

21-7219
No. _____

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ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

LORENZO SUTTLES — 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 SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lorenzo L. Suttles _____
(Your Name)
Federal Correctional Complex (Low)
P.O. Box 5000 _____
(Address)

Yazoo City, MS 39194
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether a pre-FSA (First Step Act) defendant's circumstances, changed by Congress's clarification of §924(c), and the resultant disparity thereof, alone or in combination with other factors, may constitute extraordinary and compelling reasons for compassionate release/reduction of sentence pursuant to 18 U.S.C. §3582(c)(1)(A)(i)?
- II. Whether a federal court of appeals' failure to stay and/or recall its mandate for reconsideration amounts to a miscarriage of justice, when a subsequent decision of the court rendered its previous decision demonstrably wrong, and the court's subsequent decision directly conflicts with its previous decision affirming a district court's order against a defendant?

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:

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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 C-E 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 is unpublished.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 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 is unpublished.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 November 24, 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

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STATUTES AND RULES

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18 U.S.C. §3553	passim
18 U.S.C. §3582	passim

OTHER

N/A

STATEMENT OF THE CASE

On January 16, 2020, Petitioner filed a motion for compassionate release/reduction of sentence with the United States Disrtict Court for the Eastern District of Tennessee, based on post-FSA (First Step Act) sentencing disparity, lack of danger to any other person or to the community, and post conviction rehabilitation. (Doc. 278)

On April 28, 2021, the District Court denied Petitioner's motion in a form order, finding that stacked §924(c) penalties are not extraordinary and compelling reasons for the purposes of compassionate release. (Doc. 308)

On May 6, 2021, Petitioner filed a timely notice of appeal. On May 6, 2021, the United States Court of Appeals issued it's opinion in United States v. Owens 996 F.3d 755 (6th Cir. 2021), ruling that the First Step Act's changes to §924(c) may constitute extraordinary and compelling reasons for compassionate release.

On May 10, 2021, Petitioner sought reconsideration in the District Court of the court's order denying him compassionate release, based on the Sixth Circuit's ruling in Owens.

On May 14, 2021, Petitioner's appeal was docketed in the United States Court of Appeals for the Sixth Circuit, and a briefing schedule was set for June 14, 2021.

On June 2, 2021, Petitioner filed a pro se appellate brief with the Sixth Circuit Court of Appeals, questioning in relevant part:

- "Whether the District Court abused it's discretion in summarily concluding that appellant's §924(c) 'stacking' penalty did not constitute extraordinary and compelling reasons, without also considering §3553(a) and the combination of other factors presented by appellant as extraordinary and compelling?"

- "Whether the disparity between pre FSA §924(c) 'stacking' penalties, in combination with other factors, may constitute extraordinary and compelling reasons warranting a sentence reduction, post FSA, pursuant to §603 of the FSA?"
- "Whether this court should reverse and remand in the instant case and afford appellant the benefit of it's ruling in United States v. Owens, Case No. 20-2139, 2021 U.S. App. LEXIS 13656 (6th Cir. May 6, 2021)?"

On June 3, 2021, the Sixth Circuit issued it's opinion in United States v. Jarvis, 999 F.3d 442 (6th Cir. 2021), in which the court overruled it's previous decision in Owens, determining that non-retroactive First Step Act amendments "could not" be considered for compassionate release purposes, alone or in combination with other factors.

On June 29, 2021, the Government responded in opposition to Petitioner's pro se appellate brief. (Doc. 7)

On June 30, 2021, the Sixth Circuit Court of Appeals held Petitioner's appeal in abeyance pending a ruling on Petitioner's motion for reconsideration pending in the District Court at that time.

On July 8th and 28th of 2021, Petitioner motioned the District Court to withdraw the pending motion for reconsideration. In the interim, on July 26, 2021, Petitioner filed a reply to the Government's response, accompanied by a motion requesting leave to file out of time, and a petition for hearing En Banc.

