore the fact that the Drug Tables used in application of the guideline that mandate the levels used for sentencing are valid to all the drugs listed in applying a guideline drug level to the guidelines, then to inadvertantly deny any relief because of a drug used in a filed petition proves that decision, whomever it comes from, bias and unconstitutionally sound. Which in return proves the US Court of Appeals do not have the authority, (or the lower courts), to make any ruling on these merits towards the statutory mandates in compliance with Amendment 782 and the F.S.A. (as applied and declared to the public "DRUGS MINUS 2, (repeatedly), which is suppose to reduce a sentence level by 2 levels. This, in turn, also proves that the 2 levels applies to all drugs on the chart and not a "particular certain type of drug."

Under Amendment 782, all drugs are to be considered and applied to all non-violent drug cases throughout the Federal Bureau of Prisons, (BOP, here and throughout), for post conviction relief of sentence as these applications were prepared for. This has nothing to do with the drug type in a case petitioned, and has absolutely everything to do with sentencing levels when applying guidelines.

A mandatory minimum sentence of 20 years equals out to be 240 months. This number is below the mandatory guideline range base of 262 months petitioner was sentenced to (that was a "SET" range at that time, which also is now advisory) and this petitioner as is has been denied relief on the merits, petitioner is deemed a career offender, (a "non-crack cocaine" case) yet wholly qualifies for relief as not only an applicant, but also as a simple base application of new implements about Amendment 782 being post-conviction relief for non-violent drug cases who also received a "triggered" threshold guideline sentence which is a schedules of mandates guideline levels set by the Drug Table Chart during sentencing which determines the level of guideline, (in conjunction with the "prior history" category referred to in the First Step Act.)

Petitioner's case is a non-violent drug case containing 1 Count of Conspiracy to Distribute and 3 Counts of Distribution of Methamphetamines (all under one continuous investigation period of two weeks); totaling an actual 26.14 grams of drugs that were physically shown in a baggie as evidence to the jury that were physically present at trial.

The trial judge, (Honorable Magistrate Linda R. Reade, Northern District of Iowa, attending all filed petitions and motions submitted by petitioner), acted upon her own descretion to increase the drug amount and sentence petitioner to an inaccurate drug quantity of 63.175 grams of drugs which not only increased the drug amount level of application "applicable or attributable due this petitioner as a matter of recorded judicial procedures throughout, and also allowed the court to "trigger" the 21 U.S.C. §841 enhancement statutes during Due Process. Additionally, to trigger the §841 mandatory schedule, it must also go hand-in-hand with 21 U.S.C. §851 criminal history category schedule as well. In reaction to engaging the §851 statutory provision, this is controlling the criminal history category level. Both of these statutory provisions control the guideline chart. The guideline chart recommended sentencing ranges are pointed to and discovered by the intersecting sections of the used Drug Table Chart and the Criminal History category resulting in a guideline base level and ceiling level range simultaneously. The added amount of drugs applied by the judge and inquired about by the jury, increased the drug amount which "triggered" threshold mandates, guaranteed untestable, and not only absent during trial, but completely speculation even though an admitted account of an illicit act by the petitioner, there is no way to apply an "assumed" number of drug quantity, which, in this case happens to be 37.035 grams of drugs petitioner could not cross. Unlike the

26.14 grams of drugs petitioner could. This amounts to violations of constitutional rights, and unconstitutional application of statutory provisioning. Whether "set" or "advisory".

The original PSR conducted by Mr. Todd Huss, who correctly interpreted the law as it was formed in the framework, recommended 87 months confinement. Out of a 71-87 month guideline term that was a fixed schedule in the guidelines and applicable to all the drugs used in this case, charged on the docket, and presented to the Grand Jury regarding the Indictment. Petitioner was not even in the State of Iowa when the co-defendant, who petitioner was only merely acquainted with, was arrested. (Another point defense counsel failed to present.)

Petitioner also received 3 seperate sentences during sentencing, or, "alternate sentencing." This in itself is unconstitutionally sound. Thats like preparing for scenarios that may never happen, or for those that could very well. In this case, all 3 sentences occurred in different time frames, but the only one's even recognized was the one that was most damaging. The 262 month sentence that kept petitioner continually incarcerated. The "Honorable Magistrate" never recognized the "Blakely" sentence petitioner received, or when Blakely was overturned, there was no panel of persons to go back and correct what needed to be corrected. The public defender's office didn't even have any answers, and as co-counterparts of an underpaid-staffed subsidiary of the judicial system, will not push too far on a "gamble" the claim would even be glanced at. Especially not with the overflow of filled calendars in the courts. All inquiries made to Mr. Charles H. Nadler were ignored or unanswered. Defense counsel Mr. Nadler even failed to obtain credit for time served while I was in the State of Iowa (tending this matter in extradition agreement, while on leave from California State Penal System where my time stopped because I left the State of California.) To date I have zero days credit and spent approximately (14) fourteen months in the Iowa system throughout this process on a surrendered and cooperated extradition of prosecution. (Would I have known this was going to happen, what would have been the use for me? I lost friend contact, family contact, and personal belongings in doing so.)

