

No:

**In the
Supreme Court of the United States**

ANTONIO MINNIS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHT CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

This Court in *Strickland v. Washington*, 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984), laid the foundation for the gauging of ineffective assistance of counsel claims. When an attorney admits to this ineffectiveness and the Defendant rejects a favorable plea, does the subsequent enhanced sentence justify the court's prejudice prong presented in *Strickland*.

**PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW**

In addition to the parties named in the caption of the case, the following individuals were parties to the case in the United States Court of Appeals for the Eight Circuit and the United States District Court for the Eastern District of Missouri.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

TABLE OF CONTENTS

Questions Presented for Review	ii
List of Parties to the Proceedings in the Courts Below	iii
Table of Contents	iv
Table of Authorities	v
Opinions Below	2
Statement of Jurisdiction	2
Constitutional Provisions, Treaties, Statutes, Rules, and Regulations Involved	2
Statement of the Case	4
Reasons for Granting the Writ	5
Rule 10 - Considerations Governing Review on Writ of Certiorari	5
Should a writ of certiorari be granted based on this court’s reasoning in <i>Strickland v. Washington</i> , 466 U.S. 668, 80 l.ed.2d 674, 104 S.Ct. 2052 (1984) when counsel failed to properly research a Career Offender application [and admitted to his misadvice] which led Minnis to reject a favorable initial plea offer	6
Conclusion	8
<i>Minnis v. United States</i> , No: 22-3063 (8th Cir. January 11, 2023)	A-1
<i>Minnis v. United States</i> , No. 4:19-CV-914 RLW, 2022 U.S. Dist. LEXIS 152067 (E.D. Mo. Aug. 24, 2022)	B-1

TABLE OF AUTHORITIES

<i>Descamps v. United States</i> , 570 U.S. 254, 133 S. Ct. 2276, 186 L. Ed. 2d 438 (2013)	7
<i>Mabry v Johnson</i> , 467 U.S. 504 (1971)	8
<i>Minnis v. United States</i> , No. 4:19-CV-914 RLW, 2022 U.S. Dist. LEXIS 152067 (E.D. Mo. Aug. 24, 2022)	<i>passim</i>
<i>Strickland v. Washington</i> , 104 S.Ct. 2052 (1984)	8
<i>Thomas v. United States</i> , 27 F.3d 321 (8th Cir. 1994)	8
<i>United States v. Alexander</i> , 809 F.3d 1029 (8th Cir. 2016)	7
<i>United States v. Minnis</i> , 872 F.3d 889 (8th Cir. 2017) <i>reh’g denied</i> , <i>United States v. Minnis</i> , 2017 U.S. App. LEXIS 23140 (8th Cir. Nov. 16, 2017)	4
<i>United States v. Morrison</i> , 449 U.S. 361 (1981)	8
<i>United States v. Rice</i> , 813 F.3d 704 (8th Cir. 2016)	6-7
<i>United States v. Vinton</i> , 631 F.3d 476 (8th Cir. 2011)	7

Rules

Fed.R. Crim. P. 11(b)(1)	4, 8
Rule 10	5
Rule 10.1	5

Statutes

18 U.S.C. § 924	7
21 U.S.C. § 841	6
28 U.S.C. § 1254	2
28 U.S.C. § 1654	2, 3
28 U.S.C. § 2255	3, 4
Mo. Rev. Stat. § 565.050	7

United States Sentencing Guidelines

U.S. Sentencing Guidelines Manual § 4B1.1	6
U.S. Sentencing Guidelines Manual § 4B1.2	6

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Antonio Minnis, the Petitioner herein, respectfully prays that a writ of certiorari is issued to review the judgment of the United States Court of Appeals for the Eight Circuit, entered in the above-entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Eight Circuit, whose judgment is herein sought to be reviewed, is an unpublished decision in *Minnis v. United States*, No: 22-3063 (8th Cir. January 11, 2023), is reprinted in the separate Appendix A to this Petition.