On August 31, 2021, the District Court granted Petitioner's motion to withdraw the pending motion for reconsideration. (Doc. 318)

On November 24, 2021, the United States Court of Appeals for the Sixth Circuit affirmed the District Court's order denying Petitioner's motion for compassionate release, with Circuit Judge Clay dissenting and the majority stating, "Suttles cites United States v. Owens, 996 F.3d 755 (6th Cir. 2021), in support of his argument, but Jarvis aff-

irmed a holding that we first reached in United States v. Tomes, 990 F.3d 500 (6th Cir. 2021), and we issued Tomes before Owens. Therefore, the holdings in Tomes and Jarvis must control in this appeal." See United States v. Suttles, Case No. 21-5499 (6th Cir. 2021), ~~Id.~~ at *4.

On December 17, 2021, the Sixth Circuit decided United States v. McCall, Case No. 21-3400 (6th Cir. 2021), which held in part that "Tomes does not apply", where FSA nonretroactive portions, in concert with other factors, could support a finding of extraordinary and compelling circumstances. McCall at *7. The court further stated, "Jarvis, by contravening Owens, created an intr-circuit split. Because Owens was published before Jarvis, Owens 'remains controlling authority' that binds future panels." McCall at *8.

On December 20, 2021, Petitioner filed a motion to stay and/or recall the mandate of the Sixth Circuit in the instant case, and for reconsideration in light of United States v. McCall, Case No. 21-3400 (6th Cir. 2021).

On January 10, 2022, Petitioner's motion for stay and/or recall and reconsideration was denied without discussion.

On January 19, 2022, the Sixth Circuit issued it's mandate for the instant case.

REASONS FOR GRANTING THE PETITION

I. Whether a pre-FSA (First Step Act) defendant's circumstances, changed by Congress's clarification of §924(c), and the resultant disparity thereof, alone or in combination with other factors, may constitute extraordinary and compelling reasons for compassionate release/reduction of sentence pursuant to 18 U.S.C. §3582(c)(1)(A)(i)?

In 2002, at the age of 22, Petitioner was sentenced to 492-months imprisonment. 300-months of which were for a "stacked" §924(c) offense as a "first-time" §924(c) offender.

In 2018, Congress enacted the First Step Act, in which §403 of the act "clarified" §924(c) to reflect it's intended purpose as a true recidivist statute.

If Petitioner had been sentenced after the effective date of the First Step Act, the §924(c) penalty would have carried a mandatory term of 84-months, and not 300-months. Accordingly, the sentence Petitioner is serving is 216-months (18 yrs.) longer than the sentence he would have received (84-months) if Petitioner were sentenced under the law as it now exists. However, §403 of the Act is non-retroactive and subsection (b) directs the clarification's primary application to pending cases.

In November of 2019, the District Court in United States v. Urkevich, 2019 U.S. Dist. LEXIS 197408, determined that pursuant to 18 U.S.C. §3582(c)(1)(A)(i), a reduction of sentence is warranted by the extraordinary and compelling reasons of disparate §924(c) penalties longer than Congress now deems warranted.

In January of 2020, Petitioner sought compassionate release/reduction of sentence pursuant to §3582(c)(1)(A)(i), to include but not limi-

ted to the extraordinary and compelling reason of the disparity/length of the "stacked" §924(c) sentence which is no longer mandated by Congress. (Doc. 278)

In April of 2021, the District Court denied Petitioner's motion, ruling that stacked §924(c) penalties are not extraordinary and compelling reasons for the purposes of compassionate release. (Doc. 308)

In the Sixth Circuit's order affirming the District Court's denial of Petitioner's motion for compassionate release/reduction of sentence, both the majority and the dissent acknowledged that "To be sure, had Suttles been convicted and sentenced under the laws that exist today, he would not have been subject to the 25-year mandatory minimum sentence for a second §924(c) conviction." See Suttles at *4 & 5. The Honorable Circuit Judge Clay, dissenting, further stated, "Here Suttles seeks compassionate release based on the First Step Act amendment, his 'extensive amount of post-conviction rehabilitation,' and a 'host of support from. . . members of the community, . . . family[,] and friends.' (Mot. for Compassionate Release, R. 278, Page ID #1719.) Because the district court refused to consider Suttles' First Step Act argument in combination with these other circumstances, as required under Owens, I would reverse and remand this case for further proceedings." See Suttles at *6.

