

19-8506

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

MAY 08 2020

IN THE
SUPREME COURT OF THE UNITED STATES

OFFICE OF THE CLERK

David James Ward — PETITIONER
(Your Name)

United States — RESPONDENT(S)
vs.

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Third Circuit Appeals Court

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

PETITION FOR WRIT OF CERTIORARI

David James Ward

(Your Name)

F.C.I. Butner - 2, P.O. Box 1500

(Address)

Butner, North Carolina 27509

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Does a miscalculation of the mandatory U.S. sentencing Guidelines range, where the sentencing court applied an incorrect base offense level, and applied guideline enhancements that do not apply to the offense of conviction charged in the indictment, that increased the points by nine (9) points call for the appellate court to exercise its discretion to vacate the sentence?

Does an ex post facto violation of the mandatory sentencing guidelines call for a court of appeals to exercise its discretion and vacate the sentence?

Does unlawful confinement do to the miscalculation of the mandatory sentencing Guidelines range call for an appellate court to exercise its discretion and vacate the sentence?

II

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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APPENDIX E

APPENDIX F

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[] is unpublished.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 _____ 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[] is unpublished.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.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 6, 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).

STATEMENT OF THE CASE

The sentencing court in January of 1997, sentenced the petitioner for the offence of kidnapping 18 U.S.C. 1201(a) AS WAS charged in a single count indictment, only the elements of the offense kidnapping were charged in said indictment. The district court applied guideline enhancements that do not apply to the offense of conviction that was charged in the single count indictment. The sentencing court in its calculation of the Mandatory U.S. Sentencing Guideline sentence started with an incorrect Base Offense Level of 27. The district court then incorrectly applied sentencing enhancements 2A3.1 and Application Note 7, this incorrectly increased the Offense Level by Six (6) additional points. The sentencing court incorrectly applied the Base Offense Level and guidelines enhancements that apply to the offense 18 U.S.C. 2241. Petitioner was never indicted for, nor, charged with the offense 18 U.S.C. 2241 by a grand jury.

The United States Sentencing Guidelines Manual, in Chapter Two, states that: guideline enhancements are applicable to the offense that was charged in the indictment.

This plain error was objected to by the Federal Public Defender at the sentencing proceedings when he objected to the miscalculation of the U.S. Sentencing Guidelines range that the district court imposed at sentencing.

The correct calculation of the MANDATORY Guidelines sentence in the instant case should be: kidnapping Base Offense Level 24, Prior Criminal History points 9. Pleading guilty subtracting 3. Resulting in an Offense Level of 30, Criminal History Category IV, for a MANDATORY Guidelines sentence of 135-168 months.

The sentencing court violated the U.S. Constitution Article I, ~~XXXXXX~~, Section 9, CLAUSE 3, the Ex Post Facto Clause, when it retrospectively applied the guideline enhancement 5K2.21, before its enactment, thereby altering the definition of criminal conduct, also, increasing the penalty by which a crime is punishable under the MANDATORY Guidelines, making more onerous the quantum of punishment attached to the crime, in violation of the Ex Post Facto prohibition.

The sentence enhancement guideline 5K2.21, took effect on November 1, 2000. Petitioner was sentenced on January 7, 1997. 5K2.21 allows the sentencing court to increase the sentence above the guidelines range, based on conduct underlying a charge dismissed as part of a plea agreement, or underlying a potential charge not pursued in the case as part of a plea agreement, that did not enter into the determination of the applicable guideline range.

The guideline enhancement 5K2.21 has caused a miscalculation of the Mandatory Guidelines range, increasing substantially the plea agreement made with the government when petitioner plead guilty in order to receive a sentence under the Guidelines. This was plain error, that has adversely affected the petitioner's substantial rights, affecting the fairness, and public reputation of judicial proceedings.

The sentence in the instant case is in violation of the Mandatory U.S. Sentencing Guidelines. Mandatory Guidelines are binding on judges and have the force and effects of law. Petitioner had a due process of law expectation that he would receive a sentence within the applicable guidelines range. The mandatory guidelines "fix sentences."

Petitioner's continued confinement is unlawful in violation of the Eighth Amendments cruel and unusual punishment clause. The mandatory guidelines sentence should have been 135-168 months. Petitioner has been lingering longer in federal prison than the law demands. His sentence was completely served several years ago.

8.

REASONS FOR GRANTING THE PETITION

This Court in the case Rosales-Mireles v. United States, 138 S. Ct 1897, 201 LED 2d 376 (2018) Held: A miscalculation of a Guidelines sentencing range that has been determined to be plain error and to affect a defendant's substantial rights calls for a court of Appeals to exercise its discretion under Rule 52(b) to vacate the defendant's sentence in the ordinary case.

The United States Third Circuit Appeals Court in the instant case disregarded and refused to consider the settled decision by this Court. This fact calls for an exercise of this Court's supervisory power.

Each year, district courts sentence thousands of individuals to imprisonment for violations of federal law. At times, however, an error in the calculation of the Guidelines range goes unnoticed by the courts and the parties. Rule 52(b) strikes a careful balance between judicial efficiency and the redress of injustice. All individuals in the federal prison system whose sentences are the result of a miscalculation of the U.S. Sentencing Guidelines range should be allowed to appeal according to the decision in Rosales-Mireles (*supra*) and the courts of appeals should exercise its discretion under Rule 52(b) to vacate the defendant's sentence. This will, in a positive manner, seriously affect the fairness, integrity, or public reputation of judicial proceedings.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

David James Ward.

Date: MAY 6th, 2020