NO. _____

IN THE UNITED STATES SUPREME COURT

CHRISTOPHER ALAN MITCHELL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Erin P. Rust
Assistant Federal Defender
FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.
835 Georgia Avenue, Suite 600
Chattanooga, Tennessee 37402
(423) 756-4349
Attorney for Mr. Christopher Mitchell

QUESTIONS PRESENTED FOR REVIEW

On August 18, 2017 the district court granted Christopher Mitchell's 28 U.S.C. § 2255 motion seeking relief from his 15-year mandatory minimum sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e) ("ACCA"). It thereby ordered that de novo resentencing occur. The order replied upon then-controlling precedent, and the government did not appeal. More than three years later that resentencing had still not completed, and due to an intervening change in the law the government sought reinstatement of Mr. Mitchell's original judgment. But, in the interim, Mr. Mitchell had received a 24-year sentence on related conduct in state court. He asked that rather than reimposing his original judgment, that the district court order his federal sentence be served concurrent with his related state sentence. But, the district court did not address his request for concurrent sentencing and instead entered an order vacating its prior vacatur order, and reinstating Mr. Mitchell's original sentence.

On appeal the Sixth Circuit held, *inter alia*, (1) that the district court had authority to vacate or modify its more-than-three-year-old order vacating Mr. Mitchell's original sentence, and (2) that when the controlling law changed while Mr. Mitchell's resentencing was ongoing, the district court lacked authority to do anything but reinstate the original judgment.

The questions presented here are:

(1) Is an order granting relief and resentencing under 28 U.S.C. § 2255 final when the order changes the statutory sentencing range such that the district court cannot reimpose the original sentence, and such that any injury to the government is immediately apparent?

(2) Alternatively, if such an order is not final, is the district court required to vacate it when the controlling law changes during the course of resentencing?

PARTIES TO THE PROCEEDINGS

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

RELATED CASES

Christopher A. Mitchell v. United States, 2:14-cv-183 (E.D. Tenn.)

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JURISDICTIONAL STATEMENT

Christopher Mitchell was originally sentenced in 2009 after pleading guilty to being a felon in possession of a firearm pursuant to 18 U.S.C. § 924(e). He thereafter filed a motion for relief from that sentence under 28 U.S.C. § 2255, which was granted by the district court on August 18, 2017. As part of that order the district court also ordered a de novo resentencing. That resentencing continued over the course of more than three year, until October 20, 2020, when the district court entered an order cancelling the resentencing and reimposing the original judgment. Mr. Mitchell filed a timely notice of appeal from that order on September 3, 2020. He also filed a motion for reconsideration, which the district court denied on September 28, 2020. Mr. Mitchell timely appealed that second order on October 8, 2020.

On June 17, 2021, the Court of Appeals for the Sixth Circuit granted a certificate of appealability. But after briefing, on August 5, 2022, it issued an order affirming the district court. This Court's jurisdiction is invoked under Title 28, United States Code, Section 1254(1). Pursuant to Rule 13 of the Supreme Court the time for filing a petition for certiorari review is 90 days from the judgment of the Court of Appeals. Accordingly, this petition is timely filed.

Pursuant to Rule 29.4(a), appropriate service is made to the Solicitor General of the United States and to Assistant United States Attorney Luke A. McLaurin, who appeared in the United States Court of Appeals for the Sixth Circuit on behalf of the United States Attorney's Office, a federal office which is authorized by law to appear before this Court on its own behalf.

