

22-5219

No.

FILED

JUL 27 2022

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Kim Miller

— PETITIONER

(Your Name)

vs.

United States

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals for the Fifth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Kim Miller

(Your Name)

P.O. Box 8000 / Atlanta, Georgia

(Address)

Florence, SC 29506

(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED

JUL 28 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1.) Whether Petitioner has A tenth Amendment violation claim; and standing to challenge 18 USC §§ 922(a) and 924(c)(2); And 21 USC §§ 841(c)(1) and (c)(2) and 18 USC §§ 1512(b)(2) and (c); And 18 USC §§ 1512(b)(2) counts 1-6; as an infringement upon the powers reserved to the states?

2.) Whether the 7th Circuit Court of Appeals erred by affirming the District Court's judgment denying Petitioner's Habeas corpus relief pursuant to his claims of 5th and 6th Amendment violation of due process and ineffective assistance of counsel claims; Also Actual innocence and miscarriage of Justice claim and denial of COA?

3.) Whether Petitioner has A Jurisdictional challenge pursuant to 18 USC § 13(a); 18 USC § 84(c) And Title 10 USC § 255 Assimilative Crimes Act?

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:

United States Court of Appeals:

- 1.) Clarence S. Thomas - Chief Judge
- 2.) Clarence P. Wood - Circuit Judge

United States District Court:

- 1.) Michael M. Mihm

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(iv)

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☐ is unpublished.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 13 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☒ is unpublished.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 5-10-2020.

☒ No petition for rehearing was timely filed in my case. N/A

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, 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 N/A (date) on N/A (date) in Application No. A.

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

See Appendix "C" Exhibits 1-7

[] 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

28 U.S.C. § 2255 Actual Innocence & Miscarriage of Justice:

The term "Miscarriage of Justice" comes from the U.S. Supreme Court's holding that a non-jurisdictional, non-constitutional error of law is not a basis for collateral attack under 28 U.S.C. § 2255 unless the error is a fundamental defect which inherently results in a complete miscarriage of justice.

Adjustments & Enhancements, Armed Career Criminals:

The definition of a violent felony under the Armed Career Criminal Act (ACCA) was repeated verbatim by the sentencing Commission in defining a "crime of violence" in U.S. Sentencing Guidelines Manual § 4B1.2, and it would be inappropriate to treat identical texts differently just because of different caption.

- Continued -
= Constitutional And Statutory Provision Involved =

Post Conviction Proceedings & Motion to Set Aside Sentence:

28 U.S.C. § 2255 (a) provides that a Federal Prisoner may claim the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the U.S., or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, and may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Appeals, Certificate of Appealability

One of the requirements for obtaining a certificate of appealability is that an applicant must make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2). The U.S. Supreme Court

- Continued -
"Constitutional And statutory Provision Involved"

has explained that, in this context, a substantial showing requires a demonstration that reasonable jurists could debate whether ~~Cor~~, for that matter, agree that the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

Threshold Requirements, Due Process

The U.S. Constitution grants sentencing courts wide discretion in determining what sentences to impose. it is well-established, however, that the Due Process clause applies to certain aspects of the sentencing process. Therefore, a defendant has a constitutional right to be deprived of liberty as punishment for criminal conduct only to the extent authorized by Congress.

- continued -

≡ Constitutional And statutory Provision Involved ≡

Cognizable issues, Sentences

Sentencing errors are generally not cognizable on collateral review, especially when such errors can be raised on direct appeal. There is, however, a special and very narrow exception: A postconviction clarification in the law has rendered the sentencing court's decision unlawful.

Counsel, Effective Assistance of Counsel

Ineffective assistance of counsel can constitute sufficient cause for the failure to raise an issue.

Effective Assistance of Counsel, Appeals

Appellate counsel is ineffective if counsel fails to raise issues that are C1D obvious, and C2D clearly stronger than ones raised.

- continued -

✓ Constitutional And statutory Provision involved ✓

Effective Assistance Tests

A defendant may establish cause for failing to raise a claim by demonstrating that he received ineffective assistance of counsel in order to establish ineffective assistance of counsel, a defendant must show: C1) that his attorney's performance was constitutionally deficient; and C2) that this deficient performance was Prejudicial,

Amendment 18M

U.S. Sentencing Guidelines § 2B1.1 (C) C10) under the new definition of "Cocaine base" found in the U.S. Sentencing Guidelines Manual only the form of "Cocaine base" which is "crack" is eligible for the enhanced sentence. Thus the Government must prove by a Preponderance of the evidence that the defendant possessed "crack".

