

22-6138

No. _____

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Michael Lindell Teasley — PETITIONER
(Your Name)

vs.

Solicitor General — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Eight Circuit S.D. of Iowa-Central
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Lindell Teasley
(Your Name)

FBI, P.O. Box 4000
(Address)

Manchester, Ky 40962-4000
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Court of Appeals for the Eighth Circuit, Southern District of Iowa, abuse its discretion by utilizing the career-offender guidelines, which petitioner had a policy disagreement with namely the district court's failure to differentiate between career offenders with non-violent convictions?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

Conception v. United States, No. 20-1650 (S.Ct. June 28, 2022)
Dixon, 2016 WL 449 2843 (M.D. Ala. 2016)
United States v. Henshaw, 2018 WL 324 0982 (S.D. Ill. 2018)
United States v. Hodge, 2021 WL 1169896, 5 (E.D. Ky. 2021)
Kimbrough, 552 U.S. 819 (Citation omitted)

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 6/15/2022.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Aug 23, 2022, and a copy of the order denying rehearing appears at Appendix B.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Article III, Section 1. The judicial Power of the United States, shall be vested in one Supreme Court:

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the laws of the United States, and treaties made, or which shall be made, under their Authority.

STATEMENT OF THE CASE

A. Facts

Michael Teasley, Derek Thompson, and Anthony Robinson, Jr. were part of a large-scale drug conspiracy involving nineteen charged defendants. Between July and November 2020, agents intercepted wire and electronic communications over phones used by Thompson, as well as Jerome Wilson and Corey Turner (Thompson PSR p. 11, 18.) Thompson served as a cocaine source of supply for Wilson and Turner, among others. (Thompson PSR p. 12, 20.)

Teasley bought cocaine base from Wilson and Turner. (Teasley PSR p. 13, 32.) During a search warrant at Teasley's house, officers found 5.76 grams of cocaine, 1.89 grams of cocaine base, a loaded nine millimeter pistol with an extended magazine, and 64 rounds of ammunition. (Teasley PSR p. 43, 208.)

Robinson bought cocaine from Turner. (Robinson PSR p. 14, 33.)

Specifically, in October 2020, Turner sold seven grams of cocaine to Robinson. (Robinson pp. 36-37, 161-166.) During a search warrant at Robinson's house, officers found 6.94 grams of cocaine, 1.96 grams methamphetamine mixture, a loaded nine-millimeter pistol, a ballistic vest, an extended pistol magazine, and 26 rounds of ammunition. (Robinson PSR pp. 46-47, 217.)

REASONS FOR GRANTING THE PETITION

The 2016 USSC Report indicates that "[d]uring the past ten years, the proportion of career offenders sentenced within the applicable guideline range has decreased from 43.3 percent in fiscal year 2005 to 27.6 percent in fiscal year 2014, while government sponsored departures have steadily increased from 33.9 percent to 45.6 percent." 2016 USSC Report, p. 2.

The application of USSC section 4B1.1(a) to offenders based on non-violent felony controlled substance offenses is controversial, to put it mildly. The Career Offender Guideline, as applied to offenders of this type, has been widely criticized. This criticism appears not only in publications of the Federal Public Defender, defense practitioner's blogs and law review articles but, most importantly, in a publication authored by the United States Sentencing Commission itself. That publication is titled "Report to the Congress: Career Offender Sentencing Enhancements (August 2016)". See <http://www.ussc.gov/research/congressional-reports/2016-report-congress-career-offender-enhancements>.

This is a situation that arises out of issues of importance to the federal judicial system and to the nation, not just the party involved. This is a case that runs in conflict with *United States v. Hodge*, 2021 WL 1169896, 5 (E.D. Ky. 2021), whereas the District Court cited the 2016 USSC Report's findings with regard to non-violent offenders as support for defendant's motion for compassionate release, which was granted. This case is important to grant petition because it affects others' similarly situated. The lower court/Appellate Court's decisions are erroneous in denying petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael S. Sussman

Date: 11 / 17 / 2022

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Lindell Teasley — PETITIONER
(Your Name)

VS.

