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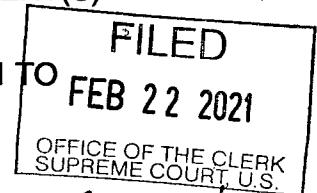
IN THE  
SUPREME COURT OF THE UNITED STATES

Thomas Creighton Shrader — 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 Fourth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

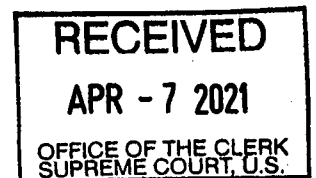
PETITION FOR WRIT OF CERTIORARI

Thomas Creighton Shrader  
(Your Name)

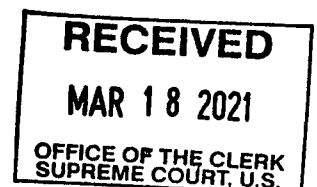
Federal Correctional Institution

P.O. Box 9  
(Address)

Mendota, California 93640  
(City, State, Zip Code)



(Phone Number)



### QUESTION(S) PRESENTED

- #1. Did the 4th Circuit Court of Appeals ERR when it affirmed the District Courts construing of Petitioners Motion as an unauthorized second or successive 28 U.S.C. §2255, and then denied the petition for failing to obtain prefiling authorization, when petitioner is a federal prisoner and 28 U.S.C. §2244 (b)(1) and (b)(3) only require state prisoners filing 28 U.S.C. §2254 motions to obtain prefiling authorizations for a second or successive motion?
- #2. Did the 4th Circuit usurp its authority by failing to adhere to the strict construction of 18 U.S.C. §921 (a)(20), by allowing prosecution under 18 U.S.C. §922 (g)(1) of a person who had any and all civil rights restored by the convicting state with an "Official Certificate" which did not expressly provide thereon that the person may not ship, transport, possess or receive firearms?

## 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

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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 "A" to the petition and is

☒ reported at 2020 U.S. App. LEXIS 30660; 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 2020 U.S. Dist. 78922; 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 25, 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. Court ORDER of March 19, 2020  
Granting 60 Day (Covid-19) Extension

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

- #1. Fifth Amendment To The Constitution of The United States of America;
- #2. 18 U.S.C. § 921 (a) (20);
- #3. 18 U.S.C. § 922 (g) (1);
- #4. 28 U.S.C. § 2244 (b) (1) AND (b) (3);
- #5. 28 U.S.C. § 2254;
- #6. 28 U.S.C. § 2255

## STATEMENT OF THE CASE

Petitioner was convicted on felony charges from a single criminal act in West Virginia in 1976 and receive two life sentences with mercy. In 1976 under W.VA. State law a convicted state felon could own and possess firearms. However, in 1989 W.VA. passed W.VA. Code 61-7-7 which set forth the criteria for felon(s) to possess firearms. Petitioner was paroled from State prison in Dec. 1994.

On Jan. 25, 2016 the district court denied Petitioner's 32255 Motion which included the issue that Petitioner's civil rights had been restored by a Certificate of Restoration issued by the State of West Virginia on February 5<sup>th</sup>, 1999, and he could legally possess firearms per no firearm restriction on the restoration.<sup>1\*</sup> Which should have made his 2010 firearm conviction illegal.

W.VA. Code 61-7-7 as applied to Petitioner is illegal because it is an ex-post facto law, because Petitioner was a "Felon" 14 years before said law was enacted. This law applied to Petitioner increased Petitioner's punishment and "violated" Petitioner's guilty plea agreement/contract with the State of West Virginia for what "punishment" he would receive in 1976 to plead guilty.

However, during the 2017-18 W.VA. State Legislative session the legislators amended W.VA. Code 61-7-7 at 61-7-7(c)(4), to; "Any person may carry a concealed deadly weapon without a license who is; (4) not prohibited from possessing a firearm under the provisions of 18 U.S.C. 922(g) or (n)."

This amendment was an intervening change in the law, and since Petitioner had his civil rights restored, in compliance with 18 U.S.C. 921(a)(20) then he was not prohibited from possessing firearm(s) under 922(g) as now required pursuant to W.VA. Code 61-7-7(c)(4).

Whereupon Petitioner filed a Rule 60(b)(6) motion into the district court based upon the denial of his 32255 motion in 2016, which at that time raised the issue but did not have benefit of this "new" 2017-18 amendment which was new law and new evidence. (See and read Appendix "C")

The district court construed Petitioner's true 60(b)(6) motion as a second and successive 32255 Motion and dismissed it because Petitioner failed to apply to the 4<sup>th</sup> Circuit Court for authorization to file a successive 32255 motion.

