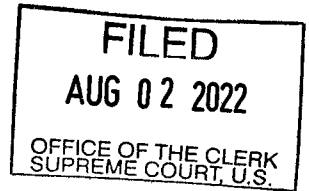


22-6571 ORIGINAL

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

MARCUS COVINGTON — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

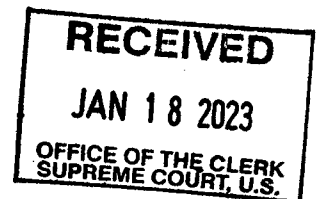
ON PETITION FOR A WRIT OF CERTIORARI TO

4th CIRCUIT COURT OF APPEAL RICHMOND V.A.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MARCUS WAYNE COVINGTON
(Your Name)

219 S. MANGUM ST.
(Address)



DURHAM N.C. 27701
(City, State, Zip Code)

919-358-2933 / 919-452-3795
(Phone Number)

QUESTION(S) PRESENTED

- 1) WETHER U.S. COURT OF APPEALS FAIL TO
CORRECT LOWER COURTS INCORRECT DESIGNATED VIOLATION?
- 2) WETHER COURT OF APPEALS FAIL TO
PROPERLY CONSIDER DISTRICT COURT ABUSE OF DISCRET
- 3) WETHER COURT OF APPEALS RECOGNIZED THE LACK
OF EFFECTIVE ASSISTANCE OF COUNSEL IN COUNSEL
SUPPLEMENTAL BRIEF?
- 4) WETHER COURT OF APPEALS TOOK NOTICE OF
LOWER COURTS MULTIPLE REFERENCES TO COVINGTON'S
LACK OF RESPECT FOR THE LAW IS MORE TROUBLING
THAN COUNSEL ARGUES AND LESS BENIGN THAN
THE GOV. CONTENDS?
- 5) WETHER COURT OF APPEALS AFFIRM
DISTRICT COURT JUDGEMENT DUE TO COUNSEL BRIANNA
INEFFECTIVE ASSISTANCE BY HIM CHOOSING TO FILE
ANDERS BRIEF INSPITE OF NONTRIVIAL ISSUES
THAT CLEARLY VIOLATED PETITIONERS RIGHTS?
- 6) WETHER COURT OF APPEALS DECISION TO AFFIRM
WAS BASED ON INEFFECTIVE ASSISTANCE OF COUNSEL
BECAUSE APPEAL COURT STATE (ON PG 8 OF UNPUBLISHED OPINION)
"APPALANT FAILED TO JUSTIFY A REMAND FOR RESENTENCING WHEN HE DID NOT
ARGUE THAT HE WOULD RECEIVED A LOWER SENTENCE HAD NOT THE

Questions

1. Was Public Defender Robert Brodey ineffective by not objecting to Policy Statement?
2. Was Public Defender Robert Brodey ineffective by misguided advice to defendant to take a Plea deal that was offered using an improperly calculated guideline policy statement?
3. Was Public Defender Robert Brodey ineffective by not allowing defendant to update pre-sentencing report?
4. Was Public Defender Robert Brodey ineffective by not objecting to information into a pending investigation to be used in a bond hearing?
5. Was Public Defender Robert Brodey ineffective by failing to require notice of Upward Variant Departure for Sentencing guideline for Grade B violation pursuant to USSC 761.4?

6. Was Public Defender Robert Brodey ineffective by not bringing to the Court's attention that defendant was not given an initial hearing?

7. Was Public Defender Robert Brodey ineffective by not adopting defendant's Writ of Habeas Corpus?

8. Was Appellant lawyer Brian Aus ineffective in his prejudice by filing an Anders Brief?

9. Was Appellant lawyer Brian Aus ineffective by the U.S. Court of Appeals order to address a nonfrivolous issue that would benefit from adversarial presentation the Appeals Court identified?

10. Was Appellant lawyer Brian Aus ineffective by not arguing the District Court's multiple references to defendant's lack of respect for the law?

11. Was Appellant lawyer Brian Aus ineffective by telling defendant that he would have to proceed PRO SE with his U.S. Supreme Court Certiorari?

