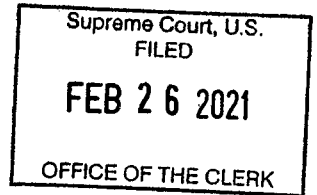


20-7313

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Leonard Overmyer — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Leonard Overmyer
(Your Name)

c/o 222 Cass St.
(Address)

Traverse City, MI 49684
(City, State, Zip Code)

231-871-8812
(Phone Number)

Question(s) Presented

- **Whether a Defendant should be allowed to seek a reduction of, or discharge from, an imposed supervised release after being improperly sentenced, and receiving ineffective counsel, which resulted in an additional ~ year of confinement and extended supervision?**

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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As well as those cited from the original Petition for Panel Rehearing filed 11-17-2020 Case 19-2448; and Brief filed 04/06/2020; Copies as enclosed within listed Appendix:

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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 _____ to the petition and is

☒ reported at Case No. 19-2448; 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☐ is unpublished.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 Originating Case No. 1:18-ct-00083-1; 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☐ is unpublished.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☐ is unpublished.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 _____.

☐ 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: Nov. 30, 2020, 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 _____.
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

- **The 5TH Amendment rights of due process.**
- **Clarification of the Sporting Purpose Provision of USSG & 2K2.1(b)(c)**

STATEMENT OF THE CASE

An improper use of the Concurrent Sentence Doctrine was applied in an appeal to a significant procedural error in improperly calculating the Sporting Purposes Provision of USSG & 2k2.1(b)(c) resulting in additional confinement (~year) and extending imposed supervision.

REASONS FOR GRANTING THE PETITION

Determining the merits of the Appeal would align the findings of various Circuit Courts to be more consistent in applying the Sporting Purpose provisions, as conflict with the application of this provision exists between all Appellate Circuits. (The Sixth Circuit Appellate Court also denied Oral Arguments that would have highlighted many of these conflicting legal issues).

Also the District Court's lack of clear direction from the Sixth Circuit on application of the Sporting Purpose Provisions resulted in a significantly higher sentence than would have otherwise been imposed, affecting 5th Amendment rights and extending the time of probation.

Finally, a multitude of Appointed Counsel was often ineffective in addressing issues in Court. Initial Counsel caused a court delay and withdrew from representation because of his caseload, later counsel never showed and had a last moment substitute in court who missed challenging key provisions and was confused during proceedings. The last counsel appointed, (fifth representative in two years) never met in person for any prior reviews, even after a year, and also withdrew representation at conclusion due to conflict of interest.

Further Notations: Throughout previous proceedings the Defendant repeatedly requested to review legal work before it was submitted to the court. Most often, this was never done, or when it happened, was far after-the-fact of proceedings, even though it was pre-dated. Defendant was frequently transferred throughout Michigan and Chicago with no legal files, or many that had been misplaced, and almost no means to contact counsel. When letters were sent, given with five different representatives in two years' time, and though there were many useful points made, much of the concerns were not addressed in any way. Often missing key points, repeating negative biases from the PSI on Defendant's paperwork, last minute and rushed meetings, and not even including responses to the Government's memorandums. The latest key point being, that whether or not Defendant would petition to be discharged earlier from

Probation, OR that the full terms of Probation would remain, a proper review of the law for the sentence as given could have an immediate effect in that the time otherwise incarcerated would have already been applied against the overall probation period! Thus, Defendant was not only enslaved a year longer than may have been legitimate if given a proper review, but that this time was also not applied to the Probation period in any way. Thus counsel failed to show how a resentencing would demonstrate that an added year of incarceration not only was of legal and emotional significance (loss of mother and other family during that time period, significant injury at MCC), but that this added time did indeed impact the overall sentence in that it now extends probation another year. Thus, the concurrent sentence doctrine has been misused, 5th Amendment Rights of due process were repeatedly violated, and Civil Liberties have been utterly marginalized. {Relevant sentencing factors US V Conaster, 514 F. 3d 508, 520 (6th Cir. 2008) }.

The counsel that the Defendant was given never addressed concerns about: how the PSI was written, how his son had acknowledged a miscommunication between them but that Defendant had never asked his son to lie; (The Probation Officer had separated his son and waved handcuffs at him to intimidate, despite their being forthright and cooperative, as they were working on a church flyer at the time); that the hunting rifles were amongst a pole barn at a separate address, stored full of farming and sporting gear but all were enclosed cased per Michigan Hunting Regulations 312.10(h) law, including one that had combination locks! As they were intended to be passed on to other relatives that spring; that the alleged “tip” had stemmed from a contending supervisor at a recent job interview, as Defendant had been spending considerable time interviewing (See MI Works support letter).

