

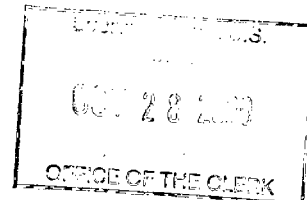
20-6606

No. \_\_\_\_\_

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Paul W. Miller

— PETITIONER

(Your Name)

vs.

B. Von Blanchensee

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Ninth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Paul W. Miller # 05503-095

(Your Name)

P.O. Box 24550

(Address)

Tucson, AZ 85734-4550

(City, State, Zip Code)

Inmate (None)

(Phone Number)

### QUESTION(S) PRESENTED

- 1) Can Congress Statutorily limit by text the subject-matter Jurisdiction of Courts created by an Act of Congress?
- 2) Can subject-matter jurisdiction be raised when it is discovered to be lacking or is there a limitation of time based on procedural hurdles (i.e. 2255, 2241, Appeal, etc.), and temporal limitations by motion?
- 3) If Congress Uses a Specific word with a specific meaning, (i.e. Sentence), does Due Process and Fair Notice allow for the Judicial to give this definitive term other meanings?
- 4) If 28:2255 limits the available remedies for the Petitioner to request and these remedies are plainly written (set aside, vacate, correct the sentence), where in the Statutory language does it authorize any Petitioner, in the text, to move any Court to set aside, vacate, or correct any Conviction?
- 5) If 28:2255 clearly and unambiguously limits any Petitioner's available remedies to set aside, vacate, or correct his sentence, is 28:2255's Statutory text ineffective and/or inadequate to move the Court to relieve a conviction when 2255(a) clearly has no such remedy available to request?
- 6) What Part of 2255(a) changes a sentence challenge to any other challenge?

## 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

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28 USC. § 2255(a)

**OTHER**

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 2020 U.S. App. LEXIS 20565 (9<sup>th</sup> Cir.); 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 4:19-cv-435-OCB-ORF (D. Ariz. 2020); or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

*WA*  
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.

*WA*  
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 JUNE 30, 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

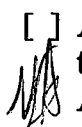
☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

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 N/A.  
A copy of that decision appears at Appendix N/A.

 ☐ A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

 ☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 USC § 2255

- a) "A prisoner in Custody under a sentence of a Court established by Act of Congress claiming the right to be released... may move the Court which imposed the sentence to vacate, set aside or correct the sentence."
- e) "... Unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."



## STATEMENT OF THE CASE

- \* On September 11, 2012, the Petitioner suffered a conviction on the United States District Court for the Middle District of Louisiana. The nature of the crimes have no legal bearing on this case. The Petitioner was sentenced to 840 months of imprisonment.
- \* The Petitioner filed a timely Appeal in the Fifth Circuit Court of Appeals which was affirmed. The Petitioner filed a timely Motion to vacate his sentence which was denied (28 U.S.C. § 2255).
- \* The Petitioner filed a Writ of Habeas Corpus in the United States District Court of Arizona (Tucson) which was dismissed for want of jurisdiction. The Ninth Circuit Court of Appeals declined to issue a Certificate of Appealability.
- \* The Petitioner is prose and of average intelligence. He challenged that Congress's choice of text, the meaning of words, Constitutional limitations on Courts to write legislation, Congress's authority to limit jurisdiction by the remedy available by statute and fair notice that 28 U.S.C. § 2255(a) is ineffective / inadequate to raise a direct challenge to the Petitioner's actual underlying conviction. Simply, Section 2255(a) only provides that the Petitioner can singly attack his sentence. Congress directly limited the Petitioner three possible remedies which he can move a Court to grant; 1) vacate the sentence; 2) set aside the sentence; or 3) correct the sentence. None of the statutory remedies available challenge or remove the underlying conviction.

\* No competent Court can read 2255(a), to in any way allow any Petitioner to pursue a motion to a court to vacate, set aside, or correct his actual Conviction. Congress used precise words; "may move the court which imposed the sentence to vacate, set aside or correct the sentence." To this there is no ambiguity. A sentence is not a conviction and a conviction is not a sentence. Legally a Conviction can stand even when a sentence is vacated, set aside, or corrected. So the statutory subject-matter jurisdiction of remedy available by 2255(a) begins and ends with the sentence.

\* 18: 2255(e) statutorily authorized any Petitioner to file a habeas corpus, if the remedy by 2255(a) is ineffective or inadequate. The Petitioner filed the instant 28: 2241 motion to attack his conviction and not his sentence, because 2255(a) offers no statutory remedy available to move the court that imposed the sentence to vacate, set aside, or correct his conviction. This lack of available remedy renders, by any application of law, 2255(a) is ineffective/inadequate to challenge the Petitioner's detention on a bad conviction.

## REASONS FOR GRANTING THE PETITION

\* Upon Creation of 28 USC § 2255 Congress expressed in the language the clear unambiguous intent to allow for judicial remedy by the Sentencing Court to correct a myriad of sentencing issues. A person in federal custody has the ability to move the Court which imposed an erroneous sentence to vacate, set aside, or correct the sentence. Section 2255(a) offers no prisoner any other remedy.

\* In order to prevent unconstitutional suspension of Habeas Corpus, Congress allows resort to § 2241 when § 2255 is ineffective/inadequate. When a prisoner makes any motion under § 2255(a), any motion not moving a sentencing court to vacate, set aside or correct the sentence is requesting some remedy which is not under the statutory limitations. Such action not attacking the sentence, by definition, renders § 2255 ineffective and inadequate for the prisoner to challenge any non-sentence issue under that section.

\* Title 28, Chapter 153 offers no congressionally created definition for the word sentence. It is well established by this Court that when a word is used, unless Congress includes some alternate meaning, all words must given common and ordinary meanings.

\* This Court and all inferior Courts refuse to identify what or where the language in 28 USC §2255(a) that permits the Petitioner to "move the sentencing court to vacate, set-aside or correct a Conviction". With no such text authorized by Congress as to a remedy available for a prisoner to "move" the sentencing court to grant, it is beyond urgent for this Court to clarify that any non-sentence error is ineffective/inadequate to be remedied by a Prisoner's motion under this section. Absent language to give the Petitioner Statutory authority to move for any other remedy, all other remedies are unavailable. The Petitioner, having an average person's understanding of English, has no training or schooling, experience that would render the word sentence, even in the legal sense, to mean "also conviction".

\* This Court's Appellant Authority requires it to clarify and articulate how §2255 is applied and to determine how federal Courts have completely expanded the word "sentence" to encompass bad indictments, Fourth Amendment, statutory jurisdiction, prosecutorial misconduct and a plethora of other "non-sentence" issues even under the guise of ineffective Counsel. No other state has treated such a common term as a chameleon.

# 18:2255(e) was created to allow for non-sentence collateral review of detention. This Court's Appellate Jurisdiction must clarify this fact to prevent the current procedural abuses by lower Courts in their denial to allow the exercise of 2255(e) on conviction issues. If Congress "intended" conviction type challenges, it would have included "conviction" as one of the remedies in 2255(a).

### CONCLUSION

The petition for a writ of certiorari should be granted.

<sup>fe</sup>  
Respectfully submitted,



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Date: 10-25-2020