

21-7331

No. 21-11426-G

3:06-cr-742-LC-HTC-2

FILED

FEB 18 2022

OFFICE OF THE CLERK
U.S. SUPREME COURT

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DARRELLUS T. ROBINSON PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES APPEALS COURT FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARRELLUS T. ROBINSON #06568-017
(Your Name)

UNITED STATES PENITENTIARY MCCREARY
P.O. BOX 3000
(Address)

PINE KNOT, KY 42635
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) CAN PETITIONER GET THE FULL EXTENT OF RELIEF, WHEN USSG § 1B1.13 DOESN'T APPLY TO PRISONER FILED COMPASSIONATE RELEASE MOTION'S BECAUSE THE POLICY PREDATES THE FIRST STEP ACT AND THEREFORE IS NOT "AN APPLICABLE POLICY STATEMENT ISSUED BY THE SENTENCING COMMISSION" WITH RESPECT TO PRISONER FILED MOTION'S? 5TH AND 8TH AMENDMENT CONSTITUTIONAL VIOLATION'S!
- 2) CAN PETITIONER GET RELIEF, WHEN THE U.S. APPEAL'S COURT AND U.S. DISTRICT COURT COMMITTED AN ERROR, (1) THAT WAS PLAIN, (2) THAT AFFECTED MY SUBSTANTIAL RIGHTS, AND (3) THAT AFFECTED THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS? 5TH AND 8TH AMENDMENT CONSTITUTIONAL VIOLATION'S!
- 3) CAN PETITIONER GET RELIEF, WHEN U.S. APPEAL'S COURT ERRONEOUSLY RELIED ON USSG § 1B1.13 TO DENY RELIEF WHEN THE GUIDELINE DID NOT APPLY TO HIS MOTION? 5TH AND 8TH AMENDMENT CONSTITUTIONAL VIOLATION'S!
- 4) CAN PETITIONER GET RELIEF, WHEN DISTRICT COURT ERRONEOUSLY HAS SUBJECTED HIM TO SERVING AN ILLEGAL SENTENCE UNDER THE CURRENT PROVISION AND APPLICATION OF 18 USC § 924(c) DUE TO HIS SIMULTANEOUS § 924(c) CONVICTION'S UNDER ONE INDICTMENT AND CONGRESS'S ELIMINATION OF THE "STACKING" OF § 924(c)? 5TH AND 8TH AMENDMENT CONSTITUTIONAL VIOLATION'S!
- 5) CAN PETITIONER GET RELIEF, WHEN DISTRICT COURT RELIED UPON UNITED STATES V. MAUMAU, NO. 2:08-CR-00758-TC-11, 2020 WL 806121, at *2, at *4, AND AT *7, (D. UTAH FEB 18, 2020) TO GRANT HIM PARTIAL RELIEF WHEN HIS CASE AND MAUMAU'S ARE PRACTICALLY EXACTLY THE SAME? 5TH AND 8TH AMENDMENT CONSTITUTIONAL VIOLATION'S!
- 6) CAN PETITIONER GET RELIEF, WHEN THE "FSA" ALTERED THE § 924(c) STATUTE SUCH THAT IT'S SUBSECTION NOW ONLY APPLIES IN CASE OF A VIOLATION OF THIS SUBSECTION THAT OCCURS AFTER A PRIOR CONVICTION UNDER THIS SUBSECTION HAS BECOME FINAL, "WHICH EFFECTIVELY PREVENTS THE 25 YEAR ENHANCED MINIMUM OR ANY SUBSEQUENT CONVICTION OR CHARGE OF THIS SUBSECTION FROM BEING GROUPED TOGETHER, OR "STACKED", INTO A SINGLE INDICTMENT, AS THEY ARE IN HIS CASE? 5TH AND 8TH AMENDMENT CONSTITUTIONAL VIOLATION'S!
- 7) CAN PETITIONER GET RELIEF, WHEN THE D.C. CIRCUIT COURT, THE 2ND CIRCUIT, THE 4TH CIRCUIT, THE 5TH CIRCUIT, THE 6TH CIRCUIT, THE 7TH CIRCUIT, THE 9TH CIRCUIT, AND THE 10TH CIRCUIT HAVE ALL CONCLUDED THAT USSG § 1B1.13 IS NOT APPLICABLE AND WHEN A MAJORITY OF THE CIRCUIT'S AGREE THERE MUST BE A SUBSTANTIAL RULING IN AGREEMENT WITH THE MAJORITY IN THE INTEREST OF "FAIRNESS, JUSTICE, INTEGRITY, AND PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS."
- 8) CAN THIS HONORABLE UNITED STATES SUPREME COURT REVIEW PETITIONER'S CASE DE NOVO?

