

FEB 04 2022

OFFICE OF THE CLERK

No. _____

21-7143

IN THE
SUPREME COURT OF THE UNITED STATES

Johnny Brett Gregory — 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 Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Johnny Brett Gregory
(Your Name)

172 Webb Dr. Ne
(Address)

Calhoun GA 30701
(City, State, Zip Code)

470-633-6277
(Phone Number)

ORIGINAL

Email: JgregoryCopper@gmail.com

QUESTION(S) PRESENTED

Does a former federal prisoner who is still serving a term of supervised release have a constitutional right to avail themselves of a writ of Coram nobis under 28 U.S.C. 1651(a) remedy?

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

USA V. Johnny Gregory, District Court Docket No: 4:06-cr-00010-ODE-WET-1, Northern District of Georgia U.S. District Court Rome. Judgment-Mandate August 17, 2021

USA V. Johnny Gregory, USCA 11th case No. 20-13449, U.S. Court of Appeals for the Eleventh Circuit Judgment entered July 19, 2021

USA V. Johnny Gregory, USCA 11th case No. 21-11177 U.S. Court of Appeals for the Eleventh Circuit Judgment entered November 16, 2021 and Mandate Dated January 6, 2022

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APPENDIX C	11th cir panel rehearing Denied Dated 12/29/2021, USCA 11th cir Case No. 21-11177 <u>USA v. Gregory</u>
APPENDIX D	11th cir Judgment and Mandate issued January 6 2022 11th cir Case No 21-11177 <u>USA v. Gregory</u>
APPENDIX E	11th cir recall Mandate 11th cir R. 41-1(b) - re-docket as a rehearing 11th cir case No. 21-11177-DD Dated 12/15-2021, <u>USA v. Gregory</u>
APPENDIX F	11th cir Order Denied motion for judicial notice dated August 27 2021, <u>USA v. Gregory</u>
APPENDIX G	11th cir Judgment Entered July 19th 2021 USCA 11 case No 20-13440 Mandate issued 08/17/2021, <u>USA v. Gregory</u>

APPENDIX H

Order of Discharge Dated September
9 1999 Docket No 33857-B
State of Georgia VS Johnny Brett Gregory

APPENDIX I

Criminal Indictment filed in
Chambers Dated February 8 2006
USA VS Johnny Brett Gregory

APPENDIX J

Judgment in the criminal Case 4:06-cr-10-01
HLM, Dated October 23 2006, USA v. Gregory
filed in Chambers U.S.D.C. Rome
See page 5 of 8 paragraph number
7, "Beretta 9-millimeter handgun
serial number SZ005675" is a fact
in the Whitfield County jurisdiction

APPENDIX K

"Defendants' Response to Plaintiff's
Motion pursuant to O.C.G.A. § 24-10-22 (a)
Subpoena duces tecum for unredacted
Grand Jury transcripts in US.
District Court Case 4:06-cr-010-01-RLV
Dated April 14th 2010.

V.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<u>Bifulco V. United States</u> , 447 U.S. 381 (1980)	5.
<u>United States V. Morgan</u> , 346 U.S. 520-512-13 (1954)	7.
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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

☐ 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 USA V Johnny Brett Gregory (11th Cir 2021); 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 N/A; 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 November 16 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: 12/29/2021, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

This case involves a petition for writ of error coram nobis, as provided at 28 USC 1651 (a), as to vacate a Criminal judgment Based on a improperly obtained guilty plea. The fact existed that, without any fault or negligence by the defendant Gregory, was not presented to the court at or before the plea. and that if prevented would have prevented the rendition of the criminal judgment and this fact of the Beretta 9-millimeter handgun, serial number 5Z005675 "fact" could not in the exercise of due diligence have been discovered earlier. (see Appendix J.)

STATEMENT OF THE CASE

COURSE OF PROCEEDINGS AND DISPOSITION OF THE CASE/FACTS

On July 19, 2005, the Whitfield County detective Rickey Dewayne Holmes, and former FBI Agent Kenneth W. Hillman, III², executed an unreasonable search and seizure. They found more than 50 grams of methamphetamine in the master bedroom (). They found also a Beretta 9-millimeter handgun located on top of the master bedroom nightstand and \$20.000 inside the nightstand.

Gregory bonded out of the Whitfield County Jail on July 20, 2005, during Gregory's Bond hearing, Detective R. Holmes requested that Gregory not have a Bond because Gregory had a firearm despite having a prior felony conviction. The State Judge refused Holmes request because Gregory had no prior GA felony and Gregory was released from the Whitfield County Jail (see Appendix H)

Footnote 1. Who Entered a Guilty Plea in Federal Court on or about July 14th 2011 for a violation of 18 U.S.C. 1905. Same Judge Walter Johnson Magistrate and District Judge Harold L. Murphy accepted the plea. Same matter involved lack of Jurisdiction over the Criminal Case No 4:06-cr-10-01-HLM

on March 22, 2006, former FBI Agent Ken Hillman and Det Holmes re-arrested Gregory on a federal indictment at his home at 254 Cheyenne Trail, Dalton GA. The indictment charged Gregory with (Doc 1.) Possession with intent to distribute at least fifty grams of methamphetamine in violation of USC 841(b)(1)(A)(viii) (Count 1); Violent Crime/Drugs/ Machine Gun (Count 2); Importing/ Manufacturing firearms (Count 3) and 18 USC 924(d) for forfeiture provision (Entered 02/10/2006) (Appendix I)