The Government’s use of “Specific” conditions, a term that doesn’t exist, - you have either Standard or Special conditions, the later being what the Waggoner case was under, and was repeatedly distinguished by the Government in his case, - as opposed to Defendant’s “Standard” Conditions, which are the same as everyone who is under Federal probation.; (See US v. Hayford, No. CR-06-27-B-W, “Unlike Waggoner, there were no probation conditions different from the general prohibitions of criminal law and [the Hayford] Court found that the defendant was entitled to the sporting purpose exceptions.” [U.S.S.G. 2K2.1 (b) (2).) The Government also back-tracking on their initial acknowledgments that the rifles were ONLY used for hunting, and trying to make an illogical issue over the term “solely”? The Government completely mislead the use of the Lemieux case findings [U.S. v Lemieux, 462 F. Supp. 2d 78 (2006)] at 86 amid page 4 of their Remand Response, leaving out the most important part of that paragraph: “however, as has been mentioned, the court imposing the probation is fully capable of imposing a separate penalty for the violation of its probation conditions, tailoring the sanction to meet the nature of the breach.” Thus, the conclusion given in that actual case entitled Lemieux to the sporting purpose, even when he was far more culpable than Overmyer (Defendant) as Lemieux had actively falsified a firearm

purchase, had a domestic assault violation, and had an inventory of 8 rifles plus an actual hand-gun! And the Sentencing Commission's follow-up footnote #7 went on to state: "The Governments reliance on Waggoner is misplaced..." s No. 18-2222 Original Brief and Argument for Appellant-Petitioner of February 11, 2019, District Court No. 1:18-cr-83-01 See details. {US V Waggoner, 103 F. 3d 724, 726-727 (6th Cir 1997)} As had been noted, In the No. 18-2222 Original Brief and Argument for Appellant-Petitioner of February 11, 2019, District Court No. 1:18-cr-83-01 "Waggoner was distinguishable as that defendant had illegally USED the relevant firearm." Also, the domestic violence accusation made on page 8 of the December 9, 2019, Remand Hearing were completely unfounded as well as several out of context accusations, while Ms. Tomic, who filled in at the last moment, seemed to be confused at times, (See Court transcript Case 1:18-Cr-00083-PLM, ECF No. 49 filed 02/11/20 Page id .265 18 PAGES), and the quick re-entry to a half-way house that the judge recommended never happened.

There were many cases that the Defendant tried to bring up with counsel over those two years of incarceration, and over the last year, that could have also been incorporated into legal arguments such as Stewart, Gains, Maas, and more of Shell, [US v Shell, 972 F..2d 548, 552 (5th Cir. 1992)] Buss, Mojica, which were all far more culpable yet received the sporting use reduction, and in Mendoza-Alvarez where "... the Court interpreted "use" under USCS 924 @(1) to mean "Active employment" thus an "Otherwise unlawful use under US sentencing Guidelines Manual 2k2.1(b)(2) **must be some action similar to 'unlawful discharge...'**" and the fact that in the Baker case, (that Judge Maloney initially relied on to deny the collection status), was based on a domestic disturbance call that not only involved a stored shot gun broken down in three sections within the house but also two handguns; and Baker also made a false statement on an ATF form in connection to one of the gun purchases. {Vrs Overmyer (Defendant) encased hunting rifles for generations, that had not been used or discharged, one leather case being custom engraved with Great Grandfather's name embroidered, another in a Cabela's type combo locking case, all cleaned, oiled, with expensive scopes and obviously TREASURED}. The purposeful omission by the Government in the report of only noting "they were covered with a towel" and in **not** providing images of the actual hunting cases that they confiscated, mislead both courts. They also misidentified an antique rifle several times, (which Defendant was not given an alternative "firearm expert" to challenge, as it had never been fired in his lifetime, and was previously dated before WWI), and as noted by Mr. Carron on page 16 of the original February 2019 Appeal, "There was nothing in their manner of storage inconsistent with being retained for [family] collection purposes.."

The Government's Resentencing Memorandum response on 12/03/19 PageID.243 claim in using the term "hiding," rather than winter storage of Sporting & Agricultural gear (as that was all it was, and any jury

would see that), and that, “most hunters keep valuable firearms safe and secure inside their homes” is not only a socioeconomic bias towards poorer, subsistence sportsman (as many Northern MI homes have sporting gear in pole buildings), but makes no logic in comparison to many other legal cases prosecuted by the Government for having firearms within the home? (Adjacent house did not have a basement or even a dinning area.)

Defendant’s Sentencing Memorandum On Remand Following Appeal Case 1:18-cr-00083-PLM ECF No. 42 filed 12/02/19 Page ID.218 [17 pages] Also, ECF 42-1 filed 12/02/10 4 pages attached, family were avid outdoorsman for five generations (Page 4 of 17) ... firearms were consistent with sporting rifles, page 5, and the Governments own discovery misled because brother-in-law had even stated Overmyer’s son wanted rifles back for deer hunting: pg 6 of 17,. (See United States v Mojica, 214 F .3d 1169 (10th Cir. 2000) [Sporting purpose reduction applied where defendant constructively possessed firearms that his brother used for hunting.] Moreover, no unlawful discharge or use of firearms occurred (ECF No. 36, Sentencing Transcript, PageID.164).

Also, despite repeated requests and letters for further review, the latest counsel appointed, for over a year, never met in person and never reviewed anything he filed ahead of time with Defendant for comment, not even by phone or email. He also withdrew, due to conflict of interests, as appointed attorney when the ineffectiveness received during many of the past proceedings was put in writing. Thus, this filing without any financial or legal help whatsoever.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: Feb. 23, 2021