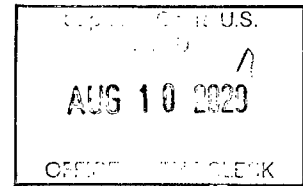


20-5394 ORIGINAL
No. _____



IN THE
SUPREME COURT OF THE UNITED STATES

EUGENE MONA — 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 FIFTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eugene Mona / Reg. No. 10149-280
(Your Name)
Federal Correctional Complex
P.O. Box 3000-Medium

(Address)

Forrest City, Arkansas 72336
(City, State, Zip Code)

870-494-4200
(Phone Number)

QUESTION(S) PRESENTED

Whether the District Court erred in denying Petitioner's Motion For Sentence Reduction pursuant to Amendment 782 to the Drug Sentencing Guidelines because it stated that his sentence was based on "First degree murder" but Mona was convicted of a 1962(d) RICO Conspiracy revolving around drugs.

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

United States v. Mona, No. EP-08-CR-059-DB
United States District Court for the Fifth Circuit
Judgement entered June 10, 2009

United States v. Mona, No. 09-50323
United States Court of Appeals for the Fifth Circuit
Judgement entered April 26, 2012

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A *Decision of U.S. Court of Appeals for the Fifth Circuit
dated March 12, 2020*

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Apprendi v. New Jersey, 530 U.S. 466, 490, 120 S. Ct. 2348, 147 L Ed 2d 435 (2000)...	5,6,7
United States v. Carter, 595 F.3d 575, 577 (9th Cir. 2010).....	8

STATUTES AND RULES

21 U.S.C. §§ 841(a) and 846.....	4,5
21 U.S.C. §§ 841(a)(1).....	4,5,6
18 U.S.C. § 3582(c)(2).....	5,7,8,9
U.S.S.G. App. C, amend 782.....	6,7, 10
U.S.S.G. § 2D1.1(c).....	6,8,9
U.S.S.G. § 1B1.10(d).....	7

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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals 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 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 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: _____, 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

(a) A defendant may file a notice of appeal in the district court for review of a denial of a motion under 3582(c)(2) if the sentence -

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

18 U.S.C. § 3742(a)(2)

STATEMENT OF THE CASE

1. Nature of the Case.

On December 2, 2008, after a month-long federal jury trial, the jury returned a guilty verdict for Mona on Count 2 of the indictment which established that the RICO conspiracy in Count 2 included an agreement among BA members to conspire to engage in narcotics trafficking in violation of 21 U.S.C. §§ 841(a) and 846. "Section 841(a)(1) makes it unlawful for any person to knowingly or intentionally 'manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance,' 21 U.S.C. § 841(a)(1). Section 846 states that 'any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.'"

2. Course of Proceedings and Disposition in the District Court.

Mona was found guilty after a month long jury trial of the offense of Conspiracy to Conduct the Affairs of an Enterprise through a Pattern of Racketeering Activity on December 2, 2008. After analyzing the underlying offenses, the United States Sentencing Guidelines, and the Pre-Sentence Report, the District Court sentenced Mona to Life in prison on April 14, 2009.

On Appeal, in light of the circumstances of the case, the government did not oppose re-sentencing on the basis of Mona's

Apprendi claim. Mona was subsequently re-sentenced to 240 months in prison.

Statement of Facts.

Mona was found guilty, after a month long jury trial, of Conspiracy to Conduct the Affairs of an Enterprise through a Pattern of Racketeering Activity which focused on the agreement by BA members to Traffic Narcotics. Mona was sentenced to Life in prison by the District Court but his sentence was lowered by this honorable court to 240 months after finding an Apprendi violation.

Mona filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2) based on a recent amendment to the drug guideline level. The District Court denied the motion stating that Mona was ineligible because he was found guilty of "first Degree murder." The government is wrong.

Mona was charged in an Indictment filed in the Western District of Texas, El Paso Division for Conspiracy to Conduct the Affairs of an Enterprise through a Pattern of Racketeering Activity alleging in Count 2 an agreement by BA members to conspire to engage in narcotics trafficking in violation of 21 U.S.C. §§ 841(a) and 846. To establish a drug conspiracy under §§ 841(a)(1) and 846, the government must prove: 1) the existence of an agreement between two or more persons to violate federal narcotics laws; 2) the defendant's knowledge of the agreement; and 3) the defendant's voluntary participation in the agreement. Correspondingly,

to establish possession of narcotics with intent to distribute under § 841(a)(1), the government must prove beyond a reasonable doubt that the defendant (1) knowingly (2) possessed a controlled substance (3) with intent to distribute it.

On appeal, Mona argued that there was insufficient evidence of an agreement to conspire to traffic narcotics, but on the contrary, the government provided sufficient evidence demonstrating that BA members conspired with each other, with their tiendas, and with the La Linea drug cartel to import and distribute substantial amounts of heroin, cocaine, and marijuana. The government offered evidence of the symbiotic relationship between the BA and the La Linea drug cartel in Juarez, Mexico.