PRAYER FOR RELIEF

Petitioner, Christopher Mitchell, respectfully prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Sixth Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal statute 28 U.S.C. § 2255 provides that:

(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 authorized 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) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. 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.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act, in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

STATEMENT OF THE CASE AND FACTS

Over a decade ago Christopher Mitchell pled guilty to being a felon in possession of a firearm pursuant to 18 U.S.C. § 922(g). Pet. App. at 2. He was original sentenced under the Armed Career Criminal Act, 18 U.S.C. § 924(e) ("ACCA"), and thereby received a mandatory minimum sentence of 180-months' incarceration. *Id.* This was based on two Tennessee convictions for aggravated burglary and one Tennessee conviction for regular burglary. *Id.*

Several years later, through counsel, he filed a motion to vacate or modify his sentenced under 28 U.S.C. § 2255. *Id.* at 3. And, after the Sixth Circuit issued its holding in *United States v. Stitt*, 860 F.3d 854 (6th Cir. 2017) (en banc) ("*Stitt I*") (Tennessee aggravated burglary does not qualify as a crime of violence under ACCA), the district court vacated his ACCA sentence and ordered that he be returned to the jurisdiction for resentencing. *Id.* A resentencing hearing was scheduled, and the district court heard argument on two different dates but continued the hearing both times—once so that the district court could consider an objection to the non-ACCA Guidelines range, and a second time because this Court had granted certiorari in *Stitt I*. *Id.* (*See also* Minutes, 1st Resent. Hrg, R. 72, PageID #215; Resent. TR, Part II, R. 84, PageID #943, 983.) At neither hearing was a new sentence ordered. *See* Pet. App. at 3.

In the interim between Mr. Mitchell's original sentencing and the grant of his § 2255 motion he had been sentenced in Tennessee state court on related conduct. (State Judgments, R. 70-1, PageID #205-08.) During the second installment of Mr. Mitchell's resentencing hearings his attorney argued that pursuant to United States Sentencing Guidelines ("U.S.S.G.")

§ 5G1.3(b) the district court could order that his federal sentence be concurrent with the related state convictions. (TR Sent., Part II, R. 84, PageID #982.) The district court declined to issue a ruling on that request, noting that "those are all arguments that can be raised" at the continuation of the resentencing hearing. (*Id.* at PageID #982-83.) A continuation of the resentencing hearing was never held, despite Mr. Mitchell's requests, as this Court concluded that Tennessee's locational element was not overbroad, therefore overturning *Stitt I*. *United States v. Stitt*, 139 S. Ct. 399, 404 (2018) (*Stitt II*); Pet. App. at 3. However, Mr. Mitchell also specifically opposed the government's motion to cancel the resentencing hearing and reinstate the original judgment, arguing that "the original judgment has been vacated and should not simply be reinstated without addressing all sentencing issued raised by the defense." (Opp. to Mot. to Cancel Resent., R. 110, PageID #1114.); *see also* Pet. App. at 3. The district court denied Mr. Mitchell's requests, cancelled the ongoing resentencing hearing, and ordered reinstatement of his original judgment. Pet. App. at 3.

Mr. Mitchell filed a motion to reconsider, were in he reraised his request for a concurrent sentence, arguing that *United States v. Setsert*, 566 U.S. 231 (2021) and U.S.S.G. § 5G1.3(b) required consideration of concurrent time. (Mot. to Recon., R. 112, PageID #1123.) He noted that his original federal judgment was silent as to whether his sentence should be concurrent or consecutive to his state sentence which means the Bureau of Prisons ("BOP") will interpret it as requiring that the federal sentence be consecutive. (*Id.*) But, he argued, pursuant to U.S.S.G. § 5G1.3(b) "[b]ecause the term of imprisonment results from the state offense which is relevant conduct and related to the instant offense . . . the federal sentence shall also be ordered to be served fully concurrent with the state sentence and [the court shall]

adjust the sentence for imprisonment already served on the undischarged term of imprisonment." (*Id.*) But, the district court declined to consider whether concurrent sentencing was appropriate here, it denied the motion for reconsideration, and it denied a certificate of appealability. Pet. App. at 3.

