

JUN 25 2021

OFFICE OF THE CLERK

NO

**21-5638**

OCTOBER TERM 2022

IN THE SUPREME COURT OF THE UNITED STATES

---

DAVIN GRIFFIN,

PETITIONER,

J.A. TERRIS, WARDEN,

RESPONDENT.

**ORIGINAL**

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## QUESTION PRESENTED

- 1) Whether the lower court courts denial of relief in a habeas corpus petition pursuant to 28 U.S.C. 2241 ON THE QUESTION OF FACTUAL AND ACTUAL INNOCENCE , departs from Established precedent incumbent upon the federal rule that no Defendant should suffer The loss of liberty on a fact which has been held subsequently not to apply, consistent With this courts holding's in like minded decisions as well as current policy statements Which have found pursuant to the First Step Act 2018 extraordinary and compelling Reasons to reduce sentences where under today's precedents would not be applied ?
- 2).

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE;

## TABLE OF CONTENTS

A. QUESTION PRESENTED;

B. LIST OF PARTIES

C. TABLE OF AUTHORITIES

D. STATUTES AND RULES

E. JURISDICTION

F. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. STATEMENT OF CASE

2. REASON FOR GRANTING THE WRIT

8. ARGUMENT

12. CONCLUSION

APPENDIX;

ORDER FROM SIXTH CIRCUIT DENYING REHEARING PETITION

SIXTH CIRCUIT COURT OF APPEALS DECISION

UNITED STATES DISTRICT COURT ORDER

REPORT AND RECOMMENDATION MAGISTRATE JUDGE

# TABLE OF AUTHORITIES;

CASES	PAGES;
1. Johnson v. united states, 576 U.S. 591, 606, (2015	1,4,11
2. MATHIS V. UNITED STATES, 136 S.CT. 2243, 2251-54, (2016)	1,4,5,8,11,12,
3. UNITED STATES V. GRIFFIN, 583 F. APP'X 576 (8 <sup>TH</sup> Cir. 2014)(percuriam)	2,
4. UNITED STATES V. DAVIS, 139 S.CT. 2319, 2336, (2019)	4,
5. SESSIONS V. DIMAYA, 138 S. CT. 1204, 1210, (2018)	4,
6. STRICKLAND V. WASHINGTON, (1984)	5,
7. HILL V. MASTERS, 836 F. 3D. 591 (6 <sup>TH</sup> Cir. 2016)	8,13,
8. Beckles v. UNITED STATES, 137 S. CT. AT 897 (2017)	8,9,10,
9. BOOKER V. UNITED STATES, 543 U.S. 220, (2005)	9,10,
10. HARRIS V. UNITED STATES, (2002) 536 U.S. 122 S. CT. 2406, 153 L.ED. 2D. 524	11,
11. APPRENDI V. NEW JERSEY, (2000) 530 U.S. 466, 120 S.CT 2348, 147 L. ED. 2D. 435	11,
12. ALLEYNE V. UNITED STATES, 99, 102 (2013)	11,12,

# TABLE OF AUTHORITIES;

CASES	PAGES;
13. UNITED STATES V. SIMMS, 914 F. 3D. (4 <sup>TH</sup> Cir. 2019)	11,
14. BOUSLEY V. UNITED STATES, 523 U.S. 614, 118 S. CT. 1604, 140 L. ED. 2D. 828 (1998)	12,
15. DESCAMPS V. UNITED STATES, 570 U.S. 254, 133 S. CT. 2276, 186 L. ED. 2D. 438 (2013)	12,13,
16. UNITED STATES V. GEOZOS, 870 F. 3D. 890, 896, (TH Cir. 2019)	12,
17. BROWN V. CARAWAY, 719 F. 3D. 583, 588, (7 <sup>TH</sup> Cir. 2013)	12, 13,
18. LESTER V. FLOURNOY, 909 F. 3D. 708, 712, (4 <sup>TH</sup> Cir. 2018)	13,
19. BEGAY V. UNITED STATES , 128 S. CT. 1581, 170 L.ED. 2D. 490 (2008).	13,

C. CONT.

## STATUTES AND RULES

21 U.S.C. 841 (A)(1) and (b)(B)

U.S.S.G. 4B1.1 and (2)

28 U.S.C. 2255

28 U.S.C. 2241

IOWA CODE 713.3

18 U.S.C. 924 (C)(3)(B)

18 U.S.C. 16(B)

FIRST STEP ACT (2018)

28 U.S.C. 994(H)

(D)

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.

