

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DHEADRY L. POWELL - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DHEADRY L. POWELL REG. 11033-031
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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- I. UNDER THE FIRST STEP ACT, DID THE DISTRICT COURT FAIL TO PROVIDE A SUFFICIENTLY COMPELLING JUSTIFICATION THAT THOROUGHLY EXPLAINS IT'S ABOVE THE GUIDELINES RESENTENCING?
- II. UNDER THE FIRST STEP ACT, DID THE DISTRICT COURT MULTIPLY PROHIBITED MONEY LAUNDERING ENHANCEMENTS THAT INCREASED PETITIONER'S UNDERLYING OFFENSE LEVEL?

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§1B1.5(c)	
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PSR PAGE.11, PARAGRAPH. 43	
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MEMORANDUM. AND ORDER DOC.208, PAGE. 2, PARAGRAPH. 1, LINES 7-8). ...	
Pub. L. No. 115-391. §404. 132 STAT. 5194 (2018).	

OPINIONS BELOW

THE OPINIONS AND ORDERS OF THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT.....

APPENDIX A-

UNITED STATES v. POWELL, 2021 U.S. APP LEXIS 1165 (10TH CIR., JAN 15, 2021)

THE OPINIONS AND ORDERS OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS.....

APPENDIX B-

UNITED STATES v. POWELL, 2020 U.S. DIST. LEXIS 70335 (D. KAN., APR 21, 2020)

JURISDICTION

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY
CASE WAS: JANUARY 15, 2021.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C § 1254(1).

STATEMENT OF THE CASE

THE DISTRICT COURT MEMORANDUM AND ORDER RESENTENCING PETITIONER UNDER THE FIRST STEP ACT IS LATENT, AMBIGUOUS AND VOID A FIRST STEP ACT AMENDED GUIDELINE CALCULATION FOR PETITIONERS COUNT ONE §841(B)(1)(A) UNDERLYING OFFENSE.

THE DISTRICT COURT WANTON MEMORANDUM AND ORDER RESENTENCING PETITIONER UNDER THE FIRST STEP ACT APPLIED DUPLICITY BY MULTIPLYING TWO PROHIBITED CHAPTER THREE MONEY LAUNDERING ENHANCEMENTS BY MERGING THEM TOGETHER WITH PETITIONER'S UNDERLYING OFFENSE LEVEL, AND USING LATENT IN PETITIONER'S PSR TO CONCEAL THAT THE COURT NEVER SENTENCED PETITIONER FOR HIS UNDERLYING OFFENSE ONLY. THE DISTRICT COURT ACTIONS CREATED AN INCREASE TO PETITIONERS ABOVE THE GUIDELINES STATUTORY MAXIMUM SENTENCE OF 480- MONTHS.

THE DISTRICT COURT MEMORANDUM AND ORDER FAILS TO PROVIDE A SUFFICIENTLY, AND COMPELLING JUSTIFICATION THAT THOROUGHLY EXPLAINS ITS RESENTENCING RATIONALE UNDER THE FIRST STEP ACT. CONGRESS INTENDED DISTRICT COURTS TO CONDUCT COMPLETE REVIEW OF THE RESENTENCING MOTION ON THE MERITS. THIS WAS CLEARLY NOT DONE IN THE DISTRICT COURT MEMORANDUM AND ORDER.

REASONS FOR GRANTING THE PETITION

THE FIRST STEP ACT CONTEMPLATES A BASE LINE OF PROCESS THAT MUST INCLUDE AN ACCURATE AMENDED GUIDELINE CALCULATION BECAUSE LIKE ALL SENTENCES IMPOSED BY THE DISTRICT COURT, THE RESENTENCING DECISION UNDER THE FIRST STEP ACT MUST NOT ONLY BE PROCEDURALLY REASONABLE, BUT SUBSTANTIVELY REASONABLE. BECAUSE CONGRESS WAS THE ACTOR THAT LOWERED THE RELEVANT GUIDELINE RANGE IN THE FIRST STEP ACT CONTEXT, THE AMENDED GUIDELINE IS ON A STRONGER GROUND THAT IN TURN INCREASES THE REQUIREMENT OF A SUFFICIENTLY COMPELLING JUSTIFICATION FOR AN ABOVE GUIDELINES RESENTENCING DECISION.

