

DOCKET NO.
20-7007

IN THE

SUPREME COURT OF THE UNITED STATES

TERM, 2020

VERNON ALLEN COLLINS,

Petitioner,

v.

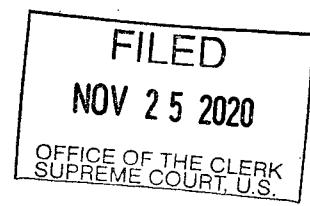
UNITED STATES OF AMERICA,

Respondent,

ORIGINAL

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

PETITION FOR WRIT OF CERTIORARI

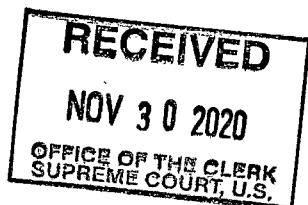


VERNON ALLEN COLLINS # 529-762,

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Trenton, New Jersey, 08625

Pro Se Petitioner



QUESTIONS PRESENTED

- I. WHETHER THE APPELLATE COURT ADOPTIONS OF THE DISTRICT COURT DISPOSITIVE PROCEDURAL CONCLUSIONS ERRED IN HOLDING COLLINS HAD FAILED TO PROVE ARTICLE III REQUIREMENTS DESPITE HIS PETITION ALLEGED FACTS DEMONSTRATING PROOF OF THE THREE ELEMENTS OF HAVING SUFFERED AN INJURY IN FACT THAT IS FAIRLY TRACEABLE TO THE CHALLENGED CONDUCT OF THE GOVERNMENT IMPROPERLY IMPOSITION OF THE ENHANCED TWENTY YEAR SENTENCE UNDER THE RESIDUAL CLAUSE DECLARED UNCONSTITUTIONAL IN JOHNSON V. UNITED STATES, 135 S.Ct. 2551 (2015) THAT IS LIKELY TO BE REDRESSED BY A FAVORABLE JUDICIAL DECISION WAS MORE THEN SUFFICIENT TO SATISFY THE CASE OR CONTROVERSY OF THE CONSTITUTIONAL MINIMUM STANDING OF ARTICLE III SINCE THE ENHANCED SENTENCE RESULTED IN HIM SERVING FIFTEEN YEARS MORE THEN THE CONVICTION OF TITLE 18 USC § 922(g)(1) AUTHORIZED PREVENTED HIS NEW JERSEY STATE SENTENCE OF LIFE IMPRISONMENT WITH PAROLE INELIGIBILITY FOR TWENTY-FIVE YEARS FROM COMMENCING EARLIER AND HAVING TO SERVE MORE THEN THE TWENTY-FIVE YEAR MAXIMUM BEFORE BECOMING ELIGIBLE FOR PAROLE CONSIDERATION RELEASE ON THE STATE ?
- II. WHAT STANDARD OF PROOF DOES THE DEFENDANT AS THE PARTY INVOKING CORAM NOBIS JURISDICTION BEAR IN ORDER TO PROVE THE CONSTITUTIONAL MINIMUM STANDING OF THE THREE ELEMENTS OF ARTICLE III BEYOND A REASONABLE DOUBT OR PREPONDERANCE OF THE EVIDENCE?

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:

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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 B 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 United States district court appears at Appendix A to the petition and is

reported at _____; 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.

A

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 25, 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: _____, 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. § 1254(1).

Y 65

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).

B

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth and Fourteenth Amendment 6,7,8,9

United States Constitution Article III 4,5,7,8,9,10,11,12,13

STATEMENT OF THE CASE

A. The Proceeding Below

On October 9, 1987, Petitioner, Vernon Allen Collins was found guilty by a jury of one count of conspiracy to distribute and possess with intent to distribute heroin, in violation of 21 U.S.C. § 846; one count of possession with intent to distribute heroin, in violation of 21 U.S.C. § 841(b)(1); one count of employment of person(s) under 18 years old to possess with intent to distribute heroin, in violation of 21 U.S.C. § 8450(1) (now codified at 21 U.S.C. § 861); and two counts of possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(e)(1). According to the Superseding Notice of Enhanced Penalties, Collins was subject to two "enhanced punishments pursuant to Title 18 U.S.C. § 924(e) of not less 15 years imprisonment as to Count IV and additional sentence of not less than 15 years without the possibility of parole based on three alleged prior qualifying convictions under the residual clause.

