

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

NOV 10 2021

OFFICE OF THE CLERK

DARRIN LASHAON BETTS — **PETITIONER**
(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Darrin Lashaon Betts Reg. No. 21755-078

(Your Name)

Pollock Federal Prison Camp
P.O. Box 2099

(Address)

Pollock, LA 71467

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Whether a defendant is eligible for 18 U.S.C. § 3582(c)(1)(2) relief pursuant Amendment 782 where the district court adopted a Type-C plea agreement but did not adhere to the specified agreed sentence nor to the subsequent sentencing guideline range it found, and if so, is the concluded sentencing departed range defendants' new starting point for purposes of Amendment 782 pursuant to Hughes v. United States, 138 S. Ct. 1765 (2018)?

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:

RELATED CASES

None.

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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 B 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 is unpublished.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 ^{N/A} 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 is unpublished.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 is unpublished.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 is unpublished.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 July 6, 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

Fifth and Fourteenth Amendment Due Process Right

18 U.S.C. § 3582(c) (2)

STATEMENT OF CASE

On July 10, 2014, Betts entered a guilty plea agreement with the government pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedures (known as a Type-C plea) before Magistrate Judge Craven. The specified sentence agreed to was 230 months of imprisonment as to Count One of the Indictment to wit: possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1) and (b)(1)(A).

On August 4, 2014, Judge Schneider (district court) adopted Betts' and the government's Type-C plea referencing the 230 months of imprisonment for the case.

On January 28, 2015, at sentencing, having the district court previously adopted the Type-C plea, it further adopted the presentencing report "find[ing] that the offense level is a 31, that the criminal history is a Category III...the guideline range is 135 to 168 months." Appx. A, Pg. 10. However, the district court departed from the established guideline range and did not follow the Type-C 230 months, rather imposed 240 months upon Betts. Appx. A, Pg. 14. The 240 months concluded from Level 35 at Category III guideline which ranges from 210-268 months.

On July 27, 2019, Betts filed his renewed § 3582 motion in the district court and sought a reduction of sentence pursuant to retroactive Amendment 782 in light of Hughes v. United States, 138 S. Ct. 1765 (2018). The district court denied Betts' motion and he appealed to the Fifth Circuit Court of Appeals.

On July 6, 2021, the Fifth Circuit Court of Appeals denied Betts' appeal holding that "the district court applied Amendment 782 in the determination of Betts' guideline range at sentencing". Appx. B, Pg. 2.

REASON FOR GRANTING PETITION

Because the Fifth Circuit Court of Appeals' opinion is inconsistent with the district court's sentencing record. Betts' sentencing record clearly does not show that Amendment 782 was applied to determine his sentence. Most likely than not, the sentencing judge would have noted it for the record, and, it is not.

Furthermore, the Supreme Court in Hughes, *supra*, demonstrates an intent by the Supreme Court to broaden the opportunity for relief under § 3582, and accordingly any relevant impact the Guideline Range had on a court's sentencing decision warrants consideration of a defendant's relief claim. Here in Betts' case although the sentencing court accepted his Type-C plea, the court however did not adhere to the specified and agreed 230 months of imprisonment. Appx. A, Pg. 13. Instead, the court imposed the instant 240 months. Appx. A, Pg. 14. The sentencing court for the record stated "I find that the offense level is a 31, that the criminal history category is a Category III...the guideline range is 135 to 168 months. Then the sentencing court departed upward to the 240 month guideline range from Level 35 Category III 210-268 sentencing range. Having the sentencing court not adhering to the terms of a Type-C plea, that action indicates the court rejected the Type-C plea. Thus, the court turns to the Sentencing Guidelines as guidance to determine the sentence. A district court still "must consult those Guidelines and take them into account when sentencing". United States v. Booker, 543 U.S. 220, 264 (2005). And, the Fifth Circuit Court of Appeals overlooked the matter shown above, as noted on the record.

The Fifth Circuit Court of Appeals decision also is conflicting with its sister circuits, as well. Namely, in United States v. Smith, 896 F.3d. 466 (D.C. Cir. 2017), this Court of Appeals noted that the Hughes, *id.* "Supreme Court held that a defendant who was sentence under a plea agreement authorized by the Fed. R. Crim. P. 11(c)(1)(C) may seek a sentence correction if his sentence was "based on" a

Sentencing Guideline range that was subsequently reduced by the Sentencing Commission. A sentence will be "based on" a Guideline range, for this purpose, "if that range was a basis for the court's exercise of discretion in imposing a sentence" in that it was a foundation or starting point for the district court's sentencing calculation." Here in Betts' case, Appendix A at page 10, it clearly shows how the district court exercised the Sentencing Guidelines to determine his sentence. Given the district court did not adhere to the Type-C agreement's 230 specified months rather imposed a 240 month sentence. Such was determined by the Sentencing Guidelines. Thus, eligible for § 3582(c)(2) relief.

In United States v. Caracheo, 741 Fed. Appx. 476 (2018), the Ninth Circuit Court of Appeals vacated and remanded the case in light of Hughes, *id.*, holding "the Supreme Court recently clarified that "a sentence imposed pursuant to a Type-C agreement is 'based on' the defendant's guideline range so long as that was part of the framework the district court relied on in imposing the sentence or accepting the agreement". Appx. C, Pg. 1-2, (copy of case). In Betts' case, the district court relied on the Sentencing Guidelines to impose the 240 month sentence rather the Type-C agreement's 230 months. Thus, Betts is eligible for § 3582(c)(2) relief.

In United States v. Hoskins, 905 F.3d. 97 (2nd Cir. 2018), the Second Circuit Court of Appeal agreed in that Hoskins was eligible for § 3582 relief having entered into a Type-C agreement with government in light of Hughes. The Second Circuit clarified that "a sentence imposed pursuant to a Type-C agreement is "based on" the defendant's Guidelines range so long as that range was part of the framework the district court relied on in imposing the sentence or accepting the agreement." Hughes, 138 S. Ct. at 1775.

Moreover, the Supreme Court continues to hold that " the Guidelines prohibit the district courts from accepting Type-C agreements without first evaluating the recommended sentence in light of the defendant's Guideline range...So in the usual case the court's acceptance of the Type-C agreement and the sentence to be imposed

pursuant to that agreement are based on the defendant's Guideline range. Hughes, id. at 1776.

Here, the district court clearly relied on the Sentencing Guidelines to determine Betts' sentence. The sentencing record clearly shows the district court's finding of the Level and Category without a doubt. Because the Guidelines was used to find Betts' sentence, wherein th court heavily relid on to do so, that warrants eligibility for relief under § 3582(c)(2) in light of Hughes, 138 S. Ct. 1765 (2018).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nanni Betts

Date: October 30, 2021