

20-5983
NO. _____

Supreme Court, U.S.
FILED

OCT 02 2020

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2020

OMAR SIERRE FOLK

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

OMAR S. FOLK
PRO SE
FCI Allenwood Medium
P.O. Box. 2000
White Deer, PA. 17887

ORIGINAL

RECEIVED

OCT - 7 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION PRESENTED

1. Whether the Third Circuit's erred in not addressing Erroneous Career Offender Designation under the Advisory Sentencing Guidelines Cognizable under 28 U.S.C. § 2255(f)(1) [Pre-Beckles] Timed-Barred Oct. 5, 2016.

PARTIES TO PROCEEDING

The parties to the proceed in the court whose judgment is sought to be reviewed are as follows:

1. United states of America
2. Omar Sierre Folk

RELATED CASES

- * *Banister v. Davis*, 139 S.Ct. 2742; 704 L. Ed. 2d 1130; 2020 U.S. Lexis 4223 No. 18-6943 June 1, 2020
- * *Borden v. United States*, (No. 19-5410) granted Cert. (March 3, 2020).

TABLE OF CONTENTS

QUESTION PRESENTED

PARTIES TO PROCEEDING

RELATED CASES

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

DECISION AND ORDER BELOW

JURISDICTION

RELEVANT STATUTORY PROVISIONS

STATEMENT OF THE CASE

REASONS FOR GRANTING THE WRIT

1. THIS COURT SHOULD GRANT CERTIORARI OR REMAND BACK BECAUSE THE THIRD CIRCUIT IMPROPERLY REASONING WAS ALREADY ADDRESSED ON ITS MERITS IN THE DISTRICT COURT MOPA DOC. 192.

CONCLUSION

APPENDIX

B. District Court Memorandum and Order,
filed 8/2/17 CMD PA, DOC. 162), 1-5

District Court Memorandum and Order,
filed 6/22/18 CMD PA DOC. 192-193, 6-36

Notice of Appeal, filed 8/7/18
CMDPA, DOC. 199), 37-38

A. Court of Appeals Order granting the
Certificate of Appealability, filed
12/24/18 CCA3 DOC. 313117863, 39-40

Judgement and Opinion,
United States Court of Appeals for the Third Circuit,
United States v. Folk, No. 18-1865 C3d Cir 4-3-20
..... 41-62

C. SUR Petition for Rehearing, and Opinion,
United States Court of Appeals for the
Third Circuit, United States v. Folk, No. 18-1865
C3d Cir 5/7/20, 63-64

TABLE OF AUTHORITIES CITED

Cases

PAGE NUMBER

Banister v. Davis, 139 S.Ct. 2742; 704 L.Ed 2d 1130; 2020 U.S. Lexis 4223 No. 18-6943 June 1, 2020... ii, 7

Borden v. United States, (No. 19-5410) granted Cert. (March 3, 2020)..... ii

United States v. Folk, No. 18-1865 C3d Cir. 4-3-20..... iv, 2

United States v. Folk, No. 18-1865 C3d Cir

5-7-20..... iv, 2

Folk v. United States, 136 S.Ct. 161 (2015)... 5, 9, 12, 16

Magwood v. Patterson, 561 U.S. 320 S.Ct. 2788, 177 L. Ed 2d 592 (2010)..... 7

Davis v. United States, 477 U.S. 333, 41 L. Ed 2d 109, 94 S.Ct. 2298 (1974)..... 8, 14

Kaufman v. United States, 394 U.S. 217, 230, 22 L. Ed 2d 227, 89 S.Ct. 1068 (1968)..... 8

Townsend v. Burke, 92 L.Ed 1690 (334 U.S. 736-741 No. 542 (1948))..... 8, 19

Beckles v. US, 137 S.Ct. 886, granted cert., June 27, 2016)..... 8, 14, 15, 16, 17

