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**IN THE
SUPREME COURT OF THE UNITED STATES**

ANTWAN SEAWOOD,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

**On Petition For Writ of Certiorari
To The United States Court of Appeals for the Eighth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Did the District Court abuse its discretion and violate Appellant's Fifth and Sixth Amendment rights by sentencing him to a term of 240 months based upon dismissed charges?

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REFERENCE TO OPINIONS BELOW

United States v. Antwan Seawood, 18-3107 (8th Circuit, April 24, 2020)

JURISDICTIONAL STATEMENT

This court's jurisdiction is invoked under Title 28 U.S.C. Section 1254(1).

The United States Court of Appeals for the Eighth Circuit denied Petitioner's appeal on April 24, 2020.

CONSTITUTIONAL OR STATUTORY
PROVISIONS INVOLVED

The Constitutional provisions involved are the 5th and 6th Amendments to the U.S. Constitution.

STATEMENT OF THE CASE

Petitioner seeks review of the denial of his appeal from the District Court which abused its discretion by using uncharged conduct as a factor to give an upward variance to Appellant, and, therefore, violated Appellant's Fifth and Sixth Amendment rights.

ARGUMENT IN SUPPORT OF GRANTING WRIT

The dangers of acquitted and dismissed conduct sentencing were brought to light in *United States v. Jones*, 744 F.3d 1362 (D.C. Cir. 2014). After trial, the defendants in this matter were found guilty of small level drug trafficking counts despite being charged with conspiracy and high level racketeering. The sentencing judge sentenced the defendants at much higher levels based upon evidence of the conspiracy rather than the substantially lower level of sentence they would have received based on the relevant conduct of the trafficking sales.

While the Supreme Court did not grant certiorari, Justice Scalia, joined by Justices Thomas and Ginsberg, issued a dissenting opinion in the denial of certiorari. *Jones v. United States*, 135 S. Ct. 8 (2014). In the dissent, Justice Scalia argued that, based on Supreme Court precedent interpreting the Fifth and Sixth Amendments decided since *United States v. Watts*, 519 U.S. 148 (1997), “any fact necessary to prevent a sentence from being substantively unreasonable—thereby exposing the defendant to the longer sentence—is an element that must be either admitted by the defendant or found by the jury. It *may not* be found by a judge.” *Id.* He wrote that the Supreme Court’s silence regarding the constitutionality of acquitted conduct sentencing, interpreted by lower courts as approval, had “gone on long enough” and that the Court “should grant certiorari to put an end to the unbroken string of cases disregarding the Sixth Amendment.” *Id.*

Justice Scalia opined that *Jones* was the opportunity for the Supreme Court to settle the issue because it was a nonhypothetical case where “not only did no jury convict these defendants of the offense the sentencing judge thought them guilty of, but a jury acquitted them of that offense.”

Even though *Watts* provided courts with the discretion to consider acquitted conduct

sentencing, Justice Stevens in his dissent stated, “The notion that a charge that cannot be sustained by proof beyond a reasonable doubt may give rise to the same punishment as if it had been so proved is repugnant to that jurisprudence.” *Watts* at 170-171.

Courts may consider background, character, and conduct of the person who is to be sentenced if it relevant to the appropriateness of a sentence relating to a conviction pursuant to 18 U.S.C. § 3661 and U.S.S.G. §1B1.4. The standard of proof for considering such conduct is preponderance of the evidence as established under *Watts*. *Id.* at 157.

The Supreme Court over time has had to attempt to resolve conflicts between sentencing and a defendant’s rights under the Sixth Amendment. *See Blakely v. Washington*, 542 U.S. 296 (2004); *Alleyne v. United States*, 133 S.Ct. 2151 (2013). While dismissed conduct is different than acquitted conduct, it carries the same potential for deprivation of Sixth Amendment rights. Though it must relate to convicted conduct, the dismissed conduct in the present situation is particularly concerning as it was not established by a jury beyond a reasonable doubt.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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