- continued -

"Constitutional And Statutory Provision Involved"

Exception to Default, Actual Innocence And Misconduct of Justice

A petitioner's claim may still be reviewed in this collateral proceeding if he can establish that the constitutional error in his plea colloquy has probably resulted in the conviction of one who is actually innocent. To establish actual innocence, petitioner must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would have convicted him.

criminal law and procedure, criminal offense, controlled substances, possession, intent to distribute, penalties

For first-time offenders who possess with the intent to distribute at least 100 kilograms of marijuana, the Controlled Substances Act (CSA) mandates a term of imprisonment of at least five years 21 U.S.C. § 841(c)(2)(C)(B)(C)(D). But for offenders who

- continued -

Constitutional And Statutory Provision involved

engage in such conduct after a prior conviction for a felony drug offense has become final, the CSA mandates a term of imprisonment of at least 10 years. ^{841 Cb2 C12 Cb2 Cvi2}. A separate provision of the CSA defines a "felony drug offense" as a drug-related offense that is punishable by imprisonment for more than one year under any law of a state ^{201 U.S.C.S. ⁸⁰² CH2}.

Criminal Law and Procedures, Sentencing Guidelines

The Government must provide evidence from the record that the defendant actually faced the Illinois recidivist enhancement that would bring his sentence for those convictions within the purview of the ACCA, and career offender status,

- Continued -

“Constitutional And statutory Provision involved”

Title 40 U.S.C.S. § 2655 reads in part:

The head or other authorized officer of any department of the government may indicate acceptance of such Jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such state. Unless and until the United States has accepted Jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such Jurisdiction has been accepted. Where the Federal Government has not filed an acceptance of Jurisdiction, § 2655 establishes the conclusive presumption that no Jurisdiction exists.

- Continued -

"Constitutional And Statutory Provision Involved"

Section 7 of Title 18

Section 7 of Title 18 defines the "Special Maritime and Territorial Jurisdiction of the United States". Specifically, subsection 1(c) defines such jurisdiction to include: Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the state in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

- continued -

≡ Constitutional And Statutory Provision Involved ≡

Jurisdiction > Legislation > Statutes of
Limitation > Time Limitation > Civil
Procedure > General Overview

There is no barrier to a Court's ex-
amination. On a 28 U.S.C. § 2255
Motion, of the propriety of its ori-
ginal exercise of Jurisdiction, rather
a court is under an affirmative
obligation to so inquire. A Jurisdic-
tional Challenge can be raised at
any point during the proceedings.

Because a Jurisdictional defect
cannot be procedurally defaulted
in the first place, it is therefore
a non sequitur to suggest that
a procedural default cannot be
overcome because the defendant
has not made an adequate
showing of cause.

Civil Procedure > Jurisdiction >
Subject Matter > General Overview

- Continued -

"Constitutional And Statutory Provision Involved"

Lawyers and Judges sometimes refer to the Interstate Commerce element that appears in many Federal crimes as the "Jurisdictional element", but this is a colloquialism - or perhaps a demonstration that the word "Jurisdiction" has so many different uses that confusion ensues. The nexus with Interstate Commerce, which courts frequently call the "Jurisdictional element", is simply one of the essential elements of the offense. Although courts frequently call it the "Jurisdictional element" of the statute, it is "Jurisdictional" only in the shorthand sense that without the nexus, there can be no Federal crime. It is not jurisdictional in the sense that it affects a court's subject matter jurisdiction. Thus, while a link to Interstate Commerce may be essential to Congress substantive authority,

- continued -

≡ Constitutional And Statutory Provision Involved ≡

the existence of regulatory power differ from the subject-matter jurisdiction of the courts. The subject matter jurisdiction in every federal criminal prosecution comes from 18 U.S.C. § 3231, and there can be no doubt that Article III permits Congress to assign federal prosecutions to federal courts. That's the beginning and the end of the "jurisdictional" inquiry.

Constitutional Law > Congressional Powers
& Powers > Reserved Powers > State autonomy
> General Overview

The Principles of limited national powers and state sovereignty are intertwined. While neither originate in the Tenth Amendment, both are expressed by it. Impermissible interference with state sovereignty is not within the

- continued -

✓ constitutional And statutory provisions involved ✓

enumerated powers of the national government, and action that exceeds the national government's enumerated powers undermines the sovereign interests of states. The unconstitutional action can cause concomitant injury to persons in individual cases.

