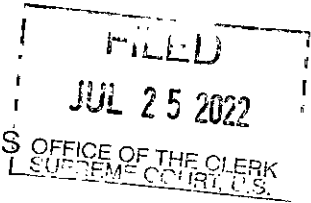


No. **22-5262**

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



DAVID D. MAJOR

— PETITIONER

(Your Name)

VS.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT APPEALS, SEVENTH CIRCUIT

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

PETITION FOR WRIT OF CERTIORARI

DAVID D. MAJOR

(Your Name)

FMC FT. WORTH, P.O. BOX 15330

(Address)

FORT WORTH, TEXAS 76119

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- (1) Isn't Seventh Circuit's panel decision contrary with UNITED STATES v. CHEEKS, 740 F.3d 440 (7thcir 2014), where district Court abused it's discretion in imposing Obstruction of Justice, because unlike CHEEKS the totality of the evidence, there is no evidence or indications Appellant attempted to pray on sympathies or sway testimony?
- (2) Isn't panel's decision district court hasnt abused its discretion in denying appellant's argument criminal history is overstated contrary to UNITED STATES v. MCLAUGHLIN, 760 F.3d 699 (7thcir 2014) and UNITED STATES v. TOWNSEND, 73 F.3d 747 (7thcir 1996)?
- (3) Isn't panel's decision contrary to it's own case law that materially rebuks the panel's conclusion the district court had not abused it's discretion in determining appellant's drugs sold to Bukowski caused A.K's death, because as stated in both UNITED STATES v. LUCAS, 670 F.3d 784 (7thcir 2012); UNITED STATES v. SANTIAGO 495 F.3d 870 (7thcir 2007), this panel's decision conflicts with it's relevant case law that a district court's sentencing determinations must be based on reliable evidence rather than speculation?
- (4) Isn't it abuse of discretion to enhance a sentence guideline range for obstruction of justice with insufficient evidence to support such conclusions?
- (5) Isn't it an abuse of discretion by not overturning district courts denial of Acceptance of Responsibility based on PSR objections?
- (6) Isn't Seventh Circuits denial of appeal contrary to their own precedent?
- (7) Isn't this sentence based upon incorrect guideline range contrary to UNITED STATES v. TOWNSEND, 73 F.3d 747 (7thcir 1996)?
- (8) Didn't Seventh Circuit fail to determine district court's improper application of the U.S. Sentencing Guidelines?
- (9) Isn't material facts stated in Indictment only relevant to sentencing?
- (10) Didn't Seventh Circuit fail to render 25 year old prior offense outdated for Career offender?

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:

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STATUTES AND RULES

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 B¹ 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 4-27-2022

☐ 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: 5-18-2022, 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 N/A
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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 _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

NONE involved

STATEMENT OF THE CASE

Contrary to Seventh Circuits panel, the court's own case law materially rebuts the panel's conclusions that the District Court had not Abused its discretion in determining that appellants drugs sold to Bukowski had caused A.K.'s death, no evidence at all to support this conclusion that drugs sold to Bukowski caused A.K.'s death, only hearsay testimony, despite the drugs could have come from multiple sources.

Panel's decision conflicts with UNITED STATES v. LUCAS, 670 F.3d 784 (7thcir 2012); UNITED STATES v. SANTIAGO, 495 F.3d 820 (7th cir 2007) that district court's determination MUST be based upon reliable evidence rather than speculation

Contrary to panels decision [in UNITED STATES v. CHEECKS, 740 F.3d 440 (7thcir 2014) is inapplicable to this case] that the district court had not abused its discretion in imposing the Obstruction of Justice enhancement conflicts with relevant Seventh Circuit case, unlike in UNITED STATES v. CHEECKS, the totality of the Government's evidence concerning Appellants contact with LOBB had been to simply have her tell the truth, unlike in CHEECKS there is no indication had attempted to pray on sympathies or to sway testimony, there is no ~~conf~~fracting evidence to this conclusion

Contrary to the Seventh Circuit's panel that the district court had not abused its discretion in denying appellants argument that his criminal history had been overstated conflicts with Seventh Circuit precedent in UNITED STATES v. MCLAUGHLIN, 760 F.3d 699 (7th cir 2014), and UNITED STATES v. TOWNSEND, 73 F.3d 747 (7thcir 1996) contrary to the Seventh Circuits decision the district court had committed significant procedural error in determing that defendants criminal history had not been overstated.

