

NO. 20-6090

IN THE SUPREME COURT of the United States

Reginald Ferguson, PETITIONER

V.

United States of AMERICA

ON Petition For A WRIT of CERTIORARI
TO THE UNITED STATES COURT of APPEALS
For the SIXTH Circuit

PETITIONERS Supplemental brief pursuant to S.Ct Rule
15.8 IN Light of Recent Ruling IN Boeder V. United
States NO. 19-5410 S.Ct JUNE 10, 2021

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MEMORANDUM

PETITIONER Reginald Ferguson Case, OR Application for Certiorari IS currently pending in this Honorable Court following a denial of his Direct Appeal to the Sixth Circuit. So his case IS NOT final according to this court's precedent. See Griffith v. Kentucky 479 U.S. 314 (1987) Thus by this court's precedent he MAY benefit from any new ruling made by this court pertaining to his case. ON June 10th, 2021 this court held that crimes with only a mens rea of recklessness can no longer qualify as a crime of violence for ACCA. AS this court IS aware the definition of crime of violence for ACCA is indistinguishable from the definition under the Required United States Sentencing guidelines, and are usually treated the SAME. I.E Both are subject to the SAME Modified Categorical Approach under the Elements clauses. In short of this instant matter The petitioner contends THAT

He was wrongfully enhanced 10 offense levels per 2K2.1 (a) in his Felon in possession, which is the sole charge. He was taken from a base offense level of 14 to level 24, from 37-46, to 100-125 months (before acceptance of responsibility) based on two predicates that possess only a mens rea of Recklessness. 1. Ohio Revised Code 2911.01 Aggravated Robbery, and 2) 2911.02 (A)(2) Robbery. see United States v. Moore 203 F. Supp 3d 851 (N.D. Ohio 2016) AND Fulton v. United States 2017 U.S. Dist Lexis 108833 Case No 1:16 cv 216; Both explaining that both of these predicates do not qualify as crimes of violence, possessing only Reckless as mens rea. The judges in these case break it down better than any prose litigant could. Petitioner challenged both predicates at sentencing based on these factors. But was unsuccessful see sentencing transcripts Case No. 1:19-CR-00012 Doc #55 Page Id 364. Petitioner did not raise the argument at appeal because others had raised it and failed.

See United States v. Johnson 933 F.3d 540 (6 Cir 2019)

Holding that "Argument that Ohio Robbery only has a MENS Rea of Reckless, thus it should not qualify as a CRIME of violence is defeated and foreclosed by circuit precedent in United States

v. Verwiebe, 874 F.3d 258 (6 Cir 2017)." Thus it would have

been FRIVOLOUS to RAISE. Indeed this Courts Ruling in Boeden v.

United States HAS overruled Verwiebe, and Affirmatively Held

that CRIMES that ONLY possess a MENS Rea of culpability of Recklessness cannot qualify as CRIMES of violence for ENHANCEMENT purposes.

IF the SAME ANALYSIS IS given to offenses categorically under the guidelines as they ARE under ACCA. Then petitioner WAS wrongfully Enhanced 10 offense levels when both predicates have only a Reckless Requirement.

IN Rosales-Mirales, the ERROR was the district Courts MIScalculation of the guidelines Range at sentencing Id at 1905. The Court stated "To a PERSONER, the prospect of additional time behind BARS

IS NOT SOME THEORETICAL OR MATHEMATICAL CONCEPT... AND THUS WARRANTS SERIOUS CONSIDERATION IN DETERMINATION WHETHER TO EXERCISE DISCRETION UNDER RULE 52(b) ^{id} ROSALIS-MIRELES 138 S.Ct at 1907 quoting BARBER V. THOMAS 560 U.S. 474 (2010) (KENNEDY J. DISSSENTING) THIS COURT OBSERVED THAT "IT IS CRUCIAL IN MAINTAINING PUBLIC PERCEPTIONS OF FAIRNESS AND INTEGRITY IN THE JUSTICE SYSTEM THAT COURTS EXHIBIT RESPECT FOR FUNDAMENTAL RIGHTS AND RESPECT FOR PERSONS AS PEOPLE" ^{id} Id at 1907.

RESPECTFULLY PURSUANT TO SUPREME COURT RULE 15.8, AND GRAFFATI V. KENTUCKY 479 U.S. 314 (1987) PETITIONER REQUEST THIS HONORABLE COURT RIGHTFULLY APPLY ITS RECENT HOLDINGS IN BORDEN V. UNITED STATES NO 19-5410 TO THE CONSIDERATION IN HIS CURRENT APPEAL, AND REMAND TO THE DISTRICT COURT FOR RESENTENCING ABSENT THE ERRONEOUS ENHANCEMENTS. THE PETITIONER IS GOING ON 36 MONTHS INCARCERATED WITHOUT THE ENHANCEMENTS PETITIONER

would be an offense level 14, and with 2 levels down for acceptance of responsibility the petitioner would be at 30-37 months. Note Petitioner was given 3 levels down at sentencing the district judge found he showed extraordinary acceptance of responsibility DOC # 55 page 1d 366 (sentencing transcripts) so it could potentially place petitioner out of the door.

In sum the predicate offenses petitioner was wrongfully enhanced for have only a mens rea of recklessness. Unless a crime of violence is different under the ACCA, than under the identical guidelines definition petitioner was wrongfully enhanced. And as his case is not yet final this court's ruling in Borden v. United States should benefit him.

Respectfully

Reginald Ferguson - pro-se
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Dated 6-11-2021

I hereby swear under penalty of perjury all of the foregoing true and correct per 28 U.S.C. § 1746 X R. Ferguson