Petitioner filed a Informal Brief for Appeal on June 5, 2020 to the 4<sup>th</sup> Circuit Court of Appeals, (See and read "Appendix 'D'"), which was denied on Sept. 25, 2020.

<sup>1\*</sup> See Exhibit "A" in (Appendix "B") 4

## REASONS FOR GRANTING THE PETITION

- #1. The Circuit Courts ARE divided AND split ON the Application of 28 U.S.C. §2244 to federal PRISONERS vs. State PRISONERS;
- #2. This COURT has stated it would GRANT CERTIORARI to RESOLVE the 28 U.S.C. §2244 conflict;  
(AVERY v. United States, 206 L. Ed. 2d 488) (Appendix "F")
- #3. The Circuit Courts ARE divided AND split ON the Application of prosecuting a PERSON UNDER 18 U.S.C. §921 (a)(20), some Circuits ARE ignoring CONGRESS'S intent by USURPING their Authority AND prosecuting PERSONS who have had their civil Rights RESTORED. This COURT should INTERVENE AND stop this practice AND abuse.

## Argument

In Bifulco v. U.S., 447 U.S. 381, 387, 100 S.Ct. 2247, 65 L.Ed. 2d 205 (1980) (quoting LADNER v. U.S., 358 U.S. 169, 178, 79 S.Ct. 209, 3 L.Ed. 2d (1958)); This court stated; "Where Congress has manifest its intention, we may not manufacture ambiguity in order to defeat that intent." Bifulco, 447 U.S. at 387.

As to question No. 1, the 2nd, 3rd, 4th, 5th, 7th, 8th and 11th Circuits have manufactured ambiguity for filing a second or successive §2255 under 28 U.S.C. §2244 (b)(1) and (b)(3) for federal prisoners, and deprives them of Fifth Amendment protection.

Whereas, the Sixth Circuit has recently rejected the other circuits interpretation of the second or successive statute and held that the statute covers only applications filed by State prisoners under §2254.

Importantly, as so stated in; "AVERY v. U.S., 206 L.Ed. 2d 488," (the United States now agrees with the Sixth Circuit that, "Section 2244 (b)(1) does not apply to Section §2255 Motions" and that the contrary view is "inconsistent with the text of Section 2244"). In other words, the Government now disagrees with the Circuit Courts that had previously decided the §2255 issue in the Government's favor. (See Appendix "F").

Addressing question No. 2, The 4th Circuit along with the 6th and 10th circuits have manufactured ambiguity by not adhering to Congress's intent and strict construction of 18 U.S.C. §921 (a)(20). Whereas, the D.C. Circuit, 5th, 7th and 9th Circuits are strictly adhering to limiting their inquiry to the language of the restoration of civil rights certificate, and not looking to the "whole of State law" which is going beyond their legal authority to do so as the 4th, 6th and 10th circuits are doing.

The language of 18 U.S.C. §921 (a)(20) is unambiguous and under our Federal system it is only Congress and not the courts which can make conduct criminal.

"Congress, 'says in a statute what it means and means in a statute what it says'. Id. (citing Connecticut Nat'l Bank v. German, 503 U.S. 249, 252-54, 112 S.Ct. 1146, 117 L.Ed. 2d 391 (1992)).

When the statutory text is unambiguous, courts need not look any further to identify the intent of Congress. Id. at 1336 (citing Burlington N.R.R. Co. v. Oklahoma Tax Comm'n, 481 U.S. 454, 461, 107 S.Ct. 1855, 95 L.Ed. 2d 404 (1987)).

Applying these principles, the court found that the text of Section 8921(a)(20) "makes clear" that "a court may look no further than the source of the restoration of [a defendant's] civil rights to see whether his gun-related rights have been restored." (See Appendix "E" - U.S. v. Payne, 382 F.Supp. 3d 71 - at pages 3, 4, and 5).

## Relief

For this Honorable Court to find that federal prisoners do not have to obtain pre-filing authorization per 28 U.S.C. § 2254(b)(1) to file a second or successive § 2255 Motion.

For this Honorable Court to compel the 11th, 4th, 10th and any other Circuit to limit their inquiry under 18 U.S.C. § 921(a)(6) to the text and language of any document a person receives restoring their civil rights and adhere to the strict construction and boundary set by Congress to not prosecute any person for a firearms violation who's conviction(s) that has been expunged, or set aside or for which a person has been pardoned or had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms. To do otherwise deprives the individual of his Fifth Amendment protections, and violates the text command of 18 U.S.C. § 921(a)(20).

## CONCLUSION

The petition for a writ of certiorari should be granted, to resolve these serious conflicts between the Circuits as set forth in question #1 and #2 to bring all the Circuits into uniformity across the United States - so that in every circuit a person has the same protection and application of law!

Respectfully submitted,

Thomas Crighton Shrader

Date: FEBRUARY 22, 2021