

21-5775

ORIGINAL

case NO

Supreme Court, U.S.
FILED

SEP 03 2021

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In THE
Supreme Court of the
United States

Peter George Noe

✓

United States of America

on Petition for a writ of
certiorari to

Eighth circuit court of Appeals

Peter George Noe # 10849-041

U.S. prison / max

P.O. Box 8500

Florence, CO, 81226

Question Presented

- ① Is the writ of Audita querela under the all writs act 1651(a) available to fill a "gap" in the current system of post conviction relief for federal inmates?

List of Parties

All parties appear in the caption of the case on the front page.

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Appendix A, Eighth circuit summarily affirmed Dist court opinion

Appendix B, Distrit court denial of writ of Audita Querela
1651 (A)

Table of Authority cited

cases

Page,

United States v Pirani, 406 F.3d 543, 552 4, 5
(8th cir 2005)

United States v Morgan, 346 U.S. 502, 510, 5, 6
74 Sct 247, 98 L 248 (1954)

Statutes and rules.

28 USC 2255

1651(A) writ of Audita Querela.

In the
Supreme Court of the
United States

Petition for writ of certitraci

Petitioner respectfully prays that a
writ of certitraci will issue to
review the judgement below

Opinions Below

The opinion of the United States
Court of Appeals for the Eighth
circuit is at appendix (A) to
the petition and is unpublished

The opinion of the district court
appears at appendix (B) and
is unpublished

Jurisdiction

The date on which the
United States Court of
appeals was Aug, 27, 21

No petition for
rehearing was timely
filed in the case

The jurisdiction of this
court is respectfully
invoked under 28 U.S.C.
1254 (1)

constitutional and statutory
provisions involved

Audita Querela under the
all writs act 1651 (A)

28 USC 2255.

Amendment 782,

Statement of the case.

Plaintiff has Eight points in guideline errors in his P.S-T as to his criminal history.

Noe

Should be a criminal history category of IV, but because of the errors has a category VI,

The rule in the Eighth circuit is that "An error only affects substantial rights if there is a reasonable probability that in its absence a more favorable sentence would be imposed" See Pirani v United States, 406 F.3d 543, ~~552~~ 8th cir 2005.

Noe's offense level is 40 so even with the errors corrected Noe's guideline range would be 360 months to life,

Statement of the case

Noe's guideline errors were not and are not cognizable on direct appeal or in 28 U.S.C. 2255 because under Pirani, Id. "Noe" could not show absent the errors a more favorable sentence would be imposed."

In 2016 the Sentencing Commission passed Amendment 782, or what's known as the all drugs minus two act. It was made retroactive.

Noe moved under Audita Querele 1651(A) in the district court and invoked the high court's ruling in United States v Morgan, 346 U.S. 502, 510 74 S. Ct 247, 98 L 248 (1954)

Noe explained that when the Sentencing Commission passed Amendment 782

Statement of the case

and made it retroactive it created a "true gap" in the current system of post conviction relief.

Amendment 782 lowered Noes offense level to a level 38

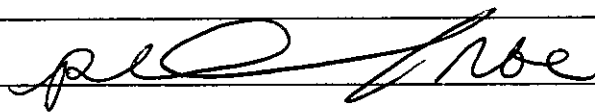
That made the errors truly affect substantial rights because if the errors were corrected Noes guideline range would be 324-405 months or level 38 cat IV,

The District Court denied to reach the merits of the case concluding that the writ of Audita Querela 1651 (A) is unavailable in federal Sentencing in direct conflict with Morgan-Id.

Conclusion

the Petition for a writ of
certiorari should be
granted

Respectfully Submitted

 R. D. Roe

Date 9/2/21 Sept, 2, 21