21-6062

IN THE
UNITED STATES SUPREME COURT
No._____

ORIGINAL

CRAIG S. JAMES;

Petitioner

-versus-

UNITED STATES OF AMERICA;

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Craig S. James# 15508-039
Petitioner
FCI
P.O. Box 1000
Cresson, Pennsylvania 16630

QUESTIONS PRESENTED

I. BECAUSE THERE IS A CONFLICT AMONG THE UNITED STATES CIRCUIT COURTS OF APPEAL OVER THIS MATTER, CAN THE SENTENCING COMMISSIONS' COMMENTS TAKE PRECEDENTS OVER THE PLAIN, STATUTORILY CONSTRUED LANGUAGE OF THE UNITED STATES SENTENCING GUIDELINES?

Petitioner James answers "No."

The 6th Circuit COA thinks "Yes."

The US Government answers "Yes."

This US Supreme Court should resolve the conflict.

II. WAS THE US DISTRICT COURT'S OVER PREOCCUPATION INSTEAD OF PETITIONER JAMES' POST-CONVICTION REHABILITATION AND SUBSTANTIAL ASSISTANCE TO THE GOVERNMENT, CONTRARY TO WHAT THIS US SUPREME COURT HELD IN PEPPERS v UNITED STATES, 562 US 476; 131 S CT 1229 (2011) AND WHAT NUMEROUS UNITED STATES CIRCUIT COURTS OF APPEALS ALL AGREE TO?

Petitioner James answers "Yes."

The US 6th Circuit COA believes "No."

The US District Court opinioned "No."

The US Government answered "No."

This US Supreme Court should answer the question.

III. CAN THE US DISTRICT COURT, CONTRARY TO WHAT THIS US SUPREME COURT HELD IN ALLEYNE v UNITED STATES, 570 US 99; 133 S CT 2151 (2013), UPWARDLY DEPART FROM PETITIONER JAMES' 70-87 MONTHS RECOMMENDED GUIDELINE MINIMUM SENTENCE TO 108 MONTHS BY MAKING AN INDEPENDENT FINDING OF FACT THAT PETITIONER JAMES DID NOT PLEAD GUILTY TO AT THE PLEA HEARING?

Petitioner James answers "No."

The US 6th Circuit COA believes "Yes."

The US District Court opinioned "Yes."

The US Government answered "Yes."

This US Supreme Court should answer the question.

PARTIES

1. Craig James is the Petitioner in this certiorari. He is identified by the Bureau of Prison (BOP) as Craig Schenvisky James #15508-039, where he is serving his sentence at Talladega Federal Prison Camp, PMB 2000, Talladega, AL. 35160.

2. The United States of America, 950 Pennsylvania Avenue NW, Washington, D.C. 20530, located within the US Department of Justice and is headed by US Attorney General, Merrick B. Garland, but is represented by the United States Attorney General Assistant, Kate Zell, at P.O. Box 208, Grand Rapids, MI. 59501

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IN THE
SUPREME COURT OF THE UNITED STATES
No._____

CRAIG S. JAMES

Petitioner

-against-

THE UNITED STATES OF AMERICA

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

DECISIONS BELOW:

The decision of the United States Sixth Circuit Court of Appeals (hereafter US 6th Circuit COA) in United States v Craig Schenvisky James, 19-2491 was entered on March 22, 2021[1] and it is accompanying the Petition For a Writ of Certiorari as A.1. The US District Court December 19, 2019 judgment upwardly departing from the Sentencing Commissions' USSG minimum guideline range recommendation of 70 - 87 months is