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: ~~REDACTED~~

COURT OF APPEALS 4th CIRCUIT

RELATED CASES

U.S. V. MOORE HOUSE | U.S. COURT OF APPEALS 4 CIRCUIT | 34 F4th 381
MAY 20 2022

MARTINEZ V. RYAN | 546 U.S. 1132 S. CT 1309

BLAKEY V. WASHINGTON | 542 US 296 124 S CT 2531
159 L ED 2d 403 (2004)

UNITED STATES V. BOOKER 543 U.S. 220 125 S. CT
238 160 L ED 2d 621 (2005)

HOLIGUON HERNANDEZ V. U.S. SUPREME CT. | FEB. 26, 2020
140 S CT 7621 2020 WL 908880

U.S. V. ANDRE RALPH HAYMOND ARGUED FEB 26, 2019
NOV 17 1672 | 139 S. CT 2369

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INDEX TO APPENDICES

APPENDIX A (Pg. 9)	ORDER OF APPEALS COURT 4 th CIRCUIT DISMISSING COUNSEL BRIAN AUX TO MAKE ARGUMENT ON APPEALS COURT NONFRAUDULOUS ISSUE BEING IDENTIFIED.
APPENDIX B (Page 10)	BRIAN AUX AS COUNSEL PART OF HIS ANDERS BRIEF STATING TO COURT HE SEES NO MERIT GROUNDS FOR HIS CLIENT APPEAL
APPENDIX C (Page 11-13)	Letters From Counsel BRIAN AUX Informing Client that he would NO File writ of Certiorari He See NO nonfraudulous Issues, yet he FILE A Certiorari STATUS Form saying he WAS NOT INFORMED By Client to proceed 30 days.
APPENDIX D (Pg. 14-23)	Counsel MOTION TO WITHDRAW / UNPUBLISHED APPEALS COURT DECISION
APPENDIX E	Pg. 24-28 Report of Supplemental Policy Statement Based on False Accusation Incorrect Policy Statement
APPENDIX F	(Pg. 29-41) Supreme Court Returned Petition with wrong Contact Number Deputy Clerk. District Court SRU HEARING TRANSCRIPT. ALSO COUNSEL LATE MOTION FOR CLERICAL ERROR CLIENT PROSE MOTION FOR ERROR WAS FILED. COPY OF PROSE MOTION AND PROOF OF SERVICE. LETTER OF EXPLANATION WHY DJB PROCESS HAS BEEN DENIED DO TO DELAY OF JAIL AND MAIL.

TABLE OF AUTHORITIES CITED

CASES STRICKLAND V. WASHINGTON | PAGE NUMBER
SUPREME COURT MAY 14 1984 466 U.S. 668 104 S.Ct. 2052
KNOWLES V. MIRZAYAN (SUPREME CT. 1556 US 111
1129 CT. 1411 (MARCH 24, 2009)
BERGHUIS V. THOMPSON | SUPREME COURT OF THE
U.S. JUNE 04 2010 1560 U.S. 3701 130 S. CT. 2250
JASON PEPPER V. U.S. DEC. 6 2010 MARCH 2, 2011
09-6822

STATUTES AND RULES

717 STATEMENT OF REASONS FOR SENTENCE
AUG. 2022 UPDATE
18 USCA 3661
FED RULE 32(a)(1) 18 USCA
18 USCA 3553(A) 3583(e)
USSC 3742(G)(2)

OTHER

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 _____ 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 JUNE 29, 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: _____, 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. § 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).

U.S.S.G.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

7B1.1(a)(2)

7B1.4

7B1.1(b)

3742(g)(2)

3553(b)

3742(e)

18 U.S.C.A. 3553(A) 3583(e)

CLASS A Felony MAXIMUM SUPERVISE RELEASE
NOT MORE THAN 5 YEARS

CLASS C Felony MAXIMUM SUPERVISE RELEASE
NOT MORE THAN 3 YEARS

U.S.S.G. 18 U.S.C.A. SD1.2 3583(b)(4) 3583(b)(2)

MR COVINGTON WAS SENTENCE TO 7 YEARS SUPERVISE
RELEASE FOR A CLASS C Felony ON COUNT ONE
THIS WAS A 8th AMENDMENT VIOLATION ON
BEHALF OF DISTRICT COURT.

STATEMENT OF THE CASE

JUNE 14 2022 APPEAL IN CASE 21-4512 WAS SUBMITTED BASED ON CASE 0812495 REVOCATION SENTENCE OF A UPWARD VARIATION SENTENCE OF 33 MONTHS. CASE WAS DECIDED JUNE 29, 2022 IN UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PRIOR TO APPEAL BEING FILED, APPELLEE MARCUS COVINGTON FILED PRO SE WRIT OF HABEAS CORPUS PETITIONING COURT OF C.J.A. VIOLATIONS AND INEFFECTIVE ASSISTANCE OF COUNSEL ON BEHALF OF ROBERT BRODIE WHO FAIL TO BE PROPERLY PREPARE AND REFUSED TO BRING CLIENTS ISSUES TO COURT FLOOR.