Nothing in §403(b) prohibits consideration of the §924(c) clarification as extraordinary and compelling reasons for compassionate release/reduction of sentence purposes. Furthermore, while Congress nor the Sentencing Commission have defined "extraordinary and compelling" or its corresponding guideline application "other reasons", at least one panel of the Sixth Circuit has determined that the statute does not define or place any limits on what "extraordinary and compelling reasons" might

warrant such a reduction. See *Crowe v. United States*, 430 F. Appx. 484, 485 (6th Cir. 2011).

As far back as the passage of the Comprehensive Crime Control Act of 1984, Congress has sought to provide a means for courts to address "the unusual case in which the defendant's circumstances are so changed. . . that it would be inequitable to continue confinement of the prisoner." S. Rep. 98-225, at 96 (Aug. 4, 1983) See also *id.* at 41 ("The Committee believes that there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include. . . cases in which. . . extraordinary and compelling circumstances justify a reduction of an unusually long sentence").

"As many courts have noted, consideration of the defendant's §924 (c) sentences is supported by the legislative history of the original compassionate release statute, enacted as part of the Comprehensive Crime Control Act of 1984. See Pub.L. 98-473, Stst. 1837. The accompanying Senate Report suggested that the length of a sentence is a relevant factor, indicating that relief would be appropriate when 'extraordinary and compelling circumstances justify a reduction of an unusually long sentence.' S. Rep. No. 98-225, at 55 (1984)". See *United States v. McCoy*, 981 F.3d 271, 288 n.8 (4th Cir. 2020).

"The fact that Congress chose not to make §403 of the First Step Act categorically retroactive does not mean that courts may not consider that legislative change in conducting their individualized reviews of motions for compassionate release under §3582(c)(1)(A)(i). As multiple courts have explained, there is a significant difference between automatic vacatur and resentencing of an entire class of sentences - with

it's 'avalanche of applications and inevitable resentencings,' and allowing for the provision of individual relief in the most grievous cases. Indeed, the very purpose of §3582(c)(1)(A) is to provide a 'safety valve' that allows for sentence reductions when there is not a specific statute that already affords relief but 'extraordinary and compelling reasons' nevertheless justify." See *United States v. McCoy*, 981 F.3d 271, 286-87 (4th Cir. 2020).

The Sixth Circuit's opinion in *United States v. Owens*, 996 F.3d 755 (6th Cir. 2021) reflects the foregoing interpretation of §3582(c)(1)(A), whereas the court's subsequent opinion in *United States v. Jarvis*, 999 F.3d 442 (6th Cir. 2021) does not. Thereby being the cause of an intra-circuit conflict which has affected the substantive rights of Petitioner. The Sixth Circuit's decision in *Jarvis* further conflicts with the decisions of the United States Court of Appeals for the Fourth Circuit in *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020), and the United States Court of Appeals for the Tenth Circuit in *United States v. McGee*, 992 F.3d 1035 (10th Cir. 2021), which calls for an exercise of this Court's supervisory power.

Finally, Petitioner further ask that he be given the benefit of this Court's potential preceding rulings in *Watford v. United States*, No. 21-551; *Jarvis v. United States*, No. 21-568; and *Williams v. United States*, No. 21-767. All of which have related questions and are pending a Writ of Certiorari before this Honorable Court.

II. Whether a federal court of appeals' failure to stay and/or recall it's mandate for reconsideration amounts to a miscarriage of justice, when a subsequent decision of the court rendered it's previous decision demonstrably wrong, and the court's subsequent decision directly conflicts with it's previous decision affirming a district court's order against a defendant?

Petitioner's appeal of the District Court's denial of his motion for compassionate release/reduction of sentence, relied upon the Sixth Circuit Court of Appeals' decision in United States v. Owens, 996 F.3d 755 (6th Cir. 2021). The Sixth Circuit overruled Owens in United States v. Jarvis, 999 F.3d 442 (6th Cir. 2021), and affirmed the District Court's denial of Petitioner's motion for compassionate release in the instant case.

