22-5185

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

Thomas Creighton Shrader — 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

Thomas Creighton Shrader
(Your Name) Reg. No. 08691-088
Fed. Correctional Institution
P.O. Box 9
(Address)

Mendota, California 93640
(City, State, Zip Code)

?
(Phone Number)

QUESTION(S) PRESENTED

#1 When the Federal Bureau of Prisons is misapplying 18 U.S.C. 3583(a) [Supervised Release] not only to Petitioner, but to thousands (1000's) of Federal Prisoners, did The Fourth Circuit err in refusing to "clarify" a term of Supervised Release must be executed within the sentence given by the Court based upon that persons guideline sentence and cannot be served after the prisoner discharges their maximum guideline range sentence in prison? As there is no sentence remaining for Supervised Release, and execution would be a second sentence of punishment for the same conviction in violation of the Double Jeopardy clause of the Fifth Amendment, 18 U.S.C. § 3742(a)(3) and 18 U.S.C. §3583(a) statutory directive, that a term of Supervised Release is imposed "as a part of the sentence" (to a term of imprisonment), and not in addition to said sentence?

#2 Since Congress failed to give any direction, did The Fourth Circuit err in Failing to decide, (when a defendant receives a term of Supervised Release, "as a part of the sentence" to a term of imprisonment, pursuant to 18 U.S.C. § 3583(a)), is it the "duty" of the district court, or the Federal Bureau of Prisons, to calculate the official execution date for release on Supervised Release prior to the discharge date of the defendants full guideline sentence?

#3 In general 18 U.S.C. § 3583(a) requires the court in imposing a sentence to imprisonment may include, "as a part of the sentence" a requirement that the defendant be placed on a term of Supervised Release after imprisonment. Was it error by The Fourth Circuit in failing to explain "how" a defendant can be placed on a term of Supervised Release after imprisonment if the defendant had to discharge their full guideline sentence before being released?

#4 Did The Fourth Circuit err in failing to rectify the district courts erroneous conclusion that Petitioners sixty (60) month Supervised Release term was to be served after completion of his two hundred thirty five (235) month maximum guideline sentence, instead of the sixty (60) month Supervised Release term being "a part" of the two hundred thirty five (235) month guideline sentence as mandated by 18 U.S.C. §3583(a)?

(Cont. next page question #5)

QUESTION(S) PRESENTED

#5 Pursuant to 18 U.S.C. § 3583(a) in imposing a sentence to imprisonment the court shall include supervised release as "a part" of the sentence upon release. How can a defendant do any supervised release when the court makes defendants maximum issued guideline sentence the term of imprisonment and leaves no sentence remaining for the term of supervised release, as defendants full guideline sentence has been served ?

LIST OF PARTIES

[X] 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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INDEX TO APPENDICES

TABLE OF AUTHORITIES CITED

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

[X] 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,
[X] 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,
[X] 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 March 29, 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

Fifth Amendment

Eighth Amendment

18 U.S.C. § 3553 (a)

18 U.S.C. § 3583 (a)

21 U.S.C. § 841

21 U.S.C. § 960

28 U.S.C. § 1254 (1)

18 U.S.C. § 3742 (a) (3)

STATEMENT OF THE CASE

On November 18, 2010 Petitioner was sentenced in The United States District Court For The Southern District of West Virginia.

The sentencing court decided Petitioner should be sentenced under The Armed Career Criminal Act and faced a guideline range of one hundred eighty eight - two hundred thirty five (188-235) months, with Supervised Release of sixty (60) months. Based on three felony conviction Petitioner received in 1976 in West Virginia. Which Petitioner believed and was told in 2010 Supervised Release was like parole.

In June 2021 during a "team" meeting for review of Petitioner's classification at Mendota F.C.I. Petitioner was informed his release date was now July 2026 instead of December 2026 due to the new re-calculation of good time credits.

At which time Petitioner objected and stated his release date should be December 2021. But now based on the new calculation he should be release in July 2021, that 2026 was the "discharge" date of his sentence and per his sixty (60) month term of Supervised Release should afford him release in July 2021 to serve his sixty month term of Supervised Release before the "discharge" date of his sentence.

Petitioner was told he was wrong. He would start his sixty (60) month Supervised Release term only after he discharged his 235 month sentence and left prison. Petitioner realized what he was being told, and objected again, stating that would illegally increase his legal guideline sentence of two hundred thirty five months into an illegal sentence of two hundred ninety five (295) months. Five years above his maximum guideline range for a sentence issued by the court under the 1984 SRA., and would be in reality a "second

REASON FOR GRANTING THE PETITION

Pursuant to an old maxim, "notice to agent is notice to principle," in today's application of this filing means all Justice's of this court are the principle and the reader/reviewer of this Petition is an agent for the Justice's.

This, "Petition" either directly, or through a court designated agent, "hereby gives notice" to the Justice's of this court to an unconstitutional application of 18 U.S.C. § 3583(a) by; "ALL OF THE UNITED STATES DISTRICT COURTS FOR THE UNITED STATES", and by; "The Federal Bureau of Prisons".