THE DISTRICT COURT MEMORANDUM AND ORDER IS AMBIGUOUS AND LATENT CONCERNING A §1B1.1, OR A PSR, FIRST STEP ACT AMENDED GUIDELINES CALCULATION THAT EXPLAINS THE COURT'S ABOVE THE GUIDELINES RESENTENCING OF PETITIONER TO A STATUTORY MAXIMUM 480 MONTHS. IT IS ALSO VOID OF EXPLAINING, HOW THE DISTRICT COURT APPLIED "THE FIRST STEP ACT" AND IT'S AMENDED GUIDELINES TO PETITIONERS COUNT ONE §841(B)(1)(A) UNDERLYING OFFENSE LEVEL ONLY.

THE DISTRICT COURT MEMORANDUM AND ORDER MAKES THE FOLLOWING STATEMENTS; THE COURT THEN RE-CALCULATED MR. POWELL'S GUIDELINES RANGE USING THE AMENDED GUIDELINES AND APPLYING THE SAME ENHANCEMENTS IT APPLIED AT MR. POWELL'S ORIGINAL SENTENCING. "THIS CALCULATION RESULTED IN A TOTAL OFFENSE LEVEL OF 43 AND AN ADVISORY

GUIDELINES RANGE OF LIFE IMPRISONMENT (MEMORANDUM AND ORDER DOC.

208, PAGE 2, PARAGRAPH 1, LINES 4-7). THE DISTRICT COURT STATES THAT IT

APPLIED THE SAME ENHANCEMENTS, (PLURAL), AT PETITIONER'S

RESENTENCING AS IT DID AT HIS ORIGINAL SENTENCING. PETITIONER'S PSR

SHOWS HIM TO HAVE BUT ONE (1) ENHANCEMENT FOR HIS COUNT ONE

§841(B)(1)(A) UNDERLYING OFFENSE AND THAT IS §2D1.1(B)(1), [REDACTED]

[REDACTED], AND NOT THE ENHANCEMENTS (PLURAL), SPOKEN TO BY THE

DISTRICT COURT. THE ONLY OTHER ENHANCEMENTS IN PETITIONER'S PSR ARE

CONTROLLED BY §2S1.1, FOR MONEY LAUNDERING AND THEY ARE §3B1.1(A),

AND §3C1.1, [REDACTED]

THESE MONEY LAUNDERING CHAPTER THREE ENHANCEMENTS ARE PROHIBITED

BY THE U.S.S.C. AND CANNOT BE APPLIED TO UNDERLYING OFFENSES.

APPLICATION OF CHAPTER THREE ADJUSTMENTS, NOTWITHSTANDING

§1B1.5(C). IN CASES IN WHICH SUBSECTION (A)(1) APPLIES, APPLICATION OF ANY

CHAPTER THREE ADJUSTMENT SHALL BE DETERMINED BASED ON THE OFFENSE

COVERED BY THIS GUIDELINE (I.E., THE LAUNDERING OF CRIME DERIVED

FUNDS), AND NOT ON THE UNDERLYING OFFENSE FROM WHICH THE

LAUNDERED FUNDS WERE DERIVED, (§2S1.1, CMT., APPLICATION NOTE 2(C)).

THE DISTRICT COURT KNOWINGLY AND INTELLIGENTLY MULTIPLIED

PROHIBITED, CHAPTER THREE MONEY LAUNDERING ENHANCEMENTS, §3B1.1,

§3C1.1 [REDACTED]

TO PETITIONER'S COUNT

ONE §841(B)(1)(A) UNDERLYING OFFENSE THAT INTENSIFIED PETITIONER'S

TOTAL OFFENSE LEVEL FROM FORTY (40) TO FORTY-SIX (46), BY MULTIPLYING

TWO CHAPTER THREE MONEY LAUNDERING ENHANCEMENTS, [REDACTED]
[REDACTED] WITH PETITIONER'S UNDERLYING
OFFENSE LEVEL. THIS PREJUDICED PETITIONER WHO RECEIVED A STATUTORY
MAXIMUM SENTENCE OF 480 MONTHS.