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

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18 U.S.C § 3582(c)(1)(A)

FIRST STEP ACT OF 2018 (FSA)

Passim

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 A 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 8/11/2021.

☒ 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

U.S. CONST. AMENDMENT V

U.S. CONST. AMENDMENT VIII

"COMPASSIONATE RELEASE" PROVISION OF THE FIRST STEP
ACT OF 2018 (FSA).

REVIEW FOR PLAIN ERROR STANDARD.

STATEMENT OF THE CASE

Pursuant to a Plea Agreement in November of 2016, Petitioner was convicted on three separate counts of Carjacking, two counts of Robbery, one count of Possession of a Firearm by a Convicted Felon all ran concurrently to a term of 60 months, and, as is most relevant to Petitioner's argument here, five counts of using or carrying a firearm during a crime of violence under 18 U.S.C. § 924(c). As to the § 924(c) counts Petitioner was sentenced to one consecutive 60 month term of imprisonment and four consecutive 150 month terms of imprisonment for a total sum of 720 months imprisonment. Petitioner has served the time for underlings offenses and convictions, and is now serving time for the § 924(c) conviction's. On 5/26/2020 Petitioner submitted a motion requesting sentence reduction for extraordinary and compelling reason under 18 U.S.C. § 3582 (c) (1) (A). On 6/24/2020 the U.S. District Court denied Petitioner's motion without prejudice for not exhausting his administrative remedies. After exhausting administrative remedies Petitioner submitted another motion for sentence reduction for extraordinary and compelling reasons under 18 U.S.C. § 3582 on 8/31/2020. On 4/8/2021 the U.S. District Court partially granted Petitioner's compassionate release. Petitioner timely filed notice of appeal on 4/26/2021 to the U.S. Appeals Court for the Eleventh Circuit. The U.S. Appeals Court denied Petitioner's appeal as moot citing United States v. Bryant, 996 F.3d 1243, 1248 (11th Cir. 2021), on 8/11/2021. Pursuant to the FSA, the compassionate release provision was modified in December 2018 to allow that inmates, not just solely the Director of the Bureau of Prisons ("BOP"), could move the courts for a modification in his or her sentence. Among other factors, a court may now modify a defendant's sentence if it finds ... that extraordinary and compelling reasons warrant such a reduction and such a reduction is consistent with "applicable" policy statements issued by the Sentencing Commission. While Congress did not define what constitutes "extraordinary and compelling reasons" for a reduction, the Sentencing Commission had been directed to publish policy statements regarding this provision and to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." 28 U.S.C. § 994(e). As directed by the statute, and "prior" to the FSA, the Sentencing Commission set out a policy statement which directs courts to first consider the Sentencing Factors set out in 18 U.S.C. § 3553 (a) "to the extent they are applicable." See U.S. Sentencing Guidelines ("USSC") Manual § 1B1.13.