Peugh v. United States, 569 U.S. 541, 545 (2013)
..... 9

Descamps v. United States, 133 U.S. s.Ct. 2276, 2283 (2013)..... 9, 10, 11

Moncrieffe v. Holder, 133 S.Ct. 1678, 1684-85, 85 L.Ed 327 (2013)..... 10

Alleyne v. United States, 133 S.Ct. 2151, 2155, 186 L.Ed 2d, 314 (2013)..... 10

US v. Hollins, 514 Fed Appx. 264 (3d Cir. 2013)
..... 10, 12

US v. Folk, 577 Fed. Appx. 106-07 (3d Cir. 2014)
..... 11

US v. Brown, 465 F.3d at 188 (3d Cir. 2014)..... 11

Mathis v. United States, 136 S.Ct. 2243 (2016)..... 13

Molina-Martinez v. United States, 136
S.Ct. 1338 (2016), 13, 19

Reedy v. Farley, 512 U.S. 339 (1994), 15

Wood v. Milyard, 566 U.S. 463, 132 S.Ct. 1826,
1835, 182 L.Ed 2d 733 (2012), 17

Glover v. United States, 531 U.S. 912, 121
S.Ct. 696, 148 L.Ed 2060 (2001), 19

Johnson v. United States, 135 S.Ct. 2551 (2015), .. 12

CONSTITUTIONAL PROVISION

Page(s) Number

U.S. CONST. AMEND. V. 3

Statutes AND RULES

28 U.S.C. § 2255(f)(1)	1, 3, 7, 8, 13, 14, 18
28 U.S.C. §§ 1331 and 2255	2, 17
28 U.S.C. §§ 1291 and 2253(a)	2
28 U.S.C. §§ 1254 (1)	3
Rule 45 Supreme Court	5, 9, 14
Fed R. Civ. P. 59(e)	6
Fed R. Civ. P. 60(b)	6
U.S.S.G. § 4B1.1	10
3d Cir. L.A.R. 31.3	11
18 U.S.C. §§ 3553(a)(6)	18

No: _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2020

OMAR SIERRE FOLK

Petitioner,

VS.

UNITED STATES OF AMERICA

Respondent,

PETITION FOR A WRIT OF CERTIORARI

Petitioner Omar Sierre Folk, respectfully petitions for Writ of Certiorari to review the Judgment to the United States Court of Appeals for the Third Circuit in this case.

DECISION AND ORDER BELOW

The United States Court of Appeals for the Third Circuit affirmed, Petitioner's conviction and sentence in a precedential opinion issued on April 3, 2020. See

United States v. Folk, No. 18-1865 (3d Cir. April 3, 2020).
See Petitioner's Appendix ("Appx") 41-62.

The Petitioner Memorandum Doc. 192-193 Denied
For the Career offender guideline Challenge ("Appx") 6-36.

The Petitioner filed for Sur Petition For Rehearing,
See ("Appx.") 63-64. Panel Denied United States v. Folk,
No. 18-1865 (3d Cir. May 7, 2020).

JURISDICTION

The United States District Court for the
Middle District of Pennsylvania (MD, PA, No. 1:11-cr-292)
exercised jurisdiction over this federal civil case
pursuant to 28 U.S.C. §§ 1331 and 2255. The Third Circuit
Court of Appeals (No. 18-1865) had Jurisdiction
pursuant to 28 U.S.C. §§ 1291 and 2253(a). The United
States Court of Appeals for the Third Circuit
entered Judgment on May 7, 2020, ("Appx") 63-64.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). This petition is timely filed within 150 of the entry of Judgment.

RELEVANT STATUTORY PROVISIONS

The Fifth Amendment to the Constitution of the United States provides: The Right to not be Deprived of Life, Liberty, or Property or denied due process of Law.

STATEMENT OF THE CASE

Background

ON August 2, 2017 Doc. 162, District Court GRANTED Doc. 151 to amend Folk initial motion (Doc. 139), for relief under 28 U.S.C. § 2255, Appx. 1-5.

ON June 22, 2018 Doc. 192-193, District Court Denied (Doc. 179, 180, 183),

pertaining to the Career offender guidelines, Appx. 6-36.

ON August 7, 2018 Doc. 199, Folk filed Amended Notice of Appeal to Third Circuit Court of Appeals. Appx. 37-38.

ON December 24, 2018 CEA3 Doc. 311 3117863 Third Circuit Court of Appeals Judge GRANTED "COA". Appx. 39-40

ON April 3, 2020 Doc. 117-119, Third Circuit Court of Appeals Judges Affirmed the District Court order in February 16, 2018. Appx. 41-62.

ON MAY 7, 2020 SUR Petition For Rehearing was Denied. Appx. 63-64.

