

No. ____

October Term, 2022

IN THE
Supreme Court of the United States

MATTHEW TASSIN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Federal law provides that a federal prisoner in custody under a federal sentence can move the sentencing court to set aside or correct the sentence based on a claim that “the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum allowed by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). “If the court finds . . . that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial **or correct the sentence as may appear appropriate.**” 28 U.S.C. § 2255(b) (emphasis added). The federal statute provides no further limitations on the district court. Yet the Eleventh Circuit has long held that where the district court grants a section 2255 motion based on a claim that an attorney was ineffective for failing to file a timely notice of appeal, a district court can only re-enter the original sentence. Thus Eleventh Circuit precedent expressly prevents a district court from exercising the authority Congress granted district courts under section 2255(b). This petition raises the following question.

Question Presented:

Whether a Circuit Court can limit the authority of a district court to resentence a federal criminal defendant or correct a criminal sentence “as may appear appropriate,” as authorized by 28 U.S.C. § 2255(b)?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED CASES

United States v. Matthew Tassin, 19-cr-80064-RUIZ (S.D. FL June 9, 2021)

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No:

**MATTHEW TASSIN,
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**UNITED STATES OF AMERICA,
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**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

Matthew Tassin respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 21-12017 in that court on July 6, 2022, *United States v. Matthew Tassin*, which affirmed the judgment and commitment of the United States District Court for the Southern District of Florida

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the judgment and commitment of the United States District Court for the Southern District District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on July 6, 2022. This petition is timely filed pursuant to Sup. Ct. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner intends to rely upon the following constitutional and statutory provisions:

U.S. Const., amend. V:

No person 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.

28 U.S.C. § 2255:

- (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the

sentence was in excess of the maximum allowed by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

- (b) If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

STATEMENT OF THE CASE

The petitioner, Mr. Matthew Tassin, was the defendant in the district court and the appellant in the Court of Appeals. Mr. Tassin, is currently incarcerated serving a 240-month term of imprisonment. At Mr. Tassin's resentencing, following the grant of a 28 U.S.C. § 2255 motion, the district court held that, pursuant to Eleventh Circuit precedent, it could not address the sentencing issues raised by defense counsel even though it would otherwise be authorized under 28 U.S.C. § 2255(b). The Eleventh Circuit affirmed holding that the district court lacked the authority to consider the sentencing issues raised at the resentencing.

COURSE OF PROCEEDINGS AND DISPOSITION IN THE DISTRICT COURT

A federal grand jury in the Southern District of Florida returned a three-count indictment against Mr. Matthew Tassin charging him with one count of transportation of child pornography (count one); one count of distribution of child pornography (count two); and one count of possession of child pornography (count

three). (DE 6). Mr. Tassin, pursuant to a written plea agreement with the government, entered a plea of guilty to counts two and three of the indictment and the government dismissed count one. The district court sentenced Mr. Tassin to a 240-month term of imprisonment. (DE 41). Retained counsel failed to file a notice of appeal as requested by Mr. Tassin. Mr. Tassin filed a 28 U.S.C. § 2255 motion claiming ineffective assistance of counsel for failing to file a notice of appeal as requested. The district court granted the motion and ordered a resentencing. Prior to the resentencing, counsel for Mr. Tassin filed sentencing objections that had not been raised at the initial sentencing hearing. The district court ruled that it was prohibited from considering those new objections by Circuit precedent and the district court merely re-imposed the same sentence. (DE 65). On appeal, Mr. Tassin argued that Circuit precedent conflicted with statutory authority and this Court's precedent and that the district court committed reversal legal error by not addressing the sentencing issues raised at the resentencing. The Eleventh Circuit affirmed the district court holding that its precedent prohibited the district court from considering the sentencing issues raised at resentencing.

STATEMENT OF FACTS

Mr. Matthew Tassin is a thirty-nine year-old native of West Palm Beach, Florida. Presentence Report (PSR) at ¶ 56. Mr. Tassin is a first-time offender having never been involved in the criminal justice system in his entire life. PSR ¶¶ 49-54.

