

CASE NO: 22-5752

IN THE SUPREME COURT OF THE UNITED STATES

RICARDO SUGGS, Petitioner

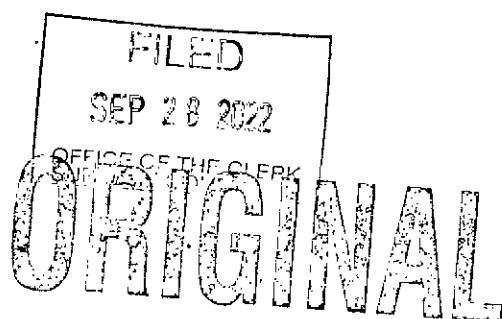
v.

WARDEN FCI-LORETTO, Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for
the Third Circuit.

Petition for Writ of Certiorari

Ricardo M. Suggs, Jr. Federal Inmate #05414-087
Loretto FCI
P.O. Box 1000
Cresson, PA 16630



QUESTIONS PRESENTED

- 1) Whether the Court of Appeals for Third Circuit incorrectly determined that the concurrent sentence doctrine can be used on a petitioner with solely consecutive sentences.
- 2) Whether the Court of Appeals for the Third Circuit incorrectly determined that the concurrent sentence doctrine is not a violation of a petitioner's constitutional rights under the Due Process and Equal Protection Clauses afforded by the 5th and 14th Amendments.

These overall questions are of public and judicial importance and are clear and definite interpretations of Supreme Court precedent and the continued nuanced interplay of partially reconciled case law will continue to result in the vague and problematic results as we have here.

LIST OF PARTIES

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

RELATED CASES

Ricardo M. Suggs Jr. v. Warden FCI-Loretto, No. 3:20-cv-0052, U.S. District Court for the Western District of Pennsylvania. Judgement entered July 27, 2021.

Ricardo M. Suggs Jr. v. Warden FCI-Loretto, No. 21-2497, U.S. Court of Appeals for the Third Circuit. Judgement entered May 11, 2022.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Ricardo Suggs, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinion of the Third Circuit Court of Appeals is unpublished.

JURISDICTION

The Third Circuit of Appeals issued its opinion on May 16, 2022 and subsequent petition for rehearing/en banc was denied on July 1, 2022. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

RELEVANT CONSTITUTIONAL and JUDICIAL PRECEDENT

In *Benton v. Maryland* 395 US 784, 23 L.Ed. 2d 707, 89 S.Ct. 2056 the Court expressed "The concurrent sentence doctrine, under which the federal courts need not consider challenges to multiple convictions not affecting the actual term of imprisonment, cannot be taken to state a jurisdictional rule; hence the existence of concurrent sentences does not remove the elements necessary to create a judicial case or controversy."

"The mere possibility of the adverse collateral legal consequences which most criminal convictions entail is enough to give a case "impact of actuality" which is necessary to make it a justiciable case or controversy."

In *Benton* the court set criteria for the application of the concurrent sentence doctrine.

- 1) There must be a valid concurrent sentence
- 2) and when another "concurrent" conviction has been reviewed and found invalid and the unreviewed conviction foreseeably will not have significant adverse consequences for the appellant.

5th Amendment of the United States Constitution

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 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 the public use, without just compensation.

14th Amendment of the United States Constitution

14th Amendment of the United States Constitution

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges' or immunities of citizens of the United States; nor shall any State deprive any person of life, Liberty, or property, without due process of law; nor deny to any person within it jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This is a criminal conviction, Petitioner Ricardo Suggs, Jr. was found guilty at trial for a violation of statute 922(g) and 924(a) Felon in Possession of a Firearm(Count One) in November of 2006. In January of 2007 he again was found guilty at trial for a violation of one count of 1512(a)(1)(A) Tampering with a witness-intent to kill(Count Two) and one count of 1512(a)(1)(b) Tampering with a witness-use of force (Count Three). In April of 2007 the probation department recommended a sentencing range of 324-~~306~~⁴ months based on the guideline penalty for Count Two. The sentencing court then applied statute 5G1.2(d) because the maximum sentence for Count Two is 240 months, and sentenced Suggs to the maximum on all three counts, 120 months for Count One to run consecutive to 240 months to Count Two and 240 months for Count Three to run consecutive to Counts One and Two in order to reach a total sentence of 324 months. Suggs' direct appeal and subsequent 2255 was denied.

