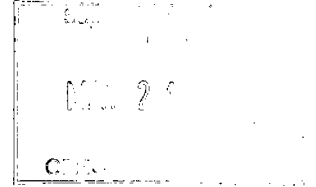


19-8621

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



STEVEN DESMOND PETERSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE 4th CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Steven Desmond Peterson
(Your Name)

P.O. Box 52020
(Address)

Bennettsville, S.C. 29512
(City, State, Zip Code)

(Phone Number)

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:

The Fourth Circuit Court of Appeals, Chief Judge J. Howie Wilkerson

The United States Attorney

The United States District Judge Honorable Malcolm J. Howard

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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 19-4631; 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☒ is unpublished.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 B to the petition and is

☒ reported at 3:19-cr-46-H3 Document 658 8/15/2019; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 MARCH 12, 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: MAY 15, 2020, 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 PROVISIONS INVOLVED

5th Amendment (1791) No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment .., nor shall any person be subject for the same offense to be twice put in jeopardy of life.

Article I, Section 9 and 10, .. No Bill of Attainder or Ex post facto Law shall be passed.

18 U.S.C. 3006 Criminal Justice Act Implementation Plan.

18 U.S.C. 3742 (f), If the court of appeals determines that--
(1) the sentence was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate.

F.R.C.P. Rule 52(b)

18 U.S.C. 3553 (a)

18 U.S.C. 924 (c)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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18 USC 3742(f)(1)	
RULE 52(a)	
18 USC 924(c)	

OTHER

FIFTH AMENDMENT OF THE CONSTITUTION
 ARTICLE I SECTION 9 and 10
 UNITED STATES SENTENCING GUIDELINES manual of 1992 and 1994.
 1B1.1 and 2A1.1
 SENTENCING PACKAGE DOCTRINE

QUESTION(S) PRESENTED

When the Bill of Particulars controls the offense and its elements through incorporation,
Could a count of conviction stand when the incorporation was vacated due to Violating the Fifth Amendment of the Constitution?

Does a COURT of APPEALS have to comply with its own Criminal Justice Act Plan?

If a court appointed attorney does not comply with Anders and CJA Plan does he render ineffectiveness assistance of counsel?

If the Court of appeals committed error and vacated the wrong count of conviction could case be consider final without correction of the error?

If petitioner last count of convict was Oct. 1993 and the guidelines changed to a harsher penalty in Nov. 1993 If petitioner was sentenced in 1995 under the 1994 guidelines Does this harsher Sentence violates the Constitution?

Does a conviction for firearm in relations to a drug trafficking offense violates Davis if it was found upon a attempted robbery and murder conspiracy?

STATEMENT OF THE CASE

On March 24, 2000 The 4th Circuit Court of Appeal took the government's view of the case and vacated count 1 and 4 without input of the defense as to which count should be vacated. Even though the case disposition was labeled as remand, the case was not remanded.

Public defender William L. Davis did not file a motion for resentence, he did not file Anders Brief or Certiorari. He did not give petitioner notice and he believed that case was remanded.

Davis and Chief Judge J. Howie Wilkerson signed CJA Voucher that clearly stated REMAND. In 2011 Petitioner filed his §2255, it was denied as time barred because the case was not remanded back to the district court. Petitioner filed a Writ of Mandamus to make the district court vacate the two counts. The writ was denied..

On August 15, 2020, the district court vacated the two counts but did not resentence. Petitioner appealed because the order was error for vacating the wrong count. Neither court took into consideration of how the indictment was drafted even though the government clearly stated that count 1 incorporated count 3, not count 4. Count 6 incorporated count 4.

Petitioner raised that count 3 can not stand because its predicate conspiracy count was vacated. Petitioner also raised ineffective assistance of counsel because counsel failed to point out which firearm should have been vacated.

Petitioner also raised that his case is not final because his sentence was not amended until Aug. 15, 2020. He also raised that he was entitled to be resentence and his case should have its review under the now applicable law.

Apprendi was decided in 2000 but because of the court not remanding the case, this denied him his rights to the new law as a pipeline case. His appeal was denied.

