

21-7086
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

JAN 21 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

William Whitefield — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Whitefield, # 07791-027

(Your Name)

Federal Correctional Complex
P.O. Box 1031 (Low Custody)

(Address)

Coleman, FL 33521-1031

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Whether a district court may consider the 2018 amendment to the sentences mandated by 18 U.S.C. § 924(c) in determining whether a defendant has shown "extraordinary and compelling reasons" warranting a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

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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

United States v. Whitefield, No. Dist 2:04-cr-20003-MMM-EIL (C.D. Ill.)

United States v. Whitefield, No. 21-1682 (7th Cir.)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Deal v. United States, 508 U.S. 129 (1993)	5, 6
United States v. Andrews, 12 F.4th 255 (3d Cir. 2021)	5
United States v. McCoy, 981 F.3d 271 (4th Cir. 2020)	5
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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

[X] 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,
[X] is unpublished.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,
[X] is unpublished.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[] is unpublished.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

[x] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was December 13, 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

18 U.S.C. § 3582(c)(1)(A)(i):

"The court may not modify a term of imprisonment once it has been imposed except that [] in any case [] the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that [] extraordinary and compelling reasons warrant such a reduction"

STATEMENT OF THE CASE

Mr. Whitefield filed a Motion seeking compassionate release on December 15, 2020. Subsequent to his pro se filing this court appointed counsel. Appointed counsel filed an amended motion for compassionate release. Thereafter, the government filed its response. Appointed counsel filed a reply to the government's response. Then on March 11, 2021, this court denied Mr. Whitefield's amended motion for compassionate release.

In his motion for compassionate release, Mr. Whitefield sought a reduction in sentence based on the changes in law to 18 U.S.C. § 924(c), his rehabilitation, and the COVID-19 pandemic, and the fact that Whitefield contracted the virus (Mr. Whitefield raised these facts while exhausting his Administrative Remedy Process).

Mr. Whitefield timely appealed. On December 13, 2021, the district court's order was affirmed. This petition for certiorari followed.

REASONS FOR GRANTING THE PETITION

The circuit courts are deeply divided on whether defendants serving decades more prison time than they would serve today because of fundamental changes in sentencing law can rely on those legal changes in motions for compassionate release under 18 U.S.C. § 3582(c)(1)(A). The Fourth and Tenth Circuits have held that the disparity between past and current sentencing penalties can serve as an extraordinary and compelling reason. See United States v. McCoy, 981 F.3d 271, 285-87 (4th Cir. 2020); United States v. McGee, 992 F.3d 1035, 1045-48 (10th Cir. 2021).

Contrary to these holdings, the Third, and Seventh Circuits have reached the opposite conclusion. See United States v. Andrews, 12 F.4th 255, 261-62 (3d Cir. 2021); United States v. Thacker, 4 F.4th 569, 575-76 (7th Cir. 2021).

Any time that the use of "Clarification" has been made it is implied to correct something that was always meant to be, and further applied retroactively:

"Congress sometimes uses slightly different language to convey the same message. Thus, Congress uses the terms 'subsequent offense,' 'Second or subsequent offense,' and 'second or subsequent conviction' in various sections of the Criminal Code, all to authorize enhanced sentences for repeat offenders.[] On some occasions, Congress meticulously defines the chosen term to identify those offenses committed after a prior conviction 'has become final';[] more frequently, it relies on settled usage and the reader's common sense to impart the same meaning."

Deal v. United States, 508 U.S. 129, 137 (1993)(Blackmun, O'Conner, Js., dissenting). As a first time offender with no criminal history I was not supposed to be sentenced as a repeat offender. This is exactly what Congress clarified. And thus when clarifying a statute, it establishes what it has always been.

I am a first time offender (no criminal history) and even with multiple § 924(c) convictions, the 25 year recidivist "stacking" statute fits the definition of what is extraordinary and compelling reasons and looking at

history at every clarified amendment it is always meant to be applied retroactively. And the District Court does have the authority to grant relief because 25 additional years is extraordinary and compelling reasons.

This court has also stated:

"In other Code sections where context is less illuminating, the long-established usage of the word 'subsequent' to distinguish between first time offenders and recidivists is sufficient to avoid misunderstanding by anyone familiar with federal criminal practice. Thus, in a 1955 opinion offender statutes has been construed to provide that any offense committed subsequent to a conviction calls for the increased penalty."

Deal, 508 U.S. at 138 (internal quotations omitted).

Here, the First Step Act of 2018 clarified that "stacking" of § 924(c) counts—using the underlying charges for the recidivism penalty—was improper. Three years later, multiple individuals have obtained relief with the exception of the Seventh Circuit because the courts do not consider a change in the law as a justification for obtaining sentencing relief under § 3582.

I am following United States v. Thacker, 21-877, which is pending certiorari, which concerns whether a district court may consider the 2018 amendment to the sentences mandated by 18 U.S.C. § 924(c) in determining whether a defendant has shown "extraordinary and compelling reasons" warranting a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Whitfield

Date: 1/21/22