

19-8908

No. \_\_\_\_\_

ORIGINAL  
PETITION

IN THE  
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.  
FILED

JUN 10 2020

OFFICE OF THE CLERK

Preston Pope — PETITIONER  
(Your Name)

vs.

United States Of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Preston Pope # 29215-047

(Your Name)

U.S.P. Florence, P.O. Box 7000

(Address)

Florence, Colorado 81226

(City, State, Zip Code)

N/A

(Phone Number)

## **QUESTION(S) PRESENTED**

Does the Criminal Justice Act of 1964, § 5 Still require that Appellant Counsel provide notice to his client by way of a written letter to his client to request if he wants to file a Writ of Certiorari to the United States Supreme Court?

Does Griffith v. Kentucky, 479 U.S. 314, 321 n.6 (1987) still exist as controlling law when "new" Supreme Court decision in Davis was announced and appellant counsel refuse to raise claim by way of a Rule 28(j) letter to preserve issue on Direct Appeal?

Does Griffith v. Kentucky still exist as controlling law when the First Step Act [Section 403] and appellant counsel refuse to address the stacking of guns under [18 U.S.C. § 924(c)] while he was still on "direct appeal"?

Can Appellant Court find that appellant counsel provided "ineffective assistance on direct appeal" under a motion to "Recall Mandate"?

## **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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## **TABLE OF AUTHORITIES CITED**

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**STATUTES AND RULES**

**OTHER**

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

[xx] 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 Appeal No: 18-1544; 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[ ] is unpublished.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 U.S.D.C. 8:16-cr-00059; 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 23rd, 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 N/A (date) on N/A (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**

Sixth Amendment

## STATEMENT OF THE CASE

On February 18, 2016, Pope was indicted for violations of 18 U.S.C. §§ 1951, 2, 924(c),, 2113(a) and 922(g). Pope maintained his innocence and proceeded to trial, but his right to a fair trial by an impartial jury was denied. And he was found guilty on counts. Mr. Pope filed a timely notice of appeal within 14 day after being sentence on the above listed Counts.

While on direct appeal and after the filed of Mr. Pope's Informal Opening Brief and the government's filing of it's Reply Brief, the United States Supreme Court made two Criminal Case Decision that were "new". See United States v. Davis, --- U.S. --- (2019) and United States v. Rehaif, --- U.S. --- (2019), Also while Mr. Pope's appeal was still pending President Trump signed into law the First Step Act (See Section 403) in December 21st of 2018. Mr. Pope's appellant counsel failed to raise any of these claim on Mr. Pope's direct appeal. See United States v. Frady, 456 U.S. 152 (1982).

On August 14th, 2019, Mr. Pope's direct appeal was denied and Mr. Pope wrote his attorney requesting that he file a petition for rehearing and/or rehearing en banc without receiving any notification from his attorney. Mr. Pope's attorney did not follow the Criminal Justice Act of 1964 Section V, by filing a motion requesting an extension and filed an out-of-time petition for rehearing and/or rehearing en banc. After this denial Mr. Pope's attorney wrote him a letter that was not in accordance with Criminal Justice Act of 1964 Section V. For counsel did not advise the defendant of the right to file a petition for a rehearing, rehearing en banc or a petition for a Writ of Certiorari. Mr. Pope wrote his attorney and asked him to file a timely petition for rehearing even though Counsel never advised him of such. See Motion to Recall Mandate with it's Exhibit's & Reconsideration of Recall of Mandate with it's Exhibits Appendix C. Counsel never filed in accordance with Griffith v. Kentucky, any claim under Davis,

or Rehaif, which could have remanded Mr. Pope's case back for a retrial or atleast allowed him to be resentenced without the stacking of his 924(c) convictions, and vacate his 922(g) conviction, and/or even find that Hobbs Act Robbery was not a crime of violence in light of Davis making Mr. Pope's 924(c) conviction illegal.

## REASONS FOR GRANTING THE PETITION

Is to the condition of the Criminal Justice Act of 1964 § V, because the appellant counsel in this case failed to provide notification by way of a written and/or typed letter to notify Mr. Pope [his client] if he even wanted to file a Writ of Certiorari to the United States Supreme Court for if the answer to this question is "Yes" then the reason becomes does Griffith v. Kentucky, still exist as controlling law when case were announced on June 26, 2019, in United States v. Davis,--- U.S. --- (2019) which would make Mr. Pope's Hobbs Act Robbery not a crime of violence, and in United States v. Rehaif --- U.S. --- (2019) which basically announced that 18 U.S.C. § 922(g) has been misapplied and that all of the elements of this crime has not been found which would make Mr. Pope's § 922(g) conviction invalid and/or unconstitutional because his right to a jury trial has been violated for the jury not finding all the elements under that statute. For appellant counsel could have supplemented the record and/or requested that the record be expanded. Because another question exist which is does Griffith v. Kentucky exist as controlling law when the First Step Act Section 403 and appellant counsel refused to address to address the stacking of guns under § 924(c) while direct appeal was still pending. The Question then is what avenue does Mr. Pope have because when he files his 28 U.S.C. § 2255, the government is going to claim "procedural default" under Frady, and then the pro-se petitioner is not going to be able to answer his claims because the district court is not going to have jurisdiction to find that the appellant counsel was ineffective because the district court has no statutory jurisdiction and/or subject matter jurisdiction to address the appeal court proceedings, only the appeal courts have the jurisdiction to address this blantant violation. But so does that mean that a petitioner/appellant has to file a "Motion to Recall Mandate". Only one circuit has addressed this matter is the D.C. Circuit. All other circuit have remained quiet and/or refuse to address this concern and/or remedy and that is

or should be construed as a "split" in circuit for the purposes of this Writ.

For this court needs to revisit this Writ because, when the U.S. Supreme Court enters a decision that is favorable to the petitioner that was on "direct Appeal" and his attorney refused to apply decision's to his appeal because no Circuit precedent existed to support his challenge and therefore he abandoned his client's appeal with knowledge that their has never been an ineffective assistance of appellant counsel case to hold him responsible for his actions should be stopped here in this case. Where this court can put a stop to this type of situation because this is a problem that really needs to be addressed and a remedy must be provided. For petitioner request that this court use his case to draw a line in the sand, to stop future cases from being ignored by Court appointed attorney's and/or Public Defenders Offices.

The petitioner request that this Court Grant Writ and Appoint Stanford Law School Supreme Court Litigation Clinic [Dean Jeffrey L. Fisher] to further research this problem and to present litigation on my behalf to assist this Honorable Court in crafting some type of decision that will cure this problem for the petitioner and others in his situation instead of allowing this problem to continue to be ignored by the masses.

### **CONCLUSION**

Petitioner seeks to have this petitioner placed on the October 2020 docket, Grant Informa pauperis status, Grant Writ and appointment of Standford Law School litigation Clinic's Dean, and Request the Solicitor General to reply to brief. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Preston Pope



Date: June 10th, 2020