COURSE OF PROCEEDINGS AND DISPOSITION in the COURT BELOW

Petitioner Ricardo Suggs, Jr. was charged with 922(g) and 924(a) Felon In Possession of Firearms after a short trial he was convicted and later sentenced to 120 months. In May of 2019 Suggs filed a habeas petition in the Western District of Pennsylvania seeking relief through the Court's decision in *Rehaif v. United States* 204 L.Ed. 2d 594, 139 S. Ct. 2191(2019). The district court agreed that Suggs met its standards for habeas relief, but denied his petition citing the concurrent sentence doctrine, despite his sentences being solely consecutive. The district court noted that Suggs was sentenced to the maximum on each count at sentencing and that even vacating Count One it could still give Suggs the same sentence with the remaining counts because the total sentence was only ~~24~~²⁴ months.

Suggs appealed to the United States court of Appeals for the Third Circuit

that his sentences were consecutive and the collateral consequences of the invalid conviction would leave him vulnerable to recidivist statutes such as the Armed Career Criminal Act. The Court of Appeals denied Suggs' petition stating its recent decision in United States v. Duka 27.F.4th 189, 194(3rd Cir. 2022) explaining "the concurrent sentence doctrine is appropriately applied whenever complete vacatur of the challenged sentence would not reduce the time Appellant must serve in prison. 'notwithstanding' any semantic distinction' about whether the sentences are 'termed concurrent'." ID. at 194-195 It then noted that United States v. Ray 481 U.S. 736, 95 L. Ed. 2d 693, 107 S. Ct. 2093(1987) does not apply to collateral attacks because of the 'in custody' requirement and that court must weigh the "social cost of a resentencing and expenditures of time and resources for the court and for a petitioner to attend when considering relief. See Duke Id. at 195-196.

REASONS FOR GRANTING CERTIORARI

This case presents important and expected recurring questions as to the interpretation of precedent and application of the concurrent sentence doctrine.

A. Concurrent sentence doctrine

The concurrent sentence doctrine is a rule of judicial convenience. It allows courts, in their discretion, to avoid reaching the merits of a claim altogether in the presence of identical concurrent sentences since a ruling in the defendant's favor would not reduce the time he is required to serve or otherwise prejudice him in any way. In this context, the court must foresee with reasonable certainty that the defendant will suffer no adverse collateral consequences from the court's decision to leave his conviction and sentence unreviewed.

B. The instant conviction and sentence

If the concurrent sentence doctrine were not invoked and Count One is vacated and the petitioner is remanded to the lower court, the remaining counts would result in a combined guideline range of 153-191 months. With changes to sentencing law and precedent from this Court since the original sentencing the petitioner would now be subject to a guideline range of 120-150 months for Count Two instead of 324-406 and instead of 240 month sentence he received for Count Three of his guidelines range would be 33-41 months.

ARGUMENT 1

Invoking the concurrent sentence doctrine against a petitioner with solely consecutive sentences violates Supreme Court precedent

Suggs ask that the Supreme Court intervene in the current instance because by invoking the concurrent sentence doctrine on Suggs' solely consecutive sentences the Third Circuit Court of Appeals has violated Suggs rights under the Due Process and Equal Protection Clauses given by the 5th and 14th Amendments. it is in direct conflict with Supreme Court precedent in Sibron v. New York 392 40,20 L.ED. 2d 917, 88 S.Ct. 1889(1968) and Benton v. Maryland, 395 U.S. 784,799,89 S.Ct. 2056 23 L.Ed. (707 (1969)) and all other Circuit Courts of Appeal whom have never used the concurrent sentence doctrine on a petitioner with solely consecutive sentences, and whom themselves have asked for this Court for intervention, guidance, and a ruling of uniformity because of concerns of the more frequent and expanded use of the concurrent sentence doctrine. See Ruiz v. United States 5 f. 4th 839; U.S. App 23077 No. 18-411(7th Cir. 2021), Judge Wood dissenting.