REASONS FOR GRANTING THE WRIT

I. THIS COURT SHOULD GRANT CERTIORARI OR REMAND BACK BECAUSE THE THIRD CIRCUIT IMPROPERLY REASON WAS ALREADY ADDRESSED ON ITS MERITS IN THE DISTRICT COURT

Petitioner will turn to the reason of why the Third Circuit Court of Appeals Judge's applied different standard of law. When the Third Circuit Judge's change course upon the District Court opinion on June 22, 2018. Appx. 11-27. It appears on the face of 3rd Cir. Doc. 117 at 3, (Appx. 43-44), there was no indication of Third Circuit Court of Appeals Clerk receiving the Supreme Court Clerk mandate under Rule 45, Appx. 1 and 7. The final order for the Writ of certiorari was on Oct. 5, 2015. See (Folk v. United States, 136 S. Ct. 161 (2015)). Now the record in the District Court was to be

addressed on merits. See Appx. 6-27. Upon
the Petitioner filing other motion, 59(e)
Motion to Alter An Amend the Judgement 60(b)
motion, Petitioner is heretoday without the
Career offender not addressed on the merits, see Appx.
43-44.

At this point the Circuit Court Judge's
are not accepting the District Court conclusion.
Which Petitioner further supported his reason
in Appx. 25-27. That was addressed on the record
in MDPA Doc. 180. Then the facts also which
was mention in MDPA Doc. 139 and MPFA. Doc. 147
these petitions were filed without consulting
Petitioner.

Petitioner will turn to a New Supreme Court ruling that also support Folk reason why the claims should have been addressed in the lower court. See (Banister v. Davis, 139 S.Ct. 2742; 704 L.Ed. 2d 1130; 2020 U.S. Lexis 4223 No. 18-6943 June 1, 2020) (cites Magwood v. Patterson, 561 U.S. 320 S.Ct. 2788, 177 L. Ed 2d 592 (2010)).

Furthermore Petitioner also meet the requirements to challenge initial 28 U.S.C. § 2255(f)(1) Time-Barred Oct. 5, 2016 within the one year filing. See (Appx. 11 and 29). Now Petitioner will further rely on the facts why also the Petitioner can meet advisory guidelines

challenge. See (Davis v. United States, 477 U.S. 333, 41 L. Ed 2d 109, 94 S.Ct. 2298 (1974); See (Kaufman v. United States, 394 U.S. 217, 230, 22 L. Ed 2d 227, 89 S.Ct. 1068 (1968); See (Townsend v. Burke, 92 L. Ed 1690 (334 U.S. 736-741 No. 542 (1948). These Supreme Court caselaws are on all four corners with respect to Petitioner reason of why his original 28 U.S.C. § 2255(f)(1), meets the advisory guideline challenge. See Appx. II and 29.

As the Petitioner was stayed pending [Pre-Beckles] Beckles v. US, 137 S.Ct. 886, granted Cert. June 27, 2016). "Due to

No Fault of Folk own." Petitioner Writ of Certiorari denial was not sent to the lower court Third Circuit Clerk. See (Folk v. United States, 136 S.Ct. 161 (2015)). The same also was not sent to the District Court under the Supreme Court Clerk Mandate Rule 45.

Now we should move a step back in time to the Sentencing Hearing MDPA Doc. 134. During this proceeding the Supreme Court came down with four decision while the Sentencing Hearing was taking place. See (Peugh v. United States, 569 U.S. 530, 541, 545 (2013)); See (Descamps v. United States, 133

U.S. S.Ct. 2276, 2283(2013); see
Moncrieffe v. Holder, 133 S.Ct. 1678,
1684-85, 85 L.Ed 327 (2013); see (Alleyne
v. United States, 133 S.Ct. 2151, 2155,
186 L.Ed 2d, 314 (2013). The Trial Counsel
recognize US v. Hollins, 514 Fed Appx. 264
(3d Cir. 2013) (Non-Precedential), petition
for Cert. filed (July 8, 2013) (No. 12A1138,
13-5310).