- ALSO REFUSE TO OBJECT TO MISCALCULATED VIOLATION GRADE.

ALSO NOT OBJECTING TO POLICY STATEMENT RECOMMENDATION THAT WAS BASE ON GRADE A VIOLATION AND ACCUSATION OF A PENDING STATE CASE. APPEALATE ATTORNEY BRIAN AUS WAS COUNSEL FOR COVINGTON ON APPEAL OF CASE.

MARCUS COVINGTON INFORMED BRIAN AUS OF THE FACT THAT HE WAS ADVISE TO PLEAD GUILTY AND BE SENTENCE TO 21 MONTH CONCURRENT AND TO JUST EXPLAIN TO COURT OF ISSUE WITH LICENSE AND TRANSPORTATION. NO NOTICE OF AN UPWARD DEPARTURE TO BE CONSIDERED BY COURT. BRIAN AUS WAS ALSO INFORMED OF ALL ISSUES CLIENT WANTED ARGUED ON APPEAL. BRIAN AUS AGREED TO DO SO AND IMPLEMENT IN ARGUMENT. BRIAN AUS INFORMED CLIENT THIS JUDGMENT COMMITMENT WAS FAULTY.

YET BRIAN AUS FILED ANDERS BRIEF STATING ON
RECORD IN SUMMARY OF ARGUMENT "COUNSEL FOR MR. COWING
HAS DETERMINED AFTER A CONSCIENTIOUS ^{*} EXAMINATION OF ENTIRE
RECORD ^{*} IN THIS CASE THAT THE APPELLANT HAS NO
MERITORIOUS GROUND FOR APPEAL". NONETHELESS, THIS BRIEF
IS SUBMITTED TO FULFILL MR. COWINGTON'S DESIRE TO
APPEAL THE SENTENCES IMPOSED" (See Page 9/10 OF ^{ANDERS} BRIEF OF APPEAL)

ON MARCH 12, 2022 APPEALS COURT FOR THE FOURTH CIRCUIT
ISSUED ORDER TO PARTY. (See ATTACHED DOCUMENT)

APPEALS COURT AFTER THEIR REVIEW OF THE RECORD PURSUANT
TO ANDERS V. CALIFORNIA 386 U.S. 738 (1967). THE COURT
HAS IDENTIFIED A NONTRIVIOUS ISSUE THAT WOULD
BENEFIT FROM ADVERSARIAI PRESENTATION.

BRIAN AUS MADE SUPPLEMENTAL BRIEF BUT STILL
FAIL TO ARGUE EFFECTIVELY. UNITED STATES APPEAL
COURT FOR FOURTH CIRCUIT RECOGNIZED COUNSEL BRIAN AUS
FAIL TO JUSTIFY REMAND FOR RESENTENCING WHEN
HE DID NOT ARGUE THAT HE WOULD HAVE RECEIVED
A LOWER SENTENCE HAD THE DISTRICT COURT NOT
CONSIDERED 3553(a)(2)(A) FACTORS. (SEE ATTACHED PAGE 8)
COURT OF APPEAL
UNPUBLISHED

UNITED STATES APPEALS COURT FOURTH CIRCUIT
IDENTIFIED THAT COURT REFERRED TO COVINGTON'S
LACK OF RESPECT FOR THE LAW MULTIPLE TIMES AND
ADmits IT IS TROUBLING MORE THAN COUNSEL
ARGUES AND LESS BENIGN THEN GOVT CONTENTS.

UNITED STATES COURT OF APPEALS FOURTH CIRCUIT
RECOGNIZED "COUNSEL ASSERTS THAT COVINGTON WAIVED
ANY OBJECTIONS TO THE DISTRICT COURT'S FINDING
IN ERROR BECAUSE WAIVER APPLIES ONLY WHEN PARTY
"IDENTIFIES AN ISSUE AND THEN explicitly WITH DRAWS
IT." WHICH DID NOT HAPPEN HERE. UNITED STATES v
ROBINSON 744 F.3d, 298 (4th CIR. 2014) (see page 7 ATTACHED)
UNPUBLISHED

MR. COVINGTON WAS SENTENCE TO 7 years SUPERVISE RELEASE
FOR A CLASS C FELONY IN COUNT ONE OF INDICTMENT.
THE MAXIMUM SUPERVISE RELEASE FOR CLASS C Felony
IS THREE years AND CLASS A OR B IS 5 years SUPERVISE
3 months IS CAPED FOR CLASS ~~B~~ C Felony.

