

No. _____

19-8854

IN THE
SUPREME COURT OF THE UNITED STATES

REGINALD STROTHBR — PETITIONER
(Your Name)

vs.

ORIGINAL

MICHAEL TRUNCALB — RESPONDENT(S)
(MANDAMUS)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
MAY 05 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

(MANDAMUS)
PETITION FOR WRIT OF CERTIORARI

REGINALD STROTHBR

(Your Name)

P.O. Box
24030

(Address)

BEAUMONT, TX 77710

(City, State, Zip Code)

(323) 694-9855

(Phone Number)

RECEIVED

JUN 10 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

I. WHETHER REFUSING TO RULE ON
PETITIONERS MOTION FOR 16 MO-
NTHS CONSTITUTES UNDUE, UNES-
SARY, AND UNREASONABLE DELAY

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:

- MARCIA A. CRONE, DISTRICT COURT JUDGE
- JOHN ALBERT CRART, AUSA
- DAVID HENDERSON, AUSA
- THOMAS BURBANK, DEFENSE ATTORNEY

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A DOCUMENT IN CASE No. 1:06-cr-182

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

UNITED STATES v. STROTHER,
387 F. APPX. 508 (5TH CIR 2010) (UNPUBLISHED)

STATUTES AND RULES

- FIRST STEP ACT § 404(b)
- 21 U.S.C. § 841(b)(1)(A); § 851
- 21 U.S.C. § 841(b)(1)(B)(iii)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
(MANUSCRIPT)
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 _____ to the petition and is

[] reported at 387 F. APPX. 508 (5th Cir. 2010); 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[] is unpublished.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 A 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[] is unpublished.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 9.2.2010.

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 TO THE U.S. CONSTITUTION
- FIRST STEP ACT § 404(b)
- 21 U.S.C. § 841(b)(1)(A); § 851
- 21 U.S.C. § 841(b)(1)(B) (iii)

STATEMENT OF THE CASE

ON 1-4-19, PETITIONER FILED A MOTION FOR RESENTENCING PURSUANT TO SEC. 404 (b) OF THE FIRST STEP ACT. AFTER 16 PLUS MONTHS, THE DISTRICT COURT STILL REFUSES TO RULE ON PETITIONER'S MOTION CAUSING HIM TO CONTINUE TO SERVE A MANDATORY LIFE SENTENCE THAT HAS BEEN INVALIDATED THROUGH RETROACTIVITY. (SEE, ATTACHED PETITION)

REASONS FOR GRANTING THE PETITION

SINCE PETITIONER WAS SENTENCED FOR A "COVERED OFFENSE"
BEFORE AUGUST 3, 2010, (1) HE HAS A STATUTORY RIGHT UNDER SBC 404 (b)
TO BE RESENTENCED, (2) TRUNCALIS HAS A STATUTORY DUTY TO APPLY
THE FAIR SENTENCING ACT RETROACTIVELY UNDER SBC. 404 (b),
AND (3) PETITIONER HAS NO OTHER REMEDY TO CAUSE TRUNCALIS TO
~~RESENTENCE~~ PERFORM HIS JUDICIAL DUTY.

IN THE SUPREME COURT OF THE UNITED STATES

REGINALD STROTHER

v.

MICHAEL J. TRUNCALO

EMERGENCY PETITION FOR

WITI OF MANDAMUS

No. 1:06-cr-182

COMES NOW, PETITIONER "PRO SE" FILING THIS EMERGENCY PETITION SHOWING THE FOLLOWING:

"COVERED OFFENSE"

ON 2-4-09, IN THE U.S. DISTRICT COURT FOR THE EASTERN OF TEXAS BEAUMONT DIVISION, PETITIONER WAS SENTENCED TO MANDATORILY LIFE IMPRISONMENT FOR 81 GRAMS OF CRACK COCAINE AND TWO PRIOR CONVICTIONS PURSUANT TO 21 U.S.C. §§ 841(b)(1)(A) AND 851.

FIRST STEP ACT

ON 12-21-18, CONGRESS PASSED SEC. 404 OF THE FIRST STEP ACT WHICH MADE THE FAIR SENTENCING ACT OF 2010 (FSA) RETROACTIVE TO "COVERED OFFENSES" LIKE PETITIONERS COMMITTED ON OR BEFORE AUGUST 3, 2010.

RESENTENCING

16 MONTHS AGO, ON 1-11-19 PETITIONER FILED A MOTION FOR RESENTENCING UNDER SEC. 404(b). ON 5-6-19, THE U.S. PROBATION DEPARTMENT IN PLANO TEXAS CONTACTED THE

RECEIVED

MAY - 5 2020 OVER

OFFICE OF THE CLERK

BUREAU OF PRISONS (BOP) AT MARION, ILLINOIS AND ADVISED THEM THAT PETITIONER WAS ELIGIBLE FOR RELIEF UNDER SEC. 404. LIKEWISE, AUSA MATT QUINN BY MOTION FILED ON 5-30-19 IN CASE NO. 1:06-CR-182 ALSO ADVISED THAT PETITIONER WAS ELIGIBLE FOR RELIEF UNDER SEC. 404. HOWEVER, DESPITE BEING AWARE OF THESE FACTS MR. TRUNCALF REFUSES TO RULE ON PETITIONER'S MOTION FOR RESENTENCING. BY REPUSING TO TAKE ACTION ON PETITIONER'S MOTION FOR 16 MONTHS, MR. TRUNCALF (1) IS CAUSING UNNECESSARY / UNDUE DELAY, (2) IS DENYING PETITIONER DUE PROCESS, AND (3) IS REFUSING TO FOLLOW THE LAW AS PASSED BY CONGRESS UNDER SEC. 404 OF THE FIRST STEP ACT.

