

No. _____

19-8653

IN THE
SUPREME COURT OF THE UNITED STATES

JOSE HERIBERTO RAMIREZ — PETITIONER pro se "petitioner"
(Your Name)

vs.

SOUTHERN DISTRICT OF TEXAS

ORIGINAL

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO **FILED**
MAY 12 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

FIFTH CIRCUIT COURT OF APPEAL

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

PETITION FOR WRIT OF CERTIORARI

JOSE HERIBERTO RAMIREZ
(Your Name)

FCC-BEAUMONT-LOW, POB 26020
(Address)

Beaumont, TX 77720
(City, State, Zip Code)

—
(Phone Number)

QUESTION(S) PRESENTED

Petitioner is challenging all Drugs Minus-Two pursuant to Title 18 U.S.C. § 3582 (c)(2). Reduction of Sentence, Petitioner is eligible to receive the two-points under:

Dillon v. United States, 560 U.S. 817 130 S. Ct. 2683,

United States v. Burrell, 622 F. 3d 961, 962 (8th Cir. 2010).

Pepper v. United States, 131 S. Ct. 1229, 1241, 179 L. Ed 196 (2011).

Whether independent review (Which was not) is an obligation for the low Court and the Appeal Court to maintain control of and to clarify the legal principles in question once the historical facts of case and law are established to determine whether the facts satisfy the relevant statutory or Constitutional standards when the rule of law as applied to the established facts is violated?

United States v. Henderson, 636 F. 3d 713; 2011 U.S. App. LEXIS 5993

United States v. Jones, 633 Fed. Appx. 259; 2016 U.S. App. LEXIS 2402

United States v. Larry, 632 F.3d 933; 2011 U.S. App. LEXIS 2369

Alabama v. Bozeman, 533 U.S. 146, 153, (2001)

Anderson v. Yungkau, 329 U.S. 482, 485, (1947)

Dillon v. United States, 560 U.S. 817, 826, (2010)

Lexecon Inc. v. Milberg Weiss Berhad Hynes & Larach, 523 U.S. 26, 35, (1988)

In re United States ex rel. Historical Cell Site Data, 724 F.3d 600, 607 (5th Cir. 2013)

United States v. Cooley, 590 F.3d 293, 297, (5th Cir. 2009)

United States v. Doublin, 572 F.3d 235,

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

Dillon v. United States, 560 U.S. 817 130 S. Ct. 2683,
United States v. Burrell, 622 F. 3d 961, 962 (8th Cir. 2010).
Pepper v. United States, 131 S. Ct. 1229, 1241, 179 L. Ed 196 (2011).
United States v. Henderson, 636 F.3d 713; 2011 U.S. App. LEXIS 5993
United States v. Jones, 633 Fed. Appx. 259; 2016 U.S. App.LEXIS 2402
United States v. Larry, 632 F. 3d 933; 2011 U.S. App. LEXIS 2369

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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 C to the petition and is

reported at Fifth Circuit Court Of Appeal; 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 03/11/ 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

Petitioner proceeding pro se, challenges the denial of his Motion for reduction of his sentence, pursuant to 18 U.S.C. § 3582(c)(2) Amendment 782 all drugs minus two, by denying Petitioner Motion for reduction of his sentence Petitioner stated that both Courts are violating his due process "Rights" because Petitioner are eligible to receive the two-points under Amendment 782 pursuant to 18 U.S.C. § 3582(c)(2). see Appendix A, and Appendix B

STATEMENT OF THE CASE

On September 13, 2018, Ramirez filed an 18 U.S.C. § 3582(c)(2) Motion for Reduction of Sentence, which sought the relief provided by Guideline Amendment 782 (ROA. .) Eighteen days later, October 1, 2018, United States District Judge Andrew S. Hanen (Hanen) summarily denied Ramirez's motion (ROA. .) Unhappy with the Court's summary denial, on October 9, 2018, Ramirez filed a timely Notice of Appeal (ROA. .) Unable to complete his opening appellate brief within the 40-days filing deadline, on March 3, 2019, pursuant to Fed. R. App. P. 26(b). Ramirez requested a 30 day extension of time. Because Ramirez's requested on April 1, 2019, and the Court gave him an April 26, 2019, filing deadline, this pro se appellate brief now follows. This case is about whether the district court can fulfill its duty, as mandated by the United States Supreme Court in Dillon and by the United States Court of Appeals for the Fifth Circuit in Garcia and determine the scope of reduction, if any, authorized by U.S.C.G. § 1B1.10 and reevaluate the applicable § 3553(a) factors to determine whether a reduction is warranted, either in whole or in part, in response to Ramirez § 3582(c)(2) Motion for Reduction of Sentence, without retrieving the August 18, 2004, paper transcripts of Ramirez's May 25, 2004, sentencing hearing from the archives and reviewing them prior to making both its determination and reevaluation. On February 24, 2004, after a six day trial, a jury in the United States District Court for the Southern District of Texas, Brownville Division, found Ramirez guilty on counts one and two of the December 2, 2003, criminal indictment (See Criminal Docket (Doc.) for case # 1:03-CR-00903-1 at #95.) In count one, Ramirez was charged with conspiracy to possess with intent to distribute a quantity more than 50 kilograms, that is, approximately 82.25 kilograms (180.95 pounds), of marijuana in violation of 21 U.S.C. § 846, 841(a)(1) and 841(b)(1)(C) (Doc. #1 at p.1.) And in count two, Ramirez was charged with possession with intent to distribute a quantity more than 50 kilograms, that is, approximately 82.25 kilograms (180.95 pounds), of marijuana in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 (Doc. #1 at pp. 1-2.) The final Presentence Investigation Report (PSR) was filed on April 27, 2004 (Doc. #171.) Fourteen years later, September 13, 2018, Ramirez filed a § 3582(c)(2)

