

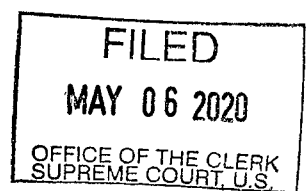
19-8524

No. 19-4516

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Gregory P. Coker — PETITIONER
(Your Name)



vs.

UNITED States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gregory Coker
(Your Name) Mr. Gregory P. Coker

FCI BUTNER II, PO Box 1500
(Address)

BUTNER, NC 27509
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1) Whether The 4th Circuit Misapplied *Stinson v US*,
Mathis v US when it Determined the S.C Code
44-53-375 as Divisible + A Qualifying Career
Offender Predicate?

(i)

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:

RELATED CASES

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19-4516
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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
DPSCLAMPS v US 570 US 254 (2013)	PASSIM
MATHIS v US 136 US 2243 (2016)	PASSIM
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US v COOPER 2019 US Dist Lexis 174261 (SDWA)	PASSIM
US v DOZIER 848 F.3d 180 (4 th 2017)	PASSIM
US v FURLOW 18-4531 (4 th 2019)	PASSIM
STATUTES AND RULES	
S.C. CODE § 44-53-375	PASSIM
U.S.S.C. § 431.2(B)	PASSIM
USC § 994(H)	PASSIM

OTHER

CONT OF TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
US v Gibbs 2:18-cr-891 (SDWA 2019)	PASSIM
US v Haus 927 F.3d 382 (6 th Cir EN BANC 2019)	PASSIM
US v Marshall 747 F.Appx 139 (4 th 2018)	6
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US v TARKSLEY 15-11078 (5 th Cir 2017, EN BANC)	PASSIM
US v WINSTEAD 890 F.3d 737 (DC 2018)	PASSIM

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 2020 US App LEXIS 5521 (4th 2020); 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☒ is unpublished.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 Feb 24, 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

5th AMENDMENT OF THE U.S. CONSTITUTION, DUE PROCESS CLAUSE

· NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT [FOR THE SAME OFFENSE] TO BE TWICE PUT IN JEOPARDY OF [LIFE OR LIMB]; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF [LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW]; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

CONT OF CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.S.G 4B1.2(B), 2016-2017 EDITION

THE TERM "CONTROLLED SUBSTANCE MEANS" AN OFFENSE UNDER FEDERAL OR STATE LAW, PUNISHABLE BY IMPRISONMENT FOR A TERM EXCEEDING ONE YEAR, THAT PROHIBITS THE MANUFACTURE, IMPORT, EXPORT, DISTRIBUTION, OR DISPENSING OF A CONTROLLED SUBSTANCE (OR A COUNTERFEIT SUBSTANCE) OR THE POSSESSION OF A CONTROLLED SUBSTANCE (OR COUNTERFEIT SUBSTANCE) WITH INTENT TO MANUFACTURE, IMPORT, EXPORT, DISTRIBUTE, OR DISPENSE

4B1.2 COMMENTARY, APP. NO 1 DEFINITIONS:

"CRIME OF VIOLENCE" AND "CONTROLLED SUBSTANCE OFFENSE" INCLUDE THE OFFENSES OF AIDING AND ABETTING, CONSPIRING, AND ATTEMPTING TO COMMIT SUCH OFFENSES

SC CODE § 44-53-375: MANUFACTURE, DISTRIBUTE, DISPENSE, DELIVER, [PURCHASE] OR OTHERWISE AID, ABET, ATTEMPT OR CONSPIRE TO MANUFACTURE, DISTRIBUTE, DISPENSE, DELIVER, OR PURCHASE, OR POSSESS WITH INTENT TO MANUFACTURE, DISTRIBUTE, DISPENSE, DELIVER, OR PURCHASE A QUANTITY OF COCAINE BASE, A SCHEDULE II, CONTROLLED SUBSTANCE UNDER PROVISIONS OF § 44-53-375.

STATEMENT OF THE CASE

MR. COHEN WAS "LABELED AS A CAREER OFFENDER" IN THE DISTRICT COURT OF SOUTH CAROLINA. THE COURT RELIED ON S.C. CODE 44-53-375, WHICH HAS BEEN CON- CERNED TO BE BROADER THAN THE FEDERAL DEFINITION OF A CONTROLLED SUBSTANCE OFFENSE. INSPITE OF THE US v RHODES 17-4162 (4TH CIR 2018) DECISION THAT STATES THE PRIOR DOESN'T QUALIFY, THE DISTRICT COURT IMPOSED THE HEIGHTENED SENTENCE INSTEAD OF THE 201.1 BASE OFFENSE LEVEL OF 12.

