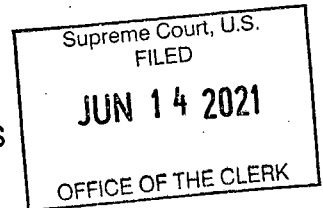


20-8400

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Daryl Barley — PETITIONER
(Your Name)

vs.

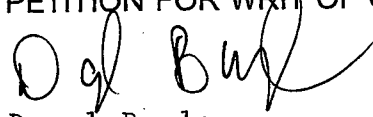
United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit of Appeals Court

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

PETITION FOR WRIT OF CERTIORARI


Daryl Barley

(Your Name)

FCI Butner II, PO Box 1500

(Address)

Butner, NC 27509

(City, State, Zip Code)

NA

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the "clear and convincing evidence standard" should be used instead of the "preponderance of evidence standard" when determining the relevant conduct in a First Step Act Reduction Motion under Sec. 404?
2. Whether the Sixth Amendment protections for Effective Assistance of Counsel are to be applied on the First Step Act Reduction Filings?
3. Whether the Court should have Remanded for further consideration of the First Step Act Sec. 401 , 851 changes, seeing that the Virginia prior used no longer qualifies today as a 851 predicate?

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5-9
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A	Request for En Banc & Denial ,as well as Request to Recall Mandate & Order
APPENDIX B	Fourth Cir. of Appeal filing and Order and Supplement(s)
APPENDIX C	District Court Filings and Orders surrounding First Step Act Relief
APPENDIX D	Letters from Appointed Counsel
APPENDIX E	Excerpts from 2255 Order
APPENDIX F	State of Virginia Records showing that the petitioner never served 12 over more consecutive months, thus deeming it inapplicable for a 851 Enhancement today.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Alleyne v US 133 S.Ct 2151 (2013).....	6
Blakely v Washington 542 US 296 (2004).....	6
Cunningham v California 549 US 270 (2007).....	6
Strickland v Washington 466 US 668 (1984).....	7-8
US v Booker 543 US 220 (2005).....	6
US v Chambers 956 667 (4th Cir. 2020).....	Passim
US v Chew 18-50301 (9th Cir. 2020).....	6
US v Rodriguez 921 F.3d 1149 (9th Cir. 2018).....	6
Richard v US 18-7036 (Sp. Ct, GVR 2019).....	7-8

STATUTES AND RULES

21 USC 841(a).....	Passim
21 USC 841(b)(1)(b).....	Passim
21 USC 851
First Step Act Sec 401.....	..
First Step Act Sec 404.....	Passim
U.S.S.G. 1b1

OTHER

NA

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 US v Barley 20-6760; 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 US v Barley, 4:10-cr-00010-JLK-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 12/21/20.

☐ 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: Jan 8, 2021, and a copy of the order denying rehearing appears at Appendix A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including June 25, 2021 (date) on May 27, 2021 (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

Constitutional Aspect: Fifth Amendment, Equal Protections Clause
and Due Process Clause

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without DUE PROCESS of law; nor shall private property be taken for public use, without just compensation.

First Step Act Sec 401: 851 Enhancement Provisional Changes

Title IV-Sentencing Reform Act, Sec 401, Reduce & Restrict Enhanced Sentencing For Prior Drug Felonies.

(a) Controlled Substances Act Amendments-The Controlled Substances Act (21 USC 801 et. seq.) is amended.--(1) in section 102 (21 USC 802) by adding at the end the following: (57) The term serious drug felony [means] an offense described in 924(e)(2) of title 18 United States Code, for which, --(A) the offender served a term of imprisonment of more than 12 months ..

STATEMENT OF THE CASE

The petitioner (Barley) filed a Request to the Court for the Appointment of Counsel and Reduction of Sentence in light of the the First Step Act. The Court appointed counsel but due to the Counsel's workload and failure to file in time, the Court proceeded without the motion filed by the counsel and reduced the sentence from 240 months to 230 months. The petitioner filed a Notice of Appeal and during the appeal filing, the counsel became aware of courts ruling and filed a motion to reconsider while attaching the family letters in support. The Appeal Court Remanded to allow the Reconsider, & the Court refused to lower the sentence and disregarded letters in support and 851 impact. (See App'x C and D)

The petitioner filed a timely notice of appeal again & then the counsel moved to withdraw (App'x B & D). The Fourth Circuit Court of Appeals ruled on US v Chambers 19-7104 (4th Cir. 2020), which held that the District Courts must consider the changes in law. But Barley filed a Rule 28(j) in light of Chambers and was still denied. (App'x B) Then Barley filed for a En Banc Hearing, which was also denied on Jan 25, 2021 but Barley did not receive any denial until he called in May 2021 and the clerk informed him of the denial. (See App'x A Correspondence and Motion to Recall and Letter to Sp. Court as well).

The Fourth Circuit Clerk stated that the petitioner has 150 days from the Jan. 25, 2021 date and the petitioner now files in time.

REASONS FOR GRANTING THE PETITION

1. Should the Courts be applying the "clear and convincing evidence standard" instead of the "preponderance of evidence standard" seeing that the McMillan v PA case has been overturned, when viewing the First Step Act Reduction Motions?