On November 24, 1987, the late Judge John R. Hargrove sentenced Collins to thirty-five years in prison on charges of conspiracy to distribute and possess with intent to distribute heroin; possession with intent to distribute heroin; employment of a person under eighteen years of age to possess with intent to distribute heroin; and possession of a firearm by a convicted felon. See 21 U.S.C. §§ 846, 841 (a)(1) and 845 (b)(1) and 18 U.S.C. § 922(g)(1) and 924(e)(1). The sentence had two components. First Judge Hargrove ordered Collins to serve three concurrent fifteen year prison terms on his convictions on Counts One, Two and Three of the indictment (i.e., the drug charges). Second, Judge Hargrove ordered Collins to serve two concurrent twenty-year terms on his convictions on Counts Four and Five of the indictment (i.e., the felon in possession charges). The twenty-year felon in possession terms were made to run consecutive to the fifteen-year narcotics terms.

The firearms component of Collins's sentence was based in part on a finding by Judge Hargrove that Collins qualified for a sentencing enhancement codified at 18 U.S.C. § 924(e)(1). That provision provides that a defendant found guilty of a violation of 18 U.S.C. § 922(g)(1) is subject to a minimum mandatory sentence of fifteen years if he has previously been convicted of at least three crimes of violence and/or serious drug offenses. See *id.* the United States submitted a sentencing memorandum in which it identified three qualifying convictions and argued that the enhanced penalty applied:

- a 1966 conviction for robbery,
- a 1972 conviction for assault with intent to murder,
- a 1973 conviction for common law assault.

During Collins's sentencing hearing, his attorney mentioned the possibility of mounting a challenge to the predicate convictions down the line. Judge Hargrove advised him that the convictions were presumptively valid until proven otherwise.

On September 13, 1988, the Fourth Circuit affirmed Collins's conviction. United States v. Taylor, 857 F.2d 210 (4th Cir. 1988). On August 28, 1992, Collins filed his first 28 U.S.C. § 2255 motion to vacate. See United States v. Collins, Criminal No. HAR-87-0338 at Paper No. 71 (Collins v. United States, Civil Action No. HAR-92-2442). On December 19, 1994, Judge Hargrove denied the motion to vacate. January 9, 1996, the Fourth Circuit affirmed Judge Hargrove's decision. United States v. Collins, 74 F.3d 1234, 1996 WL 10295 (4th Cir. 1996) (per curiam). On May 13, 1996, the Supreme Court denied the petition for certiorari.

On February 20, 2002 Collins filed pursuant to former Federal Rules of Criminal Procedure, a Rule 35(a) Motion to Correct Illegal Sentence. In that motion Collins challenging the legality of the two separate convictions and concurrent sentence imposed for Counts 4 and 5 of the indictment. On April 15, 2002 U.S. District Court, Judge Catherine C. Blake, in a memorandum and order denied Collins Rule 35 motion. United States v. Vernon Collins, Crim. No. HAR-87-0338, Civil No. CCB-02-969, Criminal No. HAR-87-0338. However, Fourth Circuit reversed one of Collins convictions under 18 U.S.C. § 922(g)(1) because that conviction was imposed in violation of the rule in United States v. Ball, 470 U.S. 865 (1985), and ordered Judge Blake to vacate one the two twenty year sentences imposed under Counts 4 and 5. In 2003 Judge Blake vacated one of the two sentences of twenty years imposed under the residual clause of the Armed Career Criminal Act of Title 18 U.S.C. 924(e)(1). See United States v. Collins, 2004 WL 857231 (4th Cir. Apr. 22, 2004).

On January 4, 2016 Collins filed a Motion to Correct an Illegal Sentence pursuant to former Federal Rules of Criminal procedure challenging the twenty year term imposed under count 4 and 5 under the residual clause of the Armed Career Criminal Act 18 U.S.C. 924(e)(1) for Collins conviction under 18 U.S.C. 922(g)(1), in light of this Court's recent decision rendered in Johnson v. United States, 135 S.Ct. 2551 (2015) that invalidated the residual clause of the ACCA definition for "violent felony" as unconstitutionally vague. Johnson, *supra*, 135 S.Ct. at 2558. However, U.S. District Court Judge Catherine C. Blake in denying relief on July 12, 2016 held: Collins was not entitled to relief because in accordance to the district court, Collins had completed his federal sentence in 2005 and had been released to a detainer to begin serving a New Jersey State sentence, and remains in the custody of the New Jersey Department of Corrections, and no certificate of appealability will be issued.