Mr. Tassin dropped out of high school and subsequently obtained his GED a decade later. PSR ¶ 64. Mr. Tassin began to abuse alcohol at an early age, and in

the past five years he has been drinking at least a twelve pack of beer a day. PSR ¶ 63.

In the instant case, Mr. Tassin was in on-line chat rooms in which individuals anonymously traded child pornography. In fact, the investigation into Mr. Tassin began when an undercover agent entered one of those chat rooms. An individual, who turned out to be Mr. Tassin, entered the chat room but was told to leave because he had not shared any child pornography. The individual, Mr. Tassin, returned to the chat room. Instead of providing the group with images or videos, the individual provided the group with a link to a website. The website contained images and videos of child pornography.

The investigation lead to Mr. Tassin's home. There, Mr. Tassin confessed to the investigating agents that he was addicted to alcohol and pornography. A search of Mr. Tassin's phone revealed images and videos of child pornography. (DE 17). It also revealed chats between Mr. Tassin and another individual suggesting that Mr. Tassin had sent child pornography to that individual.

A federal grand jury in the Southern District of Florida returned a three-count indictment against Mr. Matthew Tassin charging him with one count of transportation of child pornography (count one); one count of distribution of child pornography (count two); and one count of possession of child pornography (count three). (DE 6). Mr. Tassin, pursuant to a written plea agreement with the government, entered a plea of guilty to counts two and three of the indictment and

the government dismissed count one. The district court sentenced Mr. Tassin to a 240-month term of imprisonment. (DE 41).

Mr. Tassin subsequently filed a motion pursuant to 28 U.S.C. § 2255 claiming, *inter alia*, that counsel failed to file a notice of appeal from his conviction and sentence as requested. The district court granted the § 2255 motion on that basis. The district court appointed counsel to represent Mr. Tassin at a resentencing. Counsel for Mr. Tassin filed objections to the presentence report claiming that the calculation of the advisory sentencing range was incorrect. At the sentencing hearing, the district court, relying on this Court's precedent, held that it lacked authority to rule on Mr. Tassin's sentencing objections. It then re-imposed the same sentence of a 240-month term of imprisonment. (DE 65).

Mr. Tassin appealed that ruling to the Eleventh Circuit arguing, *inter alia*, that the district court was authorized, pursuant to 28 U.S.C. § 2255(b), to address the new sentencing issues raised at the resentencing and to determine whether it should impose a different sentence on Mr. Tassin based on those objections. Mr. Tassin argued that the district court erred when it failed to address those issues and when it failed to reduce Mr. Tassin's sentence based on the merit of those objections. However, the Eleventh Circuit never addressed the merits of those objections and simply held that "under [the Eleventh Circuit's] binding precedent, the district court did not err in finding that [Mr.] Tassin could not raise new objections at resentencing." *United States v. Tassin*, No. 21-12017 at *16-*17 (11th Cir. July 6, 2022).

REASONS FOR GRANTING THE WRIT

Eleventh Circuit precedent conflicts with the express language of federal statute, the precedent of this Court and with precedent from every other circuit that has addressed the issue. Federal law under 28 U.S.C. § 2255 authorizes a district court to resentence a federal defendant as the district court may deem appropriate as relief for a violation of the defendant's constitutional rights such as when a defendant's right to appeal is violated by constitutionally ineffective counsel. This Court and other circuits have, consistent with § 2255, remanded for a resentencing to allow a new appeal. However, the Eleventh Circuit improperly limits the district court's authority by instructing the district court that it must impose the same sentence. Because that limitation cannot be squared with the authority granted by Congress under § 2255, the precedent of this Court and every circuit to address the issues, this Court must grant Mr. Tassin's petition for a writ of certiorari to the Eleventh Circuit.

Congress Gave District Courts the Authority to Resentence a Federal Prisoner or Correct a Sentence as May Appear Appropriate

Federal law provides that a federal prisoner in custody under a federal sentence can move the sentencing court to set aside or correct the sentence based on a claim that "the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum allowed by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). "If the court finds . . . that there

has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial **or correct the sentence as may appear appropriate.**” 28 U.S.C. § 2255(b) (emphasis added).