The opinion of the United States Court of appeals for the Sixth Circuit is cited as NO. 20-1851

And appears in the appendix.

The opinion of the United states district court for the Eastern District of Michigan, appears in  
Appendix (B)

JURISDICTION

The date in which the United States court of appeals for the Sixth Circuit denied my appeal was January 22, 2021, subsequent the denial petitioner filed a petition seeking a rehearing and or rehearing en banc Which was denied on or about SEE Petitioner's Exhibit (C).

The petition for a Writ of Certiorari is timely filed subsequent the denial of the petition for a rehearing En banc Appendix (C) within 90 days of that judgment , the jurisdiction of this court is invoked under 28 U.S.C. 1254(1).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED;

FIFTH AMENDMENT;

No person shall be held to answer for a capital, or otherwise infamous crime,  
Unless on a presentment of indictment of a Grand Jury.....  
Nor shall any person be subject for the same offence 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.....

SIXTH AMENDMENT;

In all criminal prosecutions, the accused, shall enjoy the rights to a speedy  
And public trial, by an impartial jury of the state and the district wherein  
The crime shall have been committed.....

STATEMENT OF CASE;

In 2013 petitioner plead guilty to possession with intent to distribute 28 grams or more of cocaine in

Violation of 21 U.S.C. 841(a)(1) and (b)(B). Petitioner was classified as a career offender pursuant to

UNITED STATE SENTENCING GUIDELINES (HEREIN AFTER U.S.S.G), the classification was based upon

On the appearance of two prior felony convictions for crime of violence, purported as two first degree

Burglary convictions and a sexual abuse conviction in Iowa, and was sentenced to 188 Months in prison.

Petitioner objected to the classification under the premise that he did not meet the classification ,

Relying upon counsel to effectively present the claim on appeal . Counsel appeal was contrary to

Evolving decisions for different circuit court of appeals as well as the Supreme Court decisions in

JOHNSON V. UNITED STATES 576 U.S. 591, 606, (2015), SEE; MATHIS V. UNITED STATES , 136 s. Ct.

2243, 2251-54 (2016). Petitioner sought relief pursuant to Section 2255 raising a claim of counsel

Ineffectiveness, the subsequent decisions in the Eighth Circuit were indifferent to the claim and rested

Their decision on nuances in the rules of law to adequately limit the reach of a Pro Se litigant request

To correct a fundamental MISCARRIAGE OF LAW as applied using an arbitrary practice to apply a vague

Interpretation of the guideline language to increase petitioner loss of liberty.

The courts in the Eighth Circuit appear to hold that Mathis which was decided by this Court in 2016 , was

Available to petitioner on direct appeal in (2014), SEE; UNITED STATES V. GRIFFIN, 583 F. APP'X 576 (

8<sup>th</sup> Cir. 2014)(per curiam).

Petitioner as the record reflects sought relief pursuant to successive petitions pursuant to Section 2255,

Which were subsequently denied and subsequent those actions petitioner sought relief through the

Portal of 2241. This action follows

#### REASON FOR GRANTING THE PETITION;

Petitioner submits had he had competent counsel despite the plea in this case petitioner would not

Have received a 188 month sentence based up[on the use of a vague and arbitrary interpretation

Of the guideline language used to assess for purpose of the career offender designation as to whether

The prior convictions sought by respondents meet the definition for purpose of the designation. The

Practice in place in 2013 during the sentencing in this matter had not resolved the issues pending in

The appellate courts and the Supreme court addressing the question as to whether the statutory and

Identical guideline language was in fact arbitrary and vague. Nor did the courts at sentencing consider

The more important question as to whether Iowa Burglary statute did not meet the definition of a

Violent felony. Courts considering the same would have dismissed appeals on the argument that

Counsel cannot anticipate a higher court ruling in 2013, when in fact the decisions were not rendered

By this court changing not only the legal landscape but the legal understanding of a practice that was in

Fact fundamentally flawed since its inception.