Pursuant to Federal Rules of Appellate Procedure, Rule 4 (a) (11) B, Collins filed August 18, 2016 a timely pro se, Notice of Appeal, along with a certificate of appealability, appealing the district court's spontaneous treating of his former Rule 35 (a) motion to correct an illegal sentence, as one filed pursuant to 28 U.S.C. §2255 and subsequent July 12, 2016 denial of that motion, upon procedural grounds and a certificate of appealability (COA). The United States Court of Appeals for the Fourth Circuit docket this appeal using the six-digit docket number 16- 71451, and Ordered Collins to file his informal brief by September 19, 2016 using those numbers. In an unpublished opinion dated January 5, 2017, the United States Court of Appeals for the Fourth Circuit in affirming the district court conclusions first concluded in a footnote although Collins insists that the district court improperly construed his motion as a § 2255 motion rather than a former Fed. R. Crim. P. 35(a) motion, we conclude that Collins' substance claim is not cognizable under former Rule 35 (a), and therefore, the district court's construction of the motion was not erroneous, citing United States v. Paylco, 961 F.2d 440, 443 (4th Cir. 1992). The Court then concluded: We have independently reviewed the record and conclude that Collins has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process. United States of America v. Vernon A. Collins, No. 16-71425.

On July 2016, the court denied Collins's §2255 motion because he had completed his federal sentence, noting that in 2005, he was released to a detainer to begin serving a New Jersey State sentence. (Case No. CCB-87-338, ECF No. 127). Collins's appeal of this decision was denied on January 5, 2017, United States v. Collins, 672 F. App'x 302, 303 (4th Cir. 2017). On October 2, 2017, the Supreme Court denied his Petition for Writ of Certiorari. Collins v. United States, 138 S. Ct. 63, 2017 WL 1134351, at *1 (2017).

On April 6, 2017, Collins filed a Petition for Writ of Error Coram Nobis to challenge his "illegal enhanced sentence that continues to subject him to remain on federal parole until 2022, and causes or prevents his New Jersey State enhanced sentence of life imprisonment with twenty-five years parole ineligibility to commence from 2001." (Pet. at 4, ECF No. 1).

On November 1, 2019 U.S. District Judge Blake's issued a memorandum opinion order denying Collins petition for a writ of error coram nobis to vacate the illegal non-parolable enhance sentence of twenty years, imposed under Title 18 U.S.C. §924(e)(1) "Residual Clause" of the Armed Career Criminal Act of for his convictions of Counts 4, and 5 of the indictment charging violations of 18 U.S.C. §922(g) (1). District Court Judge Blake ruled although Collins met the first requirement for coram nobis relief, as he is no longer in federal

custody and cannot seek relief under the typical remedies for a direct appeal or collateral challenge to his federal sentence; Collins cannot however, meet the second requirement because he somehow badly asserts that he has met his burden to overcome the presumption that his conviction was correct, but provides no reason for not challenging the sentence earlier. Instead base his claim on the U.S. Supreme Court's decision in *Johnson* relieves him of his burden to show that the underlying proceedings were correct. Collins fails to show adverse consequences from his conviction sufficient to satisfy the case or controversy requirement of Article III, the third requirement for *coram nobis* relief; and lastly Collins cannot satisfy the fourth requirement for *coram nobis* relief. Appendix (A)-1-8, (CCB memorandum opinion order, at pg. 5, paragraph 2-3, Fn. 7; Pg. 6, pg. 7, paragraphs 1-2).

The Petitioner Collins timely noted an appeal and the United States of Appeals for the Fourth Circuit affirmed the United States District Court judgment in an unpublished per curiam opinion dated August 25, 2020 holding, We affirm substantially on the reasoning of the district court., concluding that Collins failed to show sufficient injury to convey Article III standing. Yemon Allen Collins, v. United States of America, No. 20-6013, Decided August 25, 2020. Appx. (B-1-2).

REASONS FOR GRANTING THE PETITION

A. This Court should grant a writ of certiorari to resolve and determine whether adverse consequences exist from a defendant improperly sentenced to an enhanced sentence under the residual clause of Title 18 USC 8924(e)(1) declared unconstitutional in *Johnson v. United States*, 135 S.Ct. 2551 (2015) was sufficient to satisfy the case or controversy requirement of the irreducible constitutional minimum of standing of the three elements of Article III to constitute concrete injury when that enhanced sentence caused the defendant to suffer not only an injury of having to serve fifteen years more then his conviction of Title 18 USC 922(g)(1) authorized but having to serve more then the mandatory twenty-five year maximum before becoming eligibility for parole consideration on a life sentence the State of New Jersey imposed with parole ineligibility for twenty-five years.