5th Amendment

No Person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in

- continued -

“Constitutional And statutory Provision Involved”

any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

6th Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses against him in his favor

- Continued -

Constitutional and statutory Provision involved -

and to have assistance of Counsel for his defense.

10th Amendment

The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.

Courts - Conflict of authority - State and Federal - Concurrent Criminal Proceedings.

A Prisoner with the consent of the Attorney General May, while serving a sentence imposed by a district court of the United States, be lawfully taken, on a writ of habeas corpus, directed to the Master of the house

- continued -

Constitutional and Statutory Provision Involved

of Correction, who, as Federal agent, under a writ issued out of said court, has custody of such prisoner, into a state court, in the custody of said Master, and there put to trial upon indictments there pending against him, although there is no express statutory authority for the transfer of a Federal prisoner to a state court for such purpose, and notwithstanding the provision of U.S. Rev. Stat. § 5539, that, when any criminal sentenced shall, in all respects, be subject to the same discipline and treatment as convicts sentenced to the courts of the state or territory in which such jail or penitentiary is situated, and that, while so confined therein, he shall be exclusively under the control of the officers having charge of the same, under the laws of such state or territory,

STATEMENT OF THE CASE

On 3-20-2006, Petitioner was indicted in the Rock Island Illinois District Court for Felony Possession of a Firearm in violation of 18 USC 3392(a) and 924(a)(2) and Possession with the intent to distribute crack cocaine in violation of 21 USC 841(a)(1) and 841(b)(1)(C). On 1-18-2007, a superseding indictment was filed charging Petitioner with Felony Possession of a Firearm in violation of 18 USC 3392(a) and 924(a)(2) (Count 1). Possession with intent to distribute crack cocaine in violation of 21 USC 841(a)(1) and 841(b)(1)(C) (Count 2). Witness tampering in violation of 18 USC 331512(b)(1) and (2) (Count 3). Witness tampering in violation of 18 USC 331512(b)(1) and (2) (Count 4). Witness tampering in violation of 18 USC 331512(b)(1) and (2) (Count 5). and witness retaliation in violation of 18 USC 31513(b)(2) (Count 6). (10.39).

On 3-15-2007, a Jury found Petitioner guilty on all six counts. (10.40); see Also minute entry dated 3-15-2007, on 8-14-2007, Petitioner was sentenced to the F.B.O.P. For 372 months on each of counts 1 and 2 and 120 months on each of counts 3, 4, 5, and 6 to run concurrently to each other and concurrently with counts 1 and 2. (10.101). Petitioner was placed on supervised release for five years on count 1, eight years on count 2, and 3 years on counts 3, 4, 5, 6 all to run concurrently. Id.

Petitioner appealed C.D. 1040. On 1-23-2009, the United States Court of Appeals for the 7th Circuit affirmed my conviction and sentence. C.D. 125; see also U.S. v. Millbrooke, 553 F.3d 1057 (7th Cir. 2009) overruled by United States v. Connor, 598 F.3d 411 (7th Cir. 2010) insofar as the district court was entitled to disagree with career-offender guideline.

On 6-19-2009, Petitioner filed a motion to vacate, set aside or correct sentence under § 20255, Millbrooke v. U.S., ILCD case no. 09-4044 (Initial § 2255 case). In initial § 2255 case, Petitioner alleged that the U.S. Central District Court for Rock Island Illinois lacked jurisdiction to convict me. See initial § 2255 case. C.D. 10. Petitioner appealed the court's order denying my initial motion, and the seventh circuit denied my request of certificate of appealability and dismissed the case, initial § 2255 case, C.D. 400.

Four years later, Petitioner again sought permission from the seventh circuit to file a successive § 2255 motion based on the Supreme Court's decision in *Johnson v. U.S.*, 576 U.S. 591 (2015), and alleged I no longer met the criteria for the armed career criminal enhancement on count 1 of the career offender enhancement on count 2. (Seventh Cir. case no. 16-22430). On 6-9-2016, the 7th circuit court of appeals granted my application so I could challenge the ACCA under 18 USC § 924(c) to count 1 under *Johnson*. *Millbrook v. U.S.*, ILCA case no. 16-4113 (second § 2255 case), C.D. IL.