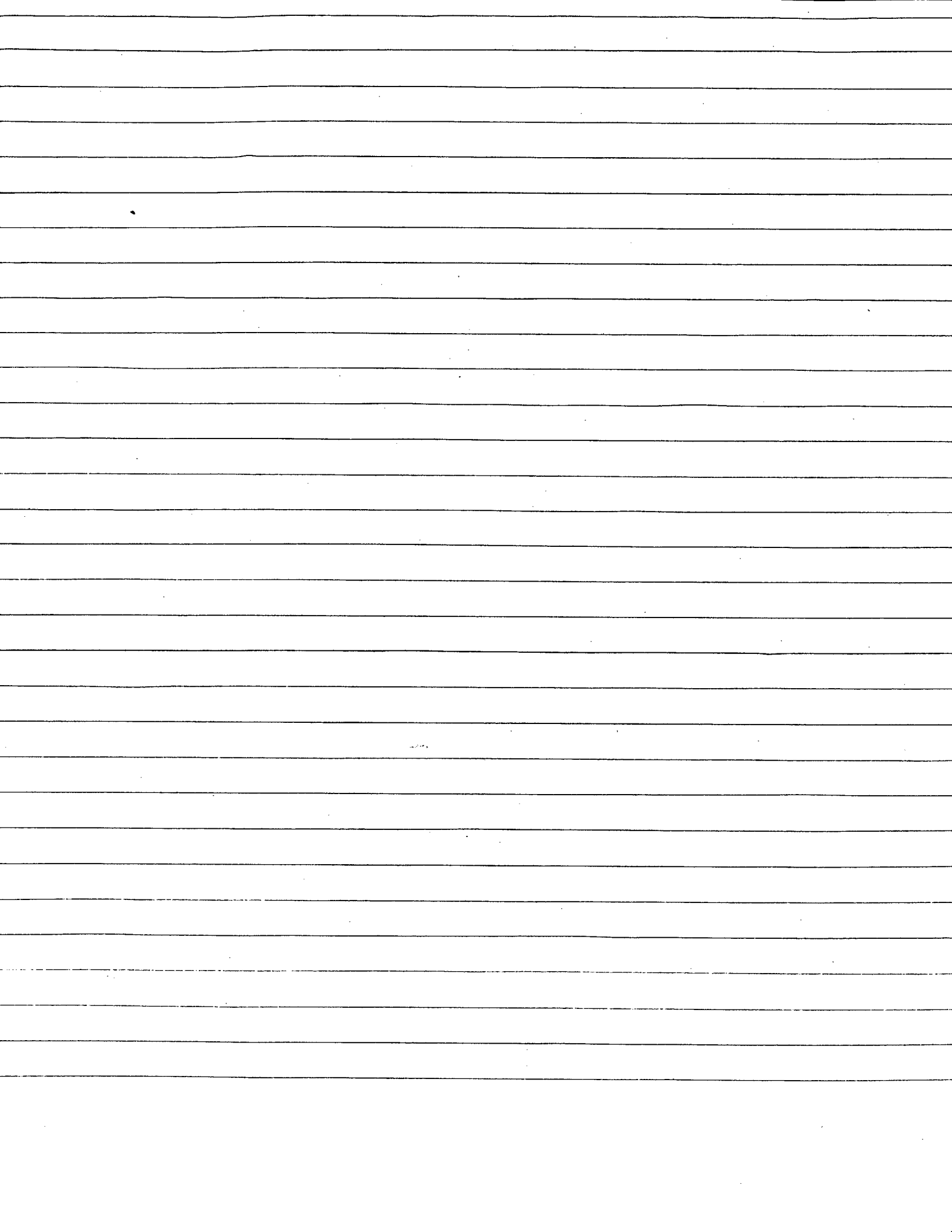
Petitioner now proceed to Direct Appeal
and was denied Career offender challenge
under U.S.S.C. § 4B1.1, although MD PA Doc. 134
at 7 shown Petitioner had raise Pro-se
objection that the Career Offender guideline

did not apply. Trial Counsel while on Direct Appeal encourage the Appellate Counsel to not pursue that issue. Thereafter Petitioner was denied the invitation due to the 3d Cir. L.A.R. 31.3 No Hybrid Counsel and foreclose any Pro Se argument. Petitioner direct Appeal was affirm. See (US v. Folk, 577 Fed. Appx. 106-07 (3d Cir. 2014); Rehearing En banc 13-4078 Doc. 00311764339 which challenge Career Offender guidelines upon a new circuit ruling. See (US v. Brown, 465 F.3d at 188 (3d Cir. 2014) (Descamps overrule precedent case Mahone) the Rehearing was denied on 10-14-14.

