

21-8030

No. \_\_\_\_\_

**ORIGINAL**

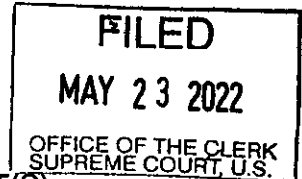
IN THE

SUPREME COURT OF THE UNITED STATES

ANDRE MARCUS BUCHANAN — 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 FOURTH CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ANDER MARCUS BUCHANAN #05610-509

(Your Name)

FCI WILLIAMSBURG, P.O. BOX 340

(Address)

SALTERS, SOUTH CAROLINA 29590

(City, State, Zip Code)

NONE

(Phone Number)

### **QUESTION(S) PRESENTED**

WHETHER MR. BUCHANAN'S SENTENCE IS UNREASONABLE BECAUSE IT IS GREATER THAN NECESSARY TO ACCOMPLISH THE GOALS OF 18 U.S.C. § 3553(a).

WHETHER PLAIN ERROR REVIEW WOULD HAVE DISCOVERED THAT PETITIONER DOES NOT QUALIFY AS A CAREER OFFENDER.

## 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, 6 |
| CONCLUSION.....  | 6    |

## INDEX TO APPENDICES

|            |   |
|------------|---|
| APPENDIX A | UNPUBLISHED OPINION/DATED 03/31/2022          |
| APPENDIX B | REPRODUCED COPY OF NORTH CAROLINA DRUG STATUE |
| APPENDIX C |   |
| APPENDIX D |   |
| APPENDIX E |   |
| APPENDIX F |   |

## 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 |
|--|-------------|
| Taylor v. United States,<br>495 U.S. 575 .....                   | 5           |
| United States v. Campbell,<br>22 F.4th 438 (4th Cir. 2022) ..... | 4, 5        |

## STATUTES AND RULES

United States Sentencing Guidelines Manual § 4B1.1

## 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 \_\_\_\_\_ 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 03/31/2022.

☒ 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**

N/A



## STATEMENT OF THE CASE

The Court sentenced Mr. Buchanan as a Career Offender, and calculated an advisory sentencing guideline range of 151 to 188 months, by using two prior state convictions that did not have the requisite required controlled substance offense as the U.S. Sentencing Guidelines Manual's definition of a "controlled substance offense" did not include an attempt crime. The court entered a written judgment on May 27, 2021. Mr. Buchanan filed a timely appeal on June 3, 2021. The United States Court of Appeals for the Fourth Circuit affirmed his conviction on March 31, 2022.

The Court of Appeals failed to notice the plain error regarding whether commission of an attempt crime constituted a controlled substance offense supporting a career offender sentencing enhancement. See *United States v. Campbell*, 22 F.4th 438; 2022 U.S. App. LEXIS 566; No. 20-4256. January 7, 2022, Decided. September 24, 2021, Argued.

## REASONS FOR GRANTING THE PETITION

This is a Constitutionally compelled issue which resulted in a fundamental unfairness of firmly established federal court proceedings against Petitioner (Career Offender), and a writ of certiorari grant by this United States Supreme Court would not alter the decision of the Fourth Circuit Court of Appeals, but would only affirm that a defendant placed in the same situation of a possible sentence enhancement of a Career Offender status, would only resolve and expand the Plain Error Standard, and prevent other courts from overlooking instances where a possible miscarriage of justice has been committed in the district court. As in this case, Petitioner relies on the fact that the Fourth Circuit Court of Appeals recently grounded its analysis of the language of the United States Sentencing Guidelines Manual § 4B1.1, and found that the enhanced sentence imposed on defendant as career offender, pursuant to U.S. Sentencing Guideline Manual § 4B1.1, had to be vacated because the defendant did not have the requisite two prior convictions of a controlled substance offense as the U.S. Sentencing Guidelines Manual's definition of a controlled substance offense did not include an attempt crime. United States v. Campbell, 22 F.4th 438. In the foregoing case, the Fourth Circuit made a ruling concerning the definition and how to determine whether a conviction under an asserted predicate offense statute constitutes a controlled substance offense as defined by the U.S. Sentencing Guidelines Manual, a court will employ the categorical approach. If the least culpable conduct criminalized by the predicate offense statute does not qualify as a controlled substance offense, the prior conviction cannot support a career offender enhancement.

The legal principle involved in this matter are of major significance to the district courts jurisprudence and the decision from the Fourth Circuit Court of Appeals is in direct conflict with the district court that failed to look to the statutory definitions of the Petitioners prior state conviction and rendered its decision on the underlying fact of those convictions in opposite of the holdings in, Taylor v. United States, 495 U.S. 575, 600 (1990). That is the reason that Plain Error Review is vital in circumstances of enhanced sentences such as career offender sentences. As in this case, the state statute, § 90-95, in the state of North Carolina, the least culpable conduct criminalized is an attempt to deliver a controlled substance. NC. Code § 90-95(a)(3)(7), "Deliver" or "delivery" means the actual constructive, or attempted transfer from one person to another of a controlled

substance, whether or not there is an agency relationship.  
(See Appendix-B)

Therefore, Petitioner has compelling reasons why this Court should grant certiorari where the district court failed to follow the Supreme Court edict when it comes to the categorical approach, which will ensure that a miscarriage of justice will not occur and this Court must order grant certiorari where the district court has departed from the accepted and usual course of judicial proceedings where the Fourth Circuit has sanctioned the lack of Plain Error review, and such departure by the Fourth Circuit, that call for the exercise of this Supreme Court's supervisory power is warranted. The importance of this issue, not only affects petitioner, but others in similarly situated cases. The Fourth Circuit has ignored the important function of the court, which was establish to prevent such actions of a sentence enhancement that a defendant does not qualify.

#### CONCLUSION

Based on foregoing, petitioner prays that this Honorable Court grant certiorari, and or grant, vacate, and remand this matter back to the Fourth Circuit Court of Appeals with instructions to use the standard of Plain Error Review, to factually determine whether petitioner qualify as a Career Offender by using the categoricial approach.

The petition for writ of certiorari should be granted.

Respectfully Submitted,



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