Solicitor General — RESPONDENT(S)

PROOF OF SERVICE

I, Michael Lindell Teasley, do swear or declare that on this date, _____, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/17/, 2022

Michael Teasley
(Signature)

ARGUMENT

Sentencing court imposed a below guideline sentence of 132 months (R. Doc. 815). Petitioner alleges the district court erred in imposing his guideline sentence by utilizing the Career Guidelines, which Teasley had a policy disagreement with, namely their failure to differentiate between career offenders with non-violent convictions (See Teasley Br. 10-24; R. Doc. 787-4). The district court did not give the Petitioner's policy disagreement with the Career Offender Guidelines larger consideration. Petitioner qualified as a career offender. See, e.g., U.S.S.G. 4B1.1(a) which put him at an Offense Level 29, Criminal History of VI, with a Guidelines range of 151-188 months, sentenced to a below guidelines sentence of 132 months. Petitioner argues that sentence was substantively unreasonable because he qualified as a career offender based on two prior controlled substance offenses.

In *United States v. Hodge*, 2021 WL1169896, 5 (E.D. Ky. 2021), the district court cited the 2016 USSC Report's findings with regard to non-violent offenders as support for the defendant's motion for compassionate relief, which was granted.

The district court considered an argument based on the 2016 USSC Report in *United States v. Reed*, 731 Fed. Appx. 540, 543-44 (8th Cir. 2018). In *Reed*, the defendant argued that:

... the court ignored a pertinent policy statement issued

In the district court cases most of which are not reported but readily available in databases. For example, in *United States v. Dixon*, 2016 WL 4492843 (M.D. Ala. 2016), the court stated:

The Court has serious concerns about the career-offender guideline as applied in many cases. First, the career-offender guideline frequently creates unwarranted sentencing uniformity. Second, in creating the career-offender guideline, the United States Sentencing Commission failed to fulfill its institutional role of calibrating the guideline to "empirical data and national experience." *Kimbrough*, 552 U.S. at 109 (citation omitted).

As a result, while there may be cases in which the sentence called for under the career-offender guideline is appropriate, the guideline often yields a sentence that does not adequately reflect a careful consideration of the section 3553(a) factors.

Dixon, 2016 WL 4492843, at 3.

Similarly, in *United States v. Henshaw*, 2018 WL 3240982 (S.D. Ill. 2018), the court adopted an argument similar to that advanced in this case.

The Court stated:

Congress had implemented in the Anti-Drug Abuse Act of 1986 ("1986 Act"), 100 Stat. 3207. 552 U.S. at 95-96. This departure from the Commission's empirical and adaptive approach has in turn affected almost all sentencing issues relating to drug-only offenses, resulting in situations like the present one; where

Congressional mandates run directly contrary to what the Commission recommended after applying its standards method. For the foregoing reasons, I find that the Career Offender Guidelines' categorical treatment of drug trafficking only offenders as severely as those who have a history of violence is unjust, results in sentences that are unduly harsh for the former, and therefore fails to promote the goals of sentencing.

But see, e.g., *Conception v. United States*, No. 20-1650 (S.Ct. June 28, 2022), whereas it stated in pertinent part via Justice Kavanaugh: "... The Court in effect green-lights district courts, 'if they wish, to make the 2016 amendment to the career-offender guideline retroactive in the First Step Act proceedings even though neither Congress nor the Sentencing Commission has made that amendment retroactive

See, Appendix A at page 6 of 7, third paragraph the lower court: The district court may, but does not have to, accept the career offender guideline in cases such as this. *United States v. Rodgers*, 20 F.4th 404, 406 (8th Cir. 2021) (per curiam)

The lower court has absolute authority consistent with *Conception v. United States* No. 20-1650 (S.Ct. June 28, 2022) to deviate from the circuit split on this issue.