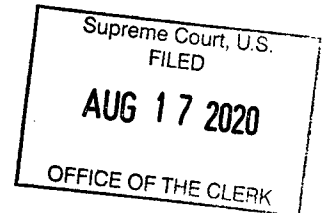


No. 20-6298

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



CARLTON M. BUTLER — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

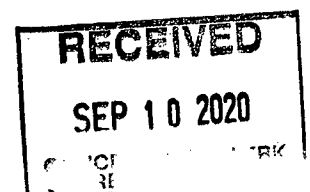
PETITION FOR WRIT OF CERTIORARI

Appendix Attachment A-1

CARLTON M. BUTLER #99605-020
(Your Name)
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 728
(Address)

Edgefield SC. 29824
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

Does Fed. R. Crim. P., Rule 35(a) provide the District Court with authority to increase a defendant's otherwise lawful sentence previously imposed on Count Two as part of an effort to correct an illegal sentence on Count One.

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:

The petitioner is CARLTON BUTLER, he is presently incarcerated by The United States Bureau of Prisons at F.C.I. EDGEFIELD, SC. 29824. The Named Respondent is The United States of America.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>HILL V. UNITED STATES</i> , 368 U.S. 424 (1962).	
<i>Kennedy V. UNITED STATES</i> , 330 F.2d 26, 27 (9th Cir. 1964).	
<i>UNITED STATES V. ABREU-CABRERA</i> 64 F.3d 67 (2nd Cir. 1995)	
<i>UNITED STATES V. CLUTTERBUCK</i> , 445 F.2d 839, 840 (9th Cir. 1987).	
<i>UNITED STATES V. GRAY</i> , 521 F.3d 514, 544 (6th Cir. 2008).	
<i>UNITED STATES V. LEWIS</i> , 862 F.2d 748, 750 (9th Cir. 1988).	
<i>UNITED STATES V. MINOR</i> 846 F.2d 1184, 1188 (9th Cir. 1988).	
<i>UNITED STATES V. QUIJADA</i> , 146 Fed. Appx. 958 (10th Cir. 2005).	
<i>UNITED STATES V. SEVILLA-OROLA</i> 770 F.3d. 1 (1st Cir. 2014).	

STATUTES AND RULES

FEDERAL RULES OF CRIMINAL PROCEDURE, RULE 35(a).

OTHER

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APPENDIX A *ELEVENTH CIRCUIT DENIED A COA. case no. 19-14252-E*

APPENDIX B *Opinion of District Court to be Supplemented after we are released from local down, due to Covid-19 outbreak at F.C.I. Edge Field.*

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APPENDIX D

APPENDIX E

APPENDIX F

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-1 to the petition and is

☒ reported at BUTLER V. UNITED STATES Case No. 19-1258-E; 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 UNITED STATES V. BUTLER; 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 02-10-2020.

☐ 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: March 26, 27, or 28, and a copy of the order denying rehearing appears at Appendix A-2. *To be supplemented*

☒ An extension of time to file the petition for a writ of certiorari was granted to and including March 26, 2020 (date) on August 26, 2020 (date) in Application No. A.

The court gave 150 days extension due to Covid-19

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

Constitutional Amendment V.

No 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 subject for the same offense 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

On March 10, 2016 Carlton M. Butler was named as the sole defendant on a seventeen-count indictment (Doc. 1). The indictment charged four counts of distribution of cocaine base in violation of Title 21, U.S.C. § 841(a)(1) & (b)(1)(C), four counts of using or carrying a firearm during and in relation to a drug trafficking crime in violation of Title 18 U.S.C. § 924(c)(1)(A), eight counts of possession of a firearm by a convicted felon in violation of Title 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2), and one count of possession of a firearm with an obliterated serial number in violation of Title 18 U.S.C. § 922(k) and Title 18 U.S.C. § 924(a)(1)(B).

Carlton Butler agreed to plead guilty to count one, distribution of cocaine base in violation of 21 U.S.C. § 841(a)(1) & (b)(1)(C), and count two, using or carrying a firearm during and in relation to a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A). (Doc. 41, pg. 3).