The Sixth Circuit thereafter granted a certificate of appealability as to "whether the district court's imposition of Mitchell's original sentence violated the Constitution or laws of the United States because (1) the imposition of the original sentence resulted in his federal sentence running consecutively to his state sentence or (2) the district court inadequately explained why the § 3553(a) factors justified the consecutive sentence." *Id.*; (Sixth Cir. R., Doc. 9-2 at 5-6.) After briefing, it issued an order and judgment affirming the district court. Pet. App. at 2. It relied upon this Court's prior decision in *Andrews v. United States*, 373 U.S. 334 (1963) to conclude that the district court's 2017 order granting § 2255 relief and vacating Mr. Mitchell's original sentence was not final, even though it had not been appealed by the government, because it concluded all such § 2255 orders are interlocutory until a new sentence has been imposed. Pet. App. at 6. It also held that when the controlling authority changed regarding whether Mr. Mitchell was today subject to ACCA that change required vacatur of the district court's order vacating his original sentence, and required reinstatement of the original judgment. *Id.* at 4-6.

REASONS FOR GRANTING OF THE WRIT

This appeal addresses the important, and recurring, question of when an order granting relief under 28 U.S.C. § 2255 for purposes of resentencing becomes final, and what the duties are of the lower courts when a change in the law, occurring after the § 2255 was granted, impacts questions material to the original § 2255 and to the present resentencing. The Court of Appeals held that any such change in controlling law requires reimposition of the original judgment, even if the government never appealed the order granting § 2255 relief. It reached this conclusion because it also held that this Court's prior decision in *Andrews v. United States*, 373 U.S. 334 (1963) meant that every § 2255 order granting relief and ordering a resentencing does not become final until the defendant is in fact resentenced. But, that conclusion overlooks the rational applied by this Court in *Andrews*, and results in an outcome at odds with *Andrews*.

The result here is extreme for Mr. Mitchell, whose prior judgment did not address a 24-year state conviction on related conduct because that conviction had not yet occurred when the prior judgment issued. That prior judgment also predated this Court's holding in *United States v. Setsert*, 566 U.S. 231 (2021). By concluding that the district court was required to reimpose the original—but long since vacated—sentence, the Sixth Circuit sanctioned a consecutive sentence for Mr. Mitchell of a cumulative 39 years, but without any explanation from the district court as to the appropriateness of that sentence under the 18 U.S.C. § 2255 factors and U.S.S.G. § 5G1.3(b). That conclusion runs afoul of not only *Andrews*, but also this Court's prior pronouncements in *Rita v. United States*, 551 U.S. 338, 339-40 (2007) (district court must consider nonfrivolous arguments in support of a lower sentence), *Pepper*

v. United States, 562 U.S. 476, 507 (2011), the Seventh Circuit's conclusion in *United States v. Mobley*, 833 F.3d 797, 802 (7th Cir. 2016) (when a judgment has been vacated, and a de novo resentencing has been ordered, "the defendant has a 'clean' slate—that is, there is no sentence until the district court *imposes a new one*")); and the Third Circuit's holding in *United States v. Mitchell*, 38 F.4th 382, 388 (3d Cir. 2022) (a vacatur for de novo resentencing "washes away the original sentence," such that the "entire sentence" is set aside; it "effectively wipe[s] the slate clean").

This case presents the Court with an opportunity to define when an order granting § 2255 relief for resentencing becomes final, where the grant of relief changes the statutory range such that the defendant cannot receive the same sentence he originally had. It also provides the Court with the opportunity to address whether a change in the law after a § 2255 is granted (but not appealed) automatically requires reinstatement of the vacated judgment, or if the parties and the court should instead move forward and issue a new sentence as part of a resentencing.

Both questions are of unique importance not only to Mr. Mitchell, but to the vast and ever-growing number of defendants who receive relief under § 2255. This case is a good vehicle for tackling these issues.