The opinion of the District Court, Eastern District of Missouri (White, R.), whose judgment was appealed to be reviewed, is an unpublished opinion in *Minnis v. United States*, No. 4:19-CV-914 RLW, 2022 U.S. Dist. LEXIS 152067 (E.D. Mo. Aug. 24, 2022) is reprinted in the separate Appendix B to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on January 11, 2023. The Jurisdiction of this Court is invoked under Title 28 U.S.C. § 1654(a) and 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

The Eight Amendment to the Constitution of the United States provides in relevant parts:

No person shall be held to answer for a capital, or otherwise, infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law...

Id. Fifth Amendment

The Sixth Amendment to the Constitution of the United States provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Id. Sixth Amendment

Title 28 U.S.C. § 2255 provides in the pertinent part:

A prisoner in custody under sentence of a court established by an Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

* * * * *

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

Id. Title 28 U.S.C. § 2255.

STATEMENT OF THE CASE

The facts that led to the arrest, conviction, and sentence are not in question and have been previously presented on direct appeal in *United States v. Minnis*, 872 F.3d 889 (8th Cir. 2017) *reh'g denied*, *United States v. Minnis*, 2017 U.S. App. LEXIS 23140 (8th Cir. Nov. 16, 2017). Those facts of the offense are adopted herein by reference but are not relevant to the writ of certiorari.

After the appeal was affirmed, Minnis filed a Title 28 U.S.C. § 2255 alleging several instances of ineffective assistance of counsel. Minnis alleged that Mr. Sims [trial counsel] "rendered ineffective assistance when he failed to properly research the career offender guidelines before advising [M]innis to reject an initial plea offer." (ECF No. 1 at 5.) The lower court determined that the "right to be apprised of the court's sentencing options is no greater than the provisions of Fed.R. Crim. P. 11(c)(1) [now 11(b)(1)], which requires only that the court inform the defendant of the applicable mandatory minimum and maximum sentences." *Minnis v. United States*, 2022 U.S. Dist. LEXIS 152067 at *16 (E.D. Mo. Aug. 24, 2022). The court determined that the District Court is not required to inform the defendant of the applicable guideline range" included the possibility of an enhanced sentence as a career offender. Based on that reasoning, the District Court denied relief. The Eighth Circuit refused to grant a certificate of appealability. This petition for writ of certiorari follows.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE EIGHT CIRCUIT AND THE DISTRICT COURT HAVE DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides relevant parts as follows:

Rule 10

CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

(1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:

(a) When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

(b) When a ... United States court of appeals has decided an important question of federal law which has not been but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.

Id. Supreme Court Rule 10.1(a), (c).

QUESTIONS PRESENTED

SHOULD A WRIT OF CERTIORARI BE GRANTED BASED ON THIS COURT'S REASONING IN *STRICKLAND V. WASHINGTON*, 466 U.S. 668, 80 L.ED.2D 674, 104 S.CT. 2052 (1984) WHEN COUNSEL FAILED TO PROPERLY RESEARCH A CAREER OFFENDER APPLICATION [AND ADMITTED TO HIS MISADVICE] WHICH LED MINNIS TO REJECT A FAVORABLE INITIAL PLEA OFFER

The trial counsel acknowledged the error in Minnis' matter. That is unprecedented. During the pre-trial settings, Minnis rejected an initial plea offer that capped his statutory maximum sentence at 20 years (21 U.S.C. § 841(b)(1)(C)). Counsel assured Minnis that he was not a Career Offender. Based on that advice, Minnis rejected an initial plea offer. It was later determined that the counsel's advice was flawed in all respects.