Petitioner filed for the writ of Certiorari and the Supreme Court Clerk place Petitioner Case No. 14-10453 on docket June 26, 2015. [During this timeframe the Supreme Court came down with *Johnson v. United States*, 135 S.Ct. 2551 (2015) (abrogated *Hollin v. United States*, 514 Fed Appx. 264 (3d Cir. 2013))].

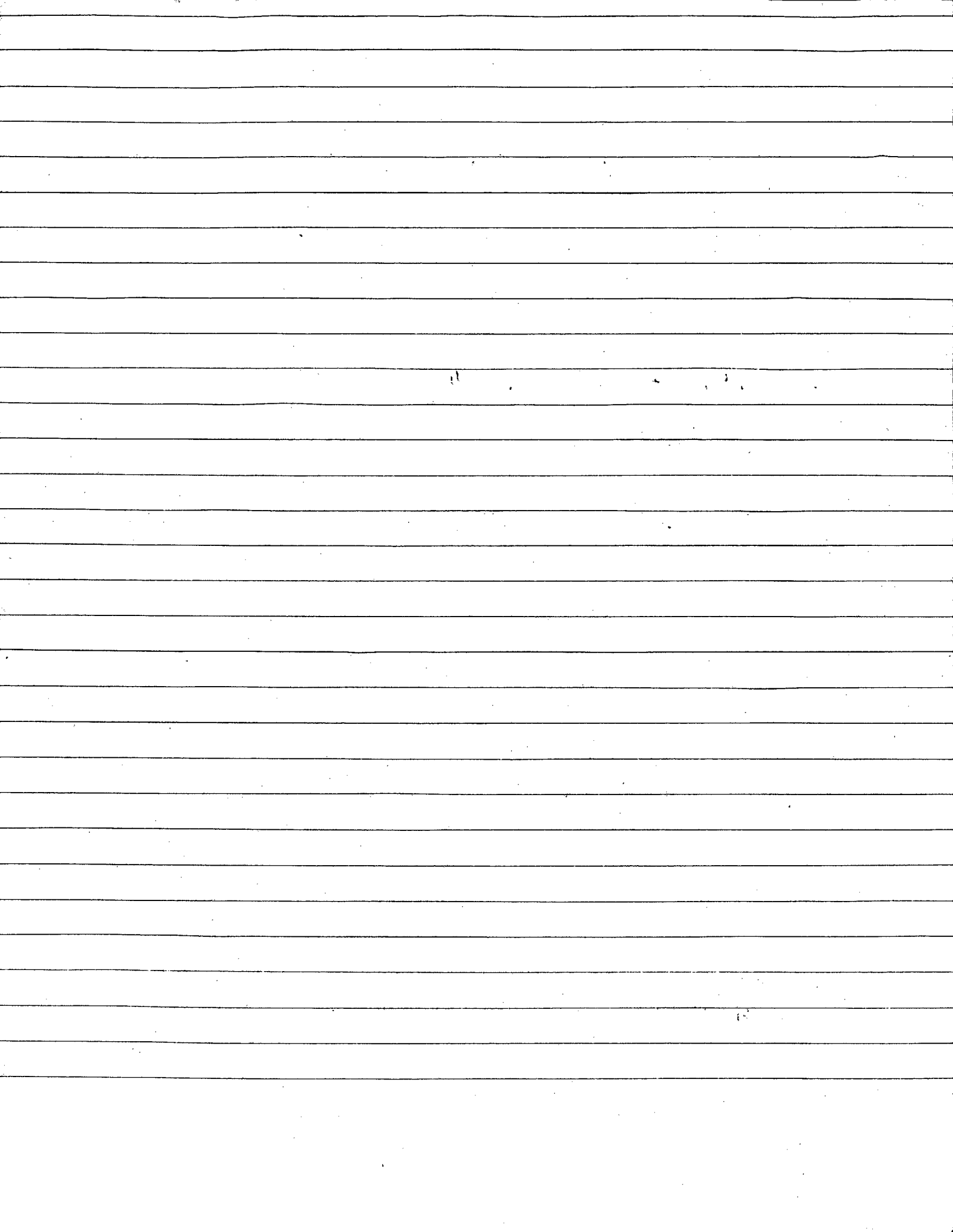
Now the government waive their response on July 10, 2015. The Supreme Court Denied Petitioner Writ of Certiorari on Oct. 5, 2015. See (*Folk v. United States*, 136 S.Ct. 161 (2015).