The 7th circuit found that my prior convictions for drug trafficking and home invasion remained valid predicates for career offender enhancement under USSG § 4B1.2(c)(3), a provision unaffected by *Johnson* and rejected my challenge to count 2. *Id.*

The U.S. District Court Central Division for Rock Island, in turn, held

that I was not an armed career criminal and granted my second § 2255 motion as to count 1, second § 2255 case, C.D. 210. I also included my argument as to count 2. In my second § 2255 regarding my career offender enhancement in which the U.S. District Court Central Division for Rock Island Illinois declined to consider. Id. On 8-3-2017 I was re-sentenced to 120 months on count 1, and 3 years of supervised release on count 1. See Minute entry dated 8-3-2017, an amended Judgment was entered on 8-4-2017, C.D. 1310.

On 1-15-2019, I filed several motions to reduce my sentence under section 404(b) of the First Step Act and Fair Sentencing Act under crack cocaine § 841 C(b) C(b) C(b) C.D. 135, 137, 139, 155, 162, 163, 165, 167. On 10-9-2020 an order was entered denying my motions. C.D. 1740. The court found that I was eligible for a reduced sentence under the First Step Act, but still denied me under the court's discretion.

The court left my drug conviction sentence on count 2, at 372 months intact. Id.

On 10-15-2020, I filed a motion for reconsideration of first step Act motion arguing under U.S., v. Ruth, 966 F.3d 642 Cir. 2020. That my prior Illinois drug conviction should not have enhanced my sentence. C.D. 1750, on 12-10-20 the court granted my motion to reconsider on the grounds of new evidence was provided that showed my prior conviction involved cocaine, and if sentenced today, the law would only permit a maximum sentence of 240 months on count 2. C.D. 181, P.P. 4-50, A second Amended Judgment was entered on 12-11-20, C.D. 1820,

While the first step motions were pending, I filed an application with the 7th circuit Appeals court for leave to file a second suc-

cessive under 208 USC §§ 2024
C63 and 2255 C63. C10.1710. I
challenged my drug conviction
under the career offender guide-
line. on 7-31-20 the 7th circuit
dismissed my application as un-
necessary. The new motion was
not a successive and did not re-
quire authorization from the
7th circuit. Id.

On 7-27-20, I filed a third § 2025
motion, again challenging my drug
conviction enhancement in the Rock
Island Illinois central district court
use of the career offender en-
hancement on count 2, claiming
my prior conviction in Rock Island
County case no. 98-CF-658 for home
invasion is not a predicate "crime
of violence" under the career of-
fender guidelines. (D.160). I also
argued that my conviction for
domestic battery did not consti-
tute a crime of violence under
USCG § 4B1.1 C63 C33 or § 4B1.26.

In support, I attached my second § 2255 case which made the same argument, Millbrooke v. U.S., ILCD case no. 16-4113, CID. 150. The court declined to consider my career offender designation.

On 11-23-20 the People's Central District Court division in Illinois entered an order to the clerk to file my third § 2255 case as a pending motion CID. 1800, a P-Pointed the Federal Public Defender (FPD) to represent me on my case and to file an amended § 2255 motion on my behalf, CID. 1790. On 2-8-21, the FPD filed a motion to withdraw as my attorney due to me wanting to file an 6th amendment ineffective assistance of counsel claim against my trial attorney and my appellate court attorney, CID. 1900. On February 24 2021 the court entered an order

granting the motion to withdraw and allowed me until 2-24-21 to file an amended or supplemental § 2255 motion, CTXT order, 2-10-21.

On 3-1-21 I filed an amended supplemental motion under 28 USC § 2255 challenging the career offender enhancement to count 2, under § 4B1.1 adding for the first time ineffective assistance of trial counsel and appellate court counsel. CD. 1912.

The court denied my third § 2255 motion under my 5th amendment 6th Amendment and 10th Amendment constitutional right violation claims and denial of an evidentiary hearing and a certificate of appealability *COA*. *Slack v. McDonald*, 529 U.S. 473, 484 (2000). I also made an actual innocence - miscarriage of justice claim in § 2255 motion.

On 7-8-21 this court denied
me relief under NY § 2255 and
a COA, I then filed an COA
in the 11th circuit court of appeal
on or about 8-13-21 case no.
21-20492 Millbrook v. USA. My
COA was deny review under
28 USC § 2253(c)(2). On 5-10-22.

