

No. USCA8 No. 21-2475

21-6160

IN THE

SUPREME COURT OF THE UNITED STATES

Dennis Dean Smith — PETITIONER
(Your Name)

VS.

United State of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED
AUG 25 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNITED States Court of Appeals The 8th
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE) *Circuit*

PETITION FOR WRIT OF CERTIORARI

Dennis Dean Smith 04685-030
(Your Name) FCI Coleman "Med"

P.O. Box 1032
(Address)

Coleman FL 33521-1032
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1) Has the Eighthth Circuit, in denying the Petitioners Compassionate Release Application, created a circuit split that requires the Supreme Court to remedy it in the interest of justice, where persons similarly situated in the circuits of cases have been granted.

2) Does the court have the authority under 3582(c)(1)(A) and the changes recently made to the application there of, to consider all "Extraordinary and Compelling" circumstances beyond those in 161.13, including changes in the law that would drastically shorten a sentence were it pronounced today? Particularly in light of the global pandemic and the petitioners health factors along with the housing conditions within the BOP.

3) Should the provisions of the First Step Act be treated as retroactive substantial changer in the law in light of Welsh v United States, this Courts holding that as such a substantial change in the law was per se retroactive.
See

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TABLE OF AUTHORITIES CITED

CASES

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APPENDIX F

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. *

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 07/09/2021.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

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

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendment 5
Constitutional Amendment 6

Title 18 U.S.C. § 3553(a)
Title 18 U.S.C. § 3559(c)
Title 18 U.S.C. § 3582(c)(1)(A)
Title 18 U.S.C. § 3661
Title 21 U.S.C. § 802
Title 21 U.S.C. § 841(b)(1)(A)
Title 21 U.S.C. § 846
Title 21 U.S.C. § 851
Title 28 U.S.C. § 994(a)
Title 28 U.S.C. § 994(t)

First Step Act

United States Sentencing Guideline 1b1.13
United States Sentencing Guideline 782

STATEMENT OF THE CASE

In 2005 Petitioner was found guilty of violating Title 21 U.S.C. 846 & 841(b)(1)(A), conspiracy to distribute methamphetamine. The United States Sentencing Guidelines (USSG) at the time of sentencing was mandatory. Petitioner was sentenced on 03/31/2006 to a mandatory minimum of Life Imprisonment, where two(2) prior drug convictions and an §851 enhancement were used along with his criminal history category.

REASONS FOR GRANTING THE PETITION

The 8th Circuit has created a circuit split with its sister courts where inmates similarly situated have been shown compassion and had their sentences reduced or have been released. See "Motion For Compassionate release Pursuant to 18 U.S.C. 3582(C)(1)(A) Extraordinary and compelling circumstances, The COVID-19 Pandemic, and the First Step Act of 2018," (The Motion) Appendix C. pages 16

Under 3582(C)(1)(A) the courts through the First Step Act of 2018 (FSA) have been given greater latitude to decide what qualifies as "Extraordinary and Compelling" circumstances. Which is not only the Petitioner's health (criteria layed out by the CDC). See the Motion pages 13-14, but also the Petitioner's sentence. Which would likely have released him from prison were he sentenced today under the new sentencing and the FSA. See Appendix C pages 4-8.

The Petitioner not only has the medical conditions specified by the CDC as being particularly exasperating should COVID be contracted, his current sentence would have ended had the FSA been made retroactive. Unfortunately, neither the Petitioner nor any other inmate, due to COVID, has the luxury of awaiting congresses next watered down bill with death eminate now. And Welch v United States, 136 S.Ct. 1257, 1264-65, 1268, 194 L.Ed. 2d 387 (2016) appears to address this issue.

The FSA is certainly a substantial change in the law and as such under Welch should be retroactively applied to all those who would benefit from this change in the law, in particular those who also have other "Extraordinary & Compelling" circumstances during this Pandemic.

For these reasons the Court should remand with instructions that cure the circuit split as well as apply the FSA retroactively to the Petitioner's sentence. Or at least to cure the circuit split so that justice is for everyone not just doled out due to location as it is not realstate that is the subject here, but instead men and women.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dennis A. Burke Jr.

Date: 08/15/21