

No. 20-7224

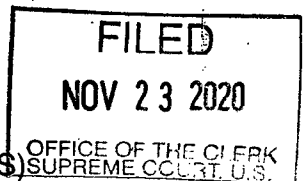
**ORIGINAL**

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Leon Niles Daye — PETITIONER  
(Your Name)

vs.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

United States Appeal Court for Fourth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

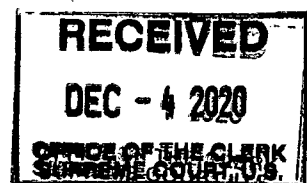
PETITION FOR WRIT OF CERTIORARI

Leon Niles Daye  
(Your Name)

P.O. Box 340  
(Address)

Salters, SC. 29590  
(City, State, Zip Code)

N/A  
(Phone Number)



QUESTION(S) PRESENTED

1) Do the petitioner's Actual Innocent Claim fall outside the scope of his Plea waiver?

## 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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## STATUTES AND RULES

- 21. U.S.C.S Section 841(a)(1)
- 18. U.S.C.S. Section 924(c)(1)(A)(i)

## 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 A to the petition and is

☐ reported at \_\_\_\_\_; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished. NO. 19-4838 (4th Cir Appeals)

The opinion of the United States district court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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☐ is unpublished.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 N/A; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the N/A 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 9-22-2020.

☒ 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).

☐ 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 \_\_\_\_\_.

☐ 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

Fifth Amendment - 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 subjected 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, without due process of law, Nor shall private property be taken for public use, without compensation.

18. U.S.C.S. Section 924(c)(1)(A)(i). provides that any person who, during and in relation to any crime of violence or drug trafficking crimes uses or carries a firearm, or who, in furtherance of any such crimes, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime be sentenced to a term of imprisonment of not less than five years.

The possession of a firearm on the same premises as a drug transaction would not, without a showing of a connection between the two, sustain an 18. U.S.C.S. Section 924(c) conviction. In order for the possession to be in the furtherance of a drug crime, the firearm must be strategically located so that it is quickly and easily available for use.



## STATEMENT OF THE CASE

The petitioner entered a plea agreement at the advise of his counsel assuming the responsibility of Section 924(c)(1)(A)(i). The petitioner did not understand each element of Section 924(c)(1)(A)(i).

The petitioner's conduct did not satisfy the elements of Section 924(c)(1)(A)(i).

The petitioner appealed to the United States Appeal Court of the Fourth Circuit contesting his Section 924(c)(1)(A)(i) conviction.

The petitioner claim was that he is Actual Innocent of Section 924(c)(1)(A)(i).

The Appeal Court Denied the petitioner's Actual Innocent Claim, Contending that The petitioner's Actual Innocent Claim fell within the scope of his plea waiver so therefore he could not bring it on Appeal.

## REASONS FOR GRANTING THE PETITION

The petitioner respectfully contends that his petition should be granted for the following reasons: The appeal court wrongfully contends that the petitioner's Actual Innocent claim fell within the waiver of his plea waiver.

The petitioner avers that the Appeal Court's assessment is in error. Actual Innocent claims have been labeled as the type of claim that can be raised despite the existence of a plea waiver.

The petitioner avers that to enforce the alleged waiver will result in a miscarriage of justice. U.S. v. Hahn, 859 F.3d 1315 (10th Cir. 2004).

In Hahn the court has determined that a miscarriage of justice through enforcement of a waiver occurs only in one of four situations: (1) where the district court relies on an impermissible factor such as race, (2) where ineffective assistance of counsel in connection with the negotiation of the waiver renders the waiver invalid, (3) where the sentence exceeds the statutory maximum, or (4) where the waiver is otherwise unlawful.

In the petitioner's instant the second example is applicable in his instant, his counsel advised him to enter a plea of guilty to an offense of 924(c) that he was actual innocent, to enforce the plea waiver in regards to this matter would result in a miscarriage of justice because he would have no avenue of redress to seek relief from a crime he is Actual innocent.

### Actual Innocent

The petitioner's initial position is that he is Actual Innocent of the Section 924(c)(1)(A)(i) conviction for the

(Continuation)

A drug house, in a room that the petitioner had jumped out the window and fled. Another firearm was allegedly found in a vehicle parked outside the drug house. The vehicle belonged to the petitioner's girlfriend.

There was no evidence in the form of statements, audio or video recording that would imply or indicate that the alleged firearms found were employed to further a drug trafficking crime. However, the petitioner's counsel adamantly advised him to enter a plea of guilty to the section 924(c)(1)(A)(i) offense.

The legislative history of Congress response to this decision indicates that Congress intended the "in furtherance of" limitation to be a higher standard than "during and in relation to," which continues to modify the use and carry prongs of the statute. As the Judiciary Committee acknowledge, though the difference between the two standards is somewhat elusive.

The committee recognizes that the distinction between "in furtherance of" and "during and in relation to" is a subtle one, and may initially prove troublesome for prosecutors. Nevertheless, the committee believes that "in furtherance of" is slightly higher standard, and encompasses the "during and in relation to" language.

The petitioner contends that to enforce his waiver would result in a complete miscarriage

of Justice, because he is Actual innocent  
of the 924 (C)(C)(C)(C) conviction.

Bailey v. U.S., 133 LED 2D 472, 516 US 137  
(1995); Bousley v. U.S. 140 LED 2D 828 523  
U.S. 614 (1998); In Re: Byron Jones, 226  
F.3d 328; 2000 U.S. App LEXIS 17317 (4th  
cir 2000);

The petitioner contends that his  
Actual Innocent Claim falls outside  
The scope of his waiver. ~~\_\_\_\_\_~~