

20-7580

No. _____

FILED
JAN 22 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

Trinidad Garcia — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Case no 20-2784

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

Trinidad J. Garcia
(Your Name)

P. O. Box 33
(Address)

Terre Haute, IN 47808
(City, State, Zip Code)

NIA
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. whether a Formal objection after pronouncement of sentence is necessary to invoke appellate reasonableness review of the length of my sentence (Ground Four)
2. By Grouping 841 with 844 did the District Court Prejudice the Defendant. (Ground Five) And increase Base level.
3. was there sufficient Evidence presented to show Any intent to distribute Should 844 only have been charged (Ground Three)
4. Did any of the other grounds Prejudice the defendant.
5. Do any of the Grounds Conflict with other Circuits (Ground Three) or (Ground Six) Relevant conduct issue

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

1. Bouchillon v. Collins 907 F. 2d 589 (5th Cir 1990)
2. Flores-Ortega 589 U.S. 470, 481, 120 S. Ct 1029, 145 L.
3. United States v. KIPP 10 F.3d. 1463, 1465-66 (9th Cir 1993)
4. Holguin-Hernandez v. U.S. (No. 18-7739) (S. Ct. Feb 26, 2020)
5. U.S. v. Glover 531 U.S. 198 P. 40
6. U.S. v. Fraser 243 F.3d. 473, 475-476 (8th Cir 2001)
7. Watson v. Jago (1977, CA6 Ohio) 558 F. 2d 330, 8 P

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.....	9

INDEX TO APPENDICES

APPENDIX A *Decision of United States Court of Appeals for the Eighth Circuit*

APPENDIX B *Decision of United States District Court*

APPENDIX C *Decision of United States Court of Appeals for the Eighth Circuit*

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Bouchillon v. Collins	907 F.2d, 589 (5th Cir 1990)	- 28
Roe v. Flores-Ortega	528 U.S. 470, 481, 120 S.Ct. 1029, 145 L Ed. 2d 985 (2000)	- 29
U.S. v. Kipp	10 F.3d. 1463, 1465-66 (9th Cir 1993)	- 30
Holguin-Hernandez v. United States	No. 18-7739 (S. Ct Feb 26, 2020)	
		- 34
		- 35
U.S. v. Glover	531 U.S. 198	
U.S. v. Fraser	243 F.3d. 473, 475-476 (8th Cir 2001)	- 37
watson v. Sago (1977, CAG Ohio) 558 F.2d 330, 8 Ohio Ops 3d 307		- 40

STATUTES AND RULES

Federal Constitution's Sixth Amendment	.....	- 35
21 U.S.C. § 841 (a)(1) & § 841 (b)(1)(A)	.....	- 27 - 36
21 U.S.C. § 844	.....	- 14
U.S. S.G. § 181.3 (a)(2)	.....	- 30 - 38
U.S. S.G. § 6 A1.3	.....	- 33
Fed. R. Crim. P. 52 (b)	.....	- 34
Federal Constitution Sixth Amendment	.....	- 35

OTHER

- Letter to Judge Contesting the PSR (objection)	.....	- 23 - 25
- Letter from Attorney to Prosecutor if I was aware	.....	- 26
of the Severance issue I would have gone to trial		
- Addendum to the P.S.R. objections by the Defendant	.....	- 31 - 33

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 November 02, 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: December 16, 2020, and a copy of the order denying rehearing appears at Appendix C.

[] 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

Federal Constitution Sixth Amendment	35
Sentencing under 21 U.S.C. § 841 (b) (1) (A) and	
The Sentencing Guidelines § 2D1.1 (c)	16, 36
(Ground Six) Relevant conduct issue	
Federal Constitution Fifth Amendment	40

STATEMENT OF THE CASE

September 22, 2015 Indictment Returned charging Appellant with Conspiracy to Distribute.

September 23, 2015 Initial appearance and preliminary detention hearing.

September 25, 2015 Arraignment, not-guilty Plea entered.

January 8, 2016 Motion to represent pro se granted

June 13, 2016 Single Count information filed charging Appellant with possession with intent to distribute 21 U.S.C. § 841 (a)(1)

June 13, 2016 Appellant enters guilty Plea to information.

November 10, 2016 Presentence Report (PSR) filed

January 13, 2017 Sentencing hearing. District Court Judge finds Appellant's Criminal History Category to be VI and guideline sentence to be 100-137 months. Appellant receives a 137-month guideline sentence.

January 18, 2017 Judgment entered.

January 19, 2017 Notice of Appeal filed.

REASONS FOR GRANTING THE WRIT

Court of Appeals opinion the court came to the decision that I did not object to the drug quantity, both prior to and at sentencing I may not have clearly objected at sentencing but this is only because when I attempted to object I was interrupted by the Judge (Sentencing Transcript "S.T." 38a). He also led me to believe that my objection to the personal use issue was being accepted when he told me that I was being sentenced to possession my standby counsel also states that I did file written objections

I think that the most important part of the Appeals Court decision is the fact that they did not see that I did object to the drug quantity in direct relation to personal use verses distribution in the Addendum to the presentence report P. 31 - 33 under OBJECTIONS BY THE DEFENDANT it states "the defendant similarly objects to the statement that he obtained the methamphetamine, directly or indirectly, from Jesse Garcia," "AND" to the statement that he possessed the methamphetamine with the intent to distribute it to others". At the bottom of this paragraph "he stated his intent was to use the methamphetamine and not to distribute it to others".