BELIEF NOT AVAILABLE IN ANY OTHER COURT

ON OR AROUND 1-5-20, PETITIONER FILED A WIT OF MANDAMUS WITH THE 5TH CIRCUIT. BECAUSE PETITIONER WAS PLACED IN THE SHU THROUGH NO FAULT OF HIS OWN, HE WAS UNABLE TO SECURE AN IN FORMA PAUPERIS FORM FROM THE STAFF. ON OR AROUND 1-20-20, THE 5TH CIRCUIT RESPONDED STATING PETITIONER'S MANDAMUS WAS DOCKETED UNDER CASE NO. 20-40017 AND ENCLOSED AN IN FORMA PAUPERIS FORM TO BE COMPLETED AND RETURNED TO THE CIRCUIT COURT. EXACTLY 7 DAYS LATER ON 1-27-20, PETITIONER PLACED THE COMPLETED IN FORMA PAUPERIS FORM IN THE HANDS THE MAIL-ROOM STAFF AT MCC CHICAGO VIA CERTIFIED MAIL, AND RECEIVED THE POST-MARKED RETURN RECEIPT ON 1-28-20.

RECEIVED

FSDS P-162

2 OF 4 1/28/20

ON 2-12-20, PETITIONER WAS TRANSFERRED TO BRAUMONT
U.S.P. WHERE R.I.O STAFF CONFISCATED ALL OF HIS LEGAL WORK
INCLUDING HIS DISCOVERY AND THE POST-MARKED RETURN - RE-
CEIPT AND THESE DOCUMENTS WERE NEVER RETURNED.

ON THE VERY NEXT DAY, 2-13-20, THE 5TH CIRCUIT DISMISSED THE PETITION CLAIMING "A WANT OF PROSECUTION" ALTHOUGH THE IN PROCLA PAUPERIS FORM WAS TIMELY COMPLETED AND RETURNED. IN AN EFFORT TO GET THE POST-MARKED RECEIPT BACK AS PROOF OF A TIMELY RETURN, PETITIONER FILED A BP. 8 WITH ASSOC. WARDEN YOUNG ON 2-24-20. ON 3-4-20, WARDEN YOUNG RESPONDED STATING THAT MY CONFISCATED DOCUMENTS WERE SENT TO U.S.P. MARION WITH NO EXPLANATION AND THAT A CALL WAS MADE TO GET THEM BACK. HOWEVER, AS STATED EARLIER THESE DOCUMENTS WERE NEVER RETURNED.

AS A REMEDY, PETITIONER FILED A WREIT OF MANDAMUS WITH THE U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION PURSUANT TO 28 U.S.C. § 1361. NEEDLESS TO SAY, NO ACTION WAS TAKEN ON THE MANDAMUS AS IT APPEARS THAT THE JUDGES IN THE BEAUMONT DIVISION ARE NOT WILLING TO HOLD MR. TRUNCALB ACCOUNTABLE TO THE LAW. BASED UPON THESE FACTS, RELIEF IS NOT AVAILABLE IN ANY OTHER COURT.

MANDAMUS IS PIPE FOR ISSUE

WHILE A SENTENCING COURT IS NOT REQUIRED TO "IMPOSE

A REDUCED SENTENCE" UNDER SEC. 404(b), IT IS REQUIRED TO APPLY THE FSA OF 2010 RETROACTIVELY TO "COVERED OFFENSES" COMMITTED ON OR BEFORE AUGUST 3, 2010.

AS SUCH, (1) SINCE PETITIONER WAS SENTENCED FOR A "COVERED OFFENSE" BEFORE AUGUST 3, 2010 HE HAS A STATUTORY RIGHT TO BE RESENTENCED UNDER SEC. 2 OF THE FSA OF 2010, (2) MR. TRUNCALO HAS A CLEAR DUTY TO ACT AS CASE NO. 1:06-CR-182 IS ASSIGNED TO HIM, AND (3) AS SHOWN ABOVE IN DETAIL PETITIONER HAS NO OTHER REMEDY TO CAUSE MR. TRUNCALO TO APPLY THE FSA OF 2010 RETROACTIVELY TO HIS CASE AS MANDATED BY SEC. 404 OF THE FIRST STEP ACT.

BASED ON THE FOREGOING, MANDAMUS IS RIPE FOR ISSUE AND PETITIONER SEEKS SUCH ISSUEABLE.

CERTIFICATE OF SERVICE

PROOF OF SERVICE IS MADE BY THE "PROOF OF SERVICE" FORM ENCLOSED.


ALL RIGHTS RESERVED

CONCLUSION

(MANOAMUS)

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 5.26.20

(b)