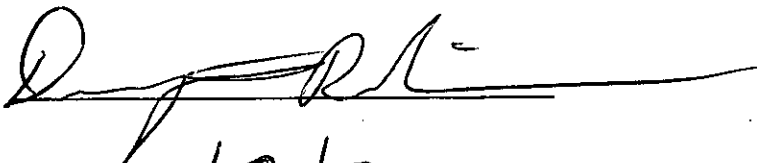
REASONS FOR GRANTING THE PETITION

ACCORDINGLY, DISTRICT COURT RELIED HEAVILY UPON THE OPINION IN UNITED STATES VS. MAUMAU, NO. 2:08-CR-00758-TZ-11, 2020, TO PARTIALLY GRANT PETITIONER'S COMPASSIONATE RELEASE MOTION UNDER 18 U.S.C. § 3582 (c)(1)(A). MAUMAU WAS INVOLVED IN A GANG. HE COMMITTED 3 ROBBERIES. IN EACH OF THE 3 ROBBERIES HE HELD A GUN AND ASKED THE EMPLOYEES TO OPEN THE CASH REGISTER. MAUMAU WAS CHARGED WITH CONSPIRACY TO COMMIT RACKETEERING OFFENSE VIOLENT CRIMES IN AID OF RACKETEERING, HOBBS ACT ROBBERY AND USING A GUN DURING A CRIME OF VIOLENCE. MAUMAU WAS FOUND GUILTY OF SEVERAL CRIMES, BUT AS RELEVANT HERE MAUMAU WAS FOUND GUILTY OF 3 § 924(c) OFFENSES. MAUMAU WAS SENTENCE TO 57 YEARS, INCLUDING A 7 YEAR MANDATORY MINIMUM SENTENCE FOR THE FIRST § 924(c) CONVICTION AND 25 YEAR MANDATORY MINIMUM SENTENCES FOR BOTH THE SECOND AND THIRD SUBSEQUENT CONVICTIONS, WITH ALL THESE SENTENCES TO RUN CONSECUTIVELY. (MAUMAU WAS SENTENCED PRIOR TO ALLEYNE V. UNITED STATES AND AS SUCH, THE FIRST § 924(c) WAS REDUCED FROM 7 YRS TO 5 YRS.) THIS BROUGHT HIS SENTENCE FROM 57 YRS TO 55 YRS. MAUMAU FILED A MOTION FOR RELIEF UNDER (FSA) SEEKING RELIEF FROM HIS "STACKED" § 924(c) CASES AS PETITIONER HAS IN HIS OWN. THE DISTRICT COURT DETERMINED "WHEN CONSIDERED TOGETHER... MAUMAU'S AGE, THE LENGTH OF SENTENCE IMPOSED, AND THE FACT THAT HE WOULD NOT RECEIVE THE SAME SENTENCE IF THE CRIMES OCCURRED TODAY ALL REPRESENT EXTRAORDINARY AND COMPELLING GROUNDS TO REDUCE HIS SENTENCE. THE COURT REDUCED MAUMAU'S SENTENCE TO TIME SERVED AS WELL AS A 3YR PERIOD OF SUPERVISED RELEASE. SIMILARLY, HERE IN PETITIONER'S INSTANT CASE HIS AGE, THE LENGTH OF SENTENCE IMPOSED, AND THE FACT THAT "STACKING" § 924(c)'S IN CASES SUCH AS HIS HAS BEEN ELIMINATED, SHOULD HAVE BEEN CONSIDERED AND ULTIMATELY BROUGHT FORTH A RULING OF VACATING ALL SUBSEQUENT § 924(c)'S AND TIME SERVED WITH 5YRS PERIOD OF SUPERVISE RELEASE. THIS IS A HUMONGOUS 5TH AND 8TH AMENDMENT CONSTITUTIONAL VIOLATION'S! FURTHERMORE, USSG § 1B1.13 DOESN'T APPLY TO PRISONER FILED MOTIONS FOR COMPASSIONATE RELEASE BECAUSE THE POLICY PREDATES THE FIRST STEP ACT AND THEREFORE IS NOT AN APPLICABLE POLICY STATEMENT ISSUED BY THE SENTENCING COMMISSION WITH RESPECT TO PRISONER-FILED MOTIONS. THIS IT DOES NOT BIND THE DISTRICT COURT IN IT'S CONSIDERATION OF PRISONER-FILED MOTIONS. (1) THE DISTRICT COURT AND THE U.S. APPEAL'S COURT COMMITTED AN ERROR (2) THAT WAS PLAIN (3) THAT AFFECTED MY SUBSTANTIAL RIGHTS, AND (4) THAT AFFECTED THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS. BOTH COURTS ERRONEOUSLY RELIED ON USSG § 1B1.13 TO DENY FULL RELIEF WHEN THE GUIDELINE DID NOT APPLY TO HIS MOTION. AN ERROR IS PLAIN WHEN IT VIOLATES AN "ABSOLUTE CLEAR" LEGAL NORM LIKE WHEN THE CLARITY OF A STATUTORY PROVISION IS NOT IN DOUBT. USSG § 1B1.13 APPLIES ONLY TO MOTIONS FILED BY THE BUREAU OF PRISONS ("BOP") AND NOT TO MOTIONS BY PRISONERS, THE POLICY STATEMENTS INAPPLICABILITY IS PLAIN ON IT'S FACE. BY IT'S TERMS, THE POLICY STATEMENT APPLIES ONLY TO MOTION FOR COMPASSIONATE RELEASE FILED BY THE (BOP), NOT BY DEFENDANT'S. THE POLICY STATEMENT'S BY THE SENTENCING COMMISSION ARE NOT SIMPLY BACKGROUND TO STATUTES ENACTED BY CONGRESS. IN FACT, IT'S THE OTHER WAY AROUND. "THEY FLOW FROM AND ARE RESPONSIVE TO CONGRESS'S CHANGES IN THE LAW. CONGRESS LEADS, AND THE COMMISSION FOLLOWS. ANY CHANGE BY CONGRESS TO THE STATUTES MAY RESULT IN A CHANGE TO THE POLICY STATEMENT'S BY THE SENTENCING COMMISSION, BUT THERE HASN'T BEEN A QUORUM TO ALLOW THESE CHANGES SINCE 2019. BECAUSE THE DISTRICT COURT TREATED USSG § 1B1.13 AS A CATEGORICAL BAR ON FULL EXTENT OF RELIEF, THE U.S. APPEAL'S COURT AND THE U.S. DISTRICT COURT COMMITTED PLAIN ERROR IN DENYING PETITIONER'S MOTION.

