NO. 22-5752

IN THE SUPREME COURT OF THE UNITED STATES

RICARDO SUGGS JR., PETITIONER

V.

WARDEN FCI-LORETTO

UNITED STATES OF AMERICA

ON PETITION FOR WRITE OF CERTORIARI TO

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

REPLY FROM THE PETITIONER IN RESPONSE TO THE UNITED STATES BRIEF OF OPPOSITION

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QUESTIONS PRESENTED

1) Whether on collateral review a court can apply the concurrent sentence doctrine despite the collateral consequences and there being no concurrent sentence?

2) Whether on collateral review leaving an invalid conviction violates the Equal Protection and Due Process Clauses?

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ARGUMENT 1

Whether on collateral review a court can apply the concurrent sentence doctrine despite the collateral consequences and there being no concurrent sentences?

The concurrent sentence doctrine was created for judicial convenience at a time before the internet, before computers, or even before the wide usage of automobiles. So it was much needed when information could not be shared at the push of a button, that time is no longer. It has instead now become a hindrance instead of a "judicial convenience" as the information can be shared and results can be distributed over video conference or email. There are still occurrences when the principles of the concurrent sentence doctrine still hold up against time such as having a non-contested concurrent sentence or the invalid conviction will have no significant adverse consequences for an appellant, See Benton v. Maryland, 395 U.S. 784,799,89 S.Ct. 2056 23 L.Ed 2d 707(1969). Yet as in this case and many before it Appellate Courts have been unable to agree on what that means or how to apply it on collateral attack causing scattered results and heated dissents, See Ruiz v. United States, 5 F.4th 839, No. 18-1114(7th Circuit 2021) Judge Wood dissenting.

In the United States argument against Suggs the Solicitor General wishes to disregard all prior rulings and the reasoning of non application of the concurrent sentence doctrine because this is a collateral attack and not a direct appeal, and therefore should be harder to find relief. Suggs agrees that direct and collateral attack are different and that if there are different levels of difficulty to reach relief then it should be defined by Congress or this Court

not the by the whims of the Solicitor General's office.

Yet if one were to define how to reach relief on collateral attack the basis of those grounds for relief on direct appeal would be a good starting point. The Supreme Court over the last half century has defined and clarified what constitutes overreach of the concurrent sentence doctrine on direct appeal. It however has not clarified what that looks like on collateral attack causing each Circuit Court to apply its own rules, 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), 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), and each judge to decide which of the original criteria from Benton matters most or can be ignored clearly violating the Equal Protection Clause as 12 people with the same case appealing on the same day could be given 12 different results for 12 different reasons because of the lack of uniformity.

In Suggs' case were this a direct appeal using the criteria set by Benton and United States v. Ray, 481 U.S. 736, 95 L.Ed. 2d 693, 107 S.Ct. 2093(1987) he would meet all the criteria for relief. He does not have a valid concurrent sentence, in fact he has no concurrent sentences, to emphasize that fact he was given three separate assessment fees, and leaving the invalid sentence in place would have life-threatening collateral consequences. The difference many times between meeting the direct appeal criteria and getting the same relief on collateral attack depends on those two words "in custody".

This Court has decided in Peyton v. Rowe, 88 S.Ct. 1549 20 L.Ed. 426, 391 U.S. 541(1968) that a "petitioner serving consecutive sentences is 'in custody' under any one of them for purposes of the federal statute 28 U.S.C. 2241(c)(3).", this clearly applies to Suggs who is serving three consecutive sentences. Still those words "in custody" have stifled many on collateral attack because none know

if that statement means "immediate or future" custody. Does removal of an invalid conviction cause for an automatic resentencing by the district court which in most cases would cause an immediate change in custody, which it could for Suggs. Then there are future changes in custody when a removal of an invalid conviction does not bring an immediate change in a release date from a district court. There are programs that give inmates time off their sentence upon completion but there are crimes that do not allow for an inmate to receive the time off their sentence. A 922(g) Possession of a Firearm happens to be one of those crimes. If an invalid conviction stays because it does not have immediate effect on custody but has a future effect on custody isn't that still an effect on custody which is a prerequisite for relief on collateral attack?

