

20-8284

No. _____

Supreme Court, U.S.
FILED

APR 19 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

HAROLD GASHE — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

EIGHTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

HAROLD GASHE

Reg. No. 03501-029

FORREST CITY CORRECTIONAL COMPLEX

P.O. BOX 3000

FORREST CITY, AR 72336

(City, State, Zip Code)

(Phone Number)

ORIGINAL

(Original)

QUESTIONS PRESENTED

- 1) Is it fair and equal justice for defendants who present under 18 U.S.C. § 3582(c)(1)(A)(i), that the previously harsh 924(c) stacking is an extraordinary and compelling reason deserving of relief be "Denied" in one Appellate Court, when the exact same issue is "Granted" in another Appellate Court?: District Courts are split on the same question even in the same circuit with defendants of similar backgrounds.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

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STATUTES AND RULES

18 U.S.C. § 3582(c)(1)(A)(i) _____ 4,5

18 U.S.C. § 924(c) _____ 4,5

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement 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

is unpublished, U.S. v. Gashe 20-3466

The opinion of the United States district court appears at Appendix B to the petition and is

reported at US Dist LEXIS 199828, No. CR07-4033-LTS

JURISDICTION

[X] For cases from **federal courts**: No. 20-3466, Eight Circuit Court of Appeals.

The date on which the United States Court of Appeals decided my case was January 19, 2021.

[X] No petition for rehearing was timely filed in my case.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. 18 U.S.C. § 3582(c)(1)(A)(i)

2. 18 U.S.C. § 924(c)

3. Fair and Equal Justice

STATEMENT OF THE CASE

On August 17th, 2020, Harold Gashe filed an compassionate release motion 3582(c)(1)(A)(i), which was denied by the district court on October 26, 2020. Gashe appealed the decision and on January 19, 2021 the Eighth Circuit Court of Appeals denied his motion stating that the district courts order denying compassionate release is summarily affirmed. Today Gashe brings this writ of certiorari to the Supreme Court because of the split in the appellate courts as to whether Congresses subsequently mitigating the harsh stacking effect of § 924(c) in the First Step Act to defendants who were previously sentenced to the excessive sentences just like Gashe, by no longer requiring § 924(c) convictions to be "stacked" constitutes "extraordinary and compelling" reasons to grant many defendant's a sentence reduction.

Several Appellate Courts have said "Yes" it is an "extraordinary and compelling" reason one in a consolidated opinion of three defendants in the Fourth Circuit Court of Appeals, United States v. McCoy, No. 20-6821; United States v. Bryant, No. 20-6869; United States v. Scott, No. 20-6877, (4th Cir. Dec. 2, 2020). And recently in the Tenth Circuit Court of Appeals in United States v. Maumau, No. 08-CR-00758-TC-11, 2020 US Dist. LEXIS 28392, 2020 WL 806121 (Feb. 18, 2020) (I do not have the appellate Case No. as it is not published on our system yet).

Several Appellate Courts have said "No" it is not an "extraordinary and compelling" reason such as the Seventh Circuit Court of Appeals, United States v. Fisher, No. 20-2574 (7th Cir.

Feb. 2, 2021); And in the Eighth Circuit Court of Appeals in United States v. Loggins, No. 19-2689 (8th Cir. April 15, 2020).

There is also a split in the district courts such as in these cases following that said "Yes" United States v. Adeyemi, No. 06-124, 2020 US Dist. LEXIS 117743 (E.D. Pa. July 6, 2020); United States v. Wade-Waiver, No. 2:99-CR-00257-CAS-3, 2020 US Dist. LEXIS 69474, (E.D. Cal. April 13, 2020); United States v. Chan, No. 96-CR-00257-CAS-3, 2020 US Dist. LEXIS 69474, (N.D. Cal. March 31, 2020); United States v. McDonel, No. 07-20189, 2021 US Dist. LEXIS 6401, (E.D. Mich. Jan 13, 2021); United States v. Owen, No. 2:03-CR-197-1, 2020 US Dist. LEXIS 237901, (E.D. Va. Dec. 17, 2020).

These following district courts have said "No" United States v. Lewis, No. 6:13-CR-221-Orl-28KRS, 2020 US Dist. LEXIS 142917 (M.D. Ala. Aug. 10, 2020); United States v. Goetz, No. 98-CR-00123, 2020 US Dist. LEXIS 165571, 2020 WL 5423920, at *4 (S.D. Ind. Sep. 10, 2020); United States v. Savoy, No. 1:08-CR-00276, 2020 US Dist. LEXIS 209557 (M.D.N.C. Nov. 9, 2020)

There are numerous other cases that have ruled both ways that I have not cited here as to not belabor this Court with a longer brief. Harold Gashe feels that he should been granted relief as his case is similar to many other defendants that have gotten relief just by being in front of the right judge. Harold Gashe was sentenced to the enhanced penalties of the previous 924(c) stacking provision and if sentenced today would receive a much lower sentence. Gashe has made great strides in rehabilitation while in prison along with only one disciplanary report his entire

time in prison. Gashe's record is very similar to many of the defendant's who have received relief in other as well as the same circuit as the one he is in the Eighth. This split in the opinions of the lower courts is ripe for review by the Supreme Court to decide the split in the lower courts.

REASONS FOR GRANTING THE PETITION

Accordingly, this Honorable Court should grant certiorari to address the split in the appellate and district courts in deciding if the 18 U.S.C. § 924(c) previous policy by the United States Attorneys of stacking sentences combined with the enormous disparity between that sentence and the sentence a defendant would receive today, can constitute an extraordinary and compelling reason under 18 U.S.C. § 3582(c)(1)(A). Several circuit Appellate Courts have said yes it is an extraordinary and compelling reason and several circuits have said no it is not. It is the same in the district courts even in the same circuit one court saying yes and another district court saying no it is not. In my case I was denied in the Eighth Circuit Court of Appeals that the stacking of the 924(c) convictions in my case are not extraordinary and compelling enough to grant me relief when cases similar to mine were granted relief. When defendant's cases are similar then this is not fair and equal justice. I also would question race being a factor in this because section 924(c) is used disproportionately against people of color. I would question the race of every defendant who has been granted extraordinary and compelling relief against those who were denied extraordinary and compelling relief. I feel this is a question that needs to be addressed. Since 924(c) was not made retroactive in the First Step Act cases like mine will continue to come up until the split in the circuits is addressed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Harold Gashe

Harold Gashe

Date: 4-15-2021