

No. **20-7273**

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

JAN 11 2021

OFFICE OF THE CLERK

Patrick Roger Brigaudin — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eighth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Patrick Roger Brigaudin • Reg. No. 21414-039
(Your Name) •

Federal Correctional Complex

P.O. Box 3000-Medium

(Address)

Forrest City, Arkansas 72336

(City, State, Zip Code)

870-494-4200

(Phone Number)

QUESTION(S) PRESENTED

- whether a prosecutor's threats to a defendant that he would receive a life sentence if he did not accept a plea offer denied him his constitutional right to trial by jury.

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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 _____; 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☒ is unpublished.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 _____; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 12, 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: August 21, 2020, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 _____.
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

- A defendant may appeal a decision by the District Court in a 28 U.S.C. Section 2255 petition denying relief if the sentence-

(1) was imposed as a result of a constitutional violation of the defendant's right to trial by jury.

STATEMENT OF THE CASE

On August 1, 2017, Brigaudin pled guilty to two counts of the second Superseding Indictment pursuant to a written plea agreement that

Brigaudin entered into after the Assistant U.S. Attorney in the Western District of Missouri, through a letter to Brigaudin's attorney, threatened a life sentence if Brigaudin did not accept the plea. Brigaudin was left with no choice but to accept, in effect, he would be punished if he exercised his right to trial.

On March 21, 2018, Brigaudin was sentenced to 360 months to Count 2 and 240 months to Count 1 to run concurrently. Brigaudin then appealed the sentence but his attorney filed an "Anders Brief" and withdrew. Brigaudin then filed a Section 2255 motion to vacate his sentence but was denied and also denied a Motion for Rehearing or Rehearing en Banc on Aug. 21, 2020. This request

for Certiorari thus follows:

The District Court denied Brigaudin's Habeas Corpus Petition without addressing the specific threats that were made by the Prosecutor, Assistant U.S. Attorney, Timothy A. Garrison, who sent a "confidential" e-mail to Brigaudin's Counsel detailing terms of a "plea offer." Garrison specifically stated that he preferred the case be resolved by a plea from Brigaudin "but" if it could not be resolved in that manner, he would seek a life sentence.

Unfortunately, this common practice occurs so often in ~~the~~ federal and state courts that it is tolerated by the judicial system and sitting judges, as common practice. No one sees the fault in these "threats." No one sees the ethical challenges that this practice raises. These tactics and threats must be eliminated so that

when a defendant is asked if he is pleading guilty without, any "threats or coercion" from anyone, he can answer truthfully that he or she has not been threatened or coerced in any way, shape, or form.

STATEMENT OF THE CASE (cont.)

It is not a stretch to conclude that most any defendant threatened with a "life sentence" is more than likely to accept and sign any agreement that does not include a life sentence. It is this truly fair in the eyes and ethics of our justice system that is looked upon as the fairest in the land. Our justice system should not only be fair but appear fair in every aspect.

Brigaudin pled guilty after his counsel informed him that he would receive a life sentence if he did not accept the "plea offer." Brigaudin was told of an e-mail sent to his counsel and the threat of a life sentence was placed over him. In essence, if he chose to go to trial he would then be subjected to a life sentence. This seems like he was going to be punished for exercising that right. The threat of a life sentence then seemed farfetched when the government, at sentencing, tacitly conceded the advisory Guideline sentence of life imprisonment was "unreasonable." With respect to the sentence, Brigaudin argues that the district court abused its discretion by not addressing the direct threats made by the prosecutor that he unethically made. This renders his sentence "tainted" with a complete and utter cloud of unfairness in these proceedings.

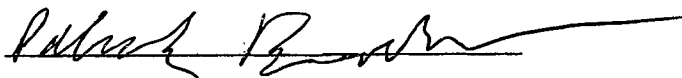
REASONS FOR GRANTING THE PETITION

Accordingly, this Honorable Court should grant Certiorari to address whether Brigaudin's constitutional right to trial was violated by the threat made by the Asst. U.S. Attorney if Brigaudin did not accept the plea offer that was made, essentially punishing Brigaudin for going to trial.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert B. Brown", written over a horizontal line.

Date: January 5, 2021



U. S. Department of Justice

Thomas M. Larson
Acting United States Attorney
Western District of Missouri

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Springfield, Missouri 65806-2512

April 10, 2016

Via E-mail
Confidential

John F. Appelquist
313 South Glenstone Avenue
Springfield, Missouri 65802

Re: Plea Offer in *United States v. Patrick Roger Brigaudin*
Case No. 16-3039-01-CR-S-MDH

Dear Mr. Appelquist:

The purpose of this letter is to offer terms of an agreement to resolve the case pending against Patrick Roger Brigaudin in the Western District of Missouri. As you know, Mr. Brigaudin is charged by indictment with conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine (Count One), conspiracy to commit money laundering (Count Two), attempted possession with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine (Count Four), three counts of distribution of methamphetamine (Counts Six, Ten, and Eleven), distribution of 50 grams or more of methamphetamine (Count Twenty-Two), laundering of monetary instruments (Count Twenty-Seven), and possession with intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine (Count Thirty-Six).

Subject to the approval of the Acting United States Attorney, I am proposing an agreement that includes the following provisions:

1. Pleas of guilty to Counts One and Two, and admission of Forfeiture Allegation One, of the Second Superseding Indictment;
2. Dismissal of all other counts;
3. As to Count One, a base offense level of 38 pursuant to U.S.S.G. § 2D1.1; and as to Count Two, an offense level of 40 pursuant to U.S.S.G. § 2S1.1(a)(1) and (b)(2)(B);¹

¹ The offense levels for Counts One and Two would be grouped for a total offense of 40, prior to the reduction for acceptance of responsibility. See U.S.S.G. § 2S1.1, n. 6 and § 3D1.2.

4. A reduction of three levels pursuant to U.S.S.G. § 3E1.1(b) (acceptance of responsibility); and
5. A recommendation from both parties for a sentence within the applicable Sentencing Guideline range.

As to any adjustments to the offense level or criminal history category, the parties would be free to advocate for their any position they deem appropriate.

Were Mr. Brigaudin to proceed to trial, I firmly expect that the substantial evidence in this case would result in convictions on all counts against him. In that event, Mr. Brigaudin would forfeit the reduction for acceptance of responsibility, and the United States would vigorously argue for a four-level enhancement under § 3B1.1. I estimate that this scenario would result in an offense level of at least 43, at which the Guideline sentence is imprisonment for life, regardless of criminal history category. Given the quantities of methamphetamine involved in this conspiracy, its extensive geographic and temporal nature, and Mr. Brigaudin's central role, I would be obliged to argue for a sentence of life imprisonment. It is my strong preference, however, that this case be resolved by plea, and avoid the further delay and expense of a trial.

The foregoing plea offer will remain available until the pretrial conference on April 18, 2017.

In light of *Missouri v. Frye*, 566 U.S. 133 (2012) and *Lafler v. Cooper*, 566 U.S. 156 (2012), please acknowledge below that you have discussed this offer with Mr. Brigaudin and return a copy of the signed acknowledgment to me. As always, if you have any questions or concerns, or if I may be of any further assistance, please do not hesitate to contact me.

Sincere regards,



TIMOTHY A. GARRISON
Assistant United States Attorney

The foregoing has been read, acknowledged, and understood as indicated by my signature on this _____ day of April, 2017.

Patrick Roger Brigaudin

John F. Appelquist
Counsel for Mr. Brigaudin