ARGUMENT

Mr. Mitchell was waiting to be resentenced after a successful 28 U.S.C. § 2255 motion resulted in the vacatur of his judgment and sentence. Years after his sentence was correctly vacated under controlling law and while awaiting resentencing, the applicable law changed as this Court issued *United States v. Stitt*, 139 S. Ct. 399 (2018) ("*Stitt II*"). As part of that resentencing—and three years after the district court vacated his 15-year ACCA sentence—the district court concluded that *Stitt II* required reapplication of the ACCA's fifteen (15) year mandatory minimum. Because it was going to sentence Mr. Mitchell to that 15-year minimum, but nothing higher, and because it overlooked that Mr. Mitchell had requested that his federal sentence be concurrent with his related state sentence, the district court simply reimposed the original 15-year sentence. (Vacatur Order, R. 111, PageID #1121 n.6 ("Since the Court is without discretion to impose any sentence of less than 180 months of imprisonment, no sentencing hearing is needed.")

In doing so, it erroneously failed to address Mr. Mitchell's nonfrivolous request for his sentence to be concurrent with his related state sentence. That resulted in a sentence of twenty-four (24) *years* in state court for the identical conduct that is the basis of his federal fifteen (15) *year* mandatory minimum. Because the district court failed to address his nonfrivolous request for concurrent sentencing he is presently subject to a total of thirty-nine *years* in prison, but without the district court ever considering whether this cumulative sentence was justified by the 18 U.S.C. § 3553(a) factors and without the district court ever justifying why it varied from the Guidelines' recommendation for a concurrent sentence under U.S.S.G. § 5G1.3(b).

Before the Sixth Circuit the government presented the novel argument that *Stitt II*, which was decided well over a year after Mr. Mitchell's original judgment was vacated and while he was in the process of being resentenced, *required* the district court to reimpose the original judgment. The Sixth Circuit erroneously agreed. But, it relied on inapposite case law to so conclude. The district court correctly vacated Mr. Mitchell's original judgment and sentence under the controlling law at the time. It was during the course of *resentencing* that the law changed. Just because *Stitt II* meant that Mr. Mitchell's Tennessee burglary convictions once again counted as ACCA predicates, that does not mean that *Stitt II* magically resurrected the original—voided—sentence.

I. The Sixth Circuit erroneously relied upon *Andrews v. United States* to conclude that the order vacating Mr. Mitchell's original sentence was not yet final.

The Sixth Circuit concluded that the order granting Mr. Mitchell's § 2255 motion and vacating his original sentence was not final until a new sentence was imposed. Pet. App. at 6. Thus, it concluded that the district court had the authority to vacate the § 2255 grant, even through more than three years had passed since its entry. To reach this conclusion, it relied upon *Andrews*, 373 U.S. at 337, and interpreted that case as holding that "[o]rders vacating sentences under § 2255, after all, are interlocutory where resentenceing has yet to occur." Pet. App. at 6.

But looking at this quotation in isolation misses the bigger context and picture of *Andrews* and overlooks the reason that this Court reached its decision in *Andrews*. The Court explained in *Andrews* that "it is obvious that there could be no final disposition of the § 2255 proceedings until the petitioners were resentenced" *because* "[t]he District Court may, as before, sentence the petitioners to the same 25 years' imprisonment," and that "[u]ntil the

petitioners are resentenced, it is impossible to know whether the Government will be able to show any colorable claim of prejudicial error." *Andrews*, 373 U.S. at 340. Thus, in *Andrews*, even though the defendant won relief under § 2255, that relief did not change his statutory range such that it was possible for him to receive the exact same sentence at his resentencing that he originally received. So, at the time the § 2255 was granted it remained possible for the same sentence to be reimposed, such that it could turn out that the government ultimately suffered no injury at all.

