

19-8853

IN THE  
SUPREME COURT OF THE UNITED STATES

IN RE: Alan Sajous, Appeal No. 19-12836-E,  
Petitioner,

vs.

United States of America, 11<sup>th</sup> Circuit,  
Respondent.

ORIGINAL

CERTIORARI

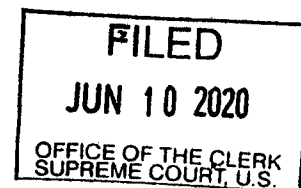
Respectfully Submitted,



Petitioner, Alan Sajous  
11<sup>th</sup> Circuit Appeal No. 19-12836-E  
470 NW 130<sup>th</sup> Street  
North Miami, Florida 33168

June 9, 2020

Date



**QUESTION PRESENTED**

1. Does the Constitution mean anything in the United States of America anymore?

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PETITIONER, Alan Sajous fervently prays that this Honorable Court shall determine that his sentence guidelines were improperly calculated therefore effecting the constitutionality of his current sentence.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under Article III of the United States Constitution.

Also, subject in the jurisdiction of this Honorable Court is the authority to “remand” or “transfer” petitions for habeas corpus to the lower courts for further proceedings and appropriate disposition or consideration on the merits. See, e.g. Supreme Court Rule 20(4)(b); see also Chaapel v. Cochran, 369 U.S. 869 (1962)(remanded/transferred to Florida District Court); Byrnes v. Walker, 371 U.S. 937 (1962)(transferred to Louisiana Court); and In re Davis, 557 U.S. 952 (2009).

As shown above, it is beyond dispute that this Supreme Court of the United States has authority and jurisdiction to hear and grant this Certiorari. See In re Bonner, 151 U.S. 242, 261 (1894).

### STATEMENT OF THE CASE AND RELEVANT FACTS

On June 11, 2014, Mr. Sajous was arrested.

On March 10, 2015, Mr. Sajous had his change of plea hearing and pled guilty to one count of Title 18 U.S.C. Sec. 1029(a)(3).

On June 1, 2015, Mr. Sajous was sentenced to 108 months for the one count of “possessing” 15 or more unauthorized access devices. The Presentence Investigation Report (“PSIR”) gave Mr. Sajous a 16 level offense enhancement for “loss amount” and a 6 level offense enhancement for “victims”.

On February 07, 2020, Mr. Sajous’ motion for reconsideration of the denial of his Appeal No. 19-12836-E was denied.

### GROUND AND REASONS FOR GRANTING THE CERTIORARI

1. Mr. Sajous was erroneously assessed a 16 level offense enhancement for loss amount and a 6 level offense enhancement for victims along with restitution in violation of Supreme Court Precedent (law of the land) and Eleventh Circuit Precedent. These errors were overlooked by two of Mr. Sajous’ attorneys which was in violation of Mr. Sajous’ Sixth Amendment Constitutional Right to effective counsel.

### ARGUMENTS

The Sixth Amendment of the Constitution guarantees effective counsel. This constitutional right was violated by two attorneys, Assistant Federal Public Defender (“AFPD”) Natale and Criminal Justice Act (“CJA”) Norris.

Mr. Sajous specifically informed trial counsel AFPD Natale and 2255/Appeal counsel CJA Norris that he could not receive enhancements for loss amount or victims for the mere possession of access devices, which was established by Supreme Court and Eleventh Circuit Precedent.

Mr. Sajous instructed both counsels to object to the erroneous enhancements at sentencing and during appeal, respectively. Both counsels failed to follow Mr. Sajous' specific instructions and due to their failure the court erroneously enhanced Mr. Sajous' offense level which increased his guidelines range.

Both AFPD Natale and CJA Norris provided ineffective assistance of counsel in this regard because "no competent counsel would have taken th[is] [in]action." Gordon, 518 F. 3d 1291, 1301; Chandler, 218 F. 3d 1305, 1315. The law is well known as it pertains to enhancements for loss amount and victims. Therefore, there is no excuse for neither AFPD Natale nor CJA Norris regarding their ineffectiveness. The ineffective assistance from both lawyers was "so patently unreasonable [because] no competent attorney would have chosen it." Dingle, 480 F. 3d 1099.

The District Court, AUSA, Probation Office, AFPD, and CJA all misinterpreted the sentencing enhancements under U.S.S.G. Sec. 2B1.1(b)(2)(A), (B), and (C). "Victims" for purposes of the enhancement at issue depends on whether the identification was used. Mr. Sajous was charged with possession of 15 or more unauthorized access devices (18 U.S.C. Sec. 1029(a)(3)). Mr. Sajous erroneously received a 6 level offense enhancement for victims. See United States v. Hall, 704 F. 3d 1317 (11<sup>th</sup> Cir. 2013)(matter of first impression, decision became Eleventh Circuit Precedent/Law almost 2 years before Mr. Sajous' sentencing on June 1, 2015).

