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No. 20-6395

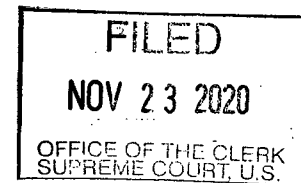
(7:19-cv-00016-NKM-JCH)

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ANTONIO W. SMITH - PETITIONER

VS.



M. BRECKEN, WARDEN - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES FOURTH CIRCUIT APPEALS COURT

PETITION FOR WRIT OF CERTIORARI

Antonio W. Smith

Reg. No. 11640-021

U.S.P. McCreary

P.O. Box 3000

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QUESTIONS PRESENTED

1) Did the Fourth Circuit Appeals Court err by not hearing Petitioner's 28 U.S.C. § 2241 petition on the merits where his misclassification as a career offender increased his mandatory U.S. Sentencing Guidelines range more than 13 years longer than the maximum sentence the court rightfully had discretion to order?

2) Did the Fourth Circuit Appeals Court err when denying Petitioner's request to have his habeas corpus petition heard on the merits by means of the savings clause in 28 U.S.C. § 2255(e), and dismissing his 28 U.S.C. § 2241 petition because § 2255 was an inadequate and ineffective means to test the legality of Petitioner's detention, which was based on a sentence issued with an erroneously increased mandatory minimum?

3) Is the Fourth Circuit Appeals Court requirement that Petitioner continue to serve an enhanced sentence as a career offender bearing the stigma of a repeat violent offender and all its accompanying disadvantages a fundamental defect representing a miscarriage of justice, where he lacks the predicate felonies to justify such a characterization?

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TABLE OF AUTHORITIES CITED

Williams v. Warden, Fed Bureau of Prisons, 713 F.3d 1332, 1343 (11th Cir. 2013)
Brown v. Caraway, 719 F.3d 583 (7th Cir. 2013)
Hill v. Masters, 836 F.3d 591 (6th Cir. 2016)
United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018)
Moncrieffe v. Holder, 133 S. Ct. 1678, 1680 (2013)
Lester v. Flournoy, 909 F.3d 708, 713 (4th Cir. 2018)
Booker v. United States, 543 U.S. 245 (2005)
Jones v. Thomas, 491 U.S. 376, 381 (1989)

STATUTES AND RULES

28 U.S.C. § 2241
28 U.S.C. § 2255(e)
28 U.S.C. § 2255
28 U.S.C. § 1254(1)
Conn. Gen. Stat. § 53a-59(a)(3)
Conn. Gen. Stat. § 53a-134(a)(4)
Conn. Gen. Stat. § 53a-169
Conn. Gen. Stat. § 21a-277(b)

OTHER

U.S.S.G. § 4B1.1
U.S.S.G. § 4B1.2(a)(1)

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.

The opinion of the United States District Court
appears at Appendix B.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals
decided my case was August 25, 2020.

A timely petition for rehearing was denied by the
United States Court of Appeals on the following date:

November 17, 2020, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

In this case, Petitioner alleged in his initial 28 U.S.C. § 2241 petition that he is no longer a career offender under U.S.S.G. § 4B1.1 under this Court's ruling in Johnson v. United States, 135 S. Ct. 2551 (2015). However, at the time for the filing of Petitioner's COA, where, by law, he was legally permitted to include any additional argument in his COA that had not been raised in his initial § 2241 petition, he abandoned the Johnson claim and included the claim under Descamps v. United States, 570 U.S. 254 (2013), arguing that he was no longer a career offender under the pre-Booker mandatory U.S. Sentencing Guidelines § 4B1.1 due to no longer having the qualifying predicates to support the enhancement, and that his sentence at present is fundamentally defective and the result of a miscarriage of justice. Rather than hearing Petitioner's claims on their merits after demonstrating that he had

satisfied the requirements set forth in United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018), the appeals court dismissed Petitioner's case without a review or hearing.

