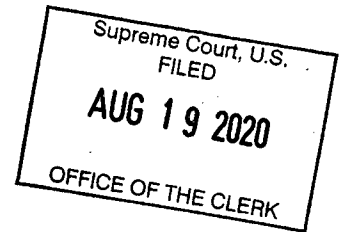


No. 20-5464

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

DWAYNE BANKS — PETITIONER
(Your Name)



vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit of Appeals Court

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

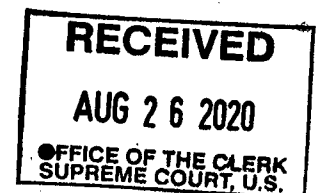
PETITION FOR WRIT OF CERTIORARI

DWAYNE BANKS, FED NO. 85470-083
(Your Name)

FBI BUTNER II, PO BOX 1500
(Address)

BUTNER, NC 27509
(City, State, Zip Code)

NA
(Phone Number)



QUESTION(S) PRESENTED

- 1) THE GOVERNMENT FILED A RESPONSE TO THE PETITIONER'S 2255 "2 yrs AFTER ORDERED BY THE COURT", THE GOVERNMENT ADMITS/CONCEDES THAT "IT FORGOT". DID THE DISTRICT COURT ABUSE ITS DISCRETION BY ALLOWING THE GOVERNMENT'S MOTION/RESPONSE TO BE RELIED ON IN DENYING THE PETITIONER'S 2255, WHEN IT CONCEDES THAT IT HAD "FORGOT" (SEE APP'X C) AND BANKS HAD OPPOSED THE RESPONSE?

- 2) THE SENTENCING COMMISSION ISSUED A "CLARIFYING + RETROACTIVE AMENDMENT" IN REGARD TO THE MINOR/MITIGATING ROLE REDUCTION [PRIOR TO BANKS SENTENCING]. ALL PARTIES CONCEDE THAT MR. BANKS PLAYED A MINOR ROLE. HOWEVER, THE COUNSEL FAILED TO RAISE THE REQUEST FOR THE 2-4 LEVEL REDUCTION AT SENTENCING, WAS THE COUNSEL INEFFECTIVE & IF SO, DID THE DISTRICT COURT ERR IN FAILING TO GRANT THE EVIDENTIARY HEARING OR RESENTENCING?

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

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4-6
REASONS FOR GRANTING THE WRIT	7-10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A	4 th Circuit of Appeal Denial
APPENDIX B	District Court Denial
APPENDIX C	Government's Response
APPENDIX D	Petitioner's Filings & Responses
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES

		PAGE NUMBER
EZE v SENKOWSKI	321 F.3d 110 (2nd 2003)	p. 9
McMANN v RICHARDSON	397 US 759 (Sp.Ct 1970)	p. 9
MORAN v CARRIER	477 US 478 (Sp.Ct 1986)	p. 9
US v ALLMINDGER	17-6447 (4th 2018)	p. 5
US v CRUICKSHANK	14-13754 (11th 2016)	p. 4
US v CARTHORNE	16-6515 (4th 2017)	p. 5
US v BLOVER	531 US 198 (Sp.Ct 2001)	PASSIM
US v MOHAMDI	17-7395 (4th 2018)	p. 5
US v WINBUSH	17-7148 (4th 2019)	p. 5

STATUTES AND RULES

AMENDMENT 790	PASSIM
AMENDMENT 794	PASSIM
AMENDMENT 811	PASSIM
U.S.S.G 3B1.2	PASSIM

OTHER NA

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 A to the petition and is

☒ reported at US V BANKS, 20-6222; 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 US V BANKS 2:15CR07; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☐ For cases from **state courts**: NA

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 JUN 19, 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**: NA

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

AMENDMENT V, OF US CONSTITUTION, DUE PROCESS OF LAW CLAUSE

NOR PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJEC FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF, NOR BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY, WITHOUT "DUE PROCESS OF LAW"; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

STATEMENT OF THE CASE

MR. BANKS WAS INDICTED FOR VIOLATING THE FEDERAL DRUG CONSPIRACY LAWS & WAS [SENTENCED ON OCTOBER 30, 2015]. PRIOR TO THE SENTENCING, THE U.S. SENTENCING COMMISSION ISSUED THE "CLARIFYING AMENDMENT 794." (SEE U.S.S.C 3B1.2); US v CRICKSHANK 14-13754 (11TH CIR 2016).