Petitioner will follow during the relevant time when the Supreme Court



issue the order on Oct. 5, 2015 during the direct appeal. The Petitioner had one year to file 28 U.S.C. § 2255(f)(1) petition before Time-Barred Oct. 5, 2016. (Appx. 11 and 29).

Now during this time frame before Petitioner habeas Corpus is Time-Barred, the Supreme Court came down with these cases within Petitioner one year toll on Oct. 5, 2016. See (Mathis v. United States, 136 S.Ct. 2243 (2016) and See (Molina-Martinez v. United States, 136 S.Ct. 1338 (2016)). Now Petitioner will further move to support his position with also these



Supreme Court cases. See *C Davis v. United States*, 417 U.S. 333, 343 (1974). Now the Petitioner do meet the advisory guideline challenge to the career offender under 28 U.S.C. §§ 2255(f)(1) petition. When the record is sound during this time period Petitioner was stayed under pre-Beckles pending a decision, "Due to No Fault of Folk Own". Third Circuit Court of Appeals Clerk did not receive the Supreme Court Clerk Mandate under Rule 45 before the filing of MPPA Doc. 139a+3. (Appx. 2-3), (Appx. 43-44).

Which will further develop Petitioner opposition motion to clear up the mistake in law.

Which cause a manifest injustice in law that amount to complete miscarriage of justice during the pre-Beckles stay. While Petitioner had filed objection upon MDPA Doc. 164 (Appx. 25-27), that also Petitioner further suffer a Stonewall when this motion was docketed by MDPA Clerk on Oct. 14, 2016, Then return back to Petitioner instead of also process on the docket upon "No Fault of his own." (Appx. 25-27).

Now for these reason Petitioner case at hand is under high bar for extraordinary circumstances and aggravated circumstances. See (Reed v. Farley, 512 U.S. 339 (1994)), Petitioner

also turn to the record at MPPA Doc. 180 at 1-9. See (Appx. 12-27). When the record was shown that government was aware of Petitioner final order by the Supreme Court. See (Folk v. United States, 136 S.Ct. 161 (2015)). But failed to address Petitioner claims on the merits under the Career offender challenge. See (Appx. 2-3 and 11-13).

Petitioner will now also come forth with a Supreme Court decision to further rely on why advisory guidelines are cognizable under Career Offender challenge. When the government also waive this challenge by steering the the District Court to rely on the Pre-Beckler,

(Appx. 2-3 and 25-27). See (Wood v. Milyard, 566 U.S. 463, 132 S.Ct. 1826, 1835, 182 L.Ed 2d 733 (2012) (Waiver occurs when the government "deliberately steer [s] a court away from a particular issue or makes a considered decision to refrain from raising a known defense to a § 2255 motion).

Then the facts which turn to nature of proceeding as far as other similar situated people who was afforded the right to have there Johnson Base Claims addressed on merits before Beckles decision. In the wake of Pre-Beckles pending the Supreme Court decision. For that

matter the Petitioner 18 U.S.C. §§ 3553(a)(6)
claim will further meet his reason why the
advisory cognizable challenge is met.

With that said as the Supreme Court
Judge's further author these caselaw's
that do support Petitioner relief. To
challenge erroneous Career offender
designation under the advisory sentencing
guidelines to be cognizable under 28 U.S.C.
§§ 2255(f)(1).

Petitioner further states these
Supreme Court caselaw's also support
Petitioner advisory challenge to the
Career offender guidelines. See

Molina-Martinez v. United States, 136 S.Ct.
1338 (2016); See (Townsend v. Burke, 92 L. Ed.

1690 334 U.S. 736-741 No. 542 June 14, 1948);

See (Glover v. United States, 531 U.S. at
203, 121 S.Ct. 696, 148 L. Ed 2060; (2001).

Petitioner has prevail that these

decision and the above record support

his relief to warrant a Reverse and

Remand back to Third Circuit Court of

Appeals to warrant all Career offender

challenges addressed on the merits. Petitioner

Therefore respectfully requests that

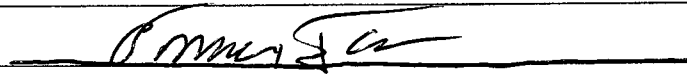
the court grant Certiorari or remand 3rd Cir.

Doc. 117-119 (Appx. 41-62), back to lower court.

CONCLUSION

The petition for a writ of certiorari
should be granted.

Respectfully submitted,



Date: 9-30-20