[1] Though the 6th Circuit COA entered the judgment/opinion on March 22, 2021, Petitioner Craig James was prevented from timely filing a motion for rehearing when: 1. His trial/appellate counsel didn't notify him about the March 22, 2021 decision until May, 2021 in a letter dated for April 22, 2021, marked here as A.4; 2. The Bureau of Prisons (BOP) deliberately delaying in transmitting Petitioner James' legal in retaliation for grievances; 3. Covid-19 quarantine restrictions/lockdowns at the facility Petitioner James housed; 4. Petitioner James was infected with Covid-19 himself; 5. Covid-19 overall total impact on postal services and operation of the BOP. Petitioner James' untimely submitted a MOTION FOR REHEARING/w SUGGESTION FOR REHEARING EN BANC (marked as A.5) and motion for EXTENSION OF TIME (marked here as A.6) to file that motion for the "GOOD CAUSE" reasons hereto numbered 1 - 5. Those motions were denied summarily w/o hearing by the 6th Circuit COA clerk on July 8, 2021. That decision is marked here as A.7.

accompanying as A.2. The Sentencing Transcript from UNITED STATESv CRAIG SCHENVISKY JAMES, 1:18-CR-167 before US District Court judge Paul L. Maloney P25197 is accompanying and marked as A.3.

JURISDICTION:

The judgment/order/opinion of the US 6th Circuit COA was entered on March 22, 2021, which was an ORDER/JUDGMENT/OPINION denying Petitioner Craig S. James' appeal of the US District Court's December 11, 2019 unlawful and abusive upward departure from the the Sentencing Commissions' recommended minimum guideline range of 70 - 87 months. The March 22, 2021 JUDGMENT/ORDER/OPINION of the US Sixth Circuit Court of Appeals conferred jurisdiction on this United States Supreme Court pursuant to 28 USC § 2101; S Ct. R. 10.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

This case involves the United States Constitution VIII Amendment, which provides in pertinent part:

VIII AMENDMENT

"Excessive bail shall not be required...nor cruel and unusual punishments inflicted."

In addition this case involves the language of 18 USC § 1307, which states in pertinent part:

18 USC § 1307(a)(1)(A)(b)(1)(c)

"The provision of sections 1301, 1302, 1303, and 1304 shall not apply to --

(1) an advertisement, list of prizes...concerning a lottery conducted by a State acting under the authority of State law which is --

(A) contained in a publication published in that state or in a State which conducts such lottery...

(b) The provisions of sections 1301, 1302 and 1303 shall not apply to the...mailing --

(1) to addresses within a State of...tickets or material concerning a lottery which is conducted by that State acting under the authority of State law[2]

(c) For the purposes of this section (1) "State" means a State of the United States..."

This case involves the language of 18 USC § 3553(e), which states in pertinent part:

"Upon motion of the Government, the district court shall have the authority to impose a sentence below a level established by statute as a minimum sentence as to reflect a

[2] The State laws of Michigan authorizing lottery playing by any person in Michigan are Const. 1963, Article IV § 41 and Michigan Compiled Law (MCL) 432.25.

defendant's substantial assistance[3] in the...prosecution of another person who has committed an offense. Such sentence shall[4] be imposed in accordance with the guidelines..."

This case also involves the language of 18 USC § 3553(a)(1)-(4)(b)(1), which states in pertinent part:

18.USC.§.3553(a)(1)-(4)(b)(1)

"(a) **Factors to be considered in imposing a sentence.** -- The court shall impose a sentence sufficient but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider --

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;
(2) the need for the sentence imposed --
(A)s to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
(B) to afford adequate deterrence to criminal conduct;
(C) to protect the public from further crimes of the defendant; and
(D) to provide the defendant with needed education or vocational training, medical care....
(3) the kinds of sentences available
(4) the kinds of sentences and the sentencing range established for --
(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines --
(i) issued by the Sentencing Commission..."
(b) **Application of guidelines in imposing a sentence** --
(1) **In general** - Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind...not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines..."

