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**SUPREME COURT OF THE UNITED STATES**

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**Jereme Eugene Mackey,**

*Petitioner,*

**vs.**

**United States of America,**

*Respondent.*

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**On Petition for a Writ of Certiorari to the Supreme Court of the United  
States**

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**PETITION FOR A WRIT OF CERTIORARI**

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Jennifer Haynes Rose  
Law Office of Jennifer Haynes Rose  
*Counsel for Petitioner*  
1135 Kildaire Farm Road, Suite 200  
Cary, NC 27511  
Tel.: (919) 415-4719

E-mail: [jenniferhaynes.rose@outlook.com](mailto:jenniferhaynes.rose@outlook.com)

## **QUESTIONS PRESENTED**

- I. WHETHER THE DISTRICT COURT ERRED IN FINDING THE APPELLANT JEREME EUGENE MACKEY GUILTY INASMUCH AS THE GOVERNMENT FAILED TO PROVE AT THE TIME OF ARRAIGNMENT THE ELEMENTS NECESSARY FOR A CONVICTION FOR CONSPIRACY TO DISTRIBUTE AND POSSESS HEROIN, MARIJUANA AND COCAINE, ALL IN VIOLATION OF TITLE 21, UNITED STATES CODE, SECTIONS 841(A)(1), 841(B)(1)(A) AND (B)(1)(D) DUE IN PART TO COUNSEL’S EFFECTIVENESS
- II. WHETHER THE DISTRICT COURT ERRED INASMUCH AS IT FAILED TO PROVIDE THE APPELLANT JEREME EUGENE MACKEY WITH CREDIT FOR THE NINE (9) MONTHS THAT HE WAS IN CUSTODY AWAITING TRIAL.
- III. WHETHER THE APPELLANT JEREME EUGENE MACKEYS SENTENCE WAS UNREASONABLE AS IT WAS GREATER THAN NECESSARY AND AS SUCH, FAILS TO COMPLY WITH TITLE 18, UNITED STATES CODE, SECTION 3553?

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

Petitioner respectfully prays that the Supreme Court of the United States will grant a writ of certiorari to review the judgment below.

**INTRODUCTION**

Jereme Eugene Mackey was indicted in a seven count Indictment, in the Eastern District of North Carolina on August 8, 2018. J.A. 10-16. Petitioner Mackey was the only named defendant in the Indictment. J.A. 10-16. In violation of Title 21, United States Code, Section 841(a)(1), 841(b)(1)(A) and (b)(1)(D), Petitioner Mackey was charged in Count One of the Indictment with Conspiracy to distribute and possess heroin, marijuana, and cocaine. Count Two, in violation of Title 21, United States Code, Section 841(a)(1), Petitioner Mackey was charged with distribution of heroin on or about August 25, 2017. In Count Three, Petitioner Mackey was charged with distribution of heroin on or about August 30, 2017, a violation of Title 21, United States Code, Section 841(a)(1). In Count Four, Petitioner Mackey was charged with distribution of heroin on or about October 25, 2017, in violation of Title 21, United States Code, Section 841(a)(1). In violation of Title 21, United States Code, Section 841(a)(1), Petitioner Mackey was charged in Count Five of the Indictment with distribution of heroin on or about November 3, 2017. Petitioner Mackey was charged in Count Six with distribution of heroin, and detectible marijuana and cocaine on or about November 8, 2017 in violation of Title 21, United States Code, Section 841(a)(1). Finally, Petitioner Mackey was charged

in Count Seven with intentionally possessing a firearm in connection with a drug trafficking crime on or about November 8, 2017 in violation of Title 18, United States Code, Sections 924(c)(1)(A) and 924(c)(1)(A)(i). J.A. 10-16.

Petitioner Mackey plead guilty on January 28, 2019, to Counts One, Six and Seven of the Indictment pursuant to a Memorandum of Plea Agreement before the Honorable Robert B. Jones, United States Magistrate Judge of New Bern, North Carolina. J.A. 17-42. A Presentence Investigation Report (PSI) was issued by the U.S. Probation Office on this matter, which included an assessment of a base level offense of level 32 that was reduced by three points under the Acceptance of Responsibility provision of the United States Sentencing Guidelines § 3E1.1(a) and 3E1.1(b). J.A. 75-90. Petitioner Mackey's offense level was then determined to be 29. J.A. 86. Furthermore, it was determined that Petitioner Mackey has a level V criminal history. J.A. 82.

