

21-7463

No. _____

FILED

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OFFICE OF THE CLERK
SUPREME COURT U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

James Edward Sandford III — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Second Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

James E Sandford III, #24157-055
(Your Name)

FCI Ray Brook, P.O. Box 900
(Address)

Ray Brook, New York 12977
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- Can the Supreme Court please clarify its holding in *Pepper v. U.S.*, 462 U.S. 577 (2011), as to when a court should, or should not, have to consider a defendant's postsentencing rehabilitation? Did the lower courts err when they refused to consider the petitioner's complete transformation and personal achievements in between his two sentencings? Why would any court ever not want to consider positive changes an individual made since his original sentencing? Can a court really just look over the original sentencing transcripts and then resentence that person from his desk?
- When does the Supreme Court exercise its "supervisory power" pursuant to Supreme Court Rule 10(a)? How much will it let a lower court get away with? When is enough, enough? Will this Court be a safeguard against injustice?
- Why does a court not have to expressly decide every legitimate argument on the merits? Why do they not take any pro se arguments serious? Is stating that "they have considered the remaining arguments and find them to be without merit" at the end of an order, without any explanation, really sufficient?
- Why does the "spirit of the law" and the "letter of the law" always seem to be in conflict, and never in agreement with each other? Why do the principles of justice and fairness not apply to most ordinary people? Will the Supreme Court ever take steps to end mass incarceration? Can we reduce the American prison population to under a million people?



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

NONE

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Pepper v. U.S., 462 U.S. 577 (2011)

STATUTES AND RULES

Supreme Court Rule 10(a)

OTHER

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A	Second Circuit Order dated September 23, 2021. (denying appeal and essentially overruling <i>Pepper v. U.S.</i> , 462 U.S. 577)
APPENDIX B	District Court Order dated August 10, 2020 (Western District of New York (Larimer, J.))
APPENDIX C	Second Circuit Order denying rehearing and en banc. Dated December 1, 2024.
APPENDIX D	Second Circuit Order dated May 29, 2020 (remanding to the district court)
APPENDIX E	
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 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 September 23, 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: December 1, 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

The Fifth Amendment of the Bill of Rights
in the United States Constitution.

Due Process of Law

STATEMENT OF THE CASE

After his initial appeal, the petitioner was remanded back to the District Court for a sentencing error. This pertained to a miscalculation of his criminal history points. The language in the mandate was ambiguous and confusing. It was impossible to determine if the Court of Appeals was directing a new sentencing hearing because there was a serious conflict between two separate sentences in the order. (Order of the Second Circuit dated May 29, 2020) The petitioner has underlined the two sentences located on pages 5 and 8 respectfully. (Please see Appendix D) Nevertheless, the petitioner still presented the District Court with detailed evidence of his extensive postsentencing rehabilitation. The court was aware that it had an obligation to determine an appropriate sentence based on the person who stood before it on that very day. In fact the court unconsciously acknowledged this when it declined to resentence the petitioner. It stated in its Order (dated August 10, 2020; page 5) that: "all of the reasons that the court set forth for departure when I imposed the original sentence remain as convincing TODAY as they were when the court originally imposed sentence..." (underlined on page 5; Appendix B) The court never held a hearing, failed to consider any postsentencing rehabilitation, and proceeded to impose the same sentence from his desk in chambers. This is literally as absurd as it sounds.

The court did not want to consider the petitioners postsentencing conduct because it would have undoubtedly justified a lesser sentence. In the process, it vehemently insulted *stare decisis*; both Second Circuit caselaw and Supreme Court precedent. (Pepper v. U.S., 462 U.S. 577 (2011)) On appeal again, the Second Circuit attempts to use semantics to back up the lower courts decision. They fail miserably. They imply that Pepper only gave courts an OPTION to consider postsentencing conduct. They make it sound like there was a good reason to not consider it in this case but provide no explanation

or guidance on the matter. They focus their attention instead on one sentence in Pepper that states: "in appropriate cases, evidence of postsentencing rehabilitation may be IRRELEVANT in light of the narrow purpose of the remand." The panel emphasized "irrelevant" but there was nothing irrelevant about it. Irrelevant means having no effect. Postsentencing rehabilitation was highly RELEVANT in this case because it alone could have justified a lower sentence. The sentence in Pepper describes a situation where postsentencing rehabilitation would not matter. For instance, a case where a mandatory minimum sentence was originally imposed, and even after the remand, would still be impossible to get under. That's irrelevant. In this case it would have made a big difference. There is no appropriate reason why "the district court was not required to consider evidence of Sandford's postsentencing rehabilitation" (Order of the Second Circuit dated September 23, 2021; page 5) (Appendix A) This was an error. Not wanting to reduce a sentence is no excuse.