Consequently this case involves the language of 28 USC § 994(n)(h), which state in seriatim:

28.USC.§.994(n)(h)

"(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would have otherwise be imposed,

---

fn[3] Craig James' "extra-ordinary" "substantial assistance" was lauded incessantly by the government, alluded to by the trial judge and Petitioner Craig James' trial attorney. Therefore, there is no denying his assistance to the government in the prosecution of other defendants was valuable to the government and needed to successfully prosecute those other defendants.

fn[4] "Congress used mandatory shall...to impose discretionless obligation." National Ass'n v Defenders of Wildlife, 551 US 644; 127 S Ct 2518, 2537 (2007). "Congress used shall to impose discretionless obligation." Lopez v Davis, 531 US 230, 241; 121 S Ct 714 (2001).

including a sentence that is lower than that established by statute as a minimum sentence to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense."

"(h) The Commission shall assure that the guidelines specify a sentence to term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and --
(1) has been convicted of a felony that is --
(A) a crime of violence; or
(B) an offense described in section 401 of the Controlled Substance Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955 and 959) and chapter 705 of title 46; and
(2) has previously been convicted of two or more prior felonies, each of which is--
(A) a crime of violence; or
(B) an offense described in section 401 of the Controlled Substance Act (21 U.S.C. 841)..."

This case involves the language of 21 USC § 851, which states in pertinent part:

21 USC § 851(a)(1)

"(a) Information filed by United States Attorney
(1) No person who stands convicted of an offense under this part shall be sentenced to increased punishment by reason of one or more prior convictions, unless...before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon.
(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed."

In addition and finally, this case involves the language of the United States Sentencing Guideline 481.2(b), which states in pertinent part:

USSG 4B1.2(b)

"(b) The term 'controlled substance offense' means an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of controlled substance...or the possession of a controlled substance with intent to manufacture, import, export, distribute, or dispense."

STATEMENT OF THE CASE

Petitioner Craig James was involved in a conspiracy to distribute and possess with intent to distribute cocaine and cocaine base from late April, 2018 to May 24, 2018. (Appendix A.3, Pp. 15, 25). On May 24, 2018 Petitioner Craig James and 26 other co-defendants were indicted for conspiring to distribute and possess with intent to distribute cocaine and cocaine base.

Following Petitioner Craig James' arrest he immediately cooperated with law enforcement. In February, 2019 Petitioner Craig James pled guilty to the conspiracy to distribute cocaine. Following his guilty plea, on October 31, 2019 Craig James offered his substantial assistance to the Government in the prosecution of others by testifying against four codefendants. That substantial assistance was acknowledged [See Appendix A.3, Pp. 4, 10, 13-14, 24-25] as significant and needed by the Government to prosecute four higher level drug dealers, but without any real benefit sentence wise for Petitioner Craig James in spite of the language and intent of 18 USC § 3353(e) and 28 USC § 994(n).

In the interim of time between Craig James' February 2019 guilty plea and testimony against four (4) codefendants on October 31, 2019, the United States Sixth Circuit Court of Appeals (hereafter US 6th Circuit COA) ruled in United States v Jeffrey Havis, 927 F3d 382 (6th Cir. 2019) that any inchoate offense or conspiracy did not fit the definition of a controlled substance offense as meant by USSG § 481.2(b) and could not be used to sentence a defendant (here Petitioner Craig James) as a Career Offender subject to the language of 28 USC § 994(h). Of great import, the date of that decision of the US 6th Circuit COA -- a law of the US Sixth Circuit jurisdiction -- is June 6, 2019. On June 6, 2019 Petitioner Craig James' Presentence Investigation Report (See, Appendix A.8) erroneously [not in acknowledgment of the United States v Havis, 927 F3d 382 (6th Cir. 2019) decision] miscalculated Petitioner Craig James' total offense level at 34 and criminal history at level VI with a Guideline range of 262 to 327 months based on the mistaken belief Petitioner Craig James' conviction made him a Career Offender subject to the language of 28 USC § 994(h).