But, the same cannot be said here. When the district court vacated Mr. Mitchell's original sentenced under § 2255 it held that ACCA was erroneously applied. Unlike in *Andrews*, without ACCA the district court could not resentence Mr. Mitchell to the same 15-year sentence because at that time, ACCA increased a 10-year statutory maximum to a 15-year mandatory minimum. *Compare* 18 U.S.C. § 924(a)(2) (2017) *with* 18 U.S.C. § 924(e). By granting the § 2255 motion the district court fundamentally changed the available punishments. In short, the government's injury was apparent at the very moment the district court granted the § 2255—precisely because there was no way to reimpose the same sentence under the § 2255 order. Thus, the primary reason this Court gave when concluding that the grant of § 2255 *for resentencing* is not final until the defendant is resentenced does not apply here. Instead, that rational indicates that *this* § 2255 *was* final, because any harm to the government necessarily occurred at the time the ACCA enhancement was voided.

The Sixth Circuit's reliance on *Andrews* is misplaced. Because its injury was immediately apparent upon the district court's grant of Mr. Mitchell's § 2255 motion, that order became final when the time for the government to appeal expired. And that was only

60 days—not three-plus years—after the § 2255 was granted. *United States v. Hayman*, 342 U.S. 205, 209 n.4 (1952); Rule 11, Rules Governing Section 2255, 28 U.S.C. foll. § 2255; Fed. R. App. P. 4(a)(1)(B). Accordingly, the district court lacked the authority to modify its order granting Mr. Mitchell § 2255 relief. It could only move forward and complete the resentencing. The Sixth Circuit erred in holding otherwise.

II. Even if the district court had authority to vacate its prior vacatur order, it was nonetheless required to address Mr. Mitchell's nonfrivolous request for a concurrent sentence.

Alternatively, the Sixth Circuit erred by concluding that when the controlling law changed, such that Mr. Mitchell was again subject to ACCA, that the district court lacked authority to do anything other than reinstate the original ACCA sentence. Pet. App. at 6. To the contrary, because Mr. Mitchell raised a nonfrivolous request for a concurrent sentence as part of his resentencing hearing, the district court was instead required to address that request prior to issuing its order vacating its prior § 2255 vacatur, or any order that resulted in a new sentence. *Rita v. United States*, 551 U.S. 338, 339-40 (2007) (explaining the sentencing judge's duty to adequately consider all "nonfrivolous reasons for imposing a different sentence"); *United States v. Pizzino*, 419 F. App'x 579, 584 (6th Cir. 2011) (explaining the district court's duty to address a defendant's nonfrivolous arguments for a lower sentence (citing *United States v. Wilms*, 495 F.3d 277, 282 (6th Cir. 2007))); *United States v. Cash*, 2019 U.S. App. LEXIS 24599, at *4 (6th Cir. Aug. 16, 2019) ("where, as here, a defendant specifically requests a concurrent sentence, the district court must explicitly rule on that request and adequately explain its ruling" (citing *United States v. Martin*, 371 F. App'x 602, 604 (6th Cir. 2010))).

Mr. Mitchell's original sentence had long since been vacated—it no longer existed and did not control anything—such that the district court had discretion to complete the resentencing. His original ACCA judgment (including its silence as to concurrent sentencing) was not magically resurrected by this Court's subsequent decision in *Stitt II*. Given Mr. Mitchell's nonfrivolous request for a concurrent sentence, the district court not only had discretion to deny the government's motion to vacate its prior vacatur order, but had an obligation to conclude the resentencing by giving adequate consideration to that request, even if after considering Mr. Mitchell's request for a concurrent sentence the district court still believed that reimposition of the original judgment was appropriate.

Years had passed since the original judgment was vacated and the time in which the district court relied upon the new law issued by this Court in *Stitt II*. On July 27, 2017 the parties filed a joint motion arguing that Mr. Mitchell "can no longer be subjected to the enhanced statutory penalties of the Armed Career Criminal Act ("ACCA"), 18 U.S.C. § 924(e)," and that the district court "should grant him relief under 28 U.S.C. § 2255." (Joint Status Report, R. 53, PageID #159.) The government made no qualifications to this conclusion, instead affirmatively arguing that the district court should either resentence him or correct his sentence. (*Id.* at PageID #160.) Thereafter, on August 18, 2017, the district court vacated his prior judgment, closed the civil case (where all of the § 2255 litigation occurred), and ordered a resentencing hearing. (Judgment Order, R. 55, PageID #171.) That resentencing occurred over the course of years, and it was not until April 1, 2019 that the government affirmatively asked the district court to reverse course. (Gov't Sent. Memo., R. 86, PageID #987-90.) And, when it first requested that the original judgment be reimposed,