MR. COHEN APPEALED (19-4516) TO THE 4TH CIR. OF APPEAL AND THE APPEAL COURT DETERMINED THE S.C. CODE 44-53-375 IS DIVISIBLE BASED UPON SEVERAL "ABROGATED DECISIONS" FROM THE 4TH & 5TH CIRCUIT. THE COURT AFFIRMED THE PETITIONER'S SENTENCE AND THE PETITIONER DID NOT FILE A PANEL REHEARING AND NOW FILES THE WRIT OF HABEAS CORPUS REQUESTING THE COURT TO DETERMINE "IF THE S.C. CODE 44-53-375 IS DIVISIBLE IN LIGHT OF MATLIS v US AND IF THE COMMENTARY IS INCONSISTENT WITH THE GUIDELINES TEXT IN LIGHT OF STINSON.

REASONS FOR GRANTING THE PETITION

The 4th Circuit has conceded that the S.C. Code 44-53-375 is "overly broad" and "includes a host of ALTERNATIVE [MEANS] that are NOT INCLUDED in the PLAIN GUIDELINES Text of 4B1.2(b). (See US v Furlow 18-4531 (4th Cir 2019) AND US v Rhodes 17-4162 (4th 2018). BUTL ATTACHED IN PART IN APPX C AND D)

However, 3 separate Judges (Wilkinson, Traylen + Brinkema) Ruled in Rhodes that the S.C. Code is overly broad + Does not Qualify AS A Career offender predicate, But then in Furlow Judges (Wilkinson, King + Duncan) Ruled 1yr later that the statute is overly broad but Divisible + now DOES Qualify AS A Career offender predicate. The Furlow panel Relied on unpublished opinions in the 4th circuit of US v Marshall 747 F App'x 139 (4th 2018). AND Marshall Relies on the now Abrogated decision from the 5th Cir. of US v Rodriguez-Negrete 772 F.3d 221 (5th 2014) that had incorrectly decided the S.C. Code 44-53-375 WAS Divisible based upon the 5th Cir decision of US v Fano. But the Marshall + Furlow Decisions DID NOT consider the fact that

Cont of Reasons For Granting THE Petition

that [Rooniguez-Negrete was overturned] by the ENBANC Ruling of US v Tanksley 15-11078 (2017), which Relied on this Courts Rulings of Descamps + Mathis.

Second, the Fullow panel Relied on its 4th Cir Decision of US v Dozien 848 F3d 180 (4th 2017), which DID NOT Consider "Whether the Commentary was Inconsistent with the Guidelines Text & the U.S. Commission Exceeding its Authority". In this case, the District Courts in the 4th Cir have held that Post US v McCollom, 17-4296 (4th Cir 2018), Misretta v US 488 US At 393 (1989), Stinson v US 508 US 36 (1993), US v Harris 927 F3d 382 (6th Cir EN Banc 2019) & US v Winston 890 F3d 737 (DC 2018) that the Dozien is not Controlling & Declared that the Guidelines & Commentary ARE Inconsistent & the Sentencing Commission DID EXCEED ITS Authority. (See US v Bond 2019 US Dist Lexis 195604 (S.D. WVA 2019) citing US v Bibbs 2:18-cr-89-1 (S.D. WVA 2019) AND US v Cooper 2019 US Dist Lexis 174261 (S.D. WVA 2019))

Consequently, not only is the 4th Circuit Judges in Intra-conflict, but also the District Courts in the Fourth Circuit are out of sync as well with this Courts Rulings & other Circuit Rulings, thus in DINE NEED of this Courts Guidance.

(7)

Therefore, the petitioner prays that this Court
Summarily Reverses the 4th Circuit Decision and
Remand For Reconsideration on Resentencing. In
Alternative, To Grant Cert And Hold Oral Arguments
On The Question Of: 1) Is the S.C. Code 44-53-375
Ovivable And 2) Is the Guidelines Commentary Incon-
sistent with the Guidelines Text?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gregory P. Coker
MR. Gregory P. Coker, 33529-171

Date: April 28 2020