The Circuit's are split on "which standard" should be applied Post Booker & Post Alleyne. The "clear and convincing evidence" standard is defined in the Black Law's Abridged 10th ed. as follows: --Evidence indicating that the thing to be proved is highly probable or reasonably certain. This is a "greater burden" than the "preponderance of evidence standard"

The petitioner took a plea in 2010 to 50 grams or more, and the Court applied the 851, which doubled the mandatory 10 yr mandatory minimum to 20 yrs. The day before the sentencing, he was arrested & it.. did not include any additional cocaine base, but instead it was a small amount of marijuana. Because of this, the original plea and drug amount of 361.7 grams of powder cocaine & 61.7 grams of cocaine base to a whopping 2061.7 grams of crack cocaine (App'x E) even though the petitioner... was never charged and convicted of the marijuana.

In US v Rodriguez, 921 F.3d 1149 (9th Cir. 2018), the Ninth Cir held that "without an explicit and specific drug quantity finding ..drug quantities in an adopted PSR were not binding in 3582 filings". In this case, the petitioner's count of conviction was for a single and discrete act for sale of 61.7 grams of cocaine base. The petitioner was never charged with a conspiracy offense, but the day of the Sentencing, the Court adopted the massive change in the PSR finding over the petitioner's objections. This dramatic drug finding increased by 2000 grams & based upon uncharged conduct should no longer suffice since the McMillan ruling has been overturned by Alleyne.

The Ninth Circuit also pointed out that there is no uniformity among the courts about which standard should be used Post Booker and now Post Alleyne, Blakely v Washington, Cunningham v California and..will require the Court to Grant the Certiorari to resolve the ongoing split. (US v Chew 18-50301 (9th Cir. 2019)

For example, In Chew, 18-50301 (9th Cir.2019) the panel held that .."the unclarity of [when] to use the clear & convincing standard should be applied at sentencing instead of the preponderance of evidence standard. Here in Barley's case, the additional arrest involved less than 10 grams of marijuana being uncovered but led to the PSR applying 2000 additional grams of crack that was never discovered in the arrest.This type of increase and drug findings should mandate the additional heightened standard of clear and convincing versus the lower standard of preponderance.

Therefore, the Court should Grant the Writ to determine the correct standard to be applied.

Issue Two

The Sixth Amendment Constitutional Protections & Strickland Ineffective Assistance Standards Should be Applied in the 3582 Proceedings.

The petitioner was appointed counsel who did not have time to file the Motion on Barley's behalf, even after the Court had repeatedly notified the attorney and the attorney repeatedly stated this or that date. But never did. The court became frustrated with the counsel's failures to adhere to the court orders and her failure to keep her promise to the court and her client. Mr. Barley had his family send the family support letters and he had sent her the Progress Report. In spite of all parties making her aware she never kept her word and did not file. The Court took the matter in his own hand and reduced the sentence from 240 mths to 230 mths. The Counsel notorious name is Kristin Lee, E.DVA Danville Div.

Mr. Barley filed an appeal, but after he filed the appeal and it was docketed, then the Counsel finally filed a Motion to Reconsider and then attached the family support and other information the court needs to make an informed decision. The Appeal Court

Remanded the Case back for further reconsideration, in which the counsel was suppose to again file a full brief in support of the reduction, in which she never did. The Court did not consider the 851 statutory changes and therefore, declined to reduce further and led to the 2nd appeal filed by Barley, in which later the same counsel filed to withdraw.

The Strickland test has 2 prongs. Cause and Prejudice. In this case, the Counsel was the cause of the court being forced to act without all the information and without the full merits brief and prejudice was that Barley was stuck with the 851 and extra drug weight. Therefore, this Court should Grant the Writ to make a announcement that the 3582 filings also have Sixth Amendment protections and that the counselors can be held as ineffective during stage as well.

Issue Three:

Whether the Court should Remand(GVR) to allow the Court Remove & Reconsider the 851 impact, seeing that his Virginia prior no longer qualifies today.

In Richard v US, 18-7036 (Sp. Ct 2019)..the Court GVR the case in light of the First Step Act changes to Sec 403. In this case, the petitioner relies on the First Step Act sec 401 and request that the Court GVR his case and allow the Court to Reconsider as well the impact upon his state Possession offense.(App'x F)

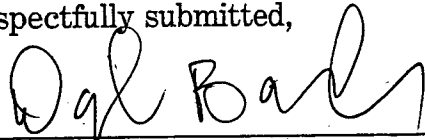
The petitioner's sentence was reduced from 240 mths to 230 mths but this decision was not guided by the US v Chamber's 956 F.3d 667(4th Cir. 2020). The 851 is a grave increase based upon a prior drug offense. Today, the First Step Act states that the prior must have occurred within 15 yrs of the instant offense and that the petitioner must have served 12 consecutive mths or more on the prior. In Barley's case, he served 10 mths not 12 or more. Therefore, his case should be GVR. (See App'x F)

In the end, any of the three issues herein warrant the Writ of Certiorari and collectively deserve to be heard so that the Court may issue guidance for all the lower courts as well. In alternative the Court should Grant, Vacate and Remand for further Consideration.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Daryl Barley", is written over a horizontal line.

Mr. Daryl Barley, 14643-084

Date: June 14, 2021