This Court’s long-established precedent allows a district court to grant a federal prisoner relief based on a claim that trial counsel was ineffective for failing to file a notice of appeal. *See Rodriguez v. United States*, 395 U.S. 327, 332 (1969); *see also Roe v. Flores-Ortega*, 528 U.S. 470 (2000); *Garza v. Idaho*, 139 S. Ct. 738 (2019). In *Rodriguez*, this Court established that granting a § 2255 motion and resentencing a federal defendant was the proper procedure where the defendant claimed the deprivation of the right to appeal based on the failure of counsel to file a timely appeal. *Id.* Justice Marshall, writing for the Court, ordered the following remand directly to the district court: “[t]he judgment is reversed and the case is remanded to the District Court where petitioner **should be resentenced** so that he may perfect an appeal in the manner prescribed by the applicable rules.” *Id.* (emphasis added). The broad remand for a resentencing without specifying that the exact same sentence should be re-entered echoed the authority granted by § 2255 itself which allows a district court to “resentence [the defendant] . . . or correct the sentence as may appear appropriate.” 28 U.S.C. § 2255(b).

Other circuits have followed this Court and have likewise instructed district courts to resentence the federal defendant to allow for a new appeal without imposing

any limitations on the district court’s authority to “resentence [the defendant] . . . or correct the sentence as may appear appropriate” as authorized under 28 U.S.C. § 2255(b). See ; *Rosinski v. United States*, 459 F.2d 59 (6th Cir. 1972); *United States v. Beers*, 76 F.3d 204, 205 (8th Cir. 1996); *Hollis v. United States*, 687 F.2d 257, 259 (8th Cir. 1982)). Both the Sixth and Eighth Circuits also used the broad language of a resentencing without any restriction not contained in § 2255. In *Rosinski*, the Sixth Circuit gave the following instructions for remand: “the District Court is directed to grant petitioner’s [2255] motion, vacate the sentence imposed, and **resentence petitioner** on the original conviction in order to start the time for appeal running again.” *Rosinski*, 459 F.2d at 59 (emphasis added). The Eighth Circuit had similar language: “[t]he procedure followed by this court to remedy petitioner’s deprivation of his constitutional right to effective assistance of counsel is to vacate the sentence and to **remand the case to the trial court for resentencing**, the time for appeal then commencing to run from the date of the resentence.” *Hollis*, 682 F.2d at 259 (emphasis added). Again, that language tracks the language of § 2255 granting the district court broad authority to resentence the defendant.

The Eleventh Circuit Improperly Limits District Court Authority

In sharp contrast, the Eleventh Circuit has placed an absolute limitation on district courts granting a section 2255 motion that deprives the district court of the express authority granted by Congress under 28 U.S.C. § 2255(b). In *United States v. Phillips*, 225 F.3d 1198 (11th Cir. 2000), the Eleventh Circuit adopted the holdings of Sixth and Eighth circuits and held that a § 2255 motion was the proper vehicle for

a claim that a federal prisoner had been denied effective counsel under the Sixth Amendment by counsel's failure to file an appeal from the criminal conviction as requested by the federal defendant. *Phillips*, 225 F.3d at 1200-1201. The Eleventh Circuit noted that the two other circuits "focused on the authority that § 2255 grants district courts to vacate and set aside the judgment" and to resentence the defendant "if the court finds that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack." *Id.* (internal quotations omitted) (citing 28 U.S.C. § 2255; *Rosinski*, 459 F.2d 59; *Beers*, 76 F.3d at 205; *Hollis*, 687 F.2d at 259. In adopting the reasoning of the Sixth and Eighth Circuits, this Court noted that "vacating a sentence and resentencing a defendant are remedies authorized by § 2255, and by using them a court can give a defendant access to the right that was previously and wrongfully denied – the right to appeal the sentence." *Phillips*, 225 F.3d at 1200-1201.