REASONS FOR GRANTING THE PETITION

The Actions and Decisions of the lower U.S. District Court and the U.S. Court of Appeals for the 11th Circuit was enormous and prejudicial to this case and thereby violating Constitutional error against their sworn oath of office to uphold the Constitution in the USA Federal laws; Rules and statutes contrary to precedents and Decisions from other Circuit Courts and the U.S. Supreme Court and U.S. Appeals Courts Decisions. Petitioner was deprived and denied of my 5th Amendment Due Process Right; 6th Amendment Right to effective assistance of counsel from trial and Appellate Counsel; And 10th Amendment Challenge as to my Federal Criminal conviction of the statutes of illegal gun possession 18 USC 922C and 924C and 262; illegal crack cocaine

Possession with Intent to Distribute 18 USC § 841 (a)(1) and (b)(1) (Counts 1-2); Witness Tampering 18 USC § 1512 (b)(1) and (2) (Count 3-5); And Witness Retaliation in violation of 18 USC § 1513 (b)(2) (Count 6).
Petitioner Filed A Motion to Vacate; Set aside on correct sentence under the case of Johnson v. U.S., 576 U.S. 591 (2015) on Count 1 and 2 of my Federal case of gun and drug charge, For Armed Career Criminal Act and Career offender enhancement 4th Cir. Case No. 16-2020430. The 4th Circuit granted my application. I was resentenced under 18 USC § 924(c). See Milbrooke v. U.S., 11th Cir. Case No. 16-4113 (second 32055 case). as to Count 1, but not Count 2. I received 120 months as to Count 1, but no reduction as to Count 2, which remained the same sentence of 3720

Months under illegal drug conviction pursuant to USG 34B1.1 CACCS.

Petitioner filed MY third § 2255 case again challenging the courts use of the career offender enhancement under the sentencing guidelines on July 24, 2020.

On 11-25-2020 the court let MY third § 2255 case proceed with appointment of the Federal Public Defender CFPD C10.1790.

The FPD filed a motion to withdraw as MY attorney on 2-8-21 stating Petitioner wished to file and raise claims of ineffective assistance of counsel against MY trial and Appellate Counsel C10.1900. In violation of MY 5th, 6th and 10th Amendment rights under Strickland v. Washington, 466 U.S. 668, 687-88 (1984).

Nat'vacz, V. U.S., 674 F.3d 621,
628-30 C.M. 2017; Bond
V. U.S., 130 S.Ct. 2355; 180 L.Ed
2d 269; 2011 U.S. LEXIS 4558.

On 2-10-21 the court granted
FPO motion to withdraw and
allowed Petitioner until 2-24-21
to file an amended or supple-
mental §2255 C.T. order.
2-10-2021

On 3-1-21 I filed an amend-
ed supplemental §2255 motion
challenging all my Federal
convictions as a career of-
fender as to Count 2. The
career career criminal Act
as to Count 1. Witness tamper-
ing as to Counts 3-5. And
Witness Retaliation as to
Count 6. Petitioner made 5th
and 10th Amendment
right violation claims against
my trial and appellate at-
torneys for not arguing

My Issues of Jurisdictional Challenge to all my Federal Charges and convictions before trial; at trial and on appeal. See *Massapo v. U.S.*, 538 U.S. 500, 504 (2003) Can ineffective-assistance-of-counsel claim may be brought in a §2255 motion whether or not the petitioner could have raised the claim on direct appeal. See Also *Bousley v. U.S.*, 523 U.S. 614, 118 S.Ct. 1604, 140 L.Ed.2d 808 (1998) Crallef under 2255 can be available, even if a contention has been forfeited. When a later decision shows that the prisoner is actually innocent of a federal crime.

See *Davis v. U.S.*, 417 U.S. 533 94 S.Ct. 2698, 41 L.Ed.2d 104 (1974) Petitioner claim of actual innocence of having possession of guns; drugs witness tampering and

Witness retaliation and
5th/6th and 10th Amend-
ment rights violation on
my federal case is involved
and void. See Buck v.

Davis, 137 S.Ct. 759 Feb.

2020, 2017 / See Murray v.

Campbell, 477 U.S. 478, 485

(1986) / Belford v. U.S., 975

F.2d 310, 313 C.M.R. 1992

Recall under 32255 is

available only for errors of
constitutional or jurisdictional
magnitude, or where the error
represents a "fundamental
defect which results in a
complete miscarriage of justice."

