

No. 22-6448

ORIGINAL

Supreme Court, U.S.
FILED

DEC 15 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Rickey Thompson — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rickey Thompson #53835-004
(Your Name)

FCC Coleman Medium, P.O. Box 1032
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Coleman, Florida 33521-1032
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

Whether extraordinary and compelling reasons exist in granting Petitioner relief in this case?

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

TABLE OF AUTHORITIES CITED

(all page numbers are from "Reasons for Granting the Petition")

CASES

PAGE NUMBER

Borden v. United States, 141 S. Ct. 1817 (2021).....	1
Cantu-Rivera, 2019 WL 2578272, at *2.....	2
Davis v. United States, 139 S. Ct. 2319 (2019).....	3
Deal v. United States, 137 S. Ct. 1170 (2017).....	2
United States v. Cantu, No. 1:05-CR-4581-1, 2019 WL 2498923, at *3 (S.D. Tex. June 17, 2019).....	1
United States v. Johnson, 135 S. Ct. 2551 (2015).....	3
United States v. Wooden, 142 S. Ct. 1063 (2022).....	3

STATUTES AND RULES

18 U.S.C. § 924(c).....	1, 2, 3
18 U.S.C. § 1111.....	3
18 U.S.C. § 3142(g).....	2
18 U.S.C. § 3553(a).....	2
18 U.S.C. § 3582(c)(1)(A).....	1, 2
U.S.S.G. § 1B1.13.....	2
U.S.S.G. § 2A1.1.....	3

OTHER

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A	U.S. District Court Denial
APPENDIX B	U.S. Court of Appeals for the Eleventh Circuit Denial
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

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 B to the petition and is

☐ reported at N/A; 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 A to the petition and is

☐ reported at N/A; 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 N/A to the petition and is

☐ reported at N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

☐ reported at N/A; 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 9/20/2022.

☒ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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 N/A.
A copy of that decision appears at Appendix N/A.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 924(c)

18 U.S.C. § 1111

18 U.S.C. § 3142(g)

18 U.S.C. § 3553(a)

18 U.S.C. § 3582(c)(1)(A)(i)

U.S.S.G. § 1B1.13

U.S.S.G. § 2A1.1

STATEMENT OF THE CASE

Petitioner was arrested in the year 2007 in the Southern District of Florida, for Title 8 U.S.C. § 1324(a)(1)(A)(i), 1324(a)(1)(A)(V)(I), 1324(a)(1)(A)(V)(II), and 1324(a)(1)(B)(iii).

Petitioner is presently incarcerated based on crimes that he is actually innocent of, according to Fifth and Sixth Amendment violations of his constitutional rights, and the fact that he suffers from medical lung problems and tuberculosis, for which he tested positive for in the past. Also, U.S. Senate Bill 756 of the First Step Act states if Petitioner were sentenced today, he would not receive the same sentence he has today.

REASONS FOR GRANTING THE PETITION

Extraordinary and compelling reasons exist in this case to allow the Petitioner relief, based on the following reasons:

Petitioner is over 55 years of age and suffers from lung problems and tuberculosis.

Petitioner's § 924(c) counts for Counts 28 and 29, for which he was stacked on both counts, one for 7 years and the other for 25 years, would be the same today based on the First Step Act of U.S. Senate Bill 756.

The First Step Act amended Title 18 U.S.C. § 924(c) in Petitioner's case in point to reduce his mandatory consecutive sentence regarding Counts 28 and 29, in which Petitioner was given 7 years for Count 28 and 25 years for Count 29. The First Step Act now states that such stacking is amended to reduce such mandatory consecutive sentences for firearm convictions, putting an end to practice known as § 924(c) "stacking." According to the U.S. Sentencing Commission, that practice discriminated against Black men. The U.S. Court of Appeals for the 11th and 10th circuits and various other circuits have concluded that the language in § 3582(c)(1)(A)(i), such as in Petitioner's case in point, does permit district courts to consider the First Step Act changes when considering sentence reductions. See United States v. Cantu, No. 1:05-CR-4581-1, 2019 WL 2498923, at *3 (S.D. Tex. June 17, 2019).

Congress did not limit "extraordinary and compelling reasons" to a specific enumerated set of circumstances. Congress did not define what could constitute an "extraordinary and compelling reason" warranting a reduction of a sentence under § 3582(c). Indeed, the legislative history confirms that it intended to grant federal sentencing courts broad discretion to make those determinations on a case-by-case basis, and to reduce fundamentally unfair sentences where such reasons exist, such as in Petitioner's case in point.