Under U.S. Sentencing Guidelines Manual § 4B1.1(a), a defendant is a career offender if: (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense; and (3) the defendant has at least two prior felony convictions of either a crime of violence or a controlled substance offense. A "crime of violence" is any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that has as an element the use, attempted use, or threatened use of physical force against the person of another. U.S. Sentencing Guidelines Manual § 4B1.2(a)(1). A "crime of violence" includes attempting to commit such offenses. *United States v. Rice*, 813

F.3d 704, 705 (8th Cir. 2016). A conviction may be a crime of violence "only if the statute's elements are the same as, or narrower than, those of the generic offense." *Descamps v. United States*, 570 U.S. 254, 133 S. Ct. 2276, 2281, 186 L. Ed. 2d 438 (2013). *United States v. Vinton*, 631 F.3d 476, 484 (8th Cir. 2011) ("To determine whether a previous conviction is a crime of violence under § 4B1.2(a), we often have looked to the case law interpreting 18 U.S.C. § 924(e)(2)(B), a provision of the Armed Career Criminal Act (ACCA) that defines the term 'violent felony' using similar language.") Minnis has a prior conviction for attempted first-degree assault (AFDA) conviction under Mo. Rev. Stat. § 565.050. Counsel was under the mistaken impression that an attempted first-degree assault (AFDA) conviction under Mo. Rev. Stat. § 565.050 did not qualify as a "crime of violence" under the Career Offender calculations when he advised Minnis to reject the first offer. Contrary to the counsel's advice, the Eight Circuit rejected a similar argument in *United States v. Alexander*, 809 F.3d 1029 (8th Cir. 2016), before Minnis's plea. As early as 2011, the Eight Circuit had rejected similar arguments that counsel was making at the time he was providing advice to Minnis. *United States v. Vinton*, 631 F.3d 476 (8th Cir. 2011). The precedent was set in 2011 in *Vinton*. There was no reason to overlook this case.

Since Minnis has shown actual ineffective assistance of counsel, the District Court will have to fashion a remedy that is "tailored to the injury suffered and [does]

not necessarily infringe on competing interests.” *United States v. Morrison*, 449 U.S. 361 (1981). The remedy for counsel’s ineffective assistance should put Minnis back in the position he would have been in if the Sixth Amendment violation would not occur. This court was explicit in *Morrison*. The remedy for Minnis is to be placed back in the same position he was in before the error. Minnis should be allowed to accept the initial offer with adequate advice. The Eighth Circuit’s decision in *Thomas v. United States*, 27 F.3d 321, 325-26 (8th Cir. 1994) cannot override this Court’s decision in *Strickland v. Washington*, 466 U.S. 668, 80 L.ED.2D 674, 104 S.Ct. 2052 (1984). This would be consistent with this Court’s decision in *Mabry v. Johnson*, 467 U.S. 504, 510 (1971); *Partida-Parra*, 859 F.2d at 633, [noting that in certain circumstances “it may be appropriate for the court to order ‘specific performance’ of the [plea] bargain.”] Thus, whereas here, Minnis was deprived of the opportunity to accept a plea offer, placing Minnis in the position he was in before the Sixth Amendment violation originally will involve reinstating the original offer. This appears to be the most just resolution to the violations raised.

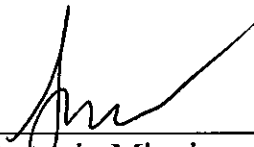
However, the lower court did not consider this option. The lower court merely determined that the Federal Rules of Criminal Procedure, Rule 11. Fed.R. Crim. P. 11(c)(1) [now 11(b)(1)]. See, *Minnis v. United States*, 2022 U.S. Dist. LEXIS 152067 at *16 (E.D. Mo. Aug. 24, 2022). *Strickland* controlled this case and under that standard, Minnis was entitled to relief. In essence, had the counsel familiarized

himself with the Eight Circuit precedent Minnis would have made an informed decision. Minnis would not have rejected the initial offer and would still be sentenced as a Career Offender, however, a lower sentence overall.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand to the Court of Appeals for the Eight Circuit.

Done this 03, day of April 2023.



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