By and through the Honorable Louise W. Flanagan, the District Court entered an oral judgment against Petitioner Mackey on August 7, 2019. J.A. 7. This judgment resulted in Petitioner Mackey being sentenced to 140 months in custody as to Counts One and Six, which are too run concurrently. Additionally, the Court sentenced Petitioner Mackey to a 60-month sentence, that will run concurrently with the previous sentence, for Count Seven. Petitioner filed a motion for appeal with the United States Court of Appeal for the Fourth Circuit, seeking that the Court vacate the judgment and remand the case back to District Court for sentencing on the Distribution and gun charges alone. The Petitioner respectfully

prays for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

### **OPINIONS BELOW**

The judgment of the United States Court of Appeals for the Fourth Circuit in *United States of America v. Jereme Eugene Mackey*, was entered on March 19, 2021, is unpublished, and is reprinted in the Appendix, at A1.

### **JURISDICTION**

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on March 19, 2021. The petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

### **CONSTITUTIONAL PROVISION**

U.S. Constitution, Amendment V:

“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 offence [sic] 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.”

## STATEMENT OF THE CASE

### A. Factual Basis

Petitioner Jereme Eugene Mackey, filed a motion to appeal to the United States Court of Appeals for the Fourth Circuit on December 12, 2019. Petitioner's motion to appeal challenged the District Court's guilty verdict, as to the Count One conspiracy offense, by way of failing to establish every element of the offense at the time of arraignment. Additionally, Petitioner's motion to appeal alleged that the District Court erred in failing to provide credit for the nine-months that Petitioner was in custody prior to his sentencing. Furthermore, Petitioner contends that the District Court erred in his sentencing because the time sentenced was unreasonable.

Petitioner was arraigned on January 28, 2019, before the Honorable Robert B. Jones, in New Bern, North Carolina. At his arraignment, Petitioner plead guilty to Count One, Six, and Seven of the Indictment pursuant to a negotiated plea agreement. The PSI Report found Petitioner to have a base offense level of 32, which was then reduced by three points for Acceptance of Responsibility per United States Sentencing Guidelines § 3E1.1(a) and (b). On August 7, 2019 the District Court, by and through the Honorable Louise W. Flanagan, sentenced Petitioner to 140 months as to Counts One and Six, followed by 60-month sentence, to run concurrently. Moreover, as to Counts One and Seven, Petitioner received a period of supervised release for five years, and a three-year sentence on Count Six. Such final judgment settled all issues and claims set forth in this matter. This judgment



was electronically sent to the Government and Petitioner's counsel on August 7, 2019.

## **B. Decisions Below**

Petitioner Jereme Eugene Mackey, pled guilty to Count One, Six, and Seven of the Indictment pursuant to a negotiated plea agreement. The Honorable Louise W. Flanagan, of the District Court, entered an oral judgment against Petitioner on August 7, 2019. Such final judgment settled all issues and claims set forth in this matter. Petitioner filed a timely Notice of Appeal on August 15, 2019, through his legal counsel.

## **REASONS FOR GRANTING THE PETITION**

“Where fundamental and constitutional rights are ignored, due process does not exist and a fair trial in contemplation of law cannot be had” *Chambers v. Mississippi*, 410 U.S. 284, 305 (1973). This case presents an exceptionally important question regarding the rights of a defendant to a fair trial and due process of law, in a Federal criminal matter, that should be settled by this court; namely, whether the District Court unjustly failed to dismiss Count One of the indictment after the prosecution failed to establish an essential element of the offense. Pursuant to the Fifth Amendment of the United States Constitution, a person shall not be deprived of life, liberty, or property, without due process of law. *Johnson v. United States*, 576 U.S. 591, 595 (2015). Petitioner has a right to a fair trial, which would include the court dismissing charges against Petitioner that are not fully established by opposing counsel. In order to determine whether the

elements of Count One of the Indictment were satisfied, the elements are outlined as follows,

“a general outline of the elements of a criminal conspiracy is: (1) An object to be accomplished; (2) a plan or scheme embodying means to accomplish that object; (3) an agreement or understanding between two or more of the defendants whereby they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by an effectual means.”

*United States v. Bostic*, 480 F.2d 965, 968 (1973). According to the statement of facts on record, Raleigh Police Department used two confidential informants to effectuate a drug deal on numerous occasions. However, it is not the drug deal that is at heart of this petition; rather, what is at heart of this petition is the mere fact that the prosecution failed to prove that there was, in fact, a second party to the agreement(s), therefore *sine qua non*. Without establishing that there was an actual second party to the agreement Petitioner is said to have made, Petitioner cannot be convicted of criminal conspiracy. The court in *United States v. Bostic*, held that the third element of a criminal conspiracy offense is, “an agreement or understanding between two or more of the defendants [...],” and without satisfaction of that element, there can be no judgment made on the conspiracy offense because the offense has not been established.

