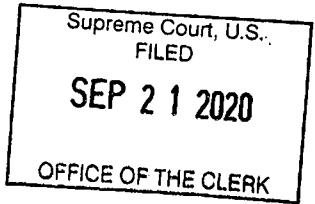


No. 20-5857

**ORIGINAL**

IN THE  
SUPREME COURT OF THE UNITED STATES



Alimamy Barrie — 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 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 Pursuant to 18 U.S.C § 3664(j)(2) a Restitution Order Should be Modify when Circumstances relating to the Case has Changed?
- 2) Whether a Post-Sentencing Clarifying guideline amendment is applicable to a defendant Pursuant to 18 U.S.C § 3582(c)(2) even though the amendment is not listed in U.S.S.G § 1B1.10(d) as this Court had Issued in Dillion v. US, 560 U.S 817, 821, 130 S.Ct 2683 (2010) but did not address the application of Clarifying amendments and lower Courts are granting Such Motions base on discretion and not the Law?

## 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

Dillon v. United States, 560 U.S. 817, 821, 130 S.Ct. 2683 (2010)

United States v. Roper, 462 F.3d 336, 339 (4<sup>th</sup> Cir 2006)

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Dillon v. United States, 560 U.S 817, 821, 130 S.Ct 2683 (2010)	
United States v. Roper, 462 F.3d 336, 339 (4 <sup>th</sup> Cir 2006)	
United States v. William Hammond, 2009 US Dist Lexis 37113 (WDNC 4 <sup>th</sup> Cir)	
United States v. Moises Valle Mercado, 2017 US Dist Lexis 29828 (EDWA 9 <sup>th</sup> Cir)	
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STATUTES AND RULES	
18 U.S.C § 3663A	Mandatory Victim Restitution Act
18 U.S.C § 3664(j)(2)	Mandatory Victim Restitution Act
18 U.S.C § 1349	Wire and Mail Fraud
18 U.S.C § 3582(c)(2)	Motion to Modify/Reduce Sentence
U.S.S.G § 1B1.10(d)	
U.S.S.G § 1B1.11(b)(2)	
U.S.S.G § 2B1.1(b)(1)	Amendment 791 Loss table
U.S.S.G § 2B1.1(3)(A)(ii)	Amendment 792 Intended loss
U.S.S.G § 3B1.2(5)	Amendment 794 Mitigating Role
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OTHER	

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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 24<sup>th</sup>, 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

18 U.S.C § 1349 Wire and Mail fraud

18 U.S.C § 1028A Aggravated Identity theft

18 U.S.C § 3663A Mandatory Victim Restitution Act

18 U.S.C § 3664 Mandatory Victim Restitution Act

18 U.S.C § 3582(c)(2) Motion to Modify/Reduce Sentence

U.S.S.G § 1B1.1D(1)

U.S.S.G § 1B1.11(b)(2)

U.S.S.G § 2B1.1(b)(1) Amendment 791. Loss table

U.S.S.G § 2B1.1(3)(A)(ii) Amendment 792. Intended loss

U.S.S.G § 3B1.2(5) Amendment 794 Mitigating Role

## STATEMENT OF THE CASE

This Case is about two issues; First Is When a Victim whom was Ordered to receive Restitution Passes away Intestate Should the District Court resentence defendant and Issue a new Restitution Order that would Specifically indicate the new recipient of the funds, and Secondly, When Post-Sentence clarifying amendments are enacted after a Case is final Can a defendant be granted a resentencing Under 18 U.S.C 3582(c)(2) even though the amendments are not listed in U.S.S.G § 1B1.10(d) as Retroactively applicable but Some Courts have granted Such motions Contrary to this Courts Instructions in Dillon v. US, 560 U.S 817, 821, 130 S.Ct 2683 (2010). After Petitioner had been Sentenced and Ordered to Pay Restitution to the Victim, which was Specifically Outlined in his Restitution Order. Petitioner has been Participating in the FRP Program offered in the BOP Since his Incarceration in June 2012. During the Incarceration and unfortunately the Victim Passed away Intestate and a Civil Action was Initiated in the Prince William County Circuit Court of Virginia. Petitioner Respectfully moved the Sentencing Court to Vacate the Restitution Order based on this development and also to benefit from Several amendments to the U.S.S.G that are applicable to his Case. The Civil action against Petitioner is Currently Pending in the State Court. When the district Court Ordered Petitioner to Pay the Victim Under the MVRA 18 U.S.C § 3663A and § 3664, the Victim was listed as the Sole Beneficiary of these funds and even after the death of the Victim the Government did not Seek any Change in the Restitution Order. Ironically the funds that have been Paid through the FRP are Sent to the district Court, it was only Until Petitioner filed a Motion to Vacate Restitution that this Oversight was noted. The District Court has Still not re-issued a new Restitution Order in this Case and Whenever the Restitution Order is Vacated, Petitioner Should also benefit from the Post-Sentence Clarifying amendments and that the actual amount of loss would then be fully Investigated.