The District Court, AUSA, Probation Office, AFPD, and CJA all misinterpreted the sentencing enhancement under U.S.S.G. Sec. 2B1.1(b)(1)(I) for "loss amount" contrary to settled law at the time of sentencing and at the time of appellate consideration. Said differently, their misinterpretation was contrary to the applicable statute, rule, and on-point precedent. See Hughey v. United States, 495 U.S. 411 (1990)(loss amount must be caused by specific conduct that is the basis of the offense of conviction);

United States v. Cobbs, 967 F. 2d 1555 (11<sup>th</sup> Cir. 1992)(there is no loss amount caused by the mere possession of access devices); and Nelson v. Colorado, 137 S. Ct. 1249 (2017)(only facts arising out of a final conviction, and not elements of acquitted, dismissed, or uncharged crimes may be considered at sentencing because of the presumption of innocence).

U.S.S.G. Sec. 3B1.5 cmt. n. 1 states that “use does not mean mere possession (e.g., use does not mean that the body armor was found in the trunk of the car but not used actively as protection).” *Id.*

Because Mr. Sajous’ sentencing guidelines range was improperly calculated and because a properly calculated Guidelines range would have been 101 months lower for this error alone (1-7 months vs. 87-108 months), this reversible error “seriously affects the fairness, integrity, or public reputation of judicial proceedings.” Molina-Martinez v. United States, 136 S. Ct. 1338, 1343 (2016).

Had the objections to the loss amount and victims been successfully argued in Mr. Sajous’ case at sentencing (or prior thereto) or during appeal, Mr. Sajous’ total offense level would have been 5, and given Mr. Sajous’ criminal history category of III, the guideline range would have been 1 to 7 months, see Sentencing Table. Discretion must be exercised to correct these errors. See Smith v. Robbins, 528 U.S. 259, 288 (2000); Glover v. United States, 531 U.S. 198 (2001); and United States v. Booker, 543 U.S. 220, 245 (2005).

Furthermore, Mr. Sajous specifically informed trial counsel AFPD Natale and 2255/Appeal counsel CJA Norris that restitution could not be imposed on him as a matter of Supreme Court Precedent and Eleventh Circuit Precedent; and instructed them both to object to the impermissible restitution order. Both counsels failed to follow Mr. Sajous’ specific instructions and due to their failure the court imposed a prohibited restitution order. Hence, the restitution order is invalid/illegal. See Hughey v. United States, 495 U.S. 411 (1990); and United States v. Cobbs, 967 F. 2d 1555 (11<sup>th</sup> Cir. 1992).



You can only be imposed an order of restitution for charged conduct. Mr. Sajous was only charged with violating Title 18 U.S.C. Sec. 1029(a)(3)(possessing 15 or more unauthorized access devices). The possession count to which Mr. Sajous pled guilty cannot support the District Court's order of restitution because there was no loss caused by his mere possession of access devices. The lines of cases descending from Hughey make it abundantly clear that a defendant may be ordered to pay restitution only for offenses for which he is convicted.

A sentence is unreasonable if it contains significant procedural error such as an improper calculation of the guidelines range. See Gall v. United States, 552 U.S. 38, 51 (2007).

### CONCLUSION

Mr. Sajous' sentence in the instant case is based on a miscalculated guidelines range. This error could have easily been obviated by effective counsel simply making timely objections and pointing out the law based on the facts of the case. Unfortunately for Mr. Sajous neither trial counsel AFPD Natale nor 2255/Appeal counsel CJA Norris were up to the task, which left Mr. Sajous prejudiced by exposure to an erroneous higher guideline range (1 to 7 months vs. 87 to 108 months). Mr. Sajous served 42 months in federal prison (from March 10, 2015 to September 14, 2018), far in excess of what he should have served had his guidelines been properly calculated. In addition, Mr. Sajous has already served 18 months of the 36 months of supervised release that was imposed on him.

Mr. Sajous begs this Honorable Court for justice. The fact that Mr. Sajous received ineffective counsel from two different attorneys is irrefutable, undeniable, and indisputable. The court's error prejudiced Mr. Sajous since it affected the selection of sentence imposed and thus was not harmless. Both counsels were deficient in failing to raise the claims since the claims were clearly stronger than the claims raised by either of them. Both AFPD Natale and CJA Norris' ignorance of a well defined legal principle is

VERIFICATION

I, Alan Sajous, certify under penalty of perjury that the Statement of Facts as shown herein are true and correct, and that the documents contained herein are true and correct copies of the documents they purport to be. See Title 28 U.S.C. Sec. 1746; see also Dejesus-Chacon v. United States, 2005 U.S. Dist. LEXIS 36268 (M.D. Fla. 2005).

Respectfully Submitted,



Petitioner, Alan Sajous  
Eleventh Circuit Appeal No. 19-12836-E  
470 NW 130<sup>th</sup> Street  
North Miami, Florida 33168

June 9, 2020  
Date