The Third Circuit has continued the process of using the concurrent sentence doctrine despite the collateral consequences an invalid conviction can have on a petitioner. It has taken up the practice of invoking the concurrent sentence doctrine whenever the relief sought will not immediately effect a petitioners current sentence believing United States V. Ray cannot be applied to habeas petitions despite the collateral consequences. It has chosen to ignore the possible outcomes to a sentence by this Courts decisions and sentencing law changes were it to remand or whether the invalid conviction

will have an effect on a future conviction or sentence, i.e...recidivist statutes.

The Third Circuit's broadening of the application of the concurrent sentence doctrine is in direct conflict with all current precedent in the other federal court of appeals. While some courts have shown concern about the unforeseen consequences of leaving an invalid conviction have stopped using the concurrent sentence doctrine at all, See United States v. Debright 730 F.2d 155, 1258(9th Cir. 1984)(en banc), others to eliminate the possibilities of collateral consequences have decided to vacate the invalid conviction and/or remand back to the district court to give a sentencing judge an ability to have a second look and give a sentence based on current law, See United States v. Holzer 848 F.2d 822, 824(7th Cir.) cert denied 488 U.S. 928 L.ed. 2d. 333,109 S.Ct 315(1988), and the rest putting together stringent test to determine the extent of, if any, possible collateral consequences, See United States v. Vargas 615 F.2d 952, 959-960(2nd Cir. 1980) and Lee v. Lockhart 754 F.2d 277, 279(8th Cir. 1985). There is no uniformity in application of the concurrent sentence doctrine as each Circuit has different rules it uses to invoke it, leaving petitioners in a legal Wild Wild West.

The Third Circuit is the only Circuit that believes collateral consequences are irrelevant once it determines the invalid conviction will not have an immediate effect on petitioners current sentence. This wayward thinking contradicts this Courts ruling in Sibron, where this Court held that "a criminal conviction entailed adverse collateral consequences, particularly in view of state statutes providing that his conviction may be used to impeach his character should he choose to put it in issue at any criminal trial, and that the conviction must be submitted to a trial judge for his consideration

in sentencing should he again be convicted of a crime, it being irrelevant the he was a multiple offender.". The Court took this position when only a handful of states had recidivist statutes , now nearly every state has a recidivist statutes some with automatic life sentences and the federal government had its own recidivist statute also capable of subjecting the convicted to a life sentence.

This Courts precedent in Sibron has continuously been ignored by the country's Appellate Courts and that is no more evident than in the Third Circuit's ruling against Suggs. The concurrent sentence doctrine was meant as a matter of convenience and "fairness to other litigants", See Benton, for when a petitioner had concurrent sentences and isn't attacking all of them, and there are no collateral consequences were a Court to leave the invalid conviction. In Suggs case none of these arguments can stand.

First, the "in fairness to other litigants" argument is moot because had the district court not invoked the concurrent sentence doctrine Suggs's sentence would've been vacated and he resentenced over three years ago. Were it concerned about the convenience for the Court of Appeals this is the position it would've taken then instead it has caused the case to be heard beyond its boundaries. In this era of technological advances brought about by Covid-19 and Congressional activity making changes to sentencing laws retroactive, courts have done video sentencing and even sent letters to the convicted in the name of saving time, maintaining safety, and continuing there daily schedules. It would seem that courts have embraced technology allowing them to complete their docket in a way that doesn't take away their time from other duties and defendants. This brings to question any necessity of having a rule of convenience as there can be no time saved if a court does its due diligence and takes an in-depth look to insure its rulings will have no

collateral consequences on petitioners in the future. (See Vargas 2nd Cir.)