## REASONS FOR GRANTING THE PETITION

As the District Court Noted in its Order "Although no Court appears to have addressed this precise Scenario, Courts have held that restitution obligations may Pass to a Victim's Successor". In this Case the Victim died Intestate So therefore who or what entity can legally become a Beneficiary of the Funds Owed. Petitioner is not Simply trying to avoid the Restitution Obligations because he has been Voluntarily Participating in the BOP Financial Responsibility Program and has made multiple Payments according to his Financial Capability. Furthermore a heavy burden Such as this Restitution Order upon Release would make a transition back into Society difficult. In US v. Roper, 462 F.3d 336, 337-58 4<sup>th</sup> Cir(2006)(noting that the MVRA removed the districts Courts' discretion to Order Restitution in anything less than the full amount of the Victims' losses). Here it is fact that the amount of \$ 476,038.83 was not the actual or full amount of loss to the deceased Victim, even though it was Part of the Plea agreement this discrepancy should now be rectified by the Courts. A district Court Should have discretion to Modify a Restitution Order due to develop facts relating to the Case and defendant(s).

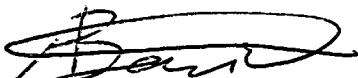
In Section 3664(j)(2) "Provides that any amount Paid to a Victim Under an Order of Restitution Shall be reduced by any amount later recovered as Compensatory damages for the same loss by the Victim, any federal civil Proceeding; and any State Civil Proceeding, to the extent Provided by the Law of the State" The MVRA does not allow a Court to remit or reduce a restitution amount except as authorized by Section 3664(j)(2). Roper, 462 F.3d at 339. Here as already Stated Petitioner is Currently a defendant in a Civil Proceeding in Prince William County, VA and Petitioner has also been making Payments towards the Restitution. Furthermore during the Plea Process the Government withheld information about the money recovered from the bank accounts and also the money that was left in the Victims' IRA account. Once this fact is fully revealed the amount of Restitution Ordered Should be modify as it Provides in Section 3664(j)(2).

This Court has issued Instructions on the application of a Post-Sentence guideline amendment and it States in Dillon v. United States, 560 U.S. 817, 824 (2010) that a Court may only modify a Sentence Under 3582(c)(2) if the amendment is listed in U.S.S.G § 1B1.10(d). However the amendments listed in 1B1.10(d) are mostly Substantive and Courts have excise their discretion in applying a Post-Sentence Clarifying amendment that is not listed in 1B1.10(d) Pursuant to a 3582(c)(2) Motion. See US v. William Hammond, 2009 US Dist Lexis 37113, (NDNC 4<sup>th</sup> Cir) and US v. Moises Valle Mercado, 2017 US Dist Lexis 29828 (EDWA 9<sup>th</sup> Cir). In most Circuit Courts it is settled that Clarifying amendments may be given retroactive effect even if they are not listed in USSG § 1B1.10. The two issues presented herein are of great importance to the Criminal Proceedings that effects thousands of defendants discrepantly, so therefore a review by this high Court to instruct and guide the lower Courts is warranted to correct these errors because they affect the fairness, Integrity or Public reputation of Judicial Proceedings.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Sept. 13<sup>th</sup>, 2020