So if the objection is now brought to the attention of the Court was the Judge required to address it at senencing based on the instructions from the Sentencing Guidelines §1B1.3(a)(2). The Appeals Court stated that Garcia admitted to the drug quantity This is not seen in the record, at no point did Garcia admit that he intended to distribute all of the methamphetamine to the contrary the record reflects that the Judge, the Prosecutor and the Author of the PSR were aware that Mr. Garcia had intended to use some or most of the methamphetamine.

The Author of the PSR came to the conclusion that the quantity would not matter because he had determined that I would be labeled as a **career** offender, but this was not part of the plea agreement between Garcia and the Prosecutor.

The Appeals Court is saying that my lack of objection at sentencing is why they are denying my appeal, but based on Molina-Martinez I seek review of an unpreserved guidelines error, because if the Judge had subtracted even a small amount based on personal use the base level would have been different and the sentence would have been based on the corresponding base level. The Prosecutor and I did not agree to any specific amount or agree on the base level as seen in the Plea Agreement

In Molina-Martinez 136 S. Ct. 1338, it states:

Nothing in the text of Fed. R. Crim. P. 52(b), its rationale, or judicial precedents supported a requirement that a defendant seeking appellate review of an unpreserved USSG (Guidelines) error make some further showing of prejudice beyond the fact that the erroneous, and higher, Guidelines range set the wrong framework for the sentencing proceedings; when a defendant was sentenced under an incorrect Guidelines range, whether or not the defendant's ultimate sentence fell within the correct range, the error itself could, and most often would, be sufficient to show a reasonable probability of a different outcome absent the error.

In my situation the error by the District Court and the Appeals Court failure to reverse the decision unfairly inflate the base offense level.

So to address the question presented here, does the decision of the Court of Appeals conflict with other cases within the Eighth Circuit and other Circuits. To first address the Eighth Circuit, the decision in my case was because the Court of Appeals believed that I did not object. Now that my objection is seen in the record and also in the Addendum to the PSR at I share the following from United States v. Fraser, 243 F3d. 473, 475-476 (8th Cir. 2001).

"However those circuits having considered the precise issue now before us are split. In United States v. Wyss, 147 F3d. 631 (7th Cir. 1998), the Seventh Circuit held that in sentencing a defendant for possession with the intent to distribute, the trial court **MUST** exclude drug quantities intended for personal use. The Court stated:

To count as relevant conduct under the Federal Sentencing Guidelines, a drug offense (and the purchase of cocaine for personal consumption is a drug offense, 21 U.S.C §844) must be a part of the same course of conduct, or common scheme or plan, as the offense of the conviction. U.S.S.G. §1B1.3(a) (2). It can be that if it is part of the same group of offenses for sentencing purposes. Possession of illegal drugs for personal use can not be grouped with other offenses. U.S.S.G. §3D1.2(d); see U.S.S.G. §2D2.1 Id. at 631. The Ninth Circuit agreed in United States v. Kipp, 10 F3d. 1463, 1465-66 (9th Cir. 1993), holding that "drugs possessed for mere personal use are not relevant to the crime of possession with intent to distribute.

The cases above are quoted from Fraser but I would like to share cases from other Circuits even though above there are cases noted from the 7th and 9th Circuits.

United States v. Antonietti, 86 F3d. 206 (5th, 11th Cir. 1990) States: The district court set the appellants base offense levels under: 2D1.1 according to the total amount of "Marijuana seized during their arrests. The district court recognized the lack of precedent within this circuit concerning whether drugs for personal use should be included in this determination, and it declined to follow relevant decisions from the Ninth Circuit on this issue.

United States v. Kipp 10 F3d. 1463 (9th Cir. 1993) States:
The court noted that " the sentencing guidelines placed the responsibility on the court to make a determination as to what amount of distribution that the defendant accomplished and/or intended in order to determine where he fits into the scheme of the guideline range for the purpose of sentencing. And... the burden is on the Government to prove what that particular intent and distribution was."

United States v. Rodriguez-Sanchez 23 F3d. 1488 (9th Cir. 1994). Furthermore, §841(a)(1) does not criminalize mere possession of drugs, only possession with intent to distribute. 21 U.S.C. §841 (a)(1). Other statutes deal with the crime of possession, See 21 U.S.C. §844. Thus, the crime of possession with intent to distribute focuses on the intent to distribute, not the simple possession.

SENTENCING UNDER 21 U.S.C. § 841 (b)(1)(A) AND THE SENTENCING GUIDELINES, § 2D1.1(c), FOR THE CRIME OF POSSESSION WITH INTENT TO DISTRIBUTE, 21 U.S.C. § 841 (a)(1) IS TO BE BASED ONLY ON THE AMOUNT OF NARCOTIC A DEFENDANT INTENDS TO DISTRIBUTE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Trinidad Garcia

Date: 3 - 2 - 21