See Adams v. U.S., 319 U.S. 312,

63 S.Ct. 1122, 87 L.Ed. 1426 (1943)

"no jurisdiction existed in the
United States to enforce federal
criminal laws until consent to
accept jurisdiction over acquired
lands have been filed on the
United States as provided in

THE HOUSE § 2055, and fact that state authorized government to take jurisdiction was immaterial."

Pottenger's trial attorney from the FID name George Tascia was ineffective assistance of counsel at trial for not raising all my issues at trial, see Appendix "C" Defendant's Motion for new trial and Motion for new Counsel dated 7-3-2007. Thus violating Pottenger's 5th 6th and 10th Amendment rights.

Appellant attorney name Abner Mikeva was ineffective assistance of counsel on my appeal for not raising my issues see Appendix "C" Motion under 208 USC § 2055 EX'S "A" "B" and "C" dates 1-10-2008 and 3-3-2008 Murray v. Carrier, 477 U.S. 478, 485 (1986)

See Appendix "C" Exhibits
1-7

See New York v. United States,
1126 S.Ct. 26408, 204126-19, 2431
C19920; United States v. Lopez,
115 S.Ct. 16204, 131 L.Ed 2d 6206,
57 CrL 2033, 2035-38 C19950.
The statutes most Federal de-
fendants are charged with
violating would "as applied"
clearly exceed the scope of Con-
gress enumerated power, there-
by upsetting the delicate
Federal balance embodied
in the Ninth, Tenth and 14th
Amendment of the Constitution
and to "commerce clause", and
the various "state" constitu-
tions as well!

See Appendix "C" "Judicial
Notice" Memorandum of
Law Regarding Federal Juris-
diction Pages 1-36

See Ponzel v. Fessenden, 66
L. Ed 607, 258 U.S. 254

McCleskey v. Zant, 499 U.S.
467, 489 C19910

Cross v. United States, 892 F.3d
288 C20080

United States v. Lockett, 482
F.3d 349, 2015 U.S. App. Lexis
5154 / United States v. Simmons,
635 F.3d 140 C4th Cir. 2010 / U.S. v.
Rodriguez, 553 U.S. 347, 128 S.Ct.
1783, 170 L. Ed 2d 719 C20080. In
Rodriguez, the court permitted
reliance on a recidivist enhance-
ment for the purpose of determin-
ing whether a prior state con-
viction qualified as a predicate
for a federal sentencing enhance-
ment under the "ACCA" armed
career criminal act. Id. at 393
But the court cautioned that
when a judgment of conviction,

Changing document, or plea colloquy does not show that the defendant faced the possibility of a recidivist enhancement. It may well be that the "Government" will be precluded from establishing that a conviction was for a qualifying offense. Id at 389. Campharo added: In Carachun, the court went even further, explaining that in Rodriguez, it had "held that a recidivist finding could set the maximum term of imprisonment, but only when the finding is a part of the record of conviction." 130 S.Ct. at 2587 n.12. Campharo added:

See U.S. v. Fitzgerald, 1998 U.S. App. Lexis 21069 (CA11, 11th Cir. Aug 24, 1998) Amendment 487

See e.g. United States v. Shaw, 936 F.2d 412 (CA11, 1991) Cocaine has a scientific, chemical definition that is more inclusive than crack.

Petitioner's trial attorney violated my 6th Amendment right and my appellate attorney violated my 6th Amendment right to effective assistance of counsel by not raising my issues at trial and on appeal.
See Murray v. Carrier, 477 U.S. 478, 485 (1986); McCleskey v. Zant, 499 U.S. 467, 489 (1991)
See Appendix "C" Ex's 1-4

Petitioner was denied an evidentiary hearing and a certificate of appealability by the District Court and the Circuit Appeals Court pursuant to 28 USC § 2253(c)(2).

Slack v. McDaniel, 529 U.S. 473, 484 (2000) For cases in which a district court denies a habeas corpus claim on procedural grounds, the habeas court should issue a COA only if the petitioner shows that a just or reason would find it

debatable whether the Petition states a valid claim of denial of a constitutional right, and *Cas* Jurist of Reason would find it debatable whether the district court was correct in its procedural ruling. *Id.*

CONCLUSION

wherefore, Petitioner request this court grant my relief as requested in this Petition.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kim Mulbrook

Date: 7-15-2020