Petitioner submits that he as well as other defendants similarly situated, suffer from a practice born

From a vague interpretation of the law, which has had an adverse affect upon this class of defendants.

As the consequence of the affect, punishment is derived from a vague and arbitrary application of law .

Which is not supported by the constitution. Despite the obvious violations and deprivation of substantial

Rights the court in assessing the criteria of 2241 portals do not overlook the fact that the law states that

The increase based upon the vague understanding of the law, and it's arbitrary application has not

Produced an unjust result, but that using the district courts analysis of the requirements petitioner

Should continue to suffer under the regime produced by the arbitrariness. SEE FOR SIMILAR VIEWS;

UNITED STATES V. DAVIS, 139 S. CT. 2319, 2336, (2019); (HOLDING that the residual clause definition of

Crime of violence is unconstitutional). 18 U.S.C. 924(C) (3)(b). Sessions V. Dimaya, 138 S. Ct. 1204, 1210,

Which held that the residual clause definition of a crime of violence in 18 U.S.C. 16(B)

Is unconstitutionally vague. Johnson V. United States, 576 U.S. 591 606, (2015), Mathis V. United States

136 S. Ct. 2243, 2251-54, (2016). Petitioner sentence and loss of liberty results from a fundamental

Defect described as vague and arbitrary, which exacerbates the concept of due process and the right

To be held accountable for conduct which is punishable by law. If as here in Mathis the court

Subsequently holds that Iowa Burglary Codes 713.3 does not meet the definition for purpose of increase

Loss of liberty the right thing to do is to correct the sentence, not justify the unfairness by contending in

2013 sentencing and or 2014 appeal that Mathis was somehow available to the petitioner to once

Perpetrate a fundamental miscarriage of justice. The only benefit in this practice is the corruption

Wrought by the failure to correct the sentence

As previously stated Mathis, 136 S. Ct. 2243, 2251,54, (2016) was decided in 2016 the appeal in this

Matter was decided long before the Mathis decision. Section 2255 permits a claim of ineffective

Assistance of counsel under the doctrine of Strickland V. Washington, (1984), yet reviewing courts have

Held that counsel is not ineffective for failing to anticipate a decision in 2016 on an issue that counsel  
Is arguing in 2013 or 2014, unless the legal landscape provides some enlightenment on the issue to be  
Subsequently decided which would in fact be favorable to his client. Society benefits from a just  
System. Unfortunately we have learned as a society that justice is not to be found in the hallow halls  
Of our justice system : The procedural decisions in this case have unfairly restricted the aims of 2241.  
Which left to the discretion of district courts often times end up making incorrect decisions which  
Undermines further the public confidence in the fair administration of justice. The record reveals that  
Counsel of record did not have a clue of the arguments being advanced by conscious minded attorney's  
Who pursued their practice with aplomb and vigor. Every attorney completing law school is committed  
To a sense of justice and fairness, but to contend that are institutions are producing deficient attorneys  
In the practice of law undermines the purpose in which law school has been established. Citizens do not  
Perceive that concept from the basic point of view these citizens are putting forth enormous sums of

Money to educate their children in a career they have perceived to be noble. Historically, history

Does not support that ideal of nobility within the fair administration of justice. Petitioner was

Convicted in the State of Iowa using Iowa Code 713.3, later to be invalidated based upon vagueness

And arbitrariness.

After exhausting the remedies available to Pro Se defendants petitioner turned to 2241 seeking relief

Through the habeas corpus vehicle which permits a reviewing court to correct what has been a

Fundamental miscarriage of justice,. The practice of using adverse and arbitrary laws also has its place

In the administration of justice, a long and sordid history of inequality, Jim crow laws, exclusion from

Juries, voters suppression, segregation , unfair housing practice, just a host of arbitrary action permitted

Through the conveyance of the law. The district court concluded incorrectly that petitioner had an

Opportunity to raise the claim in which petitioner did , despite raising the claim petitioner found out

That Section 2255 was in fact inadequate and or ineffective to test his claim and thus relied upon the



Requirements of 2241 to correct the fundamental miscarriage of justice as a result. HILL V. MASTERS