Secondly, none of Suggs sentences are concurrent. he WAS SENTENCED to three consecutive terms of imprisonment therefore meeting the "in custody" standard this Court held in Peyton v. Rowe 88 S.Ct. 1549 20 L.Ed. 426, 391 U.S. 541(1968) "that a prisoner serving consecutive sentences is 'in custody' under any one of them for purposes of the federal statute 28 U.S.C. 2241(c)(3). For the Court of Appeals to treat his sentence as concurrent is unauthorized punishment for an offense, See Ball v. United States 470 US 856, 84, L Ed 2d 740, 105 S.Ct. 1688(1985), as it goes against the text in statute 5G1.2(d) that call for the sentences to be consecutive to only reach the total sentences. Any sentence beyond that or served differently is considered invalid and inapplicable as it goes beyond congressional text. In his concurring opinion in Benton Justice White states:

"The reviewed count is often one which, but for the concurrent sentence prisoner would have a right to challenge, either directly or on collateral attack. Arguably to deny him that right when another man, convicted after a separate trial on each count or sentenced consecutively, could not be denied that right under the applicable state or federal law raises an equal protection question,"

In the 50 years since Benton was decided Justice Whites opinion still rings true the concurrent sentence doctrine cannot be used on a person with solely consecutive sentences and in their dissents Justices Harlan and Stewart agreed that the concurrent sentence doctrine is "applicable only if there exist a concurrent conviction." As in Justice Whites example Suggs actually was convicted at separate trials and given solely consecutive sentences. The Appeals Courts believed that since Suggs was given the maximum term on all three counts and the sentence was based on the penalty for Count Two but used

5G1.2(d) to achieve the total sentence that vacating one count was moot because it would not reduce his time in prison.

This is not clear because were Suggs to be remanded to a lower court either then by the Appeals Court or now by this Court there is no guarantee that Suggs would be given the same sentence, in fact it is highly unlikely that he would be due to current Supreme Court precedent in *Blockburger v. United States*, 284 US 299, 304,76 L.ed. 306 52 S.Ct. 180(1932) and *Alleyne v. United States*, 570 U.S. 99, 186 I.Ed. 2d 314, 133 S.Ct. 2151(2013). After a three day trial Suggs was convicted of Tampering with a witness-intent to kill and tampering with a witness-use of force a lesser included offense of the former count. In *Blockburger* and reaffirmed in *Ball and Rutledge v. United States* 517 US 292, 134 L.Ed. 2d 419, 116 S.Ct. 419, 116 S.Ct. 1241(1996), this Court determined that a legislature does not intend to impose two punishments where two statutory provisions proscribe the "same offense", and "the test for determining whether there are two offenses is whether each of the statutory provisions requires proof of a fact which the others do not." Then during his sentencing the district court found Suggs guilty of first degree attempted murder, even though it wasn't in his indictment or given to the jury violating's this Courts ruling in *Alleyne* and boosting his base offense level from 27 to 33 adding nearly 200 months to his sentence.

Though at first glance it would seem Suggs' sentence would not change were the invalid conviction to stay an in-depth look will show that were he to be remanded back to a lower court these arguments would present themselves making it legally impossible to give Suggs the same sentence. Giving the sentencing court a chance to address any guideline changes and other factors a petitioner may present to the court. A fact Justice Sotomayor recently explained in this Courts opinion in *Concepcion v. United States* 142 S.Ct.

2389, 231 L.Ed 2d 731(2022) "When a defendant appears for sentencing the sentencing court considers the defendant on that day, not on the date of his offense or the date of his conviction. Similarly, when a defendant's sentence is set aside on appeal, the district court at re-sentencing can (and in many cases, must) consider the defendant's conduct and changes in the United States Sentencing Guidelines since the original sentencing." This is a fact that had the Third Circuit done its due diligence, as it should when invoking the concurrent sentence doctrine, it would have seen the sentencing possibilities vacating and remanding would have brought.

Finally, in its application of the concurrent sentence doctrine the Third Circuit ignores all possible collateral consequences most notable state and federal recidivist acts. Suggs invalid conviction happened for months before the other two convictions therefore leaving him susceptible to the Armed Career Criminal act and a federal sentence starting at 15 years. Leaving the conviction would also make Suggs susceptible to numerous state recidivist acts some requiring a mandatory 25 to life sentence. In Benton the Court recognized that "the mere possibility of adverse collateral legal consequences which most criminal convictions entail is enough to give a case the 'impact of actuality' which is necessary to make it a justiciable....where the defendant might some day have both convictions counted against him in one of the few states which consider all prior felony convictions for the purpose of enhancing sentences under habitual criminal statutes, even if the convictions actually constituted only separate counts in a single indictment tried on the same day; and where both convictions might some day be used to impeach his character if put in issue at a federal trial."