This dilemma is one of the reasons why some Appellate Courts refuse to use the concurrent sentence doctrine at all, See United State v. Debright, 730 F.2d 155, 1258(9th Cir, 1984)(en banc) and yet others use it repeatedly never looking into the consequences of its application, See United States v. Duka, 27 F. 4th 189, 194(3rd Cir. 2022). There is just is no room in the judicial branch for the concurrent sentence doctrine until this Court brings uniformity by setting guidelines and criteria for its usage on collateral attack.

The government has grasped the argument from the Third Circuit Court of Appeals that the collateral consequences are irrelevant when applying the concurrent sentence doctrine on collateral attack. This has become common practice following the idea that because it isn't happening right now then relief cannot be expected on collateral attack. The fact that collateral consequences were a main staple in cases such as Benton and Sibron v. New York 392 40, 20 L.Ed. 2d 917 88 S.Ct. 1889 (1968) when clarifying the usage of the concurrent sentence doctrine. Of course the governments positions is that those cases were

argued on direct appeal and should not apply here. This position is absurd and only makes the calls louder for this Court to grant Suggs petition for certiorari to set rules for the concurrent sentence doctrine on collateral attack. Will Ford next say that the details from a ruling from this Court does not apply to them because this Court ruled against General Motors and they aren't the same. Though direct and collateral attacks aren't the same some of the same rules apply and differences can only be clarified by this Court.

The government contends that since Suggs was convicted of multiple convictions vacating one will have no effect on the possible collateral consequences, yet that just isn't true. Though Suggs was sentenced on all three Counts on the same day he was not arrested or even prosecuted on all counts at the same time. He was originally arrested on one county of 922(g) Felon in Possession of a Firearm following an arrest in March of 2006. He was later arrested again in July 2006 and subsequently indicted for three counts of Tampering with a Witness. In November of 2006 he went to trial on the 922(g) count and was found guilty. In January 2007 he went to trial on the three witness tampering counts being found guilty of two. In this Courts interpretation of Congress' intent with the Career and Armed Career Criminal Acts if the invalid conviction were to stand Suggs would be subject to the enhancements. Even though he was sentenced at the same time for all counts since they happened at different times followed by separate trials they would be considered separate incidents and therefore the ACCA would be applicable. This would contradict this Courts ruling in Sibron that "a criminal conviction entailed adverse collateral consequences". That decision was made before most states and the federal government created their recidivist laws and those laws and the consequences of them do not care if the conviction was stayed because this is a direct or collateral attack. This is in direct conflict with the government's argument that there would be no

collateral consequences were the invalid conviction to stay.

The government next claims to be omniscient by claiming that this Court will not take up and change or clarify the application of a statute that might apply to Suggs. Suggs on the other and does not presume to know what will become of the future yet if this Court were to possibly make a ruling that would effect his remaining counts keeping the current invalid conviction could put us right back here arguing against the concurrent sentence doctrine. This would once again stifle the argument of judicial convenience, as there cannot be timed saved when a court must do its due diligence to even consider the concurrent sentence doctrine. See Vargas.

ARGUMENT 2:

Whether on collateral review leaving an invalid conviction violates the Equal Protection and Due Process Clauses

The government's argument for the concurrent sentence doctrine depends upon a misreading of statute 5G1.2(d) and its call for sentences to be consective when it is applied.

5G1.2(d) 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."

Even though the sentencing judge clearly stated all counts were to run consecutive to each other including the 922(g) count, the government wishes this

Court to consider that count concurrent which would completely disregard the text and be an unauthorized punishment for an offense per Ball v. United States 470 US 856, L.Ed. 2d 740,105 S.Ct. 1668(1985). The sentencing judge could have made any of the counts concurrent he chose not to it is illogical for the government to ignore the statute for unconstitutional gain.

Further damaging the government's argument is the fact that Suggs sentence is based on the guideline range for Count Two a count that he has already completed. The 240 month sentence for Count Three-the only remaining count were this Court to rule in Suggs' favor-is 200 months over the guideline range. A sentencing judge would have a hard time explaining to a higher court why Suggs is given such a harsh sentence. The government claims that Suggs would be given the same sentence were the concurrent sentence doctrine not invoked and the invalid conviction vacated and is a violation and contradiction of Sibron. It also isn't true in fact its not even possible due to rulings by this Court and changes to sentencing law by Congress since the original sentencing. Suggs acknowledges that he is procedurally barred from using cases such as Alleyne v. United States 570 U.S. 99, 186 L.Ed. 2d 314, 133 S.Ct. 21515(2013) and Blockburger v. United States, 284 US 299, 304, 76 L.Ed.306 52 S.Ct. 180(1932) to get back in court on their own. Yet he is also aware that as this Court recognized in Concepcion v. United States, 142S.Ct. 2389, 231 L.Ed. 2d 731(2022) that "when a defendant's sentence is set aside on appeal, the district court at resentencing can(and in many cases, must) consider the defendant's conduct and changes in the United States Sentencing Guidelines since the original sentencing." Since Suggs original sentencing because of Alleyne the guideline sentence for Count Two has went from 324-405 to 120-150 months, and instead of the 240 month sentence he received for Count Three the guideline range is 33-41 months. This would be a total sentencing range of 153-191 months, not loss on the judges of this Court is the fact that