836 F. 3d. 591 (6<sup>th</sup> Cir. 2016). Petitioner met all three requirements as cited in Hill. It is clear that this

Court has ☐ to understand the blatant arbitrariness of permitting respondents from increasing

Terms of imprisonment on vagueness, and has rendered the practice unjust by invalidating the statutes

That permitted the arbitrary conduct of government attorney's. The practice of using adverse vague

Language that results in arbitrariness up until Johnson V. United States, 576 U.S. 591, 606 (2015), Mathis

V. United States, 136 S. Ct. 2243, 2251, -54, (2016), was based upon adverse precedent the district courts

Conclusion that petitioner did not show the adverse precedent is in conflict with the decisions

Invalidating the precedent.

Argument:

1) WHETHER THE LOWER COURT DENIAL OF RELIEF IN HABEAS CORPUS PETITION

PURSUANT TO 28 U.S.C. 2241 ON THE QUESTION OF FACTUAL AND ACTUAL INNOCENCE

DEPARTS FROM ESTABLISHED PRECEDENT INCUMBENT UPON THE FEDERAL RULE THAT

NO DEFENDANT SHOULD SUFFER THE LOSS OF LIBERTY ON A FACT WHICH HAS BEEN HELD  
SUBSEQUENTLY NOT TO APPLY, CONSISTENT WITH THIS COURTS HOLDINGS IN LIKE MINDED

DECISIONS AS WELL AS CURRENT POLICY STATEMENTS WHICH HAVE FOUND PURSUANT TO THE

First Step Act of 2018 extraordinary and compelling reasons to reduce sentences under today

Precedent where they apply?

Petitioner submits that the district court incorrectly determined that he was limited to the

Johnson Decisions based upon this court's decisions in *BECKLES V. UNITED STATES*, 137 S. Ct. at

897. The district court failed to address whether the advisory guidelines included addressed

In *Beckles* answered the more compelling issue as to whether the Career offender guidelines

Were advisory. SEE; *BOOKER V. UNITED STATES*, (2005) THE Booker court held that any fact

Other than a prior conviction must be submitted to a jury and found by a jury prior to the

Increase of the maximum term of imprisonment. The Booker court excluded the prior

Conviction assessment in the sentencing process based upon the statutory mandates of

Congress found in the 28 U.S.C. 994, Whereas the statutory language allowed the career

Offender designation to be utilized at sentencing as a mandatory application and Booker

Reaffirmed that defendants subject to the career offender classification of the guidelines based upon a

Prior conviction suffers from the mandatory application of the guidelines. SEE; UNITED STATES V.

BOOKER, 543 U.S. 220 (2005) Compare 28 U.S.C. 994(h). Pre-Booker mandates statutorily the mandatory

Imposition of an increased term of imprisonment. This provision was not subject of the advisory

Guidelines nor was the designation specifically addressed in Beckles. As the Booker court held

Everything but the prior conviction classification had the essential of the element of the offense and

Must be submitted to a jury, courts at the time of Booker maintained the discretion to impose a

Heighten sentence based upon the presence of a prior conviction.

Petitioner suffers from a increased minimum and mandatory sentence on the presence of a prior

Conviction which subsequent the sentence imposed has been subsequently invalidated as an

Arbitrary application of a statute which violates Due Process. The mandatory minimum and maximum

Sentences using the advisory guidelines were not implicated in Beckles V. United States, 137 S. Ct. 886,

894 (2017).

Harris V. United States, (2002) 536 U.S. 122, s. Ct. 2406, 153 L. Ed. 2d. 524; Apprendi V. New Jersey, (

2000) 530 U.S. 466, 120 S. Ct. 2348, 147 L.Ed. 2d. 435. Alleyne V. United States, 99, 102, (2013).

