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No. 22-2397

ORIGINAL

Supreme Court, U.S.
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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE
UNITED STATES

ROBERT J. THOMAS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals
for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Mr. Robert J. Thomas
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Pro se Petitioner

QUESTION PRESENTED

This Court should Grant, Vacate and Remand Petitioner's case to the lower court in order to grant him in forma pauprieris status and review his request for compassionate relief under the First Ste Act based on its decision in Concepcion v. United States, 142 S.ct. 2389 (2022) in conformance with the principles of Due Process.

TABLE OF CONTENTS

	<u>Page</u>
Opinion Below	1
Jurisdiction	1
Constitution and Statutory Provisions Involved	2
Statement of the Case	3
Reasons for Granting the Writ	5
Conclusion	8

INDEX TO APPENDICES

Appendix A	1a
Appendix B	1b
Appendix C	1c
Appendix D	1d
Appendix E	1e
Appendix F	1f

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

The opinion of the United States Court of Appeals at Appendix A to the petition and is unpublished.

The opinion of the United States District Court for the Northern District of Indiana at Appendix B and is unpublished.

JURISDICTION

The date on which the United States Court of Appeals decided my case was November 7, 2022.

No petition for rehearing was timely filed in my case.

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

STATEMENT OF THE CASE

This Pro se Petitioner sought Compassionate Relief based on the First Step Act of 2018 in the United States District Court for the Northern District of Indiana, which the lower court denied on September 13, 2021.

Thus, petitioner sought a reduction in sentence (RIS) under the First Step Act based on non-retroactive change in law concerning the §841 enhancement limitation, which in his case increased his mandatory minimum sentence under 21 U.S.C. §841. In ruling on petitioner's request for RIS, the district court construed his motion as one for reconsideration of its previous September 13, 2021 denial. (See Appendix A). In doing so, the district court made clear it took "no position on whether relief [wa]s available...under other provisions of the Fair Sentencing Act." (Id.).

Given the district court's decision, petitioner moved under the Federal Rules of Criminal Procedure ("F.R.Crim.P."), Rule 35(a) based on this Court's ruling in Concepcion v. United States, 142 S.Ct. 2389 (2022), and the district court's failure to squarely address petitioner's First Step Act claim while completely ignoring the Rule 35(a) motion then later denied him in forma pauperis status. Thereafter, petitioner filed a notice of appeal, and the required docketing statement; (see Appendix D), then the Seventh Circuit issued an order directing petitioner to file a "Jursidiction Statement" to which he complied. (See Appendixes E and F).

Following submission of petitioner's directed pleadings in the circuit court, the appellate court issued an order denying petitioner in forma pauperis, and reasoned that he had "not identified poten-

tially meritorious argument that the district court erred in denying his motion for compassionate relief.

This petition for a writ of certiorari follows the denial in the lower court.

REASON FOR GRANTING WRIT

This Court has long established that it has the authority under its "discretionary certiorari jurisdiction" to Grant this petition, Vacate the lower court judgment, and Remand the case to the lower Court (GVR) a decision of a lower appellate court when its own ruling implicates a possible error by that lower court. See Lawrence v. Chater, 516 U.S. 163, 166-67 (1996) (citing cases).

Specifically, when a GVR order is sought it allows this Court to reserve its limited resources by assisting the court below by flagging a particular issue it does not appear to have fully considered ...and alleviates the 'potential for unequal treatment' that is inherent in [this Court's] inability to grant plenary review of all pending cases raising similar issues[.]" at p. 167 (citing cases).

Last term, this Court issued a decision addressing the reach of the First Step act when it pertains to a district court's "discretion to consider petitioner's arguments that intervening changes of law and fact support[s]...adjudicat[ion] a First Step Act motion." Concepcion, supra.

In this case, neither the district court nor the appellate court considered that the scope of its authority in light of this Court's ruling in Concepcion, although the decision was squarely presented at both levels. In fact, both courts simply side-stepped the issue and whether Concepcion had any implications to petitioner's case in contravention of the principles of due process inherent in United States Constitution, Amendment V. See Mathews v. Eldridge, 424 U.S. 319, 333-34 (1976).

In this Court's due process jurisprudence, it has consistently

acknowledged that the broad scope of the requirements of due process are fundamental to a litigant's opportunity to have a court of competent jurisdiction resolve any legal controversy brought before it. Id., 333-34 ("acknowledging that "[t]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner[;]...and due process is flexible and calls for such procedural protections as the particular situation demands.")(internal citations and quotations omitted).

Besides the due process implications of petitioner being heard on a valid First Step Act claim which Congress provided an avenue for courts to review; see e.g., United States v. McCall, U.S. App. Lexis 35473 (6th Cir. December 22, 2022), the lower courts additionally contravened due process when it denied petitioner in forma pauperis status.

It is well-established that in allowing an indigent litigant meaningful access to the federal judiciary includes consideration as to whether persons unable to pay a full filing fee presents non-frivolous claims or arguments to the court. See Neitzke v. Williams, 480 U.S. 319, 324 (1989); see also, Coppedge v. United States, 369 U.S. 438, 445 (1962)(recognizing that a party to litigation does not proceed in good faith in seeking judicial review when advancing a frivolous argument or claim for relief).

Moreover, a frivolous claim or argument have been found to be one in which it appears to raise a baseless factual allegations or indisputably meritless legal theories, in other words it attempts to waste a court's time and resources as well as those of the opposing party. See Neitzke, *supra* at p. 327.

In this instance, it appears that the lower district court did not even weigh whether petitioner's First Step Act claim lacked an arguable bases in law; (see Appendix A)(stating that "[t]he Court takes no position on whether relief is available to [petitioner] under other provisions of the Fair Sentencing Act"). Likewise, the circuit court denied "leave to proceed in forma pauperis...[stating that petitioner had] not identified [any] potentially meritorious argument that the district court erred in denying his motion for compassionate release." (See Appendix B).

Although, the circuit court gave petitioner the chance to pay filing fee "within 14 days," such offer amounts to an empty exercise in comporting with due process when petitioner did not have the financial ability to do so; hence petitioner's request to proceed without prepayment of court fees based on the court's offer was an exercise in futility. See e.g., Boddie v. Connecticut, 401 U.S. 371, 391 (1971)(recognizing a litigant's right to have a meaningful opportunity to be heard in a judicial proceeding). This is because after petitioner demonstrated that he could not pay the filing fee, he could have in the least been given the chance to proceed in forma pauperis on his First Step Act claim which Congress sought to allow the opportunity to do by amending 18 U.S.C. §3582(c)(1)(A). See United States v. Moore, U.S. Dist. Lexis 191672 (E.D.Tenn. October 20, 2022)(stating "Congress enacted the First Step Act, Pub. L. No. 115-319 Stat. 5194 (2018), which amended §3582(c)(1)(A) so that courts can consider motions for compassionate release").

In sum, this Court should Grant this petition, Vacate the lower court judgment denying petitioner in forma pauperis status, and Remand the case to the lower court to allow him to proceed in forma pauperis so that it may review the district ruling in conformance with due process principles.

CONCLUSION

This petition for writ of certiorari should be granted.

Respectfully submitted,

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