This petitioner, at the very least, should receive 22 months relief under the First Step Act that could have, but hasn't been, already ordered by the lower courts. The drug chart applies to all the drugs' listed levels in comparison to a specific guideline level with weight comparison to each drug retrospectively, and not the type of drug used in this, (or any,) petitioned case. Sister Circuits are recognizing this fact as well.

Additionally, since the date of this petitioner's case, many rules and laws have been changed, altered, reformed, or completely abolished, or verified, clarified and established. This petitioner's scenario is way overdue for review which was also mentioned in the stated Footnote #3 of petitioner's filed §2255.

Petitioner wholly qualifies for Amendment 782 relief, and even more. Petitioner prayerfully requests a mandate from this Honorable Court, a resentence hearing using only trial transcripts, orders from this Court, and application of the true drug amount that should have been used at trial that was physically present at trial which agrees with the original PSR report, the third alternate sentence, and total convicted drug amount regarding the guidelines max. term which should have been 87 months, retrospectively. (All the way arounds) If "justice" is truly served, because the "residual clause" is also struck down, and the §851 mandate co-exists with the §841 mandate, which are both erroneously applied, under newly established rules and regulations this petitioner is actually being held in detention illegally, unjustly, and unconstitutionally.

Post-conviction sentence relief, ranges, and allowances are not only in conflict, but now permits the courts to administer rulings which need to be addressed, & justifiably sound. This Court, petitioner prayerfully requests, needs to really focus on how the Drug Chart Tables apply a sentencing level, and also how the Drug Table Chart can also coincide with future changes under the newly established statutory mandates, regimes, and guideline levels, both base and ceiling, that allow newly formed Amendments to be able to administer post-conviction relief of same value as pre-conviction sentencing applications.

This petitioner's base guideline level, as stands, is 262 months, which petitioner is sentenced to. The statutory mandates applied a 20 year minimum, (240 months) which also meets the §841 and §851 requirement to the guideline as sentenced, (but too has now been altered.) Petitioner is titled to some relief. A minimum of 22 months constitutionally as it all is, plus the credit due in federal custody, (14 months), totaling 36 months. Under 2004 provisions and Amendment 782 base applications.

However, the "triggered" threshold cannot be overlooked or constitutionally sound without addressing the drugs applicable per petitioner (and not type of drug used), which begins a "DOMINO" effect, rolling into numerous statutory provisions, which then, in turn, also requires this Court's authoritative attention. Point blank and simple.

Finally, petitioner claims that due to the vast number of changes which have occurred, and because this petitioner has preserved all his rights by attending trial, this case is not only ripe for review, but provides a perfect opportunity for this Honorable Court to attend necessities and modifications to fit all circumstances filed herein. Especially since petitioner is still sentenced under all the statutory regimes and schedules which has not yet been provided any review by any court for repair of wrongfully applied statutory provisions and sentence(s), where all claims in other courts mentioned herein are true, remanded, revised, or reversed throughout time, and where any "questionables," are now, and have been proven to be "absolutes," in accordance with updated established law.

Reasons for Granting Petition

Amendment 782, which became effective November 1, 2014, retroactively lower the sentencing guidelines for drug offenses by 2 levels (United States v. Taylor, 815 F3d 248, 249 (6th Cir. 2016) (citing USSG., Supp. to App. C, Amends 782 & 788 at 64-74, 86-88), however, did not lower the offense levels applicable to career offenders. See United States v. Ferguson, 656 F. Appx. 772, (6th Cir. 2016) (Amendment 782 does not impact the career offender guidelines found in USSG §4B1.1). Petitioner's denials, accordingly, "has held that a defendant convicted of drug related charges but sentenced as a career offender under USSG §4B1.1 is not elegible for a reduction on an amendment to the drug quantity tables." United States v. Cook, 870 F3d 464, 468, (6th Cir. 2017) (quoting United States v. Payton, 617 F3d 911, 914 (6th Cir. 2010.)

A review of this petitioner's presentence report will indicate that petitioner's guideline range was calculated and based on petitioner's career offender status pursuant to USSG §4B1.1. (Also, Mr. Todd Huss, U.S. Probation Officer, original

PSR petitioner received pre-sentence hearing recommended 71-87 months of confinement. According to the District Court continued refusals towards petitioners corrections or relief of sentence statutes is not entitled to ANY sentence relief as a result of Amendment 782 or otherwise, so it seems supporting statement the district court deemed Amendment 782 unappealable per the district court ruling. See, e.g. Cook, 870 F.3d at 468; United States v. Riley, 726 F.3d 756, 759 (6th Cir. 2013). United States v. Thompson, 714 F.3d 946, 950 (6th Cir. 2013)(noting that defendants' "status as a career offender essentially "trumps" the range under the guidelines.) NOTE: It appears, also, the "triggered" threshold trumps all under the guideline.