MR. COVINGTON WAS SENTENCE TO 3 years SUPERVISE RELEASE
FOR CLASS A Felony; COUNT TWO. 33 months IS WELL
ABOVE MAXIMUM PROVISION. 8th Amendment VIOLATION.
Simple possession DOES NOT CONSTITUTE Felony WHEN
PRIORS ARE 14 years OLD CONVICTIONS.

(See 5D12 3583(b)(1) 3583(b)(2) / 3583(a)(1)(2))

REASONS FOR GRANTING THE PETITION

MARCUS COVINGTON SENTENCE WAS IMPROPERLY MISCALCULATED DISTRICT COURT FOR THE MIDDLE DISTRICT OF THE 4th CIRCUIT ABUSED ITS DISCRETION BY NOT CORRECTING THE POLICY STATEMENT DISTRICT COURT VIOLATED MR. COVINGTON SUBSTANTIA RIGHT BY ALLOWING MISCALCULATED GUIDELINE RANGE TO BE CONSIDERED AT SENTENCING. STATUTORY PROVISIONS OF U.S. SENTENCING GUIDELINES MANUAL 7B1.1(a)(3) STATES THE MOST SERIOUS VIOLATION DETERMINES THE GRADE TO BE USED ACCORDING TO 7B1.4; A GRADE B VIOLATION IS SUBJECT TO 21-27 MONTHS WITH CATEGORY OF CRIMINAL HISTORY POINTS, THAT WAS NEVER UPDATED BECAUSE PROBATION NEVER CONDUCTED AN UPDATED PRESENTENCING INVESTIGATION IN ORDER TO MAKE KNOWN TO COURTS THE OBJECTIONS TO PRIORS THAT ARE 17 YEARS OLD FELONY CONVICTIONS ALSO THAT MR. COVINGTON POINTS DROPPED WHILE IN CUSTODY 11 YEARS IN D.O.P. ALSO VIOLATION 2 AND 3 WAS INCORRECTLY DESIGNATED AS GRADE B BUT COUNT TWO HAS A 12 MONTH TERM CONSECUTIVE YET WAY BELOW GUIDELINE RANGE AND WAS NEVER GIVEN REASON TO WHY THIS 12 MONTH CONSECUTIVE SENTENCE APPLY TO DETERING OR PROMOTING RESPECT FOR THE LAW. FOR DETAINER REASONS ONLY PETITIONER IS BEING HELD IN DURHAM COUNTY JAIL UNDER UNSURED BOND. YET HE IS BEING DENIED HALFWAY HOUSE OR FIRST STEP ACT ELIGIBILITY. THIS IS CLEAR MANIPULATION OF THE COURTS. CRUEL AND UNUSUAL PUNISHMENT. FOR THESE REASONS PETITION SHOULD BE GRANTED.

PETITIONER HAD TO WAIT FOR SAIL TABLETS TO BE FIXED IN ORDER TO HAVE ACCESS TO LAW LIBRARY.

ALSO IT TOOK A MONTH TO GET NOTARY TO NOTARIZE DOCUMENTS.

PETITIONER RECEIVED LETTER FROM SUPREME COURT Aug. 26 2022.

PETITIONER NEVER DENIED VIOLATING PROBATION. PETITIONER IS ONLY ASKING FOR WRIT TO BE GRANTED SO THAT HE CAN RECEIVE CORRECT SENTENCING UNDER GUIDELINE PROVISIONS AND A PRESENTENCING INVESTIGATION COMPLETED AND A CORRECT UPDATED REPORT AND A CORRECT POLICY STATEMENT THAT DO NOT REFLECT A PENDING CHARGE THAT GOV. IS NOT VIOLATING HIM FOR. ALL OF THESE ISSUES MAKES THE SENTENCE UNFAIR AND NOT REFLECTING THE INTEGRITY OF THE PUBLIC AND JUDICIAL SYSTEM.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marvin Gairing

Date: 9/29/2022