Petitioner seeks a Writ of Certiorari be issued on the compelling question whether a subsequent

Case JOHNSON v. United States , 576 U.S. 591, 606, (2015); Mathis V. United States, 136 S. t. 2243, 2251

-54, (2016). Precedent sitting requires when section 2255 became inadequate and or ineffective for

Petitioner to test his factual innocence as to the classification of the career offender resulting in a

Substantial increase in petitioners minimum mandatory sentence, whereas petitioner had no

Reasonable opportunity based on pre 2015 circuit precedent to address the factual issue of

A classification which was imposed using an arbitrary and vague statutory guideline to increase

Petitioner's minimum mandatory sentence a statute held to be fundamentally flawed has resulted

In a fundamental miscarriage of justice resulting in a substantial loss of liberty. Section 2241 required

The lower court to correct the miscarriage of justice be corrected in the interest of justice . United

States v. Simms, 914 F. wed. 229 (4<sup>th</sup> Cir. 2019)

## CONCLUSION

The district courts decision in this instant matter conflicts with established precedent of the supreme

Court. Bousley v. United States, 523 U.S. 614, 118 S. Ct. 1604, 140 L.Ed. 2d. 828. (1998) Petitioner

Had no unobstructed procedural shot at presenting his claim of factual innocence. SEE; Descamps v.

United States, 570 U.S. 254, 133 s. Ct. 2276, 186 L. Ed. 2d. 438 (2013). Mathis V. United States, 136

S. Ct. 2243, 195 L. Ed. 2d. 604 (2016).

Petitioners conviction under Iowa Code 713.3, under the statute was not a conviction for purpose

Of the career offender classification. ALLEYNE V. UNITED STATES, 570 U.S. 99, 107-08, 133 S. CT. 2151,

186 L. ED. 2DD. 3144, (2013); Bousley V. United States, 523 U.S. 614, 118 s.Ct. 1604, 140 L. Ed. 2d. 828

(1998); United States V. Geozos, 870 F. 3d. 890, 896, (9<sup>th</sup> Cir. 2019); Brown V. Carraway, 719 F. 3d. 583,

588, (7<sup>th</sup> Cir. 2013).

Petitioner asserts 4B1.1 and (2) of the career offender guidelines despite Booker, retained its force and

Effect of mandatory law. Thus within the meaning of 2241 because the career offender classification

Provided during petitioner's first opportunity on appeal or Section 2255. The Mathis decision rendered

Iowa burglaries invalid for purpose of enhancement predicates. Petitioner is actually innocent as well

Factually innocent of the increased mandatory sentence. Petitioner like the defendants in Bousley,

Only after the supreme court clarified the language in the residual clause and the language in the Mathis

Case because of vagueness and arbitrariness using the previous language relied upon by the court

Petitioner had no unobstructed procedural shot at presenting his claims of actual and factual

Innocence under the correct guideline language Beckles did not address this fact and the district

Court ignored the question. Only after the Descamps and Mathis decisions did petitioner have

*an unobstructed procedural shot. rests on the*

*Plausibility of petitioner's actual innocence to the increase of petitioner mandatory classification*

*Of the career offender relying upon pre-Circuit precedent. The district court misapplied the analysis in*

*Hill V. Masters, 836 F. 3d. 591, 600, (6<sup>th</sup> Cir. 2016) Compare: Lester V. Flournoy, 909 F. 3d. 708, 712, (*

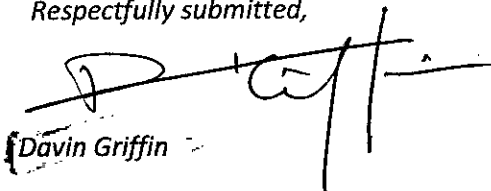
*4<sup>th</sup> Cir. 2018); Brown V. Caraway, 719 F. 3d. 583, (7<sup>th</sup> Cir 2013) Begay V. United States, 553 U.S. 137,*

128 s. Ct. 1581, 170 L. Ed. 2d. 490 (2008)

Wherefore, petitioner requests that this court grant the Writ of Certiorari and remand this matter back to the Sixth Circuit Court of appeals granting petititoner relief based upon his actual and factual innocence to the sentence imposed using an arbitrary and vague classification for good cause shwn:

DATED THIS 17<sup>TH</sup> DAY OF June 2021

Respectfully submitted,

  
Davin Griffin

6-24-21

PETITION FOR WRIT OF CERTIORARI

*D. Griffin* 6-24-21

DAVIN GRIFFIN

#13357-029

FEDERAL CORRECTIONAL INSTITUTION

P.O. BOX 1000

MILAN MI. 48160

PRO SE;