The First Step Act became law on December 21, 2018. Pub. L. No. 115-391, 132 Stat. 5194. The only retroactive portion of the Act, Section 404, United States v. Powell, No. 5:11-cr-75-DMH-1, 2019 WL 1521972, at *3 n.1, (E.D. Ky., April 8, 2019) "makes retroactive only certain statutory changes pertaining to threshold "crack cocaine" weights "triggering" mandatory minimum sentences that are under the Fair Sentencing Act of 2010. United States v. Wiseman, 932 F.3d 411, 417 (6th Cir. 2019), petition for Cert. filed No. 19-7341 (US Jan. 17, 2020.) In other words, the retroactive provision "only amended the statutory sentencing ranges for "crack cocaine" offenses." Powell, 2019 WL 1521972, at *3 n.1.

Petitioner's conviction was based on "methamphetamine" rather than "crack cocaine" and the retroactive portion of the First Step Act does not provide petitioner any relief as interpreted through lower courts even though the petitioner was sentenced under statutory sentencing mandates, had added drug weight to "trigger" a threshold statutory provision enacting the threshold engagement of drugs to increase sentencing level, which precisely runs parallel to Powell. Only using a different drug type on the Drug Level Chart that determines the guideline level range when it crosses the Criminal Category Chart, deeming the guideline level range to be applied is where both of these statutory mandates intersect. All of this information is located in a scheduled charted series which mandates guideline levels at sentencing.

Petitioner has now shown not only exceptional circumstances regarding Amendment 782, First Step Act, and sentence Drug Chart levels towards and in application of the guidelines which seem to be in applied conflict or unrelated conflict under federal law where this petitioner wholly fits multiple criterias for relief of sentence, and a re-sentence hearing to correct this sentence should be granted, in accordance with established law, statutes, and amendments that require this Supreme Courts attention of authoritative power.

Petitioner wholly fits all criteria, both constitutional and unconstitutional, where they both intersect, for relief of sentence, adjustment of drug quantity while attending the "triggered" threshold and statutory application which is due this petitioner and applicably available where the guideline range used in the original PSR, prepared by Mr. Todd Huss, using reference to the court transcripts only, where a sentence review or ordered decisions by this Supreme Court deems fit, while applying the newly revised statutory provisions to this petitioner's petitioned claims to this case.

Denying petitioner relief as stands while reflecting the fairness and integrity of our founded constitutional laws, petitioner prayerfully requests this Supreme Court to recognize the "cruel and unusual punishments," as well as the relativity to the FSA (of 2010) as stated in Powell in connection with the "identically applied "drug table chart" and struck down "residual clause" used at this trial that set the guideline schedules which was used on this petitioner.

Petitioner hereby claims that because (as the record will reflect a short trial with evidence of abandoned defense counsel), petitioner still preserves all rights for unconstitutional and constitutional review as well as post-conviction relief of sentence review after enduring numerous faulty procedures, rail-road conduct, and improper application of law applied this petitioner.

Petitioner prayerfully and respectfully pleads for correction, mercy, and justice (in that order) during this review, showing utmost remorse for all petitioner has lost while incarcerated, and petitioner Greatfully Thanks this Honorable U.S. Supreme Court and its Panel(s) for the most valuable and precious time reviewing these stated facts contained herein this submitted PRO SE prepared petition.

Sincerely & Respectfully Submitted,

I/M Timothy M. Kondrucki
REG. # 09128-029

Submitted on April 28, 2020

Conclusion

Petitioner appears humbly before this Honorable Court on bended knee in prayer for a fair and re-applied new sentence hearing. Petitioner does not contest the convictions in case, and requests appointed counsel, familiar with Supreme Court regulations and rules to file any necessary motions, amendments, or supplemental briefs necessary to complete review of these claims, granting the great Writ of Certiorari and to attend a re-sentence hearing using only established law, statutes, and guideline application in record of trial only, pre-trial, and post-conviction filings only applied to this case and available retroactively applied mandates, or to make them so if they are not. Such as the

Rule 404 and the Drug Table Chart which is absolutely pertinent to the BOP population that "triggers" drug threshold engagement to statutory applications in relation to the F.S.A. and First Step Act, relatingly so.

This petition for Writ of Certiorari, on the merits contained herein, should be granted.

Prayerfully & Respectfully Submitted,

I/M Timothy M. Kendrick
#09128-029

Executed on April 28, 2020