AT THE SENTENCING THE COUNSEL FAILED TO REQUEST THE 2-4 LEVEL REDUCTION FOR BANKS MINOR ROLE. BECAUSE OF THIS MR. BANKS WAS SENTENCED TO 135 Mths. MR. BANKS SENT A LETTER TO THE COURT ON AUG. 4, 2016 REQUESTING THE REDUCTION PURSUANT TO AMENDMENT 794, IN WHICH THE COURT CONSTRUED IT AS A 2255 AND APPOINTED COUNSEL. THEN ORDERED THE GOVERNMENT TO RESPOND. THE COUNSEL MOVED TO BE REMOVED & THE GOVERNMENT FAILED TO RESPOND. THAT IS UNTIL MARCH 22, 2019, WHICH IS AFTER MR. BANKS HAD FILED A 3582 / CORAM NOBIS SEEKING A REDUCTION IN WAKE OF AMENDMENTS 790, 794, & 811. (SEE APP'X C) VS APP'X D).

THE GOVERNMENT, IN ITS "VERY UNTIMELY RESPONSE", CONCEDES THAT... "THE GOVERNMENT FILED A TIMELY RESPONSE TO THE SMTH 2255, I BUT ERONEOUSLY FAILED TO FILE ANY RESPONSE TO PETITIONER'S (BANKS) 2255 MOTION.... THE GOVERNMENT'S OVERSIGHT WAS BROUGHT TO THE ATTENTION OF THE UNDERSIGNED ON 3/7/2019 BY A NORFOLK DISTRICT CASE MANAGER." (DOC 240 P 2 SEC 2-7, IN APP'X C)

MR. BANKS [OPPOSED THE DELAYED FILING] but the DISTRICT COURT GRANTED the GOVERNMENT'S DELAYED FILING REQUEST AND THEN USED the DELAYED FILING TO ALSO DENY the PETITIONER'S RELIEF, (SEE APP'X B), which IS A CLEAR DUE PROCESS VIOLATION.

MR. BANKS FILED A TIMELY APPEAL TO the 4th CIRCUIT COURT OF APPEALS. BANKS ARGUED

- 1) The Court LACKED JURISDICTION TO ENTERTAIN the APPEAL BECAUSE the DISTRICT COURT FAILED TO RESOLVE ALL MERIT ISSUES RAISED IN VIOLATION OF US v MOHAMEDI, 17-7395 (4th Cir 2018)
- 2) The Court ABUSED ITS DISCRETION BY ALLOWING the GOVERNMENT TO RESPOND AFTER 2yrs OF FAILING TO DUE TO "FORGETFULNESS".
- 3) The Court ERRED IN FAILING TO FIND the SENTENCING COUNSEL (T. Kelleher) AS INEFFECTIVE ESPECIALLY WHEN the 4th CIR OF APPEALS HAD RULED THAT A COUNSEL IS DEEMED INEFFECTIVE FOR FAILING TO RAISE the MERITABLE ISSUES AT the PROPER TIME. (SEE US v CARTER, US v ALLMINDGEN, US v WINBUSH + this Courts US v GLOVER)

ON JUNE 19, 2020, THE 4TH CIRCUIT DENIED THE COA REQUEST & DISMISSED THE APPEAL ON JUNE 19, 2020. (SEE APP'X A)

THE PETITIONER THEN FILED TO THIS COURT TO REQUEST THE PROSE WRIT OF CERTIORARI PACKAGE & NOW FILES HIS TIMELY CERTIORARI FILING & REQUEST THE COURT TO REVERSE THE APPEAL & DISTRICT COURT'S RULINGS, WITH INSTRUCTIONS TO EITHER GRANT A EVIDENTIARY HEARING ON IMMEDIATE RESENTENCING.