With this court being made fully aware of the misapplication of 18 U.S.C. § 3583(a) the, "Reason For Granting This Petition" would be because it's the right thing to do as the court of "last resort," if you cannot give justice for this issue, then who can ?

I'm just one man addressing this Honorable Court, but the unconstitutional application of 18 U.S.C. § 3583(a) being perpetrated in my case is also being perpetrated on Thousands of Federal prisoners! As I've discovered in my research and personal interaction with other inmates since my quest for justice and due process in this matter began.

Currently, and in the past, it is The Federal Bureau of Prisons standard practice to all inmates who received a term of Supervised Release under 18 U.S.C. § 3583(a) to "discharge" the full sentence given them and then upon release start serving their Supervised Release term. Which is an unauthorized "second sentence" of punishment for the same conviction in violation of the Double Jeopardy clause of the Fifth Amendment protection against multiple punishment for the same offense. North Carolina v. Pearce, 395 U.S. 711, 717, 89 S. Ct. 2072, 23 L. Ed. 656 (1969). Application of the 1984 Sentencing Reform Act requires the sentencing court pursuant to 18 U.S.C. § 3553(a) "to determine the particular sentence to be imposed" and at § 3553(a)(4) "the kinds of sentence and the sentencing range..."

If the sentencing court chooses a "sentence" of imprisonment, it automatically activates the court consideration and application of 18 U.S.C. § 3583(a), which states;

> "The court, in imposing a sentence to a term of imprisonment for a felony or misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such term is required by statute..."

Clearly, in compliance with 18 U.S.C.§ 3553(a)(4) pursuant to the SRA, the sentencing court determines the defendants length of "sentence" from the applicable guideline range. Once that sentence is determined for the defendant "if it is a sentence of imprisonment", then pursuant to the application of 18 U.S.C. § 3583(a) the sentence is "composed of; (1) a term of imprisonment; and (2) a term of supervised release. Since Congress "distinctly" in § 3583 commands the defendant be placed on the term of supervised release after imprisonment and it is "a part of the sentence", it must be executed within the sentence itself before the "discharge date" of the defendant sentence. Contrary to the district courts Order of December 13, 2021 in which the court held;

> "Despite Defendant's assertion, supervised release and parole are not the same. Because parole and supervised release are distinguishable, his arguments regarding parole are unpersuasive."

Petitioner was not arguing "parole" Petitioner was arguing "supervised release", so it's no wonder any argument regarding parole would be unpersuasive, and circumvents the issue.

However, this court in; Johnson v. United States, 529 U.S. 694, 710 held; "since supervised release developed out of parole it is reasonable to look to parole in fathoming the New Law." citing; (See Meeks, 25 F.3d at 1121, "[S]upervised Release is essentially similar to parole");(United States v. Paskow, 11F.3d 873, 881, (CA 1993)("Supervised Release and Parole are virtually identical systems").

It is Petitioner understanding from historical research, Congresses purpose for enacting Supervised Release was due to the fact that many inmates, (prior to 1984) who screwed up in prison consistantly were never afforded parole and "discharged" their sentence in prison and were then "free" to go, as there was no sentence remaining to serve. While on the other hand, a good inmate who was granted parole was afforded assistance and help while free on parole until they were release from parole or discharged their sentence while on parole.

A clear reading of 18 U.S.C. § 3583(a) infer's this was Congresses intent of law in § 3583(a) since Congress directly commanded that; "as a 'part of the sentence' to a term of imprisonment...may include a term of supervised release after imprisonment and shall be include if required by

statute."

Congresses usage to distinguish between "sentence" and "term" with a directive that a "term" of supervised release is "a part" of the sentence executed after the "term" of imprisonment.

When a sentencing court applies the entire range of the sentence to a term of imprisonment there is no sentence remaining for a term of supervised release, and this defeats Congresses written purpose and intent for 18 U.S.C. § 3583(a).

To be executed like parole, but forcing a "release" upon all prisoners before they can "discharge" their sentence in prison by being placed on a "term" of supervised release (determined by the sentencing court) before the "discharge" date of their sentence.

The intent was to end or stop defendants from discharging their sentence in prison and set free with no assistance, causing recidivism, by failing to be monitored and having help or assistance after release from their discharge.

But like parole, to be "released" from imprisonment early during the execution of their sentence, not "after" the sentence has been discharged.

Which is the current "illegal" practice and standard substantiated "as fact" by The District Courts December 13, 2021 Order in this case. (See Appendix "B"- page 2).

This court recognized and held in; Mont v. Unites States, 587 U.S. ____, 139 S. Ct. ____, 204 L. Ed. 2d 94, US LEXIS 3889; -

> "Supervised Release is a form of punishment prescribed along with a term of imprisonment as a part of the same sentence."

