

No. 21-5136

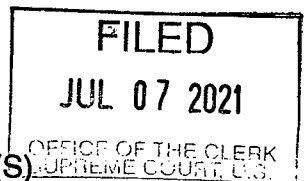
IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Ledaniel Vernell Russell — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Ledaniel Vernell Russell #59530-177
(Your Name)

P.O. Box 26030
(Address)

Beaumont Texas, 77720
(City, State, Zip Code)

N/A (incarcerated)
(Phone Number)

QUESTION(S) PRESENTED

- 1.) Does The 10:1 Ratio Between Actual Methamphetamine and Those Substances Containing A Mixture of Methamphetamine Violate Due process under Today's Data Inreguard To Methamphetamine Trafficing
- 2.) Does The 10:1 Ratio Between Actual Methamphetamine And those Substances Containing A Mixture of Methamphetamine Provide The Government With Means For Sentence Manipulation Contary To Due process of Law

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

Juan Pablo Quezada 4:19-CR-364(A) (OI)
(N.D. of Tex) (Appeal NO. 20-10640 5th Cir)

Marcus Ray Nelson, 4:19-CR-336-P(OI) fugitive

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18 U.S.C. Section 3553 (a)
21 U.S.C. Section 841(a)(1).
Pub.L. 98-473, 98 Stat 2068

OTHER

USSC. Section 201.1 (C)(8).
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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☐ is unpublished.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 _____ 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☐ is unpublished.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 MAY 19, 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: _____, 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. § 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

THE DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT TO THE UNITED STATES
CONSTITUTION

STATEMENT OF THE CASE

Ledaniel Vernell Russel ("Russell") was defendant # 2 in a three person one Count indictment. The indictment charged Russell with Conspiracy to possess with intent to distribute 50 grams or more of Methamphetamine ("Meth") in violation of 21 U.S.C. Sections 841(a)(1). In actuality, however, Russell's indictment was the fruit of an investigation commenced in March 2019 relating to a Methamphetamine distribution ring run by Jan Pablo Quezada ("Quezada"). An investigation that resulted in a 118 page Complaint that included a

total of 33 defendants. Many of those defendants were involved in multiple pound or Kilograms transactions. Indeed, Confidential informant-1 (CD-1) stated he was purchasing five Kilograms of Meth per day from Quezada. Likewise CD-2 stated he transported multiple shipments of Meth for Quezada ranging from 8 to 15 pounds. In fact, the vast majority of the defendants named in the Criminal Complaint were alleged to have participated in deals involving several pounds or Kilograms of the drug. However, Russel, on the other hand, participated in just one deal involving 4

ounces (113.4 grams) of Meth [See J.A.B PSR at ¶¶ 13-16]. This is the same amount of substance attributed to Russel [PSR JAB at ¶ 22.

The PSI subsequently prepared and submitted concluded that Russel was responsible for 113.4 grams of Meth based on his purchase of four ounces from Quezada on July 12, 2019. Although the investigation produced evidence of a wide-ranging conspiracy as detailed in the Criminal Complaint involving multiple defendants and vast quantities. However, (emphasis added) the July 12, 2019 transaction was the only evidence

of Russel's participation in the Conspiracy. In fact, Russell admitted at Sentencing that he had gotten in a bind and was looking for a way out. Furthermore, the Original PSR failed to note the purity level of the Meth. Which was because - which stands to reasoning - evidence revealed that the Meth involved in the July 12, 2019 transaction was from a isolated Shipment received by Quezada from a source used one time, and there were no drugs seized from that Shipment received by Quezada thus, no reliable means to establish the purity of the Meth Russell purchased and possessed. In consequence, the PSR Cited U.S.S.G. section

201.1(c)(8) which is applicable to a mixture of Meth. [See App B ¶ 22]. However, the government objected arguing that Russell should be held accountable for (actual) Meth and thus the base offense level should be increased accordingly. [J.A.C Addendum to PSR "objections to Paragraph 22, 31, 92"]. The probation dept responded and accepted the objection Id, ironically noting that "the investigation revealed Quezada used the same "Source of Supply" (SOS) throughout his drug distribution activity with the exception of July 9, 2019, Russell's purchase from Quezada was on July 12, 2019

thus it stands to reasoning that purchase came from the July 9, 2019 shipment.