REASONS FOR GRANTING THE PETITION

Petitioner should be afforded the right to have his review viewed under the now applicable law pursuant to Griffith v. Kentucky

The case disposition stated remand (see Exhibit #1) and Counselor Davis believed that the case was remanded. Counsel advised petitioner that he would be resentenced. (see Exhibit #2) This is why counsel did not file anders brief or certiorari. The court attributed this delay to petitioner. According to this court in Wilkins v. UNITED STATES 441 U.S. 468, 469 (1979); Counsel has to comply with CJA Plan or he renders ineffective assistance of counsel. This case should be remanded back to district court to have a hearing of why Counsel did not comply with the CJA Plan. This case should be reviewed under the now applicable law in light of Griffith v. Kentucky which States:

"By final we mean a case in which a judgment of conviction has been rendered the availability of appeal exhausted and the time for certiorari elapsed or a petition for certiorari finally denied" see 1, 497 U.S. 314, 321 n.6, 107 S.Ct. 708 (1987).

(see MOTON v. UNITED STATES. 2016 U.S. Dist. LEXIS 57361; also Exhibit #3)

The Fifth Amendment controls the indictment. Count 3 Should be Void.

The government charged two different theories for the count 6. It also charge two different firearm counts 3 and Count 4. Count 1 which incorporates several overt acts related to Count 3. The targeted and specific act was the murder of Martin. Overt act Paragraph 18. (see Exhibit #4 and #5). Paragraph 18. is a crime of violence and the principles in Davis v. United States. 139 S.Ct 2319, 204 L Ed 2d 757 (2019); should apply. The jury was not require to select which predicate applied to which firearm count. (see Exhibit #6) The jury could have convicted on any overacts, but the robbery and murder was only listed in the indictment as a crime of violence. The charge under the 924(c) residual clause was in relation to a drug trafficking crime not a crime of violence, so count 3 could not stand.

Count 1 was the predicate offense (conspiracy) which was vacated.

Count 6 was entered in the record as the count specifically charged in the indictment. If Count 4 is vacated and not Count 3 the protection of the 5th Amendment is violated. (See Exhibit # 7)

Appeals Court ruling denied Petitioner a right to correct a EX post facto violation of the Constitution and 1 B1. 11.

Petitioner was found not guilty of any offenses beyond Oct. 1993 (Count 35). Yet, he was sentenced under the 1994 guidelines manual. On Nov 1, 1993, the Commission deleted the mandatory minimum 20 Year sentence required by the statute 21 USC 848(c). (See Exhibit #8, 2A1.1 of 1992) This cause petitioner's mandatory minimum to be retrospectively applied and change it to a mandatory life sentence. (See Amendment 310 and 476) This violated 1B1.1 which forbids EX post facto law applied on the day of sentencing. Lindsey v. Washington 301 U.S. 397 (1937)

Article I Section 9 and 10 of the Constitution. If this case was remanded back to the district court the error could have been corrected. Judge Malcolm J Howard stated his hands were tied by this error (see sentencing transcripts). The PSO stated that the 2A1.1 calls for a life sentence but Application Note 1 did provide a sentence of less than life for 848(c) in 1992. The amended judgment states offense ended on 6-30-1994 but Petitioner was already arrested prior to that date. The proper guideline that should have been used is of 1992 and this case should be remanded and fixed. (See dates on indictment counts) and (Exhibit #9 court used 1994 manual.)

In Peugh v. United States, 560 U.S. 530, 544, (2013); this court prohibit the use of EX post facto law. (See also Molina-Martinez v. United States 136 S.Ct 1338, (2016); and Rosales-Mireles v. United States 138 S.Ct. 1897, 1910, (2018) (quoting Peugh, "when a court errs in its use of its most important tool, then an error in the process can occur which can undermine the fairness and integrity of the court's conclusion.")

(quoting Rosales-Mireles, concluding that a court abused its discretion in determining that a miscalculated Guidelines range did not affect the fairness of judicial proceedings). The petitioner's range was 20 years to life but was changed to mandatory life. This violated Lindsey by making the maximum sentence compulsory applied. This case is in conflict with United States v. Jones, 2019 U.S. App. LEXIS 23983 and Rule 52. This case conflicts with all 4th. Circuit cases dealing with vacatur and CJA plans where Counsel did not give notice or filed Certiorari and/or Anders brief. This case conflicts with United States v. Whitmore, 2017 U.S. App. LEXIS 4803 and United States v. Williams 2011 U.S. App. LEXIS 26764. United States v. Dodson 291 F.3d 268 (4th Cir. 2002). All 924(c) cases that were vacated see United States v. LaFromboise, 2005 U.S. App. LEXIS 23126), pursuant to the Sentencing package doctrine. This case should have been remanded also. United States v. Smith, 94 F.3d 122 (4th Cir. 1996)

CONCLUSION

Petitioner should have been allowed to prove he could've received a lesser sentence under the correct Guidelines manual and 3553 factors. and Peppers v. United States 131 S.Ct. at 1251,

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 5/20/20