even with 922(g) count Suggs wouldn't be subject to the current 324 month sentence he is currently doing one of which he has done nearly 70% of.

Many sentences are based on the collection of convictions as a whole and vacating once changes the dynamics of the punishment's given by the courts. In Suggs' case as in many across the country the punishment is only possible because of the multiple convictions, were one of those convictions to be vacated it would clearly be a violation of a defendants rights not to be resentenced by the district court. To leave an invalid conviction or not resentence a defendant after vacating one would be a judicial decision lacking rationale and would stop a defendant from being heard violating their Due Process Rights. This is just one more reason why the country and its people need this Court to intervene and bring uniformity and protection of the Constitution to the use of the concurrent sentence doctrine on collateral attack.

SUGGS HAS NO SERIOUS CRIMINAL HISTORY AND DOES NOT SHARE ANY SEMBLANCE TO GREER

The government lastly tries to connect Suggs to the cases of Jones v. Hendrix No. 21-857 and Greer v. United States, 141 S.Ct. 2090,2098(2022), but Suggs does not share much in common with the two defendants. In the case of Greer he was a defendant who had an extensive criminal record and had been to prison several times. Suggs on the other hand has never been to prison in fact his "felony" for possession of a gram of cocaine did not even have an maximum penalty over a year and he was sent to a drug rehabilitation facility for 6 months and successfully completed and was released from the program in 4 months where he did community service, left everyday to go to the local college, and went home on the weekend for home visits. It would've loosely resembled a halfway

house not prison. His plea bargain read that he would retain his gun rights if he successfully completed his probation-which he did, in fact it could be argued that the founders did not believe such a small felony as Suggs had would cause him to lose his rights especially since cocaine was still used medically until the mid 1900's, See NY State Rifle & Pistol Assn v. Bruen 142 S. Ct. 2111, 213 L.Ed. 387(2022). He was ignorant of the law and signed a stipulation after he explained to his attorney that he thought "he had to be incarcerated for over a year" to be considered for federal penalty. His attorney was not ignorant of the law and knew that the crime did not have a penalty over a year but he still convinced Suggs to sign the stipulation.

Suggs would have been a more logical defendant to argue the retroactivity or constiutional relevance of Rehaif v. United States, 204 L.Ed. 2d 594, 139 S.Ct. 2191(2019) than Greer and the need of the savings clause to bring that argument for a judge to decide. Yet that being said Suggs does not know how this Court is going rule in Jones but he would hope that this Court recognize the savings clause for what it is a way for the convicted to get back to court when current laws and this Courts rulings change a defendants penalty or conviction.

SUMMARY OF ARGUMENT

The concurrent sentence doctrine by its criteria set in Benton cannot be used on a defendant that does not have a remaining valid concurrent conviction no matter how he was sentenced. This Court in Peyton has held that a defendant is "in custody" on each of his consecutive sentences and that doesn't change here.

The differing criteria from the Appeals Courts is a violation of the Equal Protection Clause. The idea that some of the courts use it freely while others refuse to use it all runs afoul of the constitution and call for uniformity from

this Court to make the guidelines for its use on collateral attack.

The unchecked usage of the concurrent sentence doctrine can leave and invalid conviction to stand violates the Due Process Clause because it leaves a defendant on collateral attack unable to defend himself in court and calls for the concurrent sentence doctrine to be abolished.

CONCLUSION

Suggs ask that this Court grant certiorari to hear arguments of the use of the use of the concurrent sentence doctrine against a defendant with solely consecutive sentences an whether the concurrent sentence doctrine is a violation of the Due Process and Equal Protection Clauses under the 5th and 14th Amendments.

Respectfully,

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