Further, the Government's USSG § 5K1.1; 18 USC § 3553(e) Motion To Downwardly Depart was made on November 11, 2019 (See, Appendix A.9), five months after the United States v Havis, 927 F3d 382 (6th Cir. 2019) decision, in spite of the Government's later contentions that had it known the 6th Circuit COA was going to rule the way it

did in Havis it would not have made the § 5K1.1; 18 USC § 3553(e). That lack of knowledge about Havis was the Government's repeated unreasonable and illogical contention at sentencing as to why the US District Court should not sentence Petitioner Craig James to the 70 - 87 months that the USSG recommended as the minimum range for sentence. See, Appendix A.3, ST, Pp. 9-11, 23-24). With all of the judicial resources in world at their disposal, internet access, manpower et al the Government has yet to explain why five (5) months after the 6th Circuit COA decision was made and became the law of the 6th Circuit the Government still didn't know about it when it was making its § 5K1.1; 18 USC § 3553(e) MOTION TO DOWNWARDLY DEPART due to Petitioner James' "substantial assistance" in the prosecution of four (4) other higher level drug dealing kingpin defendants.

On December 19, 2019 Petitioner Craig James was brought before the US District Court for sentencing. Again (this is sixth months/a half year later) the Government request the District Court to grant their § 5K1.1; 18 USC § 3553(e) Motion To Downwardly Depart due to Craig James' substantial assistance in the prosecution of others, while claiming all the time to not having any knowledge about the United States v Havis, 927 F3d 382 (6th Cir. 2019). Appendix A.3, Pp. 9-11, 23-24. The US District Court granted the Government's § 5K1.1; 18 USC § 3553(e) Downward Departure Motion on December 19, 2019, while in fact acknowledging that the Havis decision precluded Petitioner Craig James from being sentenced as Career Offender, subject to the sanctions of 28 USC § 994(h). However, both the Government and US District Court decided that Petitioner James should be punished as a Career Offender despite what Havis says and in spite of the fact that the Government never filed a 21 USC § 851 Information or Indictment. They both noted that "if" Craig James "is not a <u>technical</u> Career Offender as the term is defined in the <u>Guidelines</u> and as interpreted by <u>appellate courts</u>, he <u>certainly</u> has made a career out of selling drugs."

For that reason the Government requested the US District Court impose a sentence

within the Guideline range of 140 to 175 months imprisonment, asserting that is what Petitioner Craig James' guideline range would have been had he been scored as a Career Offender, after including a six-level reduction under USSG § 5K1.1. The US District Court upwardly departed from the 70-87 months recommended guideline minimum sentence range to 108 months "due" to Craig James' "prior criminal conduct, as it relates to "drug dealing." The US District Court made it clear that it felt "up to now, he has not managed to absorb the full lessons of prior convictions." The irony being the US District Court agreed Petitioner James had done a 360° turn about (Appendix A.3, p. 25), was working, going to school, doing substance abuse treatment (Appendix A.3, Pp. 18-20, 25).

Even though Petitioner Craig James' contrition and compunction was quite evident where he stated he wanted to be a person that made a difference in the community as well as help younger people not go down the same road he had traveled (Appendix A.3, Pp. 18-21) and the US District Court even acknowledging Petitioner Craig James was "indeed in a different place" now than when he was involved in the conspiracy and believed Petitioner James could be a law abiding citizen, the US District Court departed upwardly from the USSG recommended minimum sentence of 70 - 87 months to 108 months, by justifying the departure on the grounds that the Government would not had made the 5K1.1; 18 USC § 3553(e) motion to downwardly depart from the statutory maximum if the Government knew Havis was going to be decided the way it was decided. (Appendix A.3, Pp. 9-11). That's a half a year later after the Havis decision though that the Government is purporting to not have any knowledge about about Havis when it made the motion on November 11, 2019, five months after the Havis decision (Appendix A.9) and on December 19, 2019 when the Government asked the US District Court to grant the 5K1.1; 18 USC § 3553(e) motion six (6) months after the Havis decision.