Much like a party signing a standard insurance contract, that contains a clause that could potentially defeat the purpose of the obtaining the insurance, Petitioner signed a plea agreement because he had no other alternative. Although the plea agreement contained the following clause, “[...] defendant understands, agrees, and admits the elements of each count to which defendant is pleading guilty

[...],” a signature on a piece of paper holds no flame against the District Court blatantly failing to dismiss a charge that was never fully established against the Petitioner. Informed consent requires: “(1) that the plaintiff must identify an undisclosed risk which would have altered his decision to agree, had it been disclosed, and (2) that plaintiff must show that the particular risk materialized and caused injuries for which he seeks to recover.” *Lipscomb v. Memorial Hospital*, 733 F.2d 332, 338 (1984). In the case at hand, Petitioner felt he had no other reasonable alternative, but to acquiesce to the plea agreement; however, Petitioner challenges that the District Court nor himself can simply believe or take the Prosecution at its word when the only evidence, as it relates to Count One, is a potential co-conspirator, couched as a “confidential informant.” Without substantiating evidence, and only providing the vague term of “confidential informant”, Petitioner was completely unaware of the person he is accused of conspiring with; which presents undisclosed risks, i.e. pleading guilty to a charge that had Petitioner been completely informed of the details would have altered his decision to plead guilty. The District Court specifically must make clear exactly what a defendant admits to, and whether those admissions are factually sufficient to constitute the alleged crime. The requirement to find a factual basis is designed to protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that his conduct does not actually fall within the charge. *United States v. Mastrapa*, 509 F.3d 652, 659-60 (4th Cir. 2007) (citations and internal punctuation omitted).

As stated before, it is uncontested that Petitioner on occasion handled drugs; however, it is unjust to allow an offense to proceed without substantiating evidence that shows, beyond a reasonable doubt, that Petitioner in fact conspired with the person that the Prosecution is claiming is the co-conspirator. Additionally, there was no testimony from any witness or party to the conspiracy that corroborates the Prosecutor's evidence against Petitioner Mackey. Finally, nothing in the evidence as presented in this case shows that Petitioner actually conspired with another party because there is no record of who and/or if the "confidential informant" exists. Rather, the evidence merely shows that there was a drug deal and the Prosecution banked on that being enough to convict Petitioner on a 140-month sentence.

Petitioner Mackey admits that he pled guilty following his consultation with his attorney and the prosecution in which the plea agreement was discussed, and subsequently signed. However, at that time, Petitioner was unaware that he was signing an agreement that was not specific enough to apprise him of the very details that were necessary to convict him of Count One. Petitioner maintains that his original counsel failed to provide adequate representation as it relates to informing him of all matters, and providing due diligence as it relates to the opposing counsels case against him. Without adequate representation, Petitioner was unable to make an informed decision when he signed the plea agreement. Furthermore, during trial, Petitioner's counsel failed to make objections toward the Prosecution's argument as it relates to Count One of the Indictment. Petitioner's counsel should have objected to the conspiracy offense at the end of the prosecution's presentation

of evidence, because the third element of the offense was not satisfied. Additionally, the District Court erred in failing to dismiss an offense that was not fully satisfied by the evidence. Therefore, without adequate representation, Petitioner unknowingly pled guilty to an unestablished offense, and received a hefty sentence as it relates to said unestablished offense.

Furthermore, if the Supreme Court of the United States grants a writ of certiorari over this issue, the Court would inevitably need to review Petitioner's sentencing. Petitioner contends that his sentencing was unreasonable, and based on the information stated above, if it is decided that Count One of Petitioner's Indictment should have been dismissed, then the sentence given against the Petitioner would be unreasonable, and therefore should be reduced.

### **CONCLUSION**

The petition for a writ of certiorari should be granted. Respectfully submitted.

LAW OFFICE OF JENNIFER HAYNES ROSE

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*/s/ Jennifer Haynes Rose*

Jennifer Haynes Rose  
*Counsel for Petitioner*  
1135 Kildaire Farm Road, Suite 200  
Cary, NC 27511  
Tel.: (919) 415-4719  
E-mail: [jenniferhaynes.rose@outlook.com](mailto:jenniferhaynes.rose@outlook.com)  
N.C. State Bar: 21036