even the government repeatedly indicated that the choice to vacate the § 2255 order in lieu of resentencing was discretionary. (Sent. Memo., R. 86, PageID #989-99 ("Because the § 2255 proceedings are not final this Court, *may*—and should—modify its earlier order . . . ." (emphasis added)).)

It was during this resentencing that Mr. Mitchell asked that his sentence be concurrent with his related state sentence. Because the original sentence had been vacated it no longer had any force or effect—Mr. Mitchell had no federal sentence at all. Vacate, Black's Law Dictionary (11th ed. 2019) (defining "vacate" as "To nullify or cancel; make void; invalidate <the court vacated the judgment>. Cf. OVERRULE."); *Mitchell*, 38 F.4th at 388 ("To vacate is 'to cancel or rescind' and to 'render an act void.' Thus, a vacatur 'cancels' the previous sentence."). A vacatur "cancel[s] the unlawful sentence and render[s] the defendant unsentenced." *Mitchell*, 38 F.4th at 388. It "washes away the original sentence," and where the resentencing is to be de novo (as is the case when a defendant wins vacatur under 18 U.S.C. § 2255), the "entire sentence" is set aside; a vacatur "effectively wipe[s] the slate clean." *Id.* (citing *Pepper v. United States*, 562 U.S. 476, 507 (2011)). When a judgment has been vacated, and a de novo resentencing has been ordered, "the defendant has a 'clean' slate—that is, there is no sentence until the district court *imposes a new one*." *United States v. Mobley*, 833 F.3d 797, 802 (7th Cir. 2016) (emphasis added).

In order for Mr. Mitchell's original ACCA-sentence to become effective again, the district court had to order it back into effect—it had to resentence him. The error here is the Sixth Circuit's conclusion that the district court was *required* to enter an order vacating its prior vacatur order instead of proceeding to the resentencing. It was during this resentencing

process that *Stitt II* announce new law. That new law meant that Mr. Mitchell's burglary convictions now qualified as ACCA predicates, such that any new sentence must also be an ACCA sentence, but it did not *require* that the original *judgment* be reinstated, as the Sixth Circuit's opinion suggests. *Stitt II* merely meant that the district court had to consider whether Mr. Mitchell was now, again, subject to ACCA as part of his resentencing.

Stitt II did not automatically erase the vacatur that had previously occurred. That water was already under the bridge, so to speak. By granting the § 2255 and vacating the ACCA sentence under the then controlling law the prior sentence became no more. And just as with any case that proceeds after this Court vacates a judgment, the normal—and appropriate—course is to move forward and resentence under the law applicable today. *See Mitchell*, 38 F.4th at 388.

The Sixth Circuit erred by holding that the district court was required to reinstate the original—yet validly vacated under then-controlling law—judgment when the controlling law changed. Instead, the district court should have considered Mr. Mitchell's nonfrivolous request that his 24-year state sentence and his 15-year federal sentence, both ordered to punish the same conduct, be served concurrently. The district court should have considered Mr. Mitchell's nonfrivolous request for concurrent sentencing before it decided to reimpose the original judgment. Or at a minimum, it should have addressed his request for concurrent sentencing in its order vacating the first vacatur order.

CONCLUSION

In consideration of the foregoing, Mr. Christopher Mitchell submits that the petition for certiorari should be granted, the order of the Sixth Circuit Court of Appeals vacated, and the case remanded to the district court for resentencing.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

By: */s/ Erin Rust*
Erin P. Rust
Assistant Federal Community Defender
835 Georgia Avenue, Suite 600
Chattanooga, Tennessee 37402
(423) 756-4349