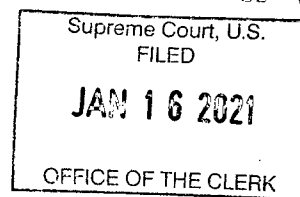


No. 20-7395 ORIGINAL



IN THE  
SUPREME COURT OF THE UNITED STATES

ANTONIO E. WILLS — 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)

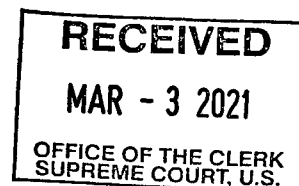
PETITION FOR WRIT OF CERTIORARI

ANTONIO E. WILLS #01086-031  
(Your Name)

FCI YAZOO CITY MEDIUM P.O. BOX 5000  
(Address)

YAZOO CITY, MS 39194  
(City, State, Zip Code)

(Phone Number)



## QUESTION(S) PRESENTED

[1]. 1st Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abuse its discretion by denying Mr. Wills' §2255 motion based on its finding that the claim he raised or attempted to raise in ground one of his pro se §2255 motion, that he was actually innocent of career offender status, was waived by his plea agreement and not a cognizable claim for relief pursuant to 28 U.S.C. § 2255 because his career offender sentence did not exceed the applicable statutory maximum?

[2]. 2nd Question Presented on Request and Application for COA

Did the appellate court err in denying a certificate of appealability on whether the district court erred or alternatively abuse its discretion in failing to construe ground one to include – or implicitly denying – Mr. Wills' ineffective assistance of counsel claims related to counsels' failure to raise a challenge to the use of his prior state conviction as a career offender predicate at sentencing or on direct appeal?

## 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:

## RELATED CASES

United States v. ANTONIO E. WILLS, Case No. 4:16-CR-104-01, U.S. District Court for the Western District of Missouri. Judgment entered December 20, 2018.

United States v. ANTONIO E. WILLS, No. 19-1041, U.S. Court of Appeals for the Eighth Circuit. Judgment entered August 29, 2019.

ANTONIO E. WILLS v. United States, Case No. 4:19-cv-01043, U.S. District Court for the Western District of Missouri. §2255 Judgment entered March 16, 2020.

ANTONIO E. WILLS v. United States, No. 20-1944, U.S. Court of Appeals for the Eighth Circuit. Judgment denying COA on §2255 motion entered September 15, 2020.

## TABLE OF CONTENTS

OPINIONS BELOW .....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED .....	3
STATEMENT OF THE CASE .....	4
REASONS FOR GRANTING THE WRIT .....	5
CONCLUSION.....	6

## INDEX TO APPENDICES

APPENDIX A	Judgment of the United States Court of Appeals for the Eighth Circuit denying COA, issued on September 15, 2020
APPENDIX B	Judgment of the United States District Court -- W.D. MO., denying the Section 2255 motion, issued on March 16, 2020
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

## TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Hill v. Masters, 836 F.3d 591 (6th Cir. 2016)	5
Narvaez v. United States, 641 F.3d 877 (7th Cir. 2011)	5,6
United States v. Havis, 907 F.3d 439 (6th Cir. 2018)	5
United States v. Newbold, 791 F.3d 455 (4th Cir. 2015)	5

## STATUTES AND RULES

28 USC Section 2253	6
28 USC Section 2255	4, 5, 6

## 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.

The opinion of the United States district court 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.

☐ 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 September 15, 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 \_\_\_\_\_.  
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

This case involves a federal criminal defendant's constitutional rights under the Sixth Amendment, which provides in pertinent part:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense.

This case also involves the application of 28 U.S.C. § 2253(c). 28 U.S.C. § 2253(c) provides that:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

...

(B) the final order in a proceeding under section 2255.

... (2) A certificate of appealability may issue under paragraph

(1) only if the applicant has made a substantial showing of the denial of a constitutional right.



## STATEMENT OF THE CASE

On December 30, 2019, Mr. Wills initiated this proceeding by filing a timely collateral attack on the judgment of the district court, via the provisions of 28 U.S.C. §2255 (f)(1) ("§2255"). On January 3, 2020, the district court ordered the United States to answer grounds one and two of Mr. Wills' §2255 motion by February 3, 2020. On January 31, 2020, the United States filed its suggestions in opposition to Mr. Wills' §2255 motion. On March 10, 2020, Mr. Wills filed his reply to the United States' suggestions in opposition. Six days later, the district court denied and dismissed Mr. Wills' §2255 motion on the basis that his ground one claim was subject to the sentence appeal waiver contained in his plea agreement and not cognizable under 28 U.S.C. §2255 and that his ground two claim was lacking in merit and also denied a certificate of appealability. On May 7, 2020, Mr. Wills timely filed his notice of appeal.