The Seventh Circuits conflicting denial of direct appeal which was contrary to their own precedent in UNITED STATES v. MCLAUGHLIN 760 F.3d 699; UNITED STATES v. YOUNG, 863 F.3d 685 (7thcir 2017) where district court failed to follow proper procedures in imposing sentence, based upon incorrect guideline range that constitutes an error affecting appellants substantial rights and amounts to plain error. See UNITED STATES v. TOWNSEND, 73 F.3d 747 (7thcir 1996)

Appellant's court failed to investigate aggravating factors of an overdose that was NOT stated in the Indictment since only relevant factors stated in Indictment can be applied, the Scienter element not satisfied explicitly in indictment. See UNITED STATES v. DIXON, 596 F.3d 178 (7thcir 1979); UNITED STATES v. PADILLA, 751 F.supp 761 (7thcir 2007), and once again Appellant's court failed to review district courts decision whether or not to depart by over-stating criminal history as to Career Offender status. See UNITED STATES v. SANTIAGO, 495 F.3d 820, 824 (7thcir 2007) (citing UNITED STATES v. COLLINS, 122 F.3d 1297 (10thcir 1997), with no facts in upward Departure from original guideline range, because there is no reliable evidence other than speculation and unfounded allegations sufficient to support probable accuracy. See UNITED STATES v. GABRIEL, 525 F.supp 173 (7thcir 1981); UNITED STATES v. SANTIAGO, 495 F.3d 820 (7thcir 2007).

STATEMENT OF THE CASE CONTINUED

For all aforementioned reasons this case should be remanded back to the Seventh Circuit of Appeals for an adequate review

REASONS FOR GRANTING THE PETITION

(1) Panel's decision's contrary to their own rulings in:

(A) In UNITED STATES v. CHEECKS, 740 F.3d 440 (7thcir 2014) contrary to Seventh Circuits panel decision, their case backs up Appellant's argument, there's no relevant evidence the Government presented, that appellant only stated he wanted LOBB to tell the truth, clearly not amounting to Obstruction of Justice

(B) IN UNITED STATES v. MCLAUGHLIN, 760 F.3d 699 (7thcir 2014) holds significant procedural error and abuse of discretion when district court failed to adequately explain it's chosen sentence and the use of 25 year old prior to enhance Career Offender status and in UNITED STATES v. TOWNSEND, 73 F.3d 747 (7thcir 1996), that mandates that a sentence based upon incorrect guideline range constitutes plain error, because in this case one of the predicate offenses for finding Career Offender had been a 1993 conviction almost 30 years old and the facts had been materially different than the present situation, because that case had no relation to drugs or drug trafficking

(C) UNITED STATES v. SANTIAGO, 495 F.3d 820 (7thcir 2007) and UNITED STATES v. LUCAS, 670 F.3d 784 (7thcir 2012) contrary to Seventh Circuits panel that district court's determination must be based upon reliable evidence, rather than speculation, because the Government failed to provide any sufficient supporting evidence to support their testimony, their evidence had neither been reliable nor credible, but instead the district court abused its discretion in determining that drugs sold to Bukowski had caused A.K.'s death

(D) In UNITED STATES v. BRYANT, 557 F.3d 489 (7thcir 2009) even if the Government were right with Obstruction of Justice, which they weren't, an adjustment for both Obstruction of Justice under 3C1 and Acceptance of Responsibility may both be possible and also supported by UNITED STATES v. CASTILLO, 779 F.3d 318 (5thcir 2015) that a defendant has a Due Process right to challenge errors in PSR that affects his sentence and as in this instant case done in Good Faith dispute as to the accuracy of factual findings in PSR to refuse to move for acceptance of responsibility simply because of those challenges

Again in UNITED STATES v. PURCHESS, 107 F.3d 1261 (7thcir 1997) it is the course of the court to determine if defendant understands and agrees with Attorney's argument before using counsel's challenge as a basis for denial of acceptance of responsibility, since this appellant has fully accepted responsibility with his plea.

(2) To Preserve the Integrity of the Court, the Seventh Circuit's panel decision should be overturned

The District Court Abused it's Discretion with respect to the Four Sentencing issues, the Seventh Circuits' panel denial is clearly contrary to its own court precedent ,to allow such a ruling stand is INJUSTICE to the point Due Process is lost,it undermines the confidence and integrity of that court and demands reversal.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul D. Maji

Date: 7-20-2022