

No. 22-7277

ORIGINAL

Supreme Court, U.S.
FILED

FEB 27 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

GENARD TONEY — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

8th Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

GENARD TONEY

(Your Name)

P.O. Box 6000 FCI Gilmer

(Address)

Glenville, WV 26351-6000

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Whether Defendant knowingly and voluntarily entered his plea of guilty after not being informed of the elements of the charged offense.
- 2) Whether Defendant received ineffective assistance of trial and/or appellate counsel because his attorneys failed to discover a missing essential element of intent (Scienter of Age) in the charged conduct of the indictment.
- 3) Whether Defendant's conviction entitles him to receive a new sentencing hearing because of the missing essential element in the charged conduct.

11

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

Henderson v. Morgan, 426 U.S. 637

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

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

Henderson v. Morgan, 426 U.S. 637

PAGE NUMBER

Statement of Case

STATUTES AND RULES

18 U.S.C. 2251A

18 U.S.C. 2252A

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 _____ to the petition and is

☒ reported at 114 S.Ct.; 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☐ is unpublished.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☐ is unpublished.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 _____.

☐ 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: 12-22-22 (COA), 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment Five and six

STATEMENT OF THE CASE

The defendants guilty plea cannot be knowingly, intelligently, and voluntarily entered without being notified of the elements to which he pled guilty to. Neither his attorneys nor the district court during the Rule 11 colloquy, nor the Agreed Factual Basis provided the defendant with ~~any~~ ~~of~~ ~~the~~ the essential elements. Without knowledge of the elements of the offenses, the defendants plea cannot be considered knowing, intelligent, and voluntary.

The essential intent element (scienter of Act) is completely absent from the defendants conduct as to Count one Attempt 18 - U.S.C. 2251A. This Fatal Flaw renders this conviction and sentence unlawful.

In *Henderson v. Morgan*, 426 U.S. 637, this court vacated a guilty plea of murder because the court or the attorney did not inform the defendant of the intent element. This court explained that a plea of such violates due process.

REASONS FOR GRANTING THE PETITION

The defendant conviction is in violation of Federal laws.

The defendant's due process rights is violated as explained by this court.

The defendant conviction and sentence is unlawful.

The Failure to allege all the elements of the crime was a violation that prejudiced the defendant's substantial rights.

Not being informed anywhere on record or off record of elements renders the guilty plea not knowingly, intelligently, or voluntarily.

In this particular case the 8th circuit is in conflict with this court's ruling as well as their own decision and other circuits.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

GENARD TONEY

Date: 2-20-23