However, in *Phillips*, the Eleventh Circuit, without any justification or citation, limited the authority of the district court to grant relief under § 2255. Specifically, the Court in *Phillips* instructed the district courts of the Eleventh Circuit as follows:

When the district courts of this circuit conclude that an out-of-time appeal in a criminal case is warranted as the remedy in a § 2255 proceeding, they should effect that remedy in the following way: (1) the criminal judgment from which the out-of-time appeal is to be permitted should be vacated; (2) **the same sentence should then be reimposed**; (3) upon reimposition of that sentence, the defendant should be advised of all the rights associated with an appeal from a criminal sentence; and (4) the defendant should also be advised that the time for filing a notice of appeal from that re-imposed sentence is ten days.

Phillips, 225 F.3d at 1201 (emphasis added). That language is far more restrictive than the authority granted under § 2255 which allows district courts to “resentence [the defendant] . . . as may appear appropriate.” 28 U.S.C. § 2255(b).

Courts “have no authority to alter statutory language.” *United States v. Stevens*, 997 F.3d 1307, 1315-1316 (11th Cir. 2021) (internal citations omitted). “It is a fundamental principle of statutory interpretation that ‘absent provisions cannot be supplied by the courts.’” *Rotkiske v. Klemm*, 140 S. Ct. 355, 360-361 (2019) (quoting A. Scalia & B. Garner, *Reading the Law: The Interpretation of Legal Texts* 94 (2012)). The holding of the Eleventh Circuit limits the authority of the district courts by adding a restriction that is not in the statute. This Court must grant the petition for a writ of certiorari to the Eleventh Circuit.

Mr. Tassin’s Petition Provides the Perfect Vehicle for Review

This petition presents this Court with the perfect opportunity to determine whether a circuit court can limit the authority of a district court to grant relief under 28 U.S.C. § 2255(b). On September 26, 2019, the district court held an initial sentencing hearing. (DE 36). The district court entered the judgment against Mr. Tassin sentencing Mr. Tassin to a 240-month term of imprisonment. (DE 37). Subsequently, the district court entered an amended judgment adding the stipulated restitution amount. (DE 41). No timely notice of appeal was filed. Instead, Mr. Tassin filed a *pro se* motion pursuant to 28 U.S.C. § 2255 claiming, *inter alia*, that retained counsel was ineffective for failing to file a notice of appeal from the judgment

entered in 2019. (DE 46); see also 20-cv-81957-RAR (DE 1). The district court granted Mr. Tassin's *pro se* § 2255 motion on that claim. (DE 54).

The district court appointed the Office of the Federal Public Defender to represent Mr. Tassin at a resentencing. (DE 55). Prior to that resentencing, Mr. Tassin, through appointed counsel, filed objections to the presentence report. (DE 61). The objections raised issues that were not raised during the initial sentencing.

The district court held a new sentencing hearing for Mr. Tassin. (DE 64, 79). At the sentencing hearing, the district court held that it lacked the authority to rule on the objections to the presentence report. (DE 79:7-9). Specifically, the district court ruled that pursuant to *United States v. Phillips*, 225 F.3d 1198 (11th Cir. 2000), it lacked the authority to rule on the objections and that it had no choice but to enter the same sentence it had previously. Based on that legal ruling, the district court again sentenced Mr. Tassin to a 240-month term of imprisonment and maintained the same conditions of supervised release. (DE 65).

Mr. Tassin appealed arguing, *inter alia*, that the district court was authorized, pursuant to 28 U.S.C. § 2255(b), to address the new sentencing issues raised at the resentencing and to determine whether it should impose a different sentence on Mr. Tassin based on those objections. Mr. Tassin argued that the district court erred when it failed to address those issues and when it failed to reduce Mr. Tassin's sentence based on the merit of those objections. However, the Eleventh Circuit never addressed the merits of those objections and simply held that "under [the Eleventh Circuit's] binding precedent, the district court did not err in finding that [Mr.] Tassin

could not raise new objections at resentencing.” *United States v. Tassin*, No. 21-12017 at *16-*17 (11th Cir. July 6, 2022). Again, the holding of the Eleventh Circuit is contrary to the express language of 28 U.S.C. § 2255(b). In addition, the holding conflicts with the established precedent of this Court and other circuit courts who have addressed the same issue. Accordingly, this Court must issue a writ of certiorari to the Eleventh Circuit.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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