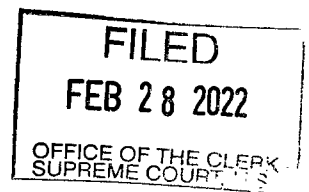


21-7315
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

In RE: MICHAEL LYNN CASH — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

MICHAEL LYNN CASH
(Your Name)

P.O. Box 24550
(Address)

Tucson, AZ. 85734
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. DID THE TENTH CIRCUIT COURT OF APPEALS
ERRONEOUSLY DISMISS MR. CASH'S § 2255 AND
DENY A CERTIFICATE OF APPEALABILITY ("COA")
BECAUSE MR. CASH DID NOT "CITE AUTHORITY" WHEN
THE PRO SE LITIGANTS INSTRUCTIONS (FORM COA-12)
SPECIFICALLY INSTRUCTED MR. CASH THAT IT WAS NOT
NECESSARY? (THE TENTH CIRCUIT'S PRO SE FORM
FOR "MOTION FOR AUTHORIZATION TO FILE A SECOND OR
SUCCESSIVE... § 2255" ALSO SPECIFICALLY STATES:"
SUPPORTING FACTS (TELL YOUR STORY BRIEFLY WITHOUT
CITING CASES OR LAW) No. 12, PAGE 8 (SEE APPENDIX
"G" AND "H", RESPECTIVELY)

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

U.S.A. v. MICHAEL Lynn CASH, 6:11-CR-57-RAW - CASE IN CHIEF

U.S.A. v. MICHAEL Lynn CASH, 6:15-CV-117-JHP - FIRST 2255

U.S.A. v. MICHAEL Lynn CASH, No. 17-7018 (727 Fed Appx 512) 2255 Appeal

U.S.A. v. MICHAEL Lynn CASH, 6:19-cv-126-RAW - SECOND 82255

USA v. MICHAEL Lynn CASH No. 21-7033 - SECOND 2255 Appeal

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	5
CONCLUSION.....	6

INDEX TO APPENDICES

APPENDIX A:	28 U.S.C. § 2255 MOTION, SUPPLEMENT, AND ATTACHMENTS
APPENDIX B:	DISTRICT COURT ORDER DISMISSING §2255 MOTION
APPENDIX C:	RULE 39(e) MOTION TO ALTER OR AMEND JUDGMENT
APPENDIX D:	COMBINED OPENING BRIEF AND APPLICATION FOR A CERTIFICATE OF APPEALABILITY ("COA")
APPENDIX E:	TENTH CIRCUIT'S ORDER DISMISSING/DENYING "COA"
APPENDIX F:	TENTH CIRCUIT'S ORDER DENYING MOTION FOR REHEARING
APPENDIX G:	TENTH CIRCUIT'S INSTRUCTIONS TO LITIGANTS PROCEEDING WITHOUT COUNSEL; FORM COA-12, PAGE i
APPENDIX H:	TENTH CIRCUIT'S MOTION FOR AUTHORIZATION... SECOND OR SUCCESSIVE... § 2255; PAGE 8

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
MAGWOOD V. PATTERSON 561 U.S. CT. 320 (2010).	4, 5

STATUTES AND RULES

924(e)/A.C.C.A.	4
28. U.S.C. § 2255	4, 5
924(c)	4
U.S.S. G. 4B1.1	4

OTHER

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 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 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 NOVEMBER 2, 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: JANUARY 3, 2022, and a copy of the order denying rehearing appears at Appendix F.

☐ 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

FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION: RIGHT TO DUE PROCESS OF LAW

SIXTH AMENDMENT TO THE U.S. CONSTITUTION: RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

28 U.S.C. § 2255: HABEAS CORPUS

U.S.S.G. 4B1.1: CAREER OFFENDER GUIDELINE

924(e): ARMED CAREER CRIMINAL ACT

924(c): POSSESSION OF A FIREARM IN FURTHERANCE OF A DRUG TRAFFICKING CRIME

REASONS FOR GRANTING THE PETITION

THE TENTH CIRCUIT'S TREATMENT OF MR. CASH IS BEYOND UNFAIR. THE DECISION TO DISMISS MR. CASH'S § 2255 ON THE BASIS THAT HE FAILED TO "CITE AUTHORITY" AFTER BEING INSTRUCTED THAT IT IS "NOT REQUIRED" IN "FORM COA-12" AND IN THE PRO SE MOTION FOR AUTHORIZATION TO FILE A SECOND OR SUCCESSIVE... § 2255, HE WAS INSTRUCTED TO TELL HIS STORY "WITHOUT CITING CASES OR LAW." THIS SITUATION DESERVES THIS HONORABLE COURT'S ATTENTION.

THE ACTUAL MERITS OF MR. CASH'S 2255 HAVE NOT BEEN ADDRESSED. MR. CASH ARGUED THAT INEFFECTIVE ASSISTANCE OF COUNSEL RESULTED IN THE ERRONEOUS CONCLUSION THAT THE AMENDED JUDGMENT ADDRESSED "CERTAIN ERRORS." MR. CASH ARGUED THAT THE AMENDED JUDGMENT CREATED A "NEW SENTENCE" / "NEW JUDGMENT" RENDERING MAGWOOD APPLICABLE.