The US District Court's only basis for the upward departure was that Craig James had priors that couldn't be used to make him subject to the Career Offender punishments

under 28 USC § 994(h) so it was compensating for that by sentencing him "at or near" the minimum he would have received were 28 USC § 994(h) applicable, though it's couched under the guise of 18 USC § 3553(a) without any regard for the remainder of 18 USC § 3553(a)(b)(e) nor the language of 28 USC § 994(h)(n).

Petitioner Craig James appealed the US District Court upward departure from his recommended minimum guideline range of 70 - 87 months to the US 6th Circuit COA. The US 6th Circuit COA found that because the PSIR (Appendix A.8) was miscalculated by giving Craig James a guideline range of 262 to 327 months, as if he were actually being sentenced as a Career Offender pursuant to 28 USC § 994(h), no error occurred. Appendix A.1, p.4. The US 6th Circuit COA found the US District Court's unjustified, statute violative and abusive upward departure was reasonable. Appendix A.1, Pp 5-6, 10.

The 6th Circuit COA panel also found that the US District Court could ignore Alleyne's principles by upwardly departing from the "statutory Guideline minimum recommended range of 70 - 87 because during Petitioner James' substantial assistance to the Government when he testified on four (4) codefendants and at Sentencing (Appendix A.3, p. 16) he admitted that due to his own drug dependency from a gun shot wound he had been basically a street level drug dealer on and off for his entire life that some how constituted a confession or admission to an element of his conspiracy crime to the degree that the US District Court could upwardly depart from the minimum guideline range based on its independent finding of fact that Petitioner Craig James had in deed been a drug dealer all his life and consequently a Career Offender and subject 28 USC § 994(h) in spite of what Alleyne and Havis disapproved of. Appenndix A.1, Pp. 13-14.

However, this March 22, 2021 US 6th Circuit COA decision did reach Petitioner James' hands, due to appointed appellate counsel's negligence (See, Appendix A.4) or the Bureau of Prison (BOP) interference or the covid-19 epidemic (See, Appendix A.6, Pp. 1-3) until circa May, 2021 (See, Appendix A.4, Appendix A.6, p. 1), which was two whole months past the March 22, 2021 6th Circuit COA decision and impossible for

Petitioner James to have met the FRAP 40 14 days requirement. Petitioner Craig James then tried to file his motion for rehearing with suggestion for rehearing en banc out of time (Appendix A.5) with an accompanying motion for extension of time (Appendix A.6) wherein explaining and showing he had good cause for his tardiness in filing the motion. The clerk or case manager or en banc coordinator decided never to submit either motion to the 6th Circuit COA and just outright returned the pleadings in spite of the highly unusual covid-19 pandemic having caused rule changes and leniency throughout the entire United States of America on every level, federal and state. See, Appendix A.7.

BASIS FOR GRANTING CERTIOARAI

Per US Supreme Court Rule (US S Ct, R) 10(a)(c):

i. There is a conflict among federal circuit courts of appeals;
ii. There is a conflict among different panels of a single court of appeals;
iii. There is a conflict between a decision of the United States Supreme Court and a subsequent decision of a federal court of appeals.

Long ago in Boag v McDougall, 454 US 364, 368; 102 S Ct 700 (1982) this US Supreme Court held what should apply to this particular case before the US Supreme Court, serving as the basis for granting certiorari even to a Petitioner in pro se or in propria persona, where that US Supreme Court opinined:

"...we must never forget that this Court is not a forum for correction of error...The Supreme Court is not and never has been, primarily concerned with correction of errors in lower court decisions...The function of the Supreme Court is, therefore, to resolve conflicts of opinion on federal question that have risen among lower courts, to pass upon questions of wide import under Constitution, laws and treaties of the United States, and to exercise supervisory power over lower federal courts."

Petitioner Craig James can only hope the US Supreme Court's word today is as strong and good as it was in 1982 in spite of him being pro se because the present case before the US Supreme Court falls into each of these categories or reasons alluded to as a basis for granting certiorari.