IN ALTERNATIVE, TO GRANT CERT & ASSIGN COUNSEL & SET THE MATTER FOR ORAL ARGUMENTS TO RESOLVE THESE 1ST IMPRESSION & NOVEL ISSUES TO PROVIDE GUIDANCE TO THE COURTS.

REASONS FOR GRANTING THE PETITION

- 1) THE DISTRICT COURT & GOVERNMENT VIOLATED THE DUE PROCESS CLAUSE BY RELYING ON THE DELAYED RESPONSE OF ZYNS TO MAKE ITS DENIAL DECISION & WARRANTS REVERSAL.

THIS ISSUE IS A [1ST IMPRESSION] ISSUE FOR THIS COURT & MUST BE RESOLVED TO GUIDE ALL COURTS GOING FORWARD. AS THIS COURT IS AWARE, IF ANY INMATE MISSES A DEADLINE TO FILE OR RESPOND, THEN THE PARTIES ARE 99% DENIED. THE EXCEPTION IS EQUITABLE TOLLING. BUT THE GOVERNMENT CONCEDED IT "FORGOT" & WAS REMINDED ZYNS LATER BY THE NORFOLK DISTRICT COURT CASE MANAGER. (DOC 240, SEC. 6 AND 7).

BUT THIS MEANS "EVERYONE IN THE EASTERN DISTRICT DA'S OFFICE FORGOT & IN FORGETTING VIOLATES THE COURT ORDER & PETITIONER'S DUE PROCESS RIGHTS". JUST AS "IGNORANCE OF THE LAW IS NO EXCUSE, FORGETFULNESS ALSO IS NO EXCUSE", RATHER IT WAS INTENTIONAL OR UNINTENTIONAL.

The MOVI Question For this Court is "whether the Government's Response, 2 yrs later, should have been allowed + then used to make the denial of the Filings? This issue has never been requested + never been resolved by this Court + must be resolved for all parties going forward.

Therefore, Certiorari should be granted on this issue.

2) Whether a Counsel is ineffective for failing to raise a meritable issue at sentencing when the U.S. Sentencing Commission had already issued the clarifying amendments 790, 794 + 811 at least 11 mths earlier?

This Court has already held in US v Glover, 531 US 198, 203-04 (2001), that a Counsel's error [at sentencing] resulting in a 6 to 21 mth sentence sentence increase could establish ineffective assistance of Counsel.

The Glover decision incorporated the Strickland 2 prong test. According to Strickland's 2 prongs, Mr. Banks must show the following 1) Counsel's performance fell below an objective standard of reasonableness AND 2) Counsel's deficient performance prejudiced Mr. Banks.

In this case, Mr. Banks showed that the Counsel failed to raise the clearly meritorious minor/mitigating role clarifying amendment, which prejudiced Mr. Banks & was the "cause of the increased punishment". While the Court could not go below the 10 yr mandatory minimum, the Court could have imposed the 10 yrs instead of the 11 yrs plus if Counsel raised the minor/mitigating role. (Eze v Senkowski, 321 F.3d 110, 112 (2nd Cir 2003))

"Ineffective assistance of counsel may still be demonstrated where counsel performs competently in some respects but not in others..." MEMANN v Richardson 397 US 759, 771 (1970)... A Sixth Amendment right to counsel is a right to effective counsel; MURRAY v CARRIER 477 US 478 (1986)... A single isolated error of counsel can give rise to relief under the Sixth Amendment.)

Because this Court has found on several occasions that a "single error" can support a claim of ineffectiveness, this requires the Court to grant the certiorari & reverse the District & Appeal rulings.

IN DOING SO, REMAND FOR A EVIDENTIARY HEARING & A RESENTENCING. ALSO, WITH INSTRUCTIONS TO ASSIGN NEW COUNSEL FOR THESE LIMITED PURPOSES.

IN ALTERNATIVE, ORDER ORAL ARGUMENT IN THIS CASE EITHER IN THIS COURT OR THE 4TH CIR OF APPEAL COURT.

8/17/20

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dwayne Banks

MR. DWAYNE BANKS, 85470-083

Date: Aug 17, 2020

8/17/20
Dwayne Banks