THE TENTH CIRCUIT AVOIDED THE ISSUE AND FOUND THAT MR. CASH FAILED TO "CITE AUTHORITY" THAT WOULD PERMIT A REVIEW OF THE ISSUES. THE TENTH CIRCUIT DID NOT FIND THAT THEY COULD OR COULD NOT DECIDE THE CASE, ONLY THAT MR. CASH DID NOT "CITE AUTHORITY."

FIRST, MR. CASH INITIATED A § 2255 PROCEEDING WHICH PROVIDES VERY BROAD AUTHORITY TO CORRECT ERRORS. SECONDLY, MR. CASH CITED 2255, INEFFECTIVE ASSISTANCE OF COUNSEL, AND THIS COURT'S "MAGWOOD" STANDARD. THIRDLY, MR. CASH IS PROCEEDING PRO SE. THE TENTH CIRCUIT'S INSTRUCTIONS TO PRO SE LITIGANTS - LIKE MR. CASH - INSTRUCT THAT IT IS "NOT REQUIRED" AND TO NOT CITE LAW ALTOGETHER.

MR. CASH ASKS THIS HONORABLE COURT TO PLEASE REMAND THIS CASE BACK SO A DECISION CAN BE MADE ON THE ACTUAL MERITS AND WHETHER MR. CASH SHOULD HAVE RECEIVED AN EVIDENTIARY HEARING FOR THE MANY DISPUTED FACTS.

STATEMENT OF THE CASE

AT INITIAL SENTENCING, MR. CASH WAS FOUND TO QUALIFY FOR BOTH U.S.S.G. 4B1 (CAREER OFFENDER AND 924(c)/A.C.C.A. ENHANCEMENTS. MR. CASH'S JUDGMENT WAS AMENDED PURSUANT TO A PARTIALLY GRANTED § 2255 WHERE MR. CASH SUCCESSFULLY ARGUED THAT HE DID NOT QUALIFY FOR THE 924(c)/A.C.C.A. ENHANCEMENT, THAT CONTROLLED HIS SENTENCING PLAN.

IN DECIDING THAT MR. CASH'S 924(c)/A.C.C.A. SENTENCE WAS ERRONEOUS, THE DISTRICT COURT SOMEHOW AGREED WITH THE GOVERNMENT'S POSITION THAT MR. CASH'S 924(c)/COUNT 2 WAS [SUPPOSE] TO BE ENHANCED BUT WAS NOT. (MR. CASH RECEIVED THE VERY, VERY COMMON "60-MONTHS" ON HIS 924(c)/COUNT 2) THE IDEA IS THAT THE SENTENCING COURT "INTENDED" TO APPLY U.S.S.G. 4B1 (CAREER OFFENDER ENHANCEMENT) TO MR. CASH'S 924(c)/COUNT 2. HOWEVER, THIS [DISCRETIONARY] GUIDELINE (4B1.1) ENHANCEMENT WAS NOT ORDERED TO APPLY TO CASH'S 924(c)/COUNT 2 AT HIS SENTENCING HEARING. REGARDLESS, THE DISTRICT COURT ORDERED THE CLERK TO "AMEND THE JUDGMENT" TO REMOVE THE 924(c)/A.C.C.A. ENHANCEMENT FROM HIS COUNT 3 AND APPLY THE U.S.S.G. 4B1.1 (CAREER OFFENDER ENHANCEMENT) TO HIS 924(c)/COUNT 2, CHANGING HIS OVERALL SENTENCING PLAN WITHOUT AFFORDING MR. CASH ANY OPPORTUNITY TO OBJECT TO THE NEW SENTENCE.

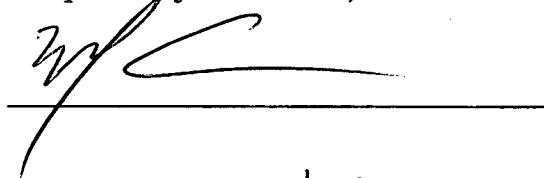
AN APPEAL OF THE AMENDED JUDGMENT WAS TAKEN. COUNSEL FOR MR. CASH FILED IT AS AN APPLICATION FOR A COA RATHER THAN A DIRECT APPEAL. REGARDLESS, THE COA WAS GRANTED AND COUNSEL WAS INEFFECTIVE IN HIS APPROACH AND FAILED TO ARGUE THE CORRECT FACTS/ARGUMENT WHICH LED TO THE ERRONEOUS CONCLUSION THAT THE AMENDED JUDGMENT WAS DESIGNED TO CORRECT A "CLERICAL ERROR", BASED ON THE ERRONEOUS POSITION THAT THE SENTENCING TRANSCRIPTS OUTLINE THE SENTENCING COURT'S INTENT TO APPLY THE U.S.S.G. 4B1.1 ENHANCEMENT TO CASH'S 924(c)/COUNT 2. THIS IS ERROR.

USING THIS HONORABLE COURT'S HOLDING IN MAGWOOD, 512 U.S. 320 (2000) MR. CASH FILED A SECOND-IN-TIME § 2255 TO ADDRESS THE INEFFECTIVE ASSISTANCE OF COUNSEL ISSUE. IT WAS DISMISSED. MR. CASH APPEALED AND THE TENTH CIRCUIT DISMISSED THE CASE BECAUSE MR. CASH "FAILED TO CITE AUTHORITY." MR. CASH WAS INSTRUCTED NOT TO CITE AUTHORITY. 4.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a stylized 'W' followed by a long horizontal stroke, positioned above a horizontal line.

Date: 2-24-2022