REASONS FOR GRANTING THE PETITION

Petitioner respectfully asserts that the appeals court panel decision in this case conflicts with the authoritative decisions of other United States court of appeals that have addressed the same important matter; William v. Warden, Fed Bureau of Prisons, 713 F.3d 1332, 1343 (11th Cir. 2013); Brown v. Caraway, 719 F.3d 583 (7th Cir. 2013); Hill v. Masters, 836 F.3d 591 (6th Cir. 2016); with authoritative decisions of the Fourth Circuit Appeals Court; Lester v. Flournoy, 909 F.3d 708 (4th Cir. 2018); United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018), and with authoritative decisions of this Court; Jones v. Thomas, 491 U.S. 376, 381 (1989); Descamps v. United States, 570 U.S. 254 (2013); Moncrieffe v. Holder, 133 S. Ct. 1678, 1680 (2013).

In Hill, the Sixth Circuit Appeals Court held that a petition under § 2241 was authorized for prisoners who were sentenced under the mandatory sentencing regime pre-Booker, who were foreclosed from filing a successive petition

under 28 U.S.C. § 2255, and a subsequent, retroactive change in statutory interpretation by the U.S. Supreme Court have revealed that a previous conviction was not a predicate offense for a career offender enhancement. Therefore, Hill's challenge to his misapplied career-offender enhancement was properly brought under § 2241.

In Lester, the Fourth Circuit Appeals Court held that a petitioner's § 2241 petition should have been heard on the merits where his misclassification as a career offender increased his mandatory U.S. Sentencing Guidelines range more than nine years longer than the maximum sentence that the court rightfully had discretion to order, and thus, § 2255 was inadequate and ineffective to test the legality of Lester's detention.

In Wheeler, the Fourth Circuit appeals court held that the district court erred in denying Wheeler's request to have his habeas petition heard on the merits by means of the savings clause in § 2255(e) and dismissing his § 2241 petition because § 2255 was an inadequate and ineffective means to test the legality of Wheeler's detention, which was based on a sentence issued with an erroneously increased mandatory minimum.

Petitioner respectfully asserts that the lower court's

decision in this case is erroneous, as his present situation in which he complains of is identical to the defendants in Hill, Lester, and Wheeler.

Petitioner's Connecticut priors for assault first, robbery first, sale of a controlled substance, and escape first cannot be reconciled with this Court's ruling in Descamps, and subsequent ruling in Moncrieffe. This is because the least culpable act found in assault first under Conn. Gen. Stat. § 53a-59(a)(3) requires only that a defendant, "under circumstances evincing an extreme indifference to human life, 'recklessly engages in conduct' which creates 'a risk of death' to another person and thereby causes serious physical injury to another person." *Id.* The least culpable act under robbery first of Conn. Gen. Stat. § 53a-134(a)(4) requires that the defendant, "or another participant in the crime," (i.e., co-conspirator as the statute also charges violations for conspiracy). The least culpable act under escape first of Conn. Gen. Stat. § 53a-169 requires "a failure to return to" or "a mere walk away." *Id.* The least culpable act under sale of a controlled substance of Conn. Gen. Stat. § 21a-277(b), requires a "mere offer" to sell.

In Descamps, this Court held that, "If a statute

sweeps more broadly than the generic crime, a conviction under that law cannot count as a [§ 4B1.2 (a)(1)] predicate, [or controlled substance offense] even if the defendant actually committed the offense in its generic form." Descamps, 133 S. Ct. 2283. In Moncrieffe, this Court held, "If the statute criminalizes several acts, [we] must assume that the conviction rested upon nothing more than the least of the acts criminalized, and then determine whether even those acts are encompassed by the [guidelines definition of a violent felony or controlled substance offense]".

Petitioner respectfully asserts that the lower court's ruling in this matter has so departed from the accepted and usual course of judicial proceedings, and sanctioned such a departure by a lower court that the appeals court actions calls for an exercise of this Court's supervisory power, whereas, the lower court of last resort has decided an important matter in a way that conflicts with the decisions of other United States court of appeals and conflicts with relevant decisions of this Court as well.

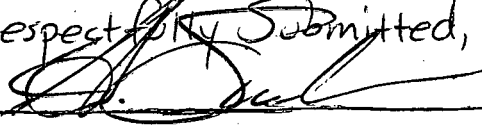
CONCLUSION

Wherefore, in light of the above, Petitioner

respectfully asserts that the petition for writ of certiorari should be granted.

11 / 23 / 20

Date:

Respectfully Submitted,


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