IT IS VIVIDLY CLEAR THAT BEFORE PETITIONER'S INDICTMENT AND ULTIMATE CONVICTION'S IN THIS INSTANT CASE, THAT HE WAS NEVER CONVICTED OF A § 924 (c) OFFENSE. WHICH MEANS THERE WAS NO PRIOR CONVICTION UNDER THIS SUBSECTION AND THEREFORE UNDER THE FSA'S CHANGES AS IT CURRENTLY STANDS, ALL SUBSEQUENT COUNT'S UNDER THIS SUBSECTION MUST BE VACATED IN ACCORDANCE TO CURRENT LAW AS IN MAUMALI'S CASE. OTHERWISE AS OF NOW PETITIONER WOULD BE SUBJECT TO SERVING AN ILLEGAL SENTENCE FOR (STACKED § 924 (c) SENTENCE'S) TO WHICH THE CHANGE UNDER THE FSA EFFECTIVELY PREVENTS IN CASES SUCH AS THIS ONE. IT IS GLARINGLY CLEAR THAT THE DISTRICT COURT IS AWARE OF THESE PARAMETER'S THAT HAVE BEEN ENACTED BY FSA BECAUSE IT MENTIONS THIS IN IT'S ORDER AND JUDGEMENT PG. 10 PARAGRAPH 2. SO THIS IS A BLATANT PLAIN AND CLEAR VIOLATION OF PETITIONER'S 5TH AND 8TH AMENDMENT CONSTITUTIONAL RIGHT'S. IT IS ALSO ABUSE OF DISCRETION BY THE DISTRICT COURT BECAUSE ALTHOUGH IT IS UP TO THE DISTRICT COURT'S DISCRETION TO DECIDE IF A REDUCTION OF SENTENCE IS WARRANTED UNDER 18 USC § 3582 (c) (1)(A), THE FIRST STEP ACT IS NOT DISCRETIONARY IN IT'S APPLICATION OF THE § 924(c) STATUTE AND SUBSECTION. THIS FURTHER SHOWS THE DISTRICT COURT'S PLAIN ERROR DUE TO IT'S CLEAR AND OBVIOUS KNOWLEDGE OF PETITIONER'S "STACKED" CONCLUSION § 924(c) CONVICTION'S IN A SINGLE INDICTMENT. PETITIONER RESPECTFULLY AND HUMBLY ACK'S THIS HONORABLE UNITED STATES SUPREME COURT TO VACATE BOTH LOWER COURTS ORDER AND JUDGEMENT AND REMAND TO THE DISTRICT COURT WITH AN ORDER TO PROPERLY VACATE ALL SUBSEQUENT § 924(c) CONVICTION'S IN ACCORDANCE WITH THE FSA CHANGE OF LAW, OTHERWISE HERE EXISTS A SERIOUS MISCARriage OF JUSTICE. PETITIONER FOREVER PRAYS

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 2/8/2022