Mr. Wills unsuccessfully sought COA from the United States Court of Appeals for the Eighth Circuit on the following issues:

[1]. 1st Question Presented on Request and Application for COA

Did the District Court err or alternatively abuse its discretion by denying Mr. Wills' §2255 motion based on its finding that the claim he raised or attempted to raise in ground one of his pro se §2255 motion, that he was actually innocent of career offender status, was waived by his plea agreement and not a cognizable claim for relief pursuant to 28 U.S.C. § 2255 because his career offender sentence did not exceed the applicable statutory maximum?

[2]. 2nd Question Presented on Request and Application for COA

Did the district court err or alternatively abuse its discretion in failing to construe ground one to include – or implicitly denying – Mr. Wills' ineffective assistance of counsel claims related to counsels' failure to raise a challenge to the use of his prior state conviction as a career offender predicate at sentencing or on direct appeal?

## REASONS FOR GRANTING THE PETITION

Relevant to this application for COA, Mr. Wills raised, or attempted to raise, claims that he: 1) was actually innocent of career offender status and suffering both a violation of due process and a complete miscarriage of justice by virtue of having to serve the resultant career offender enhanced sentence; 2) had been deprived of the effective assistance of appellate counsel; and 3) had been deprived of the effective assistance of counsel by counsel's failure "to object to the characterization of Wills' prior drug convictions as controlled substance offenses for purposes of U.S.S.G. § 4B1.2(b)." Specifically, Mr. Wills argued that his prior state conviction did not qualify as a predicate "controlled substance offense" within the meaning of U.S.S.G. §4B1.2(b), as clarified by the Sixth Circuit in *United States v. Havis*, 907 F.3d 439 (6th Cir. 2018) and his appellate counsel had been constitutionally ineffective for failing to present this reality to the Eighth Circuit on direct review, in his initial §2255 Motion. In his reply, Mr. Wills sought to amend this claim to include a claim that his sentencing counsel had likewise been constitutionally ineffective for failing to raise such challenge to the prior state conviction relied on by the sentencing court to determine that Mr. Wills was a career offender.

Due to Mr. Wills' pro se status and the patently inartful §2255 motion he submitted, the district court should have construed his ground one claim as a challenge to his 228-month sentence of imprisonment, imposed a result of his misclassification as a career offender, as a miscarriage of justice, cognizable and remediable under *Hill v. Masters*, 836 F.3d 591 (6th Cir. 2016) ("ground one-a"), and alternatively as a claim that appellate counsel was constitutionally ineffective for failing to argue the same on direct appeal ("ground one-b"). Additionally, the district court was obligated to consider the amended claim, that counsel was constitutionally ineffective at sentencing for failing to object to the use of Mr. Wills' prior state drug conviction as a career offender predicate ("ground one-c"), presented in Mr. Wills' reply.

Clearly, these issues are cognizable on collateral review and provide the constitutional dimension required to obtain COA. With respect to ground one-a, the prevailing majority view is that a claim of actual innocence of career offender status is cognizable on collateral review. See e.g., *Hill v. Masters*, 836 F.3d 591, 600 (6th Cir. 2016); *United States v. Newbold*, 791 F.3d 455, 460-61 (4th Cir. 2015); *Narvaez v. United*

States, 641 F.3d 877, 882 (7th Cir. 2011). At least one Circuit Court of Appeals has held that a similar claim of misclassification as a career offender under the Guidelines stated a violation of Due Process to the extent necessary to satisfy § 2253's requirement of "a substantial showing of the denial of a constitutional right," where the movant lacked the requisite prior convictions. Narvaez, 674 F.3d at 626-27. Ground one-b and ground one-c claim ineffective assistance of counsel in violation of Mr. Wills' Fifth and Sixth Amendment rights, and are both cognizable and involve a substantial showing of denial of constitutional rights.

Mr. Wills respectfully submits that the appellate court erred in denying COA on the district court's denial of his §2255 motion, which constituted an abuse of discretion, or the question is at least debatable amongst jurists of reason. This Court should grant COA on the issues presented herein.

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Antonio Wills

Date: 1-16-21