B. This Case presents the perfect opportunity for this Court to resolve and determine what standard of proof does the defendant as the party invoking *coram nobis* jurisdiction bear in order to prove the constitutional minimum standing of the three elements of Article III beyond a reasonable doubt or preponderance of the evidence.

ARGUMENT I.

WHETHER THE APPELLATE COURT ADOPTIONS OF THE DISTRICT COURT DISPOSITIVE PROCEDURAL CONCLUSIONS ERRED IN HOLDING COLLINS HAD FAILED TO PROVE ARTICLE III REQUIREMENTS DESPITE HIS PETITION ALLEGED FACTS DEMONSTRATING PROOF OF THE THREE ELEMENTS OF HAVING SUFFERED AN INJURY IN FACT THAT IS FAIRLY TRACEABLE TO THE CHALLENGED CONDUCT OF THE GOVERNMENT IMPROPERLY IMPOSITION OF THE ENHANCED TWENTY YEAR SENTENCE UNDER THE RESIDUAL CLAUSE DECLARED UNCONSTITUTIONAL IN JOHNSON V. UNITED STATES, 135 S.OL 2551 (2015) THAT IS LIKELY TO BE REDRESSED BY A FAVORABLE JUDICIAL DECISION WAS MORE THEN SUFFICIENT TO SATISFY THE CASE OR CONTROVERSY OF THE CONSTITUTIONAL MINIMUM STANDING OF ARTICLE III SINCE THE ENHANCED SENTENCE RESULTED IN HIM SERVING FIFTEEN YEARS MORE THEN THE CONVICTION OF TITLE 18 USC § 922(g)(1) AUTHORIZED PREVENTED HIS NEW JERSEY STATE SENTENCE OF LIFE IMPRISONMENT WITH PAROLE INELIGIBILITY FOR TWENTY-FIVE YEARS FROM COMMENCING EARLIER AND HAVING TO SERVE MORE THEN THE TWENTY-FIVE YEAR MAXIMUM BEFORE BECOMING ELIGIBLE FOR PAROLE CONSIDERATION RELEASE ON THE STATE ?

Here, Vernon Allen Collins, petitioner was found guilty on October 9, 1987, by a jury of two counts of possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). On November 24, 1987, according to the Superseding Notice of Enhanced Penalties, the late Judge John R. Hargrove pursuant to Title 18 U.S.C. § 924(e)(1) sentenced Collins for two convictions of possession of a firearm by a convicted felon to serve two concurrent twenty-year terms on his convictions on Counts Four and Five of the indictment (i.e., the felon in possession charges). ^{1/} The twenty-year felon in possession terms were made to run consecutive to the three concurrent fifteen-year sentences imposed on Counts 1, 2, and 3, for convictions of violations of Title 21 USC §846 (conspiracy); possession with intent to distribute Title 21, USC 841, and conspiracy to possession with intent to distribute deflquent Title 21 USC 845.

FN1. Collins was subject to two 'enhanced punishments of twenty years imprisonment as to Count IV and V without the possibility of parole based on three alleged prior qualifying convictions under the residual clause. The firearms component of Collins's sentence was based in part on a finding by Judge Hargrove that Collins qualified for a sentencing enhancement codified at 18 U.S.C. § 924(e)(1). That provision provides that a defendant found guilty of a violation of 18 U.S.C. § 922(g)(1) is subject to a minimum mandatory sentence of fifteen years if he has previously been convicted of at least three crimes of violence and/or serious drug offenses. See id. the United States submitted a sentencing memorandum in which it identified three qualifying convictions and argued that the enhanced penalty applied: a 1966 conviction for robbery, a 1972 conviction for assault with intent to murder, a 1973 conviction for common law assault.