THE DISTRICT COURT THEN MAKES THE INACCURATE CLAIM, THAT PETITIONER
OFFENSE LEVEL IS 43, PETITIONER'S PSR OFFENSE LEVEL FOR HIS UNDERLYING
OFFENSE IS 40 [REDACTED] CONTRARY TO THE COURT'S
MEMORANDUM AND ORDER. THE COURT ALSO MAKES THE FALSE CLAIM THAT
PETITIONER IS NOT ELIGIBLE FOR A SENTENCE REDUCTION, (MEMORANDUM
AND ORDER DOC. 208, PAGE 2, PARAGRAPH 1, LINES 7-8). A CLOSE
EXAMINATION OF PETITIONER'S PSR [REDACTED], WILL SHOW
PETITIONER'S COUNT ONE §841(B)(1)(A) UNDERLYING OFFENSE LEVEL TO BE
FORTY (40), A SENTENCING GUIDELINE RANGE OF 360- LIFE, AFTER CORRECTLY
APPLYING THE FIRST STEP ACT AND THE AMENDED GUIDELINES PETITIONER'S
UNDERLYING OFFENSE LEVEL IS LOWERED FROM FORTY (40), TO THIRTY-SIX
(36), LOWERING HIS SENTENCING GUIDELINES RANGE TO 262-327. CONTRARY TO
THE DISTRICT COURT MEMORANDUM AND ORDER (M & O DOC. 208 PAGE 2,
PARAGRAPH 1, LINES 7-8), PETITIONER IS ELIGIBLE FOR A SENTENCE
REDUCTION BECAUSE THE FIRST STEP ACT LOWERS BOTH HIS UNDERLYING
OFFENSE LEVEL IN ADDITION, TO HIS SENTENCING GUIDELINES RANGE.

THE FIRST STEP ACT ITSELF INDICATES THAT CONGRESS CONTEMPLATED CLOSE
REVIEW OF RESENTENCING MOTIONS. PUB. L. NO. 115-391, §404, 132 STAT. 5194

(2018) STATES THAT A PRISONER CANNOT SEEK RELIEF UNDER THE ACT TWICE IF THE FIRST MOTION WAS DENIED, AFTER A COMPLETE REVIEW OF THE MOTION ON THE MERITS. PUB. L. NO. 115-391, §404, 132 STAT. 5194 (2018). THOUGH COMING FROM THE PROVISION THAT GOVERNS REPEAT RESENTENCING MOTIONS, THIS LANGUAGE SHOWS THE DIMENSIONS OF THE RESENTENCING INQUIRY CONGRESS INTENDED DISTRICT COURTS TO CONDUCT: COMPLETE REVIEW OF THE RESENTENCING MOTION ON THE MERITS. WHILE COMPLETE REVIEW DOES NOT AUTHORIZE PLENARY RESENTENCING, A RESENTENCING PREDICATED ON AN ERRONEOUS OR EXPIRES GUIDELINE CALCULATION WOULD SEEMINGLY, RUN AFOUL OF CONGRESSIONAL EXPECTATIONS. THE SENTENCING COMMISSION HAS ACKNOWLEDGED THOSE EXPECTATIONS: IT HAS INFORMALLY ADVISED THAT REGARDLESS OF WHETHER RESENTENCING UNDER THAT ACT CONSTITUTES A PLENARY RESENTENCING PROCEEDING OR A MORE LIMITED SENTENCE MODIFICATION PROCEEDING, THE ACT MADE NO CHANGES TO 18 U.S.C.S. §3553(A), SO THE COURTS SHOULD CONSIDER THE GUIDELINES AND POLICY STATEMENTS, ALONG WITH OTHER §3553(A) FACTORS, DURING THE RESENTENCING.

THE FIRST STEP ACT WAS PASSED BY CONGRESS AND SIGNED BY THE PRESIDENT OF THE UNITED STATES OF AMERICA, IN AN EFFORT TO REMEDY THE DISPROPORTIONATELY HARSH SENTENCES IMPOSED FOR CRACK COCAINE OFFENSES. THE COURTS 480-MONTH SENTENCE UNDERMINES CONGRESS AND THE PRESIDENT'S PURPOSE AND INTENT FOR THE FIRST STEP ACT.

CONCLUSION

FOR THE REASONS ABOVE, PETITIONER RESPECTFULLY REQUESTS FOR THE COURT TO REMAND AND VACATE THE DISTRICT COURT'S ABOVE GUIDELINES 480-MONTH SENTENCE, WITH INSTRUCTIONS, NOT TO APPLY MONEY LAUNDERING ENHANCEMENTS WHEN RESENTENCING PETITIONER FOR HIS UNDERLYING OFFENSE.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED.

RESPECTFULLY SUBMITTED,

D. Powell

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