Before the finality of judgment in the instant case, and less than one month after the United States Court of Appeals for the Sixth Circuit affirmed the District Court's denial of Petitioner's motion for compassionate release/reduction of sentence, relying upon Jarvis, the Sixth Circuit issued it's ruling in United States v. McCall, Case No. 21-3400 (6th Cir. 2021). The court in McCall stated, "Owens was the first in-circuit case to address the issue of a nonretroactive sentence as one of several factors creating an extraordinary and compelling reason for compassionate release. Jarvis, by contravening Owens, created an intra-circuit split. Because Owens was published before Jarvis, Owens 'remains controlling authority' that binds future panels. Salmi v. Sec'y of Health & Human Servs., 774 F.2d 685, 689 (6th Cir. 1985). Faced with the conflict between Owens and Jarvis, courts 'must follow the first one[.]' Jarvis, 999 F.3d at 445-46. Here, that is Owens." McCall, *Id.* at *8.

The court in United States v. Tolliver, 116 F.3d 120 (5th Cir. 1997)

has recognized that recalling the mandate is appropriate when a subsequent decision of the Supreme Court or of the Court of Appeals renders a previous decision "demonstrably wrong." *Tolliver*, 116 F.3d at 123. A previous decision is "demonstrably wrong" if it "directly conflicts with" the subsequent decision. *Tolliver*, 116 F.3d at 123. See also *Sargent v. Columbia Forest Prods., Inc.*, 75 F.3d 86, 90 (2d Cir. 1996) ("One circumstance that may justify recall of a mandate is '[a] supervening change in governing law that calls into serious question the correctness of the court's judgment.'" (quoting *McGeshick v. Choucair*, 72 F.3d 62, 63 (7th Cir. 1995))).

In the instant case, *McCall* is a "subsequent decision" that "directly conflicts with" the Sixth Circuit's previous decision relying upon *Jarvis*, to affirm the District Court's denial of petitioner's motion for compassionate release/reduction of sentence. *McCall* holds that "a court may consider a nonretroactive change in the law as one of several factors forming extraordinary and compelling circumstances qualifying for sentence reduction under 18 U.S.C §3582(c)(1)(A)." See *McCall*, Case No. 21-3400 at *11. Had *McCall* been decided at the time the Sixth Circuit issued it's previous decision in the instant case relying upon *Jarvis*, the court would not have followed *Jarvis*' contrary holding and would not have affirmed the District Court's decision.

In *United States v. Murray*, 2 Fed. Appx 398 (6th Cir. 2001), the Sixth Circuit itself has determined that "When an intervening. . . case calls into question the "integrity" of a separate judgment, the circumstance is extraordinary enough to warrant the extreme remedy of recalling a mandate." *Murray* at *398-99.

Twenty-seven days after the Sixth Circuits ruling in *McCall*,

Petitioner sought a stay and/or recall of the court's mandate and re-consideration in light of McCall, which the court denied without discussion.

For the Sixth Circuit to affirm the District Court's denial on the basis of Jarvis, and then 27 days later declare Jarvis invalid, and not allow defendants whose judgment has not yet been finalized, the benefit of reconsideration, amounts to "injustice".

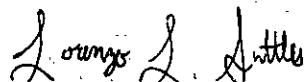
Petitioner here contends that the Sixth Circuit's previous decision in the instant case, relying upon Jarvis, was "demonstrably wrong," and that the court's failure to stay and/or recall it's mandate for reconsideration in light of it's subsequent ruling in McCall, has caused Petitioner and potentially other defendants in the Sixth Circuit to suffer a grave miscarriage of justice, which calls for an exercise of this Court's supervisory power.

The judgment below is contrary to it's decision in Owens and it's subsequent decision in McCall. The judgment below further conflicts with the decisions in McCoy and McGee, thereby resulting in an intra and inter-cirucit split. Finally, the circuit court's decision to not recall it's mandate runs afoul of constitutional due process protections, and has caused Petitioner to suffer a grave miscarriage of justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Lorenzo L. Suttles

Date: January 31, 2022