

No. 21-5055

ORIGINAL

Supreme Court, U.S.  
FILED

JUN 18 2021

OFFICE OF THE CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

Bobby Wilson Jr. — PETITIONER  
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, 5th Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Bobby Wilson, Jr.  
(Your Name)

M.S.P., Unit 30-D Bldg.  
(Address)

Parchman, MS. 38738  
(City, State, Zip Code)

662-745-6611  
(Phone Number)

## QUESTION PRESENTED

CAN A CDRAM NOBIS MOTION  
OR APPEAL BE DISMISSED BASED  
UPON A WRITTEN WAIVER EVEN THOUGH  
THE GOVERNMENT BREACHED ITS  
PLEA AGREEMENT THAT INDUCED A  
PLEA OF GUILTY AND STILL BE  
CONSISTENT WITH THE FIFTH AMENDMENT  
OF THE UNITED STATES CONSTITUTION

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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 \_\_\_\_\_; 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 02/05/2021.

☐ 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: 04/06/2021, 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

"No person shall be deprived of  
life liberty or property without  
due process of law."

United States Constitution 5<sup>TH</sup> Amendment

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

Santobello v. New York, 404 U.S. 257 (1972).....17.

### STATUTES AND RULES

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### OTHER

## STATEMENT OF THE CASE

On July 21, 1998 petitioner was indicted by a federal grand jury on two counts of bank robbery in violation of 18 U.S.C. 2113(a). App'd D

On August 4, 1998 a joint motion ore tenus of the petitioner and the Government for a mental health examination in accordance with the provision of section 4241, 4242, and 4247, Title 18, United States Code. App. E

After the mental health examination was completed the petitioner's counsel Dennis Joiner and the Government engaged into a plea discussion that if this petitioner enter a plea of guilty to both counts of bank robbery



and waives the right to contest the conviction and sentence that the Government would recommend a sentence of 51 months in federal custody. App. F

On February 22, 1999 petitioner entered a plea of guilty, in which sentencing was set off until a pre-sentence investigation was conducted.

On March 22, 1999 the pre-sentence report was filed that stated petitioner's criminal history category of IV, offense level of 23 and a guideline range of 70-87 months of imprisonment for both counts. App. G

Prior to the sentencing hearing

petitioner's counsel filed his objections to the pre-sentence report, in which counsel pointed out the fact of the plea agreement with the Government of 51 months. App. H

On June 15, 1999 the United States District Court for the Southern District of Mississippi, Western Division sentenced this petitioner to 70 months of imprisonment. App. I

On September 12, 2019 petitioner filed a motion for Writ of Coram Nobis alleging that he was mentally incompetent and was denied a hearing after a mental health examination was ordered, in which petitioner's was required.

On June 8, 2020 the district court found the plea hearing transcript was destroyed and thereafter denied petitioner's motion. App. B

Petitioner appealed to the United States Court of Appeals, Fifth Circuit, in which the Government raised the waiver of appeal that was granted by the Court of Appeals. App A

Petitioner now seeks review by this Honorable Court.

## REASON FOR GRANTING THE PETITION

This Honorable Court should grant the petition because the United States Court of Appeals Fifth Circuit has decided this case contrary to Santobello v. New York, 404 U.S. 257 (1972) in which this court requires the enforcement of a plea agreement or the reinstatement of an accused right to a jury trial.

The Government agreed to recommend a sentence of 51 months in federal custody prior to the petitioner plea of guilty.

When the sentencing hearing was held on June 15, 1999, the

GOVERNMENT RECOMMENDED A SENTENCE OF 70 MONTHS.

THIS PETITIONER SOUGHT REVIEW OF THE CASE, VIA A WRIT OF CORAM NOBIS THE U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT DISMISSED THE APPEAL BASED UPON A WRITTEN WAIVER CONTAINING THE PLEA AGREEMENT THAT WAS BREACHED. SEE APP. A

FURTHER, SINCE A WRIT OF CORAM NOBIS CAN ONLY BE USED INVOLVING A FUNDAMENTAL ERROR THIS COURT SHOULD GRANT THE PETITION SINCE THE FAILURE TO CONDUCT A COMPETENCY HEARING WHICH IS REQUIRED IS A VIOLATION OF THIS PETITIONER'S FUNDAMENTAL RIGHT NOT TO BE TRIED WHILE INCOMPETENT.

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Bobby Wilson Jr

Date: 6/14/21