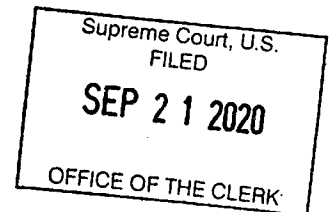


No. **20-5856**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Alimamy Barrie — PETITIONER
(Your Name)

vs.

Matthew M. Robinson — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alimamy Barrie, Reg. No 39273-037
(Your Name)

P.O Box 1031
(Address)

Coleman, FL 33521
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether an Omission by habeas Counsel for failing to include a Supporting fact that Appellate Counsel was ineffective, after Petitioner specifically requested it, is a Violation of Petitioner's Fifth and Sixth Amendments to effective Counseling Under Strickland v. Washington 466 U.S. 668, 688, 694, 104 S.Ct. 2055, 2063 (1984)?
2. Whether a Motion brought under 28 U.S.C. § 2255 Should be Considered as a Civil or Criminal Proceeding for the Sole Purpose Requirements on appearance of Counsel, base on local District Court Rules, and Federal Rules of Civil Procedure?
3. Whether the appearance of Counsel rule was Violated when habeas Counsel was neither a member of the bar of the Court and was not admitted as Pro Hac Vice as the Rule States; 28 U.S.C. § 515 and L.R. 112-3?
4. Whether the Inconsistency of applying a Post-Sentence amendment that is Clarifying in the lower Courts Should be reviewed when there is Currently a Split in the Circuit Courts on the application of a Post-Sentence Clarifying amendment that is not listed in U.S.S.G. § 1B1.10(d)?

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

Strickland v. Washington, 466 U.S. 668, 688, 694, 104 S. Ct 2055, 2063 (1984)

Murray v. Carrier, 477 U.S. 478, 485-86, 106 S. Ct 2639 (1986)

Martinez v. Ryan, 566 U.S. 1, 132 S. Ct 1309 (2012)

Trevino v. Thaler 569 U.S. 413, 133 S. Ct 1911 (2013)

Bradley v. School Board 416 U.S. 696, 711, 94 S. Ct 2006 (1974)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
US v. Jordan, 438 Fed. App'x 180, 181-82, 4 th Cir 2011	
US v. Smith, 86 F. App'x 646, 647, 4 th Cir 2004	
US v. Armstrong, 347 F. 3d 905, 908-9, 11 th Cir 2003	
US v. Cruickshank, 837 F. 3d 1182-1194, 11 th Cir 2016	
US v. Marmolejos, 140 F. 3d 488-491, 3 rd Cir 1998	
Jones v. US, 178 F. 3d 790, 796, 6 th Cir 1999	
Scott v. US, 997 F. 2d 340, 342, 7 th Cir 1993	
US v. Cábrera-Polo, 376 F. 3d 29, 32, 1 st Cir 2004	
US v. Quintero-Leyva, 823 F. 3d 519, 522, 9 th Cir 2016	
US v. Caceda, 990 F. 2d 707-9, 2 nd Cir 1993	
STATUTES AND RULES	
28 U.S.C § 2255 Motion to Vacate, Set aside or Correct Sentence	
42 U.S.C § 1983 Prisoner's Civil Rights	
18 U.S.C § 3582(c)(2) Motion to Reduce/Modify Sentence	
28 U.S.C § 515 Rule for Appearance of Counsel	
L.R 112.3 Local District Court Rules on Counsel appearance	
U.S.S.G Amendments 791, 792 and 794 enacted Nov. 1 st 2015	
 OTHER	
US v. Torres-Aguino, 334 F. 3d 939, 10 th Cir 2003	
US v. Dowdy, 996 F. 2d 937, 938, 8 th Cir 1993	
US v. William Hammond, 2009 US Dist lexis 37113, WDNC 4 th Cir	
US v. Moises Valle Mercado, 2017 US Dist lexis 29828, EDWA 9 th Cir	

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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 July 24th, 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

- 1) The effective Representation of Counsel Under the Fifth and Sixth Amendments of the United States Constitution.
- 2) Motion to Vacate, Set aside or Correct Sentence under 28 U.S.C § 2255
- 3) Federal Rules of Civil Procedure. Summary Judgment 56(a)
- 4) Prisoner's Civil Right. 42 U.S.C § 1983 and 28 U.S.C § 1332
- 5) Local District Court Rules. L-R 112.3 (101 and 201 Counsel appearance)
- 6) Rule For Appearance of Counsel. 28 U.S.C § 515
- 7) Wire Fraud 18 U.S.C § 1343 and Aggravated Identity theft 18 U.S.C § 1028A
- 8) U.S.S.G Amendments; 791 loss table § 2B1.1(b)(1); 792 Intended loss § 2B1.1, Application Note 3(A)(ii); and 794 Mitigating Factors § 3B1.2 App. Note(5).
- 9) 18 U.S.C § 3582(c)(2) Motion to Reduce/Modify Sentence

STATEMENT OF THE CASE

Respondent Matthew M. Robinson was hired as habeas Counsel to Prepare and Submit a motion to Vacate, Set aside or Correct Sentence Under 28 U.S.C § 2255 to Challenge Petitioner's Sentence and Conviction in the Southern district of Maryland Case No. 8:14-CR-00006. During the Preparation of the Motion and its Subsequent filing on Sept. 19th, 2016 Petitioner Provided habeas Counsel a list of Issues and most importantly that appellate Counsel was Ineffective for failing to notify the Fourth Circuit of Several Clarifying amendments that was enacted during the Pendency of his direct appeal, that are applicable to his Case and under Fourth Circuit Law and Precedent, Petitioner's Sentence would have been Vacated and Remanded for a Re-Sentencing. see United States v. Jordan, 438 Fed. Appx 180, 181-82 (4th Cir 2011). A Re-Sentencing would have Substantially lowered Petitioner's Sentence because Amendment 791 revised the loss table due to Inflation; Amendment 792 on Intended loss revised the Commentary and Amendment 794 Clarifies when a defendant may be eligible for a minor-role Reduction. All three Amendments had a Substantial impact on Petitioner's Sentence. Due to habeas Counsel Failure to Include this Supporting Fact, Petitioner's Right has been Substantially affected and is Currently Procedurally barred from Seeking review on the merits of his Case.