Consequences from maintaining invalid criminal convictions should never be ignored especially in a situation where it will leave a petitioner subject

to recidivists acts. Collateral consequences that will effect the freedom of a petitioner are of the most dire circumstances and should never be ignored, yet the Third Circuit has done just that. In its expansion of the concurrent sentence doctrine to Suggs' solely connective sentences it uses the example of its ruling in Duka, yet an in-depth look at the two cases will find no similarities. The Duka brothers fit the criteria for the concurrent sentence doctrine set by this Court quite well. After a two-and-half month jury trial they were both sentenced to a life sentence, a consecutive 360 months sentence, a concurrent 120 month sentence, and two more 120 month concurrent sentences. They appealed their consecutive 360 month sentence under Johnson v. United States 576 U.S. 591, 597. 135 S.Ct. 2551 192 L.ED. 2d 569(2015) and United States v. Davis 139 S.Ct. 2319, 2323-2324, 204 L.Ed. 757(2019).

The case was remanded back to the district court where the trial judge declined the brothers challenge to their 924(c) convictions because of their unchallenged life sentences by invoking the concurrent sentence doctrine. Though the question of judicial convenience could be argued here because doing its due diligence a court will have spent as much time on affirming a conviction as it would vacating one, the brothers are subject to several concurrent sentences, and the unchallenged life sentences leave it unlikely the defendants will be released and subject to any legal collateral consequences. Therefore meeting the standard set by this Court for invoking the concurrent sentence doctrine.

Suggs on the other hand after being found guilty at two separate trials was given three consecutive sentences. The trial judge then used the count with the highest penalty(Count two) and imposed a total sentence of 324 months, but since the maximum penalty for this count is 240 months he invoked statute 5G1.2(d) which states "the sentence imposed on one or more of the

other counts shall run CONSECUTIVELY, but only to the extent necessary to produce a combined sentence equal to the TOTAL PUNISHMENT."(Emphases Added). The maximum terms given in the other two counts are well beyond the guideline ranges and more so Suggs has completed the 240 month sentence for Count Two that his total sentence is based on. The Court of Appeals claimed that Suggs custody would not change because he still had a max term to complete but that isn't true either. The sentencing judge could've used just one other count to get the total punishment and make the other count concurrent but he did not instead he made all counts consecutive meaning for Suggs to do time on each count. So unlike the Duka brothers Suggs does not have any concurrent sentences and since his crimes were committed at different times and tried at different times they are able to be used as separate interest for recidivist statutes making the concurrent sentence doctrine inapplicable.

The district and appeals courts believed that this argument is not because the same sentence could be given despite the invalid conviction. Yet this Court has held that "A criminal case is moot...only if it is shown that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction.", See Sibron. This Court therefore acknowledges that :most criminal convictions do in fact entail adverse collateral consequences", Pollard v. United States, 352 US 354, 1 L.Ed. 393, 77 S.Ct. 481(1957), and even if it is up to a defendant to "show the existence of collateral legal consequences." St. Pierre v. United States 319 US 41, 87 L.ED. 1199, 63 S.Ct. 910(1942), Suggs has met that burden by showing how the invalid conviction will leave him susceptible to state and federal recidivist statutes because of when the crimes were committed. Yet in its denial the court did not dispute this or make a counter position. No defendant nor any Court is omniscient and able to predict any and all future and possible

collateral consequences from an invalid conviction. Yet in the instance Suggs has stated a very substantial possibility therefore showing that contrary to the ruling by the Appeals Court invoking the concurrent sentence doctrine in the case is unconstitutional.