Most importantly, the distinction between Actual Meth and a Mixture of Meth increased Russell's Sentencing exposure by 32%, e.g. as to a Mixture of the guideline range was 92 to 115 Months [adjusted offense level 23 Criminal history VI] [JA B 11 (S) 22-31] It should be noted that due to the statutory mandatory minimum of 120 months the Guideline range would have been 120 months. But Compare the offense level of Actual Meth which resulted in a adjusted offense level of 29. [JA C 11 31].

which resulted in a Guideline Range of 151-188 months. Russell argued that the original offense level was correct. Never-the-less the Court relied on the governments "assumption" that Russell had purchased and possessed "Actual Meth" and sentenced Russell pursuant to the 10 to 1 Ratio and Specifically sentenced Russell to 155 Months. Russell appealed but the Court of Appeals Affirmed [JAA]. Russell's Counsel withdrew, thus Russell comes here through the Assistance of an inmate Paralegal [JAD] and petitions this Court to determine whether the 10 to 1 ratio as to Meth and a Mixture of Meth violates

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Due Process under today's Data as to trafficking of Meth. Moreover, does such a disparity allow the Government a unchecked method of sentence manipulation.

REASONS FOR GRANTING THE PETITION

The Court should grant this Petition for several Reasons. The Combination of those reasons and those reasons standing alone constitute violations of Due process. First, as a result of the 10:1 Ratio between "Actual" Meth and a "Mixture" of Meth Discarded, Sentences for Meth are higher than any other drug. See United States v. Nawanna, 321 F.Supp. 943, 953 (N.D. of Iowa 2018) (Discussing disparity in sentences). Secondly, the disparity of sentencing rests on the 10:1 Ratio between actual Meth (and ICE) and those substances containing a Mixture of Meth. Most importantly,

it is a distinction that "does not comport with the reality of how Meth is created trafficked, and sold today and created an arbitrary distinction between defendants that runs contrary to the 3553(a) factors" and thus, runs a foul of due process. Thirdly, under current reality the 10:1 ratio does not meet the purpose for the built in increase. The purity of the drug is built into the meth guideline as it is for few other substances. See U.S.S.G. section 2D1.1 (mt. 1, 27(c)). For most drugs the Guidelines provide that "unusually high purity may warrant an upward departure," Id. The reasoning for the built in increase for Meth

and departure for other Controlled Substances are often "Controlled Substances are often distributed and Combined with other substances as they pass down the Chain of distribution, the fact a defendant is in possession of unusually pure narcotics may indicate a prominent Role in the Criminal enterprise and proximity to the source of the drugs. Id Judge Lewis Brook in United States v. Ibarra-Sandoval, 265 F.Supp. 3d 1249 (D.N.M. 2017) summarized this flawed approach: "The point then of increasing a defendant's Sentence based on drug purity is to punish defendant's who have prominent Roles in drug distribution."

Because lower punty is a thing of the past,
Judge Brock Concluded that "the Commission's
assumption regarding the Connection between
Meth punty and Criminal role is divorced from
reality." Id. The problem, he wrote is "that the
Sentencing Guidelines would treat the average
individual convicted of a crime involving Meth
as a Kingpin or leader, even though that is simply
not true." Id. See also United States v. Nalanna,
321 F. Supp. 3d at 951 ("the justification in the
Guidelines themselves for the punty-driven Meth
Guidelines is erroneous or at least has been
erroneous for the last several years")