Petitioner Initiated this Civil action against Respondent in hopes of Seeking regress in the Same district Court that Ruled on the 2255 motion and Sentenced Petitioner. During the Civil Proceedings Petitioner found out that Respondent Matthew M. Robinson was not a member of the bar of the Court and also did not enter an appearance Under Pro Hac Vice which Violated the appearance of Counsel Rule both locally and Under 28 U.S.C § 515. Respondent also Provided misleading and False arguments to the District Court. Respondent failed to obtain affidavits from witnesses that was willing to Provide one. Respondent failed miserably and his lack of Competence has Substantially affected Petitioner's Right. As a matter of Professionalism and Responsibility, an attorney owes a duty of loyalty to his client. This duty encompasses an obligation to defer to the Clients wishes on Major litigation decisions.

REASONS FOR GRANTING THE PETITION

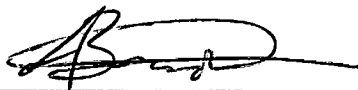
There is currently a split in the Circuit Courts on the application of a Post-Sentence guideline amendment. Some Circuit Courts have held that Clarifying amendments rather than Substantive amendments become effective regardless of whether or not the U.S.S.G deems them Retroactive. It is well settled with Case Law and Fourth Circuit Precedent that Clarifying amendments are given effect at Sentencing, Direct Review and before a case is final. See *U.S. v. Jordan*, 438 F. App'x 180, 180-82 (4th Cir. 2011) See also *United States v. Smith* 86 F. App'x 646, 647 (4th Cir. 2004). The Conflict Presented here is the discretion used by some district Courts to grant a 3582 Motion based on a Clarifying amendment that is not listed in U.S.S.G 1B1-10(d) and also that some Circuit Courts has different approaches to the application of a Post Sentencing guideline amendment that is not listed in U.S.S.G 1B1-10(d). Clarifying amendments that are not listed in U.S.S.G 1B1-10(d) may be applied retroactively only in the context of a direct appeal and a 2255 habeas Petition. *US v. Armstrong*, 347 F. 3d 905, 908-9 (1st Cir. 2003); *US v. Cruickshank*, 837 F. 3d 1182, 1194 (11th Cir. 2016). Amendment 794 is clarifying and applies retroactively. The third Circuit has stated that Clarifying amendments can be applied retroactively. *US v. Marmolejos* 140 F. 3d 488, 491 (3rd Cir. 1998). Defendant Marmolejos Filed a 2255 Motion without alleging any Constitutional Violation and the motion was Granted. An Error in the application of the Sentencing guidelines does not warrant Collateral relief Under 2255 absent a Complete miscarriage of Justice. *Jones v. US*, 178 F. 3d 790, 796 (6th Cir. 1999). A claim that the Sentence Imposed is Contrary to a Post Sentencing Clarifying amendment is non-constitutional Issue that does not provide a basis for Collateral relief in the absence of a Complete miscarriage of Justice. *Scott v. US* 997 F. 2d 340, 342 (7th Cir. 1993). When amendments are Clarifying rather than Substantial they are deemed to be Purely Expository and may be applied Retroactively. *US v. Cabrera-Polo*, 376 F. 3d 29, 32 (1st Cir. 2004). The Ninth Circuit has Said that Clarifying amendments applies retroactively in direct appeals. *US v. Quintero-Leyva*, 823 F. 3d 519-22 (9th Cir. 2016). The Second Circuit has stated that only amendments listed in U.S.S.G 1B1-10(d) may be given retroactive effect. *US v. Caceda*, 990 F. 2d 707-9 (2nd Cir. 1993). In *US v. Torres-Aguino*, 334 F. 3d 939 (10th Cir. 2003) Tenth Circuit Stated that only amendments listed in U.S.S.G 1B1-10 may be given retro effect.

The Eight Circuit has directly rejected the view of the Ninth Circuit and other courts they state that only amendments enumerated in 1810 are to be applied retroactively even if appellate review has not concluded. *US v. Dowdy* 996 F.2d 937, 938 (8th Cir 1993). In *US v. William Hammond*, 2009 U.S. Dist. Lexis 37113 (W.D. NC 4th Cir) and *US v. Moises Valle Mercado*, 2017 U.S. Dist. Lexis 29828 (E.D. WA 9th Cir) The District Courts granted motions pursuant to 3582 based on clarifying amendments that was not listed in U.S.S.G. 1B1.1(d). Due to these inconsistency in the courts, habeas counsel was not competent enough to raise the issue under Fourth Circuit law since he was not a member of the bar of the court and also out of the Sixth Circuit. This court has stated and instructed that lower courts on direct review is to apply the law in effect at the time it renders its decision unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary. *Bradley v. School Board*, 416 U.S. 696, 711 40 L. Ed 2d 476, 94 S. Ct 2006 (1974). This court should grant certiorari and issue instructions on the application of clarifying amendments and post-sentence amendments that are not listed in U.S.S.G. 1B1.1(d) which are applicable to reduce a defendant's sentence.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Sept. 13th, 2020