

No. 22-7342

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
APR 07 2023
OFFICE OF THE CLERK

Dyree Penn — PETITIONER
(Your Name)

vs.
United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S.C.A. 7, Appeal No. 22-1873
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mr. Dyree Penn, 45566424
(Your Name)

U.S. Penitentiary, P.O. Box 24550
(Address)

Tucson, AZ 85734
(City, State, Zip Code)

N/A
(Phone Number)

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QUESTION(S) PRESENTED

1. Does vertical stare decisis require vacatur of the judgment below to compel adherence to the holdings in *Concepcion v. United States*, 142 S. Ct. 2389, 2395-2396, 2399, 2404-2405 (2022) and confinement of the Sixth, Seventh, Eighth, and Eleventh Circuits to a proper exercise of their jurisdiction applying *Concepcion*?

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

Raul Tovar v. United States, S. Ct. (2022)

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May 3, 2022 District Court Order

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February 6, 2023 U.S.C.A. 7 Order

APPENDIX C

March 13, 2023 U.S.C.A. 7 Order (Rehearing)

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TABLE OF AUTHORITIES CITED

CASES

Concepcion v. United States, 142 S.Ct. 2387, 2395-2396, 2404 (2022)
United States v. Andrews, 12 F.4th 255 (CA3 2021)
United States v. Chen, 48 F.4th 1092, 1098 (CA9 2022)
United States v. Crandall, 25 F.4th 582 (CA8 2022)
United States v. McCall, 2022 U.S. App. LEXIS 35431 (CA6 2022)
United States v. McCoy, 981 F.3d 271, 285 (CA4 2020)
United State v. Ruvalcaba, 26 F.4th 14, 28 (CA1 2022)
United States v. King, 40 F.4th 594, 595 (CA7 2022)

STATUTES AND RULES

18 U.S.C. § 3582(c)(1)(A)
21 U.S.C. § 841(a)(1); § 846
U.S.S.G. § 1B1.13(5) (2023)

OTHER

Vertical Stare Decisis

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 _____; 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 _____; 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 February 6, 2023.

☐ 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: March 13, 2023, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

Vertical State Decisions

18 U.S.C. § 3582(c)(1)(A)

STATEMENT OF THE CASE

On May 3, 2022, the district court unilaterally denied petitioner's motion to reduce sentence under 18 U.S.C. § 3582(c)(1)(A). Appendix - A, and mischaracterized the motion as containing a sole ground for relief. On February 6, 2023, the court of appeals applied its erroneous precedent, *King*, *supra*, Id. at 595, that misapplied *Concepcion*, *supra*, Id. at 2396, 2399 2404 - 2405, and affirmed the district court's order. Appendix - B.

On February 23, 2023, petitioner sought rehearing en banc to overrule *King*, *supra*, and on March 13, 2023 the court of appeals denied that petition. Appendix - C.
This petition follows.

REASONS FOR GRANTING THE PETITION

This Court should enforce vertical stare decisis in *Concepcion*, and hold the Ninth, Fourth, First, and Tenth Circuits' application of *Concepcion* is correct thus overruling the Third, Sixth, Seventh, and Eighth Circuits' precedent misapplying and minimizing the legal holdings in *Concepcion*. Had petitioner's motion been filed in the Ninth, First, Fourth, or Tenth Circuits, the court of appeals would have likely held the district court accountable and vacated the May 3, 2022 order denying relief.