PART TWO OF STATEMENT OF THE CASE

Motion for Reduction of Sentence, which sought the relief provided by Guideline Amendment 782 (ROA. .) In his motion, Ramirez provided that, prior to the amendment, his total calculated offense level was 26 and his criminal history category was IV. This produces a guideline sentencing range of 92-115 months of federal imprisonment (ROA. .) But after the amendment, his amended calculated base offense level is now 24, but his criminal history category remains at IV. This produces an amended calculated guideline sentencing range of 77-96 months of federal imprisonment (ROA. .) And after the district court reevaluates the applicable § 3553(a) factors, Ramirez asserts that a reduction to 77 months would in no way jeopardize the public's safety, would provide respect for the law, and would punish him but not too great a manner (ROA. .) On October 1, 2018, without liberally construing Ramirez's § 3582(c)(2) Motion for Reduction Sentence and giving him an opportunity to explain why the relevant § 3553(a) factors, and his post-sentencing conduct, support a finding that sentence modification was warranted; without having the United States Probation Office prepare a post-motion-for-reduction report; without having the United States file a response; and without reviewing the August 18, 2004, transcript of the May 25, 2004, sentencing hearing, Judge Hannen denied the § 3582(c)(2) Motion For Reduction of Sentence (ROA. .) As a reason for his denial, Judge Hanen stated, "[t]he Court has considered Defendant's Motin for Reduction of Sentence Pursuant to Title 18 U.S.C. § 3582(c)(2) [Doc. No.236]. The Court finds the motion should be and the same is hereby denied, because the sentence was appropriate under the dictates of Title 18 U.S.C. § 3553(a)"(Id.) (emphasis added.) Unhappy with the district court's summary denial of his § 3582(c)(2) Motion for Reduction of sentence, on October 9, 2018, Ramirez filed a timely Notice of Appeal (ROA. .) Ramirez's Notice of Appeal was docketed by the district court on October 16, 2018 (ROA. .) And because the August 18, 2004, transcript of his May 25, 2004, sentencing hearing (Doc. #210) would be material to the perfection of his appeal, Ramirez had his cousin, Eduardo Ramirez (Eduardo), purchase a copy from the clerk of the United States District Court for the Southern District of Texas, Brownville Division, and mail it to him (See Ramirez's Affidavit (Aff.) at ¶¶ 3-5.) On November

30, 2018, however, district court clerk Juanita Tabares told Eduardo that because the paper transcript had not been pulled from the archives by any one and made available in electronic format, it was not available. Consequently. On April 16, 2019, Cuauchtemoc Ramirez contacted twila Gona and ordered the transcripts. Cuauchtemoc paid for the transcripts and mailed them to Ramirez (Id. at ¶6.) But the documents were returned by prison staff (Id. at ¶8.)

After dealing with several procedural issues, on February 27, 2019, Ramirez designated and requested the Record on Appeal from the district court. The Record on Appeal includes: Docket No. 236, Motion to Reduce Sentence Pursuant to § 3582(c)(2) (ROA. .); Docket No. 238, Notice of Appeal re 236 Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(2) (ROA. .); Docket No. 201, August 18, 2004, transcripts of the May 25, 2004, Sentencing Hearing; and the relevant pages of the criminal Docket for case #: 1:03-CR-00903-1 (ROA. .)

Because the district court committed error when it failed to retrieve the August 18, 2004, paper transcript of Ramirez's May 25, 2004, sentencing hearing from the archives prior to making the determination required by § 1B1.10 to determine the scope of reduction, if any, authorized by Guideline Amendment 782 and the reevaluation required by § 3553(a) to determine whether the reduction is warranted, either in whole or in part, under the applicable factors in response to Ramirez's § 3582(c)(2) Motion for Reduction of Sentence, it abused its discretion.

REASONS FOR GRANTING THE PETITION

The Petitioner asserts the grounds for this petition for Writ of Certiorari is legally sufficient on its constitutional merits, and this Honorable United States Supreme Court should invoke its powers to maintain the uniformity of law and facts with relevant decisions of this court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 5/7/20