Extraordinary and compelling circumstances warrant a reduction in Petitioner's sentence, because the practice of "stacking" enhanced § 924(c) charges in a first offense was condemned for years, by the Sentencing Commission, the judicial conference of the United States, and others. Finally, in December of 2018, this

practice was eliminated entirely. The government can no longer invoke the dramatically enhanced mandatory consecutive sentences prescribed for "second or successive" § 924(c) convictions in the same case in which the first such conviction is obtained. From now on, those staggering sentences will be permissible only after a truly "subsequent" conviction. Notably, the fact that this amendment was titled a "clarification of § 924(c)" makes clear that § 924(c) was never intended by Congress to result in sentences like the one at issue here.

In addition, a motion for relief under 18 U.S.C. § 3582(c)(1)(A)(i) requires a court to consider other factors that may warrant relief, including the history and characteristics of the defendant, the defendant's rehabilitation, the sentencing disparities with his co-defendants, and other factors bearing on the Petitioner. See U.S.S.G. § 1B1.13 (requiring consideration of inter alia, the factors set forth in 18 U.S.C. § 3553(a); see also Cantu-Rivera, 2019 WL 2578272, at *2 (The court recognized rehabilitation and the "unwarranted [sentencing] disparities among defendants" in determining resentencing was appropriate). As set forth below, these factors further establish the sort of "extraordinary and compelling reasons" that warrant a reduction of Petitioner's multi life term sentence.

The relevant factors weigh strongly in favor of a sentence reduction. In deciding Petitioner's request for a sentence reduction, the court must determine whether, after considering the factors set forth in 18 U.S.C. § 3553(), a lower sentence would be appropriate, in addition to making a finding that Petitioner is no longer a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g). U.S.S.G. § 1B1.13(2).

The relevant § 3553(a) factors weigh strongly in favor of relief. All of the § 3553(a) factors weigh strongly in favor of relief in Petitioner's case. As an initial matter, there have been several changes in sentencing policies and the law that would lead to a much lower sentence, if Petitioner were before a court today. Since his sentencing, the Supreme Court has held both that the guidelines are advisory, and that sentencing judges may consider the impact of harsh, consecutive, mandatory minimums on a defendant's ultimate term of incarceration when determining the appropriate sentence on the § 924(c) counts, such as in Petitioner's counts, including Counts 28, 29, and the other counts concerning § 924(c) as well. See Deal v. United States, 137 S. Ct. 1170 (2017). A court today can impose a one day sentence on those other counts in light of the severity of the sentences required by

the stacked § 924(c) counts Petitioner was facing in this case. The First Step Act, Congress made it clear that it never meant for defendants like the Petitioner to receive the enhanced sentences for "second or successive" § 924(c) convictions that were charged in the initial case. If Petitioner were sentenced today on those convictions for § 924(c), he would receive 14 years, and not 32 years for Counts 28 and 29. This would be a full 16-year reduction on these two counts.

Over the last 14 years, Petitioner has been working tirelessly to educate himself while incarcerated by participating in various programs.

Petitioner did not kill, murder, or deliberately cause the death of any individuals, with specific intent, nor deliberate intent either, nor with specific conduct. Therefore, Petitioner did not commit first nor second degree murder, and should have never been tried under first degree murder counts, because he never used any malice nor malicious intent to kill anyone at all. Borden v. United States, 141 S. Ct. 1817 (2021). Wooden v. United States, 142 S. Ct. 1063 (2022), because the counts were connected separately for murder when in fact they should have been concurrent with each other, based on the same sequence. See Wooden.

Petitioner is presently serving murder convictions under Title 18 U.S.C. § 1111, and U.S.S.G. § 2A1.1, for intentional and deliberate murders that he is not responsible for because he did not kill nor murder anyone at all, nor by force, malice, nor with malicious intent, nor with deliberate intent. See Borden, supra. See also Wooden, supra, and Davis v. United States, 139 S. Ct. 2319 (2019); United States v. Johnson, 135 S. Ct. 2551 (2015).

These are extraordinary and compelling reasons for the Petitioner's relief, as well as his medical reasons.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. T. ...", written over a horizontal line.

Date: 12/7/2022