First, directly after this Court decided Johnson v. United States, 135 S.Ct. 2551 (2015), Petitioner Collins filed on January 4, 2016 a "Motion to Correct an Illegal Sentence Pursuant to Former Rule 35(A) of the Federal Rules of Criminal Procedure," which the district court construed as a Motion to Vacate under 28 USC § 2255 (Case No. CCCB-87-338). Collins argued that pursuant to this Court's decision in Johnson v. United States, 135 S.Ct. 2551 (2015), the sentence on his Title 18 USC § 922(g) (1) convictions" were improperly enhanced under the ACCA's residual clause. And the district court denied , Collins's § 2255 motion on July 7, 2016 based upon conclusions he had allegedly completed his federal sentence, noting that in 2005, he was released to a detainer to begin serving a New Jersey state sentence. Collins appealed the decision denying relief from the enhanced sentence pursuant to 28 USC § 2255 relief and the decision was affirmed on January 5, 2017, United States v. Collins, 672 F. App'x 302, 303 (4th Cir. 2017). Cert. was denied by this Court October 2, 2017. Collins v. United States, 138 S.Ct. 63, 2017 WL 113435, at * (2017).

Collins filed on April 6, 2017, a petition for writ of coram nobis to challenge the illegal enhanced sentence based on the district court's prior ruling denying relief under 28 USC 2255 because he had allegedly completed his federal sentence, he could not seek relief under the typical remedies for a direct or collateral attack of a federal judgment and sentence because according to the district court he was no longer in custody. See 28 USC §2255 (1948); 28 USC §2241 (1948). Collins coram nobis petition established that (1) relief under the typical remedies for direct or collateral attack of the federal judgment and enhance sentence against Collins was not available to him. Thus satisfying the first prong of United States v. Demardo, 556 U.S. 904, 91 (2009).

Second, Collins's petition for coram nobis relief established with respect to the Demardo's second prong that reasons exist for not having launching or attacking the enhance twenty-year sentence earlier was a valid one, in light of the fact that the U.S. Supreme only recently rendered the primary decision in Johnson v. United States, 135 S.Ct. 2551 (2015) on which he relies. And filed the petition for writ of coram nobis relief immediately after the district court, 4th circuit appellate court and the U.S. Supreme informed Collins he was not entitle to relief from the enhanced twenty-year sentence pursuant to 28 USC § 2255 relief because he was no longer under custody of the Government serving a federal sentence. United States v. Collins, 672 F. App'x 302, 303 (4th Cir. 2017), and Cert. was denied by this Court October 2, 2017. Collins v. United States, 138 S.Ct. 63, 2017 WL 113435, at * (2017).

Third, Collins's petition coram nobis relief established that he is yet burdened with his enhanced federal twenty-year sentence improperly imposed under the residual clause of Title 18 USC §924(e) because it

had not been vacated under this Court's holding of Johnson v. United States, 135 S.Ct. 2551 (2015) it was unconstitutional. He has been caused to suffered a concrete injury because he has been forced to served fifteen years more than the statute, he was convicted of Title 18 USC § 922(g) (1) authorized when he improperly imposed under the residual clause of Title 18 USC § 924(e) declared unconstitutional in Johnson that prevented Collins's from being released upon mandatory release from federal custody with good conduct time credit five (5) years earlier then 2005; continues to cause him to not only to suffer the substantial adverse collateral consequences, e.g. of not having his New Jersey state sentence of life imprisonment with parole ineligibility for twenty-five years from commencing five (5) years earlier then 2005, but even more importantly caused him to serve more then the mandatory maximum of twenty-five years before becoming eligible for parole consideration on his New Jersey state sentence of life imprisonment with parole ineligibility for twenty-five years. Not only established adverse consequences exist but those collateral consequences resulting from the twenty-years enhanced sentence improperly imposed under the residual clause of Title 18 U.S.C. § 924 (e) declared unconstitutional by this Court in Johnson, was more then sufficient under Denedo's third prong to satisfy the case or controversy requirement of Article III three elements to constitute concrete injury..

Fourth, Collins's petition for coram nobis relief with respect to Denedo's fourth prerequisite as to whether this Court's decision decided in Johnson v. United States, *supra*, was an error of the most fundamental character" such that coram nobis relief is required to "achieve justice" Denedo, 129 S. Ct. at 220. " A terminology that derives from the U.S. Supreme Court decisions of long standing, where the Court emphasized that an error of the most fundamental character" is one that has "rendered the proceeding itself irregular and invalid. United States v. Mayer, 235 U.S. 55, 69,35 S.Ct. 16, 559 L. Ed. 129 (1914). Collins's petition for coram nobis relief established that the unconstitutional error that occurred in his case at sentencing was an error of the most fundamental character" such that coram nobis relief is required to "achieve justice when the district court to sentenced him to an enhanced sentence of twenty years without parole eligibility based upon conclusions the three prior convictions that court classified to be violence felonies under the residual clause of Title 18 USC 924(e) (2) (B) (ii) this Court held to be unconstitutional vague in Johnson v. United States, 135 S. Ct. 2551 (2015). Such classification error were so serious as to be, in terms of the fourth prerequisite of coram nobis an error "of the most fundamental character" because Johnson held the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges and increasing a defendant's sentence under the clause denies

due process.¹⁷

Although Collins's petition for coram nobis sought relief under this Court's Johnson decision and undeniably satisfied all four of Denedo's prerequisites prong that must be met before coram nobis relief can be granted. The district court nevertheless erroneously ruled:

Although Collins met the first requirement for coram nobis relief, as he is no longer in federal custody and cannot seek relief under the typical remedies for a direct appeal or collateral challenge to his federal sentence; Collins cannot however, meet the second requirement because he somehow badly asserts that he has met his burden to overcome the presumption that his conviction was correct, but provides no reason for not challenging the sentence earlier. Instead base his claim on the U.S. Supreme Court's decision in Johnson relieves him of his burden to show that the underlying proceedings were correct. Collins fails to show adverse consequences from his conviction sufficient to satisfy the case or controversy requirement of Article III, the third requirement for coram nobis relief; and lastly Collins cannot satisfy the fourth requirement for coram nobis relief. Appendix (Appendix (A)-1-B) (CCR memorandum opinion order, at pg. 5, paragraph 2-3, Fn. 7; Pg. 6 pg. 7, paragraphs 1-2).¹⁸

On appeal although the appellate court rejected the majority of the district court erroneous conclusions for denying coram nobis relief the appellate court adopted the district court's Article III findings:

"We affirm substantially on the reasoning of the district court, concluding that Collins failed to show sufficient injury to convey Article III standing. Vernon Allen Collins, v. United States of America, No. 20-6013, Appx. (B-1-2).

Clearly, in light of the cases of this Court held that the irreducible constitutional minimum of standing consist of three elements. Lucas, 504 U.S. at 566, 112 S. Ct. 2130, 119 L.Ed. 2d 35. That the defendant must

FN2. Obviously this Court concluded Johnson errors were an error "of the most fundamental character" since the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges and increasing a defendant's sentence under the clause denies due process. As a result this Court in Welch v. United States, 136 S.Ct. 1257, 194 L.Ed. 2d 387 (2016), held federal habeas motions challenging sentencing pursuant to the Armed Career Criminal Act under Johnson allowed prisoners seek to invalidate such sentences under 28 U.S.C. 2255 motions without seeking permission from Civil Courts for prisoners who had already previously filed 2255 motions.

FN3. The district court decision also erroneously placed a burden on Collins greater than four prong requirement of Denedo to obtain coram nobis relief as the district court wanted Collins to address why his other prior convictions could not serve to substitute to support enhanced sentencing for one's relief upon its obtained enhanced sentencing under ACCA's residual clause in violation of Johnson v. United States.

have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the Government, and (3) that is likely to be redressed by a favorable judicial decision. *Id.* at 560-561, 112 S.Ct. 2130, 119 L.Ed. 2d 351. *Friends of the Earth, Inc. v. Dallas*, 493 U.S. at 180-187, 120, S.Ct. 693, 145 L.Ed. 2d 610. ^{1/} The appellate court adoption of the district court's conclusion, Collins had failed to show sufficient injury to convey Article III standing were erroneous. Since Collins's petition alleged facts demonstrating proof of each one of the three prerequisites elements necessary to determine he had standing to maintain *coram nobis* relief in a federal court against the Government under of Article III and therefore satisfied Denedo's third prong.

Proof Of The First Element Of Article III

Suffered An Injury In Fact

Although the party invoking federal *coram nobis* jurisdiction bears the burden of establishing the three elements of Article III the standard of proof of proving the elements is not expressly or authoritatively prescribe as beyond a reasonable doubt or preponderance of the evidence. However, with respect to establishing the burden of proving the element suffered an injury in fact, the very first of Article III, ^{2/} Collins petition demonstrated because Johnson determined that the indeterminacy of the wide-ranging inquiry required by the residual clause both denies fair notice to defendants and invites arbitrary enforcement by judges and increasing a defendant's sentence under the clause denies due process. As a result the enhanced federal sentence of twenty-years, improperly imposed under the residual clause of Title 18 USC § 924(e) determined in Johnson to be unconstitutional caused him to suffer an injury in fact based on irrefutable facts:

'1) Since the enhanced twenty-year sentence, cause Collins to suffer an injury in fact by having to serve fifteen more years in federal prison than the mandatory maximum sentence of five years the federal statute authorized for his conviction of violation of Title 18 USC § 922(g) (1));

'2) Collins is yet still continuously burdened with having to suffer an injury in fact constituting a substantial collateral consequences directly resulting from the imposition of the enhanced twenty-year sentence, improperly imposed under the residual clause of Title 18 USC § 924(e), e.g. because the federal

FN4. The party invoking federal jurisdiction, bears the burden of establishing those three elements *PPMPS v. Denizo*, 493 U.S. 215, 231, 110 S.Ct. 598, 107 L.Ed. 2d 603 (1990). *Stetka, Inc. v. Rubin*, 139 S.Ct. 1540 (2016) also see *Franky v. Goss*, 293 L.Ed. 2d 404 (2019).

FN5. Black Law Dictionary defines an **Injury In Fact**: An actual or imminent invasion of a legally protected interest, contrast to an invasion that conjectural or hypothetical, an injury in fact gives the victim standing to bring an action for damages.

enhance sentence prevented his New Jersey state sentence of life imprisonment with parole ineligibility for twenty-five years from commencing five (5) years earlier than 2005, the date he was released from federal prison custody;

'3) Collins is yet still continuously burdened with having to suffer an injury in fact constituting a substantial collateral consequences directly resulting from the imposition of the enhanced twenty-years sentence, improperly imposed under the residual clause of Title 18 USC §924(e), e.g. since the federal enhanced sentence is forcing him to having to serve more than the twenty-five-years mandatory maximum before becoming eligible for parole consideration on the state life imprisonment sentence with parole ineligibility for twenty-five-years. Since the Title 18 USC §924(e) enhanced sentence of twenty-years without the possibility of parole consideration forced Collins to serve fifteen years more than the five years maximum for his conviction of violation of Title 18 USC § 923(g) (1) authorized,

Proof Of The Second Element Of Article III

That Is Fairly Traceable To The Challenged Conduct Of The Government.

With respect to element (2) of Article III, that requires Collins to prove, that is likely fairly traceable to the challenged conduct of the Government. In the case sub judice, the federal enhanced twenty-years sentence without parole consideration improperly imposed under the residual clause of Title 18 U.S.C. § 924(e) declared unconstitutional by this Court in Johnson is directly traceable to the conduct of the Government:

'1) Since in the absence of the Government use of the state convictions of July 26, 1966 robbery, Case No. 2826/1966; October 19, 1972 assault with intent to murder, Case No. 13,803; and May 2, 1973 assault conviction, Case No. 1971/871 as the three prior predicate convictions to justify the imposition of the enhance non-paroleable twenty year sentence under the residual clause of Title 18 U.S.C. § 924(e). Collins would have faced no more than a maximum sentence of five years imprisonment with parole eligibility for his conviction for violation of Title 18 U.S.C. § 923(g)(1); Even if, the federal district court would have imposed the five year sentence to run consecutive with the three concurrent fifteen years sentences for a total maximum sentence of twenty years imprisonment for his three drug convictions. Collins after having served thirteen (13) years and four (4) months of that twenty year sentence would have with good conduct time earned pursuant to Title 18 U.S.C. § 4164 would been mandatory released from federal custody in December, 2000.

'2) Since in the absence of the Government obtaining the enhance federal sentence of twenty-year without parole eligibility under the residual clause of Title 18 U.S.C. § 924(e), Collins New Jersey state

sentence of life imprisonment with parole ineligibility would not have been prevented from commencing earlier than the date of 2005 when Collins was actually released from federal prison since he would have been released from federal custody five years earlier.

(3) Since in the absence of the Government obtaining under the residual clause of Title 18 U.S.C. § 924(e) the enhance federal sentence of twenty years without the possibility of parole eligibility, is forcing Collins having to serve more than the twenty-five years mandatory maximum before becoming eligible for parole consideration on his New Jersey state life imprisonment sentence with parole ineligibility for twenty-five years.

Proof Of The Third Element Of Article III

Three "That Is Likely To Be Redressed By A Favorable Judicial Decision".

With respect to Article III's element three, "(3) that is likely to be redressed by a favorable judicial decision." Collins will likely be redressed with a favorable judicial decision, if the district court vacate fifteen years of the enhance non-paroleable twenty years sentence improperly imposed under "residual clause of Title 18 U.S.C. §924(e)." this Court declared unconstitutional in Johnson.