A. CONFLICT AMONG THE UNITED STATES CIRCUIT COURTS OF APPEAL OVER WHETHER THE SENTENCING COMMISSIONS' COMMENTS TAKE PRECEDENT OVER THE PLAIN, STATUTORILY CONSTRUED LANGUAGE OF THE UNITED STATES SENTENCING GUIDELINES

In the present case the matter comes down to the conflict between what the US 6th

Circuit COA's United States v Havis, 927 F3d 382 (6th Cir. 2019) and the US District of Columbia Circuit Court of Appeals in US v Winstead, 890 F3d 1082, 1091 (D.C. Cir. 2018) hold when they each opine the Sentencing Commissions' note# 1 comment to USSG § 4B1.2(b) do not take precedent over the plain language of § 4B1.2(b) verses the US First Circuit Court of Appeals in US v Piper, 35 F3d 611, 617 (1st Cir. 1994); US Second Circuit Court of Appeals in US v Whitaker, 958 F2d 1551, 1553 (2nd Cir. 1991); US Seventh Circuit Court of Appeals in US v Adams, 934 F3d 720, 729 (7th Cir. 2019); US Eighth Circuit Court of Appeals in US v Mendoza-Figueroa, 65 F3d 691, 694 (8th Cir. 1995); US Ninth Circuit Court of Appeals in US v Crum, 934 F3d 963, 966 (9th Cir. 2019 and the US Eleventh Circuit Court of Appeals in US v Smith, 54 F3d 690, 693 (11th Cir. 1995) all hold about the Sentencing Commissions' comments.

The former two US Circuit Courts of Appeals opine that the language of § 4B1.2(b) presents a very detailed definition of what a controlled substance is and it plainly excludes any inchoate offense like attempt or conspiracy. While the latter US Circuit Courts of Appeals all hold that the Sentencing Commissions' note# 1 comment to § 4B1.2(b) is within the broad sphere of the Sentencing Commission's interpretive authority and is a reasonable interpretation of the Career Offender guidelines. The latter all contend that conspiracy and attempts do not conflict with the language of the guideline itself. The former, like US v Havis, 927 F3d 382, 386-87 hold that "the text of § 4B1.2(b) controls and it makes clear that attempt (including conspiracy) crimes do not qualify as controlled substance offenses." Notably this US Supreme Court held in Stinson v United States, 508 US 36, 38; 113 S Ct 1913 (1993) that:

"Commentary in the Guideline Manual that interprets or explains a guideline is authoritative unless it...is inconsistent with or a plainly erroneous reading of that guideline."

B. THE CONFLICT BETWEEN 6TH CIRCUIT COA PANELS

In the present case the United States v Havis, 927 F3d 382 (6th Cir. 2019) panel is absolutely clear that the language of § 4B1.2(b) is not referring to Petitioner

James' conspiracy offense nor any prior state drug attempt case. The March 22, 2021 6th Circuit COA panel is in conflict with that decision because it still believes and holds that Petitioner James' conspiracy offense made him eligible for the punishment under the Career Offender language of 28 USC § 994(h) in substantive effects so as to justify the US District Court's upward departure from the minimum guideline range solely on the basis that Petitioner James was a Career Offender (though technically he was not under Havis and no 21 USC § 851 information nor indictment had been filed by the Government) due to the conspiracy and the state attempt case.

In addition, and similar to this US Supreme Court's holding in Pepper v United States, 562 US 476; 131 S Ct 1229 (2011), in United States v Lee, 974 F3d 855 (6th Cir. 2020) the US 6th Circuit COA ruled there was too much weight on Lee's criminal history as that placed by the US District Court on Craig James' criminal history (making it serve solely as the basis for the upward departure). Whatever priors Petitioner James had were definitely taken into consideration by the Sentencing Commission according to the US the Circuit COA in Lee. Petitioner James' case and the Lee case bare strong similarities.