Of equal importance the 10:1 ratio is not a product of normal empirical approach and is based on a flawed concept, under modern reality. Moreover, is evolving into a repeat of the mass incarceration of the underprivileged as with Crack Cocaine. The 10:1 Ratio is not the product of the Sentencing Commission's usual empirical approach. In 1987, the Guidelines Drug Quantity table did not distinguish between Actual/Pure Meth. e.g. see United States v. Pereda, No. 18-CR-228 2019 W.L. 46302 [#] 2 (D. Colo Feb 6, 2019). In 1988, Congress established mandatory minimums for Meth using 10:1 Ratio between actual Meth

and a mixture containing the substance. Id., As was the case with other controlled substances, the Sentencing Commission followed Congress' lead in developing the Guidelines. See Kimbrough v. United States, 552 U.S. 85, 96 (2007) ("The Commission did not use the empirical approach in developing the Guidelines for drug trafficking offenses. Instead, it employed the 1986 Act's weight driven scheme. However, that rationale was under the flag of the war on drugs that resulted in mass incarceration. Moreover, as to Meth based on data that has changed dramatically. Thus, the Guidelines must use the empirical approach to service

its intended purpose. The United States Drug Enforcement Administration in a document published on-line "Meth[?] a Growing Domestic Threat" wrote that in 1995 the purity of Meth averaged 54%.¹ In another more recent DEA publication i.e., "2016 National drug price and purity Data (July 2018)" at 3, the agency stated between January of 2012 and December of 2016 the average purity of Meth increased from 87.9 Percent to 94 Percent.² In United States v. Rodriguez, 382 F. Supp 3d 892, 896-97 (D. Alaska 2019). The Court

¹ see: <https://fas.org/irp/agency/doj/dea/product/meth/threat.htm>.

Thirdly, as demonstrated by this Case where there was only an assumption of purity at best, the Government is using this Flaw as a Cudgel and Sentencing manipulation tool. Fourthly, This Court is needed because the Flaws have invalidated the Sentencing Commission Role. The Sentencing reform Act of 1984 ("SRA"), a Chapter of the Comprehensive Crime Control Act of 1984 Pub. L. 98-473, 98 Stat. 2068 Created the Sentencing Commission. See Dorsey v. United States, 132. S. Ct. 2321, 2326 (2012) (The Commission was directed to promulgate Sentencing Guidelines to take effect on November 1, 1987 18 U.S.C. section

3551 (1987). The Commission was instructed to reconcile the multiple purposes of Sentencing set forth in 18 U.S.C. Section 3553 (a)(2), to provide certainty and fairness, to avoid sentencing disparities. However, as applied the 10:1 ratio as to Meth defies the intended purpose of the Sentencing guidelines and runs afoul of the due process clause. e.g., the Government explicitly the Plan and other times a defendant is confused as to his Sentencing exposure, thus, Certainty is undermined, as here even the probation dept was confused. Furthermore, the Government explicitly the Plan arbitrarily as here the drugs were not

even seized or tested. Moreover, Russel made one buy a small one at that, but was sentenced as if a King pin. Moreover, due to lack of voting Members on the Commission this Court is needed to enforce the process of Law and to prevent another needless Mass incarceration.

Finally, as to this Case specifically, the facts of this Case present an excellent Example of the 10:1 Ratio's Flaws and example the Ratio is not meeting its intended purpose, e.g. Russell is demonstrably not a "King pin" or "prominent Role player". Russell made one small purchase from a individual importing pounds into this

Country. Although Russel was far down the Food Chain, he was still sentenced under a Ratis designed for King pins. Furthermore, this Case presents an excellent example of the Government's Manipulation of this Judicially recognized Flaw. It was demonstrable that the drugs were from a unknown Supplier and none of the drugs were tested. The Government merely assumed that the drugs were pure. In fact, the probation dept had no evidence of purity but merely agreed with the Government. The government merely manipulated the Guideline range and the Statutory range and Constructively amend the facts to Concceed with the indictment.

Accordingly, for all the above reasons
the Court should accept this Case for review.
To uphold due process, the Guidelines purpose and
the respect an integrity of the Criminal Justice System,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


LEDANIEL VERNELL RUSSELL

Date: 6/29/21