(1) Since pursuant to N.J. Rule 3:21-10, Collins will be able to litigate a claim in the New Jersey Superior Court to entitlement to have the New Jersey state sentence of life imprisonment with twenty-five years parole ineligibility to commence from December, 2000. A whole five years earlier than the current date of 2005. See Breeden v. New Jersey Department of Corrections, 132 N.J. 457, 625 A.2d 1125 (1993) which held:

The most sensible solution is to allow the prisoner to move for a change in sentence. Although neither the Code nor the Rules Governing Criminal Practice specifically contemplate an authority to resentence in such circumstances, we have heretofore, in the absence of specific statutory direction, interpreted the Code to further its general purposes. See State v. Roth, 95 N.J. 334, 369, 471 A.2d 370 (1984) (referring to provisions of N.J.S.A. 2C:44-1 to 8, which cover authority of court in sentencing). The general sentence purposes of the Code will best be accommodated if a prisoner claiming credit under principles of comity for time served elsewhere applies to the sentencing court pursuant to the procedures set forth in Rule 3:21-10 (governing reduction of, or change in, sentence). We do not anticipate many such applications because we doubt that many states have a policy such as California's.

In exercising that authority under Rule 3:21-10, the court shall consider, in addition to the interests of comity, whether the penal purposes of its original sentence will have been fulfilled by allowing a defendant credit for time served in the other jurisdiction under that

jurisdiction's intent that the punishment for both offenses be concurrent. Although "from the inside, still jail's alive," State ex rel. Ameringer v. Hamlin, 236 So. 2d 442, 445 (Fla. 1970) (Boyed, J., concurring [***23] in part, dissenting in part), *rev'd*, 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972), the reasons for a prisoner's confinement outside of New Jersey may be quite different and sentencing policies in the foreign state may differ from ours. The defendant who violates the law of two states owes a debt to two different states.

Id. 132 N.J., at 470.

'2) If this Court vacates fifteen years of the illegal non-paroleable enhance twenty year sentence, improperly imposed under Title 18 U.S.C. §924(e) "residual clause," Collins will be considered for released on parole pursuant to New Jersey state statute mandating a prisoner sentenced to life imprisonment with parole ineligibility for twenty-five years shall be paroled at the age of 70. See State of New Jersey v. Candelaria, 311 N.J. Super. 437, 710 A.2d 545, (1998).

Even the new "three strikes and you're in law," which relates to armed robberies, N.J.S.A. 2C:43-7.b, recognize that a person serving mandatory extended terms (for a single qualifying offense) should normally be paroled at age seventy once he has served "at least 35 years in prison. See N.J.S.A. 2C:43-7.b,q. Accordingly, we direct that defendant's aggregate sentence be modified so that defendant becomes eligible for parole at age seventy after serving in this case almost thirty-nine years (which is more than the thirty-five required by N.J.S.A. 2C:43-7.b, where it applies). Because the trial judge made all of the sentences consecutive to count three, not to each other, a new judgment is required and we direct the trial judge to modify the sentences to impose two consecutive sentences of twenty years with seven years each without parole eligibility, following the life sentence with twenty-five years before parole eligibility, so that the aggregate sentence will be life imprisonment plus forty years, with thirty-nine years of parole ineligibility, which would make defendant eligible for parole at age seventy.

Id. 311 N.J. Super, at 454.

Considered with the above precepts in mind, although there have not been any standard of proof set forth in Article III of the US Constitution or by Congress or this Court to determine whether a defendant must prove the three elements of Article III beyond a reasonable doubt or preponderance of evidence.

Collins nonetheless as the party invoking federal *coram nobis* jurisdiction under the United States Constitution Article III standing has met the minimum standard of proof of proving those three elements to establish concrete injury resulting from the enhanced sentence improperly imposed under the residual clause of Title 18 U.S.C. § 924(e) to entitlement to seek federal *coram nobis* relief. In light of the fact whether the standard is beyond a reasonable doubt or preponderance of evidence the adverse consequences set forth

above were more than sufficient to satisfy the case or controversy requirement of Article III, first element of suffering an injury in fact, second element that is fairly traceable to the challenged conduct of the Government and the third element of that is likely to be redressed by a favorable judicial decision. As a result the appellate court adoption of the district court's erroneous conclusions of Collins having failed to show adverse consequences from his sentence sufficient to satisfy the case or controversy requirement of Article III is preposterous and must be rejected.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

James A. Collins

Date: November 19, 2020