Petitioner's sentencing guideline range was one hundred eighty eight - two hundred thirty five (188-235) months. The sentencing court gave Petitioner a "sentence" of two hundred and thirty five (235) months. Which included a sixty (60) month term of Supervised Release upon Petitioner being released from prison.

This creates a "catch 22", in The Federal Bureau of Prison's implementation of defendants sentence. The Federal Bureau has no legal authority pursuant to the courts written, "Judgement In A Criminal Case Order", of November 23, 2010 to release Petitioner sixty (60) months prior to his discharge date of his two hundred thirty five (235) month sentence.

When Petitioner legally discharges his two hundred thirty five (235) month sentence, there is no sentence left to serve on supervised release. (Emphasis Added)

To now say Petitioner has to serve a sixty (60) month sentence, would be a seperate second sentence, and per Mont supra that supervised release is punishment, (i.e. Double Jeopardy). This would turn Petitioner's within guideline sentence of 235 months into an illegal 295 month out of range sentence! (Emphasis Added)

The Fourth Circuit condoned and affirmed the district courts denial of Petitioners, "Motion for Clarification or Immediate Release", to begin serving his term of supervised release before his sentence reached its discharge date.

The current "practice" is harmful to defendant's (as it is doubling their time of punishment) and therefore expensive to the tax payers.

Inasmuch, as thousands of currently incarcerated federal inmate's would have their sentences re-calculated from a sentence discharge date release, to a supervised release date prior to the sentence discharge date, and ease overcrowding.

Which should immediately "discharge" all current § 3583 defendants, who are currently on supervised release that discharged their full sentence in prison before being released from prison.

Please take notice in Title 21 U.S.C. in the penalities for § 841, § 960, Congress made it a point to clarify; "Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall...impose a term of supervised release of at least 5 years 'in addition to such term of imprisonment'".

This language clearly shows Congress took exception under Title 21 in drug cases for a term of supervised release to be "in addition" to a sentence of imprisonment and not "a part" of the sentence as stated in 18 U.S.C. § 3583(a).

This Petition will afford this Honorable Court the opportunity to clarify whether it is the "duty" of the sentencing court or The Federal Bureau of Prisons to determine the defendants "release date" on Supervised Release prior to their "sentence discharge date". Since 18 U.S.C. § 3583(a) directs the court in imposing a sentence to a term of imprisonment... may include as "a part of the sentence" a requirement that the defendant be placed on "a term of Supervised Release" after imprisonment.

Or the district court in it's Judgement in a Criminal Case ORDER require The Federal Bureau of Prisons to calculate the defendants release date on Supervised Release based on the term of months required to be on Supervised Release prior to the defendants discharge date of his sentence, as the defendant accrues good time credits each month of 4.5 days per month.

With The Fourth Circuit affirming the district courts denial Order, in essence denied Petitioner due process of law in violation of his Fifth Amendment, confirmed that a second sentence per supervised release in violation of the double jeopardy clause of the Fifth Amendment was okay, and this double punishment with execution of the supervised release when the defendant had discharged his 235 month sentence was not cruel and unusual punishment in violation of the Eighth Amendment.

The principle here is simple: The courts must not countenance violations of the Constitution. "In a government of laws, existence of The Government will be imperilled if it fails to observe the law scruplously... If the Government becomes a law breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Olmstead v. United States, 277 U.S. 438, 485, 72 L. Ed. 944, 48 S. Ct. 564 (Brandeis, J., dissenting).

If this Honorable Court does not Grant this Petition, then this court and it's Justices of Honor will be condoning the unconstitutional application of 18 U.S.C. § 3583(a) by the United States District Courts of The United Sates in the current execution of supervised release, contrary to the intent of Congress to be served during the defendants sentence and not after said sentence has been discharged.

The district courts will continue day in and day out from now until this court puts an "End" to this unconstitutional application and execution of supervised release after said sentence has been discharged and there is no sentence remaining to serve for Supervision.

This court has the power to correct this past, present, and future practice in the execution of supervised release under 18 U.S.C. § 3583(a). Not only the power, but the "duty" and a "sworn duty" at that, to do "Justice", that "I" as a person and Petitioner hunger for. Since each of you now have the first name "Justice", which is so much more than "a title" it is in essence, breathing living "Justice" embodied in you as righteous Justice itself, that I humbly petition as Justice itself for the Justice I Seek in Justice to correct and right this wrong of egregious

application, execution and constitutional abuse of 18 U.S.C. § 3583(a).

I beseech this court to do honor to your first name and be Justice, by giving all of us, that are being, have been, and will be "abused" with the misapplication of 18 U.S.C. § 3583(a) much longer periods of confinement than required since we are not being released until our sentence is discharged and then forced to do a second sentence, as "supervised release" illegally without recourse to any lower court that refuses to do anything as proven by evidence of this case as fact.

Do Honor to this court by enforcing an ancient maxim, "Equity treats as done what ought to be done."

Thank You! Petitioner prays This Petition be GRANTED for good cause and Justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Thomas Creighton Shrader

Date: May 20, 2022