Next, the Second Circuit just brushed the petitioners five separate pro se arguments right under the rug. They devoted a single paragraph, consisting of just one sentence for each of his nonfrivolous issues. They deliberately discombobulated these well presented arguments so they did not have to really delve into them and possibly have to grant relief. They wish this pro se brief was nonsense. Instead, it was well written and supported by law. The petitioner did not graduate from William and Mary, but he is intelligent and has a great understanding of legal concepts. He loves the law and will never break it again. Even though it may seem he never has anything good coming from the courts, he will continue to fight. This is his purpose. His dream is to write a brief that gets granted cert. He represents the underdog and strives to even the playing field. He is on the search for justice and fairness. This is a man with a mission.

Please do not allow the courts to keep getting away with

whatever they want. Hold them accountable like they hold everyone else. The law applies to everyone. By the way, please let the Second Circuit know that they always have the power to recall a mandate. The petitioner has made repeated requests so that he can file for rehearing regarding his initial appeal. He never receives a response. Grant certiorari and send a message. We need criminal justice reform. The Supreme Court has the power to truly make America a better place.

REASONS FOR GRANTING THE PETITION

Because it is the right thing to do | Far too often, human-beings languish in prison unnecessarily because a court did not adhere to the law like they are suppose to. This results in far too many people incarcerated and costs American taxpayers billions. This is a problem that affects everyone on some level. Thank God that the United States Supreme Court has Rule 10(a).

Supreme Court Rule 10(a) bestows the Court with "supervisory powers." Yet, not even Rule 10(a) is "controlling or fully measuring the Courts discretion." The Supreme Court is suppose to step in when a court "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court (Sp.Ct.R. 10(a)). Justice Thomas recently explained that the Court must "provide lower courts with "much needed" guidances, and ensure adherence to our precedent" (Rogers v. Grewal, — U.S. —, 207 L.Ed.2d 1059 (2020)). In this case, Supreme Court precedent was blatantly ignored. Pepper v. U.S., 562 U.S. 476 (2011) stood for the proposition that courts should consider intervening circumstances between Sentencings, and that a courts DUTY is always to sentence a defendant as he stands on that day. Justice Sotomayor wrote that there is no better indicator of a prisoners present purposes and tendencies than his postsentence conduct. A court should want to consider this type of positive evidence. Unless, it would make its preferred sentence seem unreasonable. But then this would be an "abuse of discretion", and in this case, the Second Circuit allowed it.

The lower courts were so clearly wrong that a remand is warranted. "The strangeness of the Court of Appeals holding may lead this Court to believe that it will be unlikely to figure in future cases, but the decision, if left undisturbed, will stand as binding precedent" (Alito, J. in Kalamazoo County Rd. Comm'n v. DeLeon, 574 U.S. 1104 (2015)). This case is a "plant that needs to be yanked out of the ground because it is not healthy" (Roberts, C.J. in Spears v. U.S., 555 U.S. 261 (2009)).

Please "insist that courts comply with the law, that parties will be able to vindicate the rights they assert, and preserve the laws own insistence on neutrality and fidelity to principle" (Hollingsworth v. Perry, 558 U.S. 183 (2010)). These systematic interests are all present in this case, plus a court should always want to ensure the integrity of their own judgements. Certiorari should be granted in this case because it will make the criminal justice system better and more fair. It will show America that the highest court in the land will not permit a court to do whatever it pleases, to whoever it wants. Justice is not locking millions of

people up, but also that they are afforded protections and due process. It is not okay when a court veers off that path.

In *Tolan v. Cotton*, 572 U.S. 650 (2014), this Court granted cert. for essentially just an "error correction." This Court needs to really be the last stop in maintaining uniformity of court decisions. Please take a greater interest in criminal cases because this is where there is a very real potential to make America a better place. This Court has a tough job but you were chosen by God to do it. And even with the Courts "vague concept of substantive due process, this case passes the "raised eyebrow" test" (*BMW v. Gore*, 517 U.S. 59 (1995)).

Prisoners should be rewarded for staying out of trouble and doing everything they can to become better people. Any court should appreciate this. After all, we are a nation of second chances. A court should always have to consider the good, along with the bad.

Please grant cert. because it would be good for everyone.

CONCLUSION

The petition for a writ of certiorari should be granted..

Respectfully submitted,

James E Sandford III

Date: February 23, 2022

I declare under the penalty of perjury that this petition was deposited in the inmate mail system on February 23, 2022.
18 U.S.C. §1621 and 28 U.S.C. §1746

Dated: Feb. 23, 2022
Ray Brook, NY

James E Sandford III
James E Sandford III
24157-055