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ARGUMENT2

Concurrent sentence doctrine violates the Due Process and equal Protection Clauses

The district court following Third Circuit precedent recognized that Suggs met the requirements of the savings clause set forth in the AEDPA. Yet its and subsequently the Appeals Courts use of the concurrent sentence doctrine attempts to overrule Congressional law, and precedents by this court and the other Appeals Courts denying Suggs the ability to attack and remedy an invalid conviction. Even if a majority of the consequences to Suggs would be after his sentence is complete, they still exist and by invoking the concurrent sentence doctrine they are denying Suggs his Due Process right to be heard. By ignoring the collateral legal consequences that are the recidivist statutes in nearly every state and the federal government simply because they can occur after Suggs sentence is complete is contradictory to this Court's ruling in *United States v. Morgan*, 346 US 502, 98 Led. 248 S. Ct. 247(1954) where it noted "Although the term has been served, the results of the conviction may persist. Subsequent convictions may carry heavier penalties, civil rights may be affected. As the power to remedy an invalid sentence exists, we think, the respondent is entitled to an opportunity to attempt to show that his conviction was invalid.", and the Third Circuit's judgment is a judicial decision lacking rationale.

In *Sibron* this Court has acknowledge that it "cannot foretell what opportunities might present themselves in the future for the removal of other convictions from an individual's record" yet this is the opposite of the stance the Court of Appeals has taken believing that despite all of Suggs sentences being consecutive since it can give him the same sentence with the remaining counts then it is within its

rights to invoke the concurrent sentence doctrine. This is the conundrum that is the concurrent sentence doctrine, in 2022 because every circuit has their own rules and qualifications to invoke it; a petitioner's fate is determined by where they were sentenced or are currently imprisoned. Since it is used freely to uphold invalid convictions on collateral attacks it has no bounds and even wrote this Court to make a decision to strike a petitioners second conviction because collateral attacks have such small window and Appeals Court could use the concurrent sentence doctrine again and a petitioner could in theory be incarcerated on two invalid convictions not because of Congressional law but judicial convenience.

In using the concurrent sentence doctrine as it did against Suggs the Third Circuit Court of Appeals contradicts and ignores the other Circuits calls for caution and uniformity. They recognize that laws are changing and being interpreted differently everyday so a sentence today may not carry the same penalty or enhancements may not be applicable as before. This is why other Circuits have chosen to vacate the invalid convictions because they simply cannot know the possible consequences leaving an invalid conviction can have on a petitioner. Invoking it against a petitioner with solely consecutive sentences is a clear violation of their rights under the Due Process and equal protection clause under the 5th and 14th Amendments. More so it is not a duty given to disregard a valid habeas claim. As Justice Kavanaugh stated in his dissent in *Concepcion* a "Court may not simply rewrite... as the Court thinks best.". It is clearly an infringement on Suggs constitutional right to invoke the concurrent sentence doctrine on him when he doesn't have any concurrent sentences and he would face substantial collateral consequences were the invalid conviction to stand, and therefore should be vacated

and remanded back to a lower court.

SUMMARY OF ARGUMENT

The concurrent sentence doctrine only applies to petitioners who have a valid concurrent conviction they are not attacking, and when the unreviewed and the invalid conviction will have no collateral legal consequences.

Suggs sentences are solely consecutive therefore he does not have any concurrent sentences and were the unreviewed and invalid conviction stay he would be subject to the federal recidivist statutes such as the Armed Career Criminal Act and other state recidivist statutes.

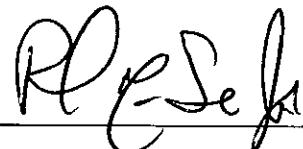
The Due Process Clause of the 5th and 14th Amendment states no person shall be deprived of life, liberty or property without due process of law. Furthermore the Equal Protection Clause of the 14th Amendment states that no state shall... deny to any person within its jurisdiction the equal protection of laws.

The concurrent sentence doctrine subjects a petitioner to a rule that one with the exact same circumstances yet sentences are consecutive would not be permissible. It also prohibits a petitioner from having his invalid conviction dismissed without him being heard or a given a judicial decision with a stated rationale. A prohibition not afforded to other petitioners who have invalid convictions on direct or collateral attack.

CONCLUSION

For the reasons stated above and for the uniformity of the application of the concurrent sentence doctrine across all Circuits, Suggs asks that this Court grant certiorari.

Respectfully Submitted



Ricardo Suggs, Jr. 05414087