In 2006, Gregory entered an agreement (Appendix J) in federal court and Gregory retained all state court jurisdiction via authority over the subject matter of the case/property involved that is located in the "Superior Court" of Whitfield County, State of Georgia Court's control (i.e. Johnny Brett Gregory vs. Scott Chitwood, et al, Civil Action File No. 10-CJ-272-B. See, USCA 11: (Appendix K) 21-14151 Date filed: 12/09/2022 page 19 of 47.) Gregory never agreed to forfeit of his state of Georgia rights, title and/or interest in no property illegally taken on July 19 2005 to present day the

Federal District Court lacked Jurisdiction. Same as on October 23, 2006, the district Court sentenced Gregory to 10 years on Count One and 5 years on Count Two, to run consecutively, for a total sentence of 15 years and a term of supervised release of five years on each count, to run concurrently. (Appendix J) (Doc. 27 by Sentencing Judge Harold Lloyd Murphy.) Therefrom, Gregory filed numerous 2255 motions that lack of Jurisdiction Cognizable 2255 Claims. Further, Gregory began his term of supervised release on July 19, 2019. Next on July 24, 2020, Gregory moved to terminate his supervised release. The district Court Judge William Ray II, sua sponte denied Gregory's motion, on July 19, 2021. The United States Judges William Pryor, Chief Judge, Jill Pryor and Luck in USCA 11 Case: 20-13440 VACTED AND REMANDED for further proceedings.

5.

Bifulco V United States 447 U.S. 381 (1980).

Footnote 2. The district Court exceeded its jurisdiction when it imposed a special supervision term on the defendant. The statute did not authorize a special term at all. See: (Doc 27 term #7 void the Judgment supervised release after imprisonment)

On November 3, 2021, in light of the record, the New District U.S. Court Judge William M. Ray III.³ As apparent from the sentencing hearing transcript, Judge Ray do not know the nature of the events leading to Gregory's 2006 conviction and of his state non-existent criminal history Georgia first offender Act (see: Docket USCA 11 Case: 21-14151 Dated 12/22/2021; "Notice of Receipt; Motion for Reconsideration as to Appellant Johnny Brett Gregory, Superior Court filing [Entered: 01/05/2022 03:32 PM.]

The course of the proceedings on the new Judge Ray came onboard in 2021 has no experience on the conducting of the defendant Gregory's sentencing considerations 16 years ago do not give an meaningfully appeal review.

b.

Footnote 3: That is "not", the Judge that conducted Johnny Brett Gregory's plea and sentencing. To this point, Gregory notes that the Senior U.S. District Judge Harold Lloyd Murphy presided over, Johnny Brett Gregory's 2006 sentencing and Murphy is not the Judge that denied Gregory's § 3583(c)(1) motion.

REASONS FOR GRANTING THE PETITION

Writs of error Coram nobis are reserved for those rare cases where petitioner like Gregory is no longer in custody but his conviction contains factual errors material to the validity of the legal proceedings. Coram nobis relief is available after the sentence has been served because "the results of the conviction may persist. Subsequent convictions may carry heavier penalties, civil rights may be affected." United States v. Morgan, 346 U.S. 502, 512-13 (1954).

The Coram nobis writ is an extraordinary remedy that is only available where (1) no other avenue of relief is or was available, and (2) the petitioner presents a fundamental error that made his criminal proceedings irregular and invalid. Id. Morgan Gregory has made this standard. His brief, while long on citations of cases and statutes, does identify the clear errors related to his indictment, judgment, guilty plea, and sentence. Invokes the Morgan, i.e.

relief on Coram nobis. The new facts that would clearly have affected the willingness of Gregory to enter a plea, and would have encouraged and convinced him to make different strategic choices and seek a different disposition and this facts would have prevented rendition of the Criminal Judgment/Supervised release filed in Chambers in Rome GA on October 23, 2006. The 11th Cir Court abuse its discretion in denying along with the district courts abuse of its discretion in denying Gregory's motion for a writ of error Coram nobis. Morgan, 346 U.S. at 512-13. Moreover, Gregory clearly showed that no other avenue for relief is or was available to him, and that there was a fundamental error that made his criminal proceedings irregular and invalid.

.. Moreover, the 11th Cir Court Judges intentionally ignored the district courts lack of Jurisdiction

over the final Judgment in
this Criminal Case on
October 23, 2006, (Doc 27)
Appendix J is Void ab Initio
Based on the fact on the
date April 14th 2010, Counsel(s)
in the State of Georgia Ronald
R. Womack State Bar NO# 773650
and Steven M. Rodham State
Bar NO# 611404 stated the fact
"although Judge Murphy ordered
that the handgun be destroyed,
said order was without effect
because the handgun was in the
possession of the Whitfield County
Sheriff. Neither the Whitfield
County Sheriff nor the State of Georgia
were parties to plaintiff (Gregory)
Criminal Case in Federal Court.
Obviously, the prosecuting authority
was the United States of America.
Since neither the Whitfield County
Sheriff nor the State of Georgia
were parties in the case, the
Federal Court was without
jurisdiction to order them to
destroy the handgun." see:
(Appendix K hereto).

In closing, the 11th Cir Court
struggle to find jurisdiction,
that was not established, so
with the stroke of a pen
and without jurisdiction dispute,
the 11th Cir simple "Stamp" Affirm
the denial of Gregory's petition
for a writ of error coram
nobis, on the fact of no
Jurisdiction not proven as
"Courts are constituted by authority
and they cannot go beyond that
power delegated to them. If
they act beyond that authority,
and certainly in contavention of
it, their judgments and order
are regarded as nullities; they
are not voidable, but simply
Void, and this even prior to"
reversal". Williamson v Berry,
8 How. 945, 540 12 L. Ed 1170,
1189 (1850).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

John Brett Levy

Date: February 4th 2022