

No. 21-7473

IN THE
SUPREME COURT OF THE UNITED STATES

ANTWOYN TERRELL SPENCER- PETITIONER

VS.

UNITED STATES OF AMERICA- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

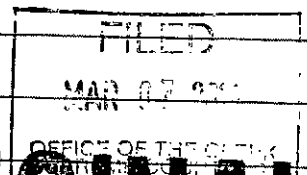
Antwoyn Terrell Spencer

#14781-041

Federal Prison Camp

P.O. BOX 1000

Duluth, MN 55814



ORIGINAL

QUESTION PRESENTED

1. Whether Petitioner is being deprived of his Civil Right to Due Process against law (without due process of law) in violation of the Constitution and Laws of the United States?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

RELATED CASES

United States v Antwonn Terrell Spencer,
07-cr-174-JRT-JJG, U.S. District for the
District of Minnesota. Judgment entered
11/22/21

United States v Antwonn Terrell Spencer,
No. 21-3728, United States Court of Appeals
for the Eighth Circuit. Judgment entered
1/24/22

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Appendix B- Decision of the District Court

TABLE OF AUTHORITIES CITED

CASES

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Apprendi v New Jersey,
530 U.S. 466, 147, L. Ed. 2d
435, 120 S. Ct. 2348 (2000)

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United States v Spencer,
998 F.3d 843, 845 (8th Cir. 2021)

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STATUTES AND RULES

Section 404 of the First Step Act, 2018

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

☒ is published

The opinion of the United States District Court appears at Appendix B to the petition and is

☒ is published

JURISDICTION

[X] For cases from Federal Courts:

The date on which the United States Court of Appeals decided my case was 1/24/22

[X] No petition for rehearing was timely filed in petitioner's case.

The jurisdiction of this Court is invoked under 28 U.S.C.S. 1254(1).

Judgment was entered 1/24/22

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Due Process Clause, Fifth Amendment;
No person shall be deprived of life,
liberty, or property without due
process of law.

Section 404 of the First Step Act
of 2018

STATEMENT OF THE CASE

1. In 2007, Petitioner was convicted and sentenced for felony crimes presented on a criminal complaint never submitted to a Grand Jury for its lawful return.
2. On December 21, 2018, the First Step Act of 2018 was enacted.
3. On May 27, 2021, the Eighth Circuit Court of Appeals reversed the district court's decision denying petitioner resentencing under Section 404 of the First Step Act.
4. On November 22, 2021, the district court issued a order on a Motion to Expedite disguised as a final decision.
5. On January 24, 2022, the Eighth Circuit Court of Appeals summarily affirmed the judgment.
6. This petition for a writ of certiorari follows.

REASONS FOR GRANTING THE PETITION

PETITIONER IS BEING DEPRIVED OF PETITIONER'S CIVIL RIGHT TO DUE PROCESS AGAINST LAW IN VIOLATION OF THE FIFTH AMENDMENT, SECTION 404 OF THE FIRST STEP ACT, APPENDI V NEW JERSEY, 530 U.S. 466, L. Ed. 2d 435, 120 S.Ct. 2348 (2000), UNITED STATES V SPENCER, 998 F.3d 843, 845 (8th Cir. 2021), AND THE UNITED STATES SENTENCING GUIDELINES

The Eighth Circuit Court of Appeals found Petitioner eligible for resentencing under Section 404 of the First Step Act. United States v. Spencer, 998 F.3d 843, 845 (8th Cir. 2021).

Section 404(b) of the First Step Act authorizes a reduced sentence for a "covered offense" as if Sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed. See Section 404(b).

Appellant was convicted of, and sentenced for a conspiracy to distribute at least 5 kilograms of cocaine and at least 50 grams of cocaine base, both in violation of Title 21, United States Code, Sections 841(a)(1), 846, and 841(b)(1)(A) and (B).

Under the United States Sentencing Guidelines 1 gram of cocaine = 200 grams of converted drug weight. 5 kilograms of cocaine is 5,000 grams which amounts to 1,000,000 grams of converted drug weight. 1,000,000 grams of converted drug weight equals 1,000 kilograms of converted drug weight.

Furthermore, 1 gram of cocaine base = 3,571 grams of converted drug weight. 50 grams of cocaine base is 178,550 grams of converted drug weight. 178,000 grams of converted drug weight equals 178.55 kilograms of converted drug weight.

(6)

5 kilograms of cocaine and 50 grams of cocaine base is equivalent to 1,178.55 kilograms of converted drug weight.

This sum of converted drug weight establish a base offense level of 30, at least 1,000 kilograms but less than 3,000 kilograms of converted drug weight. See U.S.S.G. 2D1.1(c)

Offense level 30 in criminal history category 2 provide a guideline range of 129-151 months of imprisonment, which is petitioner's applicable guideline range for his covered offense.

The guideline range presented is absolutely accurate based on the jury's verdict and the principles articulated in *Apprendi v. New Jersey*, 530 U.S. 466, 147 L. Ed. 2d 435, 120 S. Ct. 2348 (2000) (Any fact other than a prior conviction that increases the penalty for a crime beyond the "Prescribed Statutory Maximum" must be submitted to a jury and proved beyond a reasonable doubt.).

Based on the foregoing Petitioner is being deprived of due process of law against law, and is currently unlawfully restrained of his liberty.

Petitioner has exceeded his time authorized by law being that he has served nearly 15 years of imprisonment.

CONCLUSION

In accordance with due process of law, the petitioner is entitled to immediate release. The petition for writ of certiorari should be granted.

Antwain Terrell Spencer submits this petition for writ of certiorari on this 7th day of March, 2022.

Respectfully Submitted,

s/ Antwain Spencer

Dated: 3/7/22