The emphasis the US District Court put on Petitioner James' priors was unwarranted and illegal in the sense this was Petitioner James' first federal crime and a distinctly different crime from what he had ever committed. Like with the situation in Lee, the crime of conviction was different than the crimes that were priors. Petitioner James' minimum Guideline range, like Lee's, already reflected whether he was likely to commit a conspiracy again and the need to deter others from doing so. His minimum sentencing guideline range of 70 - 87 months already reflected whatever criminal history Petitioner James had. In United States v Lee, 974 F3d 855 (6th Cir. 2020) the US 6th Circuit COA pertinently held:

"In imposing the sentence, the district court placed too much weight on Lee's criminal history...Without question recidivism is an unfortunate aspect of our criminal justice system, and it may very well be a concern that is implicated in Lee's case. However, we must not forget that Lee's advisory guideline range already reflects his likelihood of reoffending and his need for deterrence. USSG, Ch 4, pt A (stating that § 4A1.1

reflects correlations of recidivism and patterns of career criminal behavior)."

C. CONTRARY TO WHAT THIS US SUPREME HELD IN ALLEYNE v UNITED STATES, 570 US 99; 133 S CT 2151 (2013) THE 6TH CIRCUIT COA OPINED THE US DISTRICT COURT WAS JUSTIFIED IN ITS UPWARD DEPARTURE FROM THE 70-87 MONTHS TO 108 MONTHS BY MAKING AN INDEPENDENT FINDING OF FACT NOT PLED TO BY PETITIONER JAMES

Just plain and simple. What the US District Court did (and the US 6th Circuit COA affirmed) was in substantive effect merely make an independent finding of fact Petitioner Craig James was a Career Offender and still subject to the 28 USC § 994(h) language, but couched beneath the guise of 18 USC § 3553(a) in order to upwardly depart from the minimum guideline range of 70 - 87 months. The US District Court increased the penalty for the crime of conspiracy that Petitioner James pled to by making the finding he was a Career Criminal or Offender, but without any 21 USC § 851 Information or indictment filed, without Petitioner James actually, as a matter of law, qualifying for the extra punishments pursuant to 28 USC § 994(h). Petitioner James did not plead to being a Career Offender. And Alleyne is not referring to him mentioning his criminal past during sentencing nor at the time he is testifying for the Government on four (4) other codefendants. Any penalty that increases the statutory minimum must be either pled to and found by a jury. In Alleyne v United States, 570 US 99; 133 S Ct 2151 (2013) this US Supreme Court held:

"Any fact, by law, that increases the penalty for a crime is an element that must be...pled to by the defendant."

The US 6th Circuit COA in affirming the US District Court's judgment failed to comprehend the true ramification of the US District Court's actions no matter what cloak or veil it was concealed under.

CONCLUSION

This case before the US Supreme Court evidences why Superintendent Control must be exercised over the US 6th Circuit COA, who has seemed to become a law unto its own self regardless. There is no way a US District Court's violation of Petitioner James' VIII Amendment rights and numerous sentencing laws, laws concerning the right of

anybody to play the lottery and that type of US District Court behavior be affirmed as reasonable. What relationship did lottery have with the criminal offense? None! Can a person be treated as a Career Offender when the statutes does not allow it, case law does not allow it and no 21 USC § 851 information or indictment ever being filed by the Government? This US Supreme Court should for once or more regularly give a pro se Petitioner a fair shake and even chance to vindicate his or her rights and resolve these conflicts herein alluded to.

Respectfully submitted
Craig James
Craig S. James
Craig S. James# 15508-039
FCI
P.O. Box 1000
Cressen, Pennsylvania 16630

August 10, 2021

IN THE
UNITED STATES SUPREME COURT
NO._____

CRAIG S. JAMES,

S. Ct. No.

Petitioner,

vs

UNITED STATES OF AMERICA,

Respondents.
_____/

APPENDIX INDEX REFERENCE PAGE

Submitted,
Craig James
Craig S. James

Craig S. James# 15508-039
FCI
P.O. Box 1000
Cressen, Pennsylvania 16630

Dated: 8/10/2021