On March 17, 2017, Butler was sentenced by the district court to a sentence of 300 months on count one, and 60 months on count two (Doc. 59). Shortly thereafter, the parties noticed that the court had imposed an illegal sentence on count one, where 300 months was in excess of the 240 month statutory maximum. (Doc. 80) page 2. The court issued a text only, sua sponte, order vacating the judgment, (Doc. 61), and scheduled a reconvened hearing for March 27, 2017.

At this subsequent hearing, Butler objected to the district court's sua sponte vacation and resentencing on count two (Doc. 77, pgs 3-6). The court requested the parties research and submit briefs (Doc 80, Page 3). Butler timely filed a motion for relief under Fed. R. Crim. P., Rule 35(a) (Doc. 63) and the government quickly responded (Doc. 64).

Over Butler's objection the court elected to resentence Butler on both counts, and on March 31, 2017, the court reinstituted the judgment, ordering an amended sentence of ~~240~~ months on count 1, and 120 months on count two to run consecutively. (Doc. 67). Mr. Butler with counsel filed a Notice of Appeal to the Eleventh Circuit, and entered on 06-27-2017 Case No. 17-11436.

CONTINUATION OF STATEMENT OF THE CASE

ON April 2, 2018, The Eleventh Circuit Court of Appeals affirmed the conviction and sentence see 2018 Lexis 8585. Butler has raised the issue of the question presented from the Direct Appeal stage all the way through his Section 2255, up to the instant writ of Certiorari.

REASONS FOR GRANTING THE PETITION

The circuits are now split on whether Fed. R. Crim. P., Rule 35(a) allows the courts to resentence on all counts in a multi-count sentence, ... where not all of the counts were illegally imposed. Although the 11th circuit allows for reallocation of prison time amongst the counts under Rule 35, other circuits carefully apply the narrow language of Rule 35(a), in determining sentencing.

In *United States v. Oujada*, 146 Fed. Appx. 958 (10th Cir. 2005), the court held that the subdivision of Rule 35, is not intended to afford the court the opportunity to reconsider the application or interpretation of the sentencing guidelines or for the court simply to change its mind about the appropriateness of the sentence. Nor should it be used to reopen issues previously resolved at the sentencing hearing through the exercise of the court's discretion with regard to the application of the sentencing guidelines. Citing *United States v. Abreu-Cabrera*, 64 F.3d 67 (2nd Cir. 1995).

A district court's authority under Rule 35(a) is "strictly limited to the correction of the illegal portion of an illegal sentence!" see *Kennedy v. United States*, 330 F.2d 26, 27 (9th Cir. 1964), *United States v. Lewis*, 862 F.2d 748, 750 (9th Cir. 1988); *United States v. Minor*, 846 F.2d 1184, 1188 (9th Cir. 1988). In *United States v. Clutterbuck*, the Ninth circuit held that the "authority to vacate and amend a sentence 'at any time' extends only to the illegal portion of the sentence". 445 F.2d 839, 840 (9th Cir. 1989).

In *United States v. Gray*, the Sixth circuit reiterated the proper function of Rule 35(a) is "to eliminate illegal excess beyond statutory maximum". 521 F.3d 514, 544 (6th Cir. 2008). In quoting *Hill v. United States*, 368 U.S. 424 (1962), the First circuit also reiterated the narrow circumscription of Fed. R. Crim. P., Rule 35(a) as it held: for Rule 35(a) purposes, a sentence is illegal if [the punishment meted out was in excess of that prescribed by relevant statutes, multiple terms were or the terms of the sentence itself were legally or constitutionally invalid in any respect". *United States v. Sevilla-Oxola*, 770 F.3d 1 (1st Cir. 2014).

The Eleventh circuit is now split on the issue of reallocation of prison time amongst the counts under Rule 35(a), with the narrow interpretation of Rule 35(a) used by the First, Second, Sixth, Ninth and Tenth circuits. Only this court's intervention can ensure nationwide uniformity in the circuits, on this important issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carlton Butler

Date: 8-17-20