The pre-sentence investigation report found that pursuant to the United States Sentencing Guidelines, Mona was held accountable for more than 4.5 kilograms of heroin and cocaine, and more than 500 kilograms of marijuana. The court sentenced Mona to Life in prison but Mona's sentence was reduced by the Fifth Circuit Court of Appeals to 240 months after an Apprendi violation.

On November 1, 2014, Amendment 782 to the United States Sentencing Guidelines took effect. See U.S.S.G. App. C, amend. 782; U.S.S.G. § 2D1.1(c) (Nov. 2014). This amendment reduced the base level offense levels that apply to most drug offenses by two levels. On that same date, Amendment 788 to the Guidelines took effect. See U.S.S.G. App. C, amend. 788. This amendment made the lower base offense levels retroactively applicable to individuals who were previously sentenced based on the drug-trafficking

guideline. U.S.S.G. § 1B1.10(d), p.s. (Nov. 2014)(listing amendment 782 as a covered amendment).

Mona filed a motion for a sentence reduction under 28 U.S.C. § 3582(c)(2) and the retroactive effects of Amendment 782 to the U.S. Sentencing Guidelines because he qualifies for a two level adjustment to his sentence. The District Court denied his motion stating that he did not qualify for a reduction in sentence because his sentence was not based on "drug quantities" but on "first degree murder."

Mona respectfully disagrees, this conspiracy was initiated by the Drug Enforcement Agency after investigating large quantities of drugs being circulated in and around the El Paso, Texas area. Mona's conviction is directly related to this drug activity based on his association with the BA. It is incomprehensible to conclude that Mona would be in a federal prison serving a "20 year" prison term for "first degree murder." The government wants this honorable court to ascertain that it would agree to a 20 year term for this type of heinous crime. The government is wrong. Mona filed a notice of appeal.

SUMMARY OF THE ARGUMENTS

Mona Can Identify His Claim Concerning His Request for a Sentence Reduction Under 18 U.S.C. § 3582(c)(2).

Defendant-Appellant was subsequently sentenced to 240 months imprisonment, which was an Amended Judgement after an Apprendi violation by the District Court. The government would like this

court to believe that this sentence is consistent with a conviction for "first degree murder." It is not.

This sentence is in direct relation to the drug trafficking activities of the BA. Recently, the Sentencing Commission amended the relevant drug guideline. 18 U.S.C. § 3582(c)(2) generally permits a district court to reduce a sentence in light of subsequent amendments to the Sentencing Guidelines that reduce the applicable Guidelines range. Mona is eligible for such a reduction. A district court cannot reduce a sentence below the applicable statutory mandatory minimum. Mona's statutory mandatory minimum is 10 years. The District Court erred in denying Mona's § 3582(c)(2) motion for a reduced sentence.

STANDARD OF REVIEW

This Court reviews a decision whether to reduce a sentence under § 3582(c)(2) for abuse of discretion. United States v. Carter, 595 F.3d 575, 577 (5th Cir. 2010). The Court reviews the district court's interpretation of the guidelines and sentencing statutes de novo. *Id.*

Mona has a compelling argument that the district court abused its discretion.

Effective November 1, 2014, the U.S. Sentencing Commission, in response to growing bipartisan concerns about the length of federal drug sentences, amended the guideline applicable to drug trafficking offenses, § 2D1.1, by reducing most of the quantity-determined base offense levels by two. See U.S.S.G. App. C, amend.

782. The Commission also made the reduction retroactively applicable to offenders sentenced under the prior version of guideline § 2D1.1. See U.S.S.G. App. C, amend. 788; § 1B1.10(d), p.s.

As a result, Mona's base offense level for his conviction has been reduced. Compare U.S.S.G. § 2D1.1(c)(2)(2012) with U.S.S.G. § 2D1.1(c)(2) (2016).

Therefore, the base offense level is decreased for Group I, which is the group that involves the Amendment 782, Section 3582 (c)(2) permits a district court to reduce the sentence "of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission." A reduction, however, must be "consistent with applicable policy statements issued by the Sentencing Commission." § 3582(c)(2). The relevant policy statements authorize a sentence reduction in Mona's case.

For these reasons the district court erred in denying Mona's motion for a reduction of sentence in light of the amended drug guideline.

REASONS FOR GRANTING THE PETITION

Accordingly, this Court should grant certiorari to address whether the District Court has the authority to deny a petitioner's 3582(c)(2) motion for sentence reduction pursuant to Amendment 782 to the United States Sentencing Drug Guidelines, because it incorrectly concluded that the petitioner was convicted of "First degree murder" and not a "drug guideline."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eugene Mora

Date: August 1, 2020