

22-7385 **ORIGINAL**

Supreme Court, U.S.
FILED

MAR 25 2023

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IN THE
SUPREME COURT OF THE UNITED STATES

Timothy Eugene Brown — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Timothy Eugene Brown #15798-104
(Your Name)

FCC Coleman Medium, P.O. Box 1032
(Address)

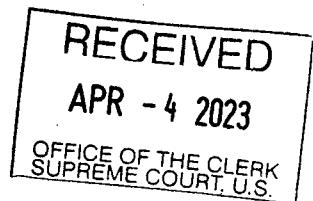
Coleman, Florida 33521-1032
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

Whether United States v. Jackson, 36 F.4th 1294 (11th Cir. 2022) was wrongly decided by the Eleventh Circuit Court of Appeals, when it stated that Appellant's Florida state priors for armed career offender status, regarding Florida state statute § 893.13(a)(1), which removed ioflupane from its state Controlled Substance Act and the Federal Register (2015 for the Federal Register and in 2018 for the Florida state Controlled Substance Act).

Whether the Florida state priors for career offender and armed career federal enhancement purposes stated when the Petitioner was arrested by the state for career and/or armed career purposes, or whether they started for enhancement purposes when the Petitioner was federally sentenced using these state priors for federal enhancement purposes. Petitioner states they start when he was federally enhanced.



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

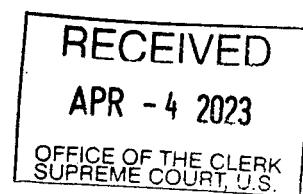


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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

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 C 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 N/A to the petition and is

reported at N/A; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

reported at N/A; 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 11/10/2022

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: 1/5/2023, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/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 N/A. A copy of that decision appears at Appendix N/A.

A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution (Fifth Amendment rights)

Sixth Amendment of the United States Constitution (Sixth Amendment rights)

STATEMENT OF THE CASE

Petitioner was charged and enhanced as an armed career offender, according to Title 18 U.S.C. § 924(e)(1) and unconstitutionally enhanced based on violations of his Fifth and Sixth Amendment rights not to be declared an armed career offender based on Florida state priors that violate Petitioner's Fifth Amendment rights to due process and his Sixth Amendment rights to an unconstitutional armed career offender sentence for Florida state drug offenses that are not serious drug offenses.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable Court does not have to accept this writ of certiorari because the United States Supreme Court has discretion as to what cases it wishes to take and what cases it does not want to accept. The reason Petitioner is requesting his case be accepted is because there is a conflict in the circuits as to if as in Petitioner's case in point, when being careered and/or armed careered, with state priors being used against a defendant as to serious drug offenses, with ioflupane no longer being an illegal substance in the state cases, should when a defendant is being sentenced federally as a career offender or an armed career offender, should the state priors apply when the defendant is sentenced federally at that time of sentencing, or when the defendant was first sentenced in the federal sentence. Petitioner is stating that it should be when he is arrested for and sentenced for those state priors federally and not when he was sentenced for them in the state case, when in fact the defendant is being at that very moment federally sentenced.

Therefore, Petitioner asks that this Honorable Supreme Court accept this case and decide the conflict among the circuits.

In September of 2015, because it was found that ioflupane had value in potentially diagnosing Parkinson's Disease, the United States Attorney General "remove[d] the regulatory controls and administrative, civil, and criminal sanctions applicable to controlled substances, including those specific to Schedule II controlled substances, on persons who handle or propose to handle [(123)] ioflupane." United States v. Jackson, 36 F.4th 1294 (11th Cir. 2022), citing 80 Fed. Reg. 54715, 54716 (Sept. 2015); Schedules of Controlled Substances: Removal of [123] Ioflupane from Schedule II of the Controlled Substance Act. Since then, ioflupane has not been included on any federal drug schedule. See 21 C.F.R. § 1308.12(b)(4)(ii) (2021) ("except[ing]" ioflupane from current Schedule II).

While true, ioflupane has not been a federally "controlled substance," as defined in 21 U.S.C. § 802 since September of 2015 and has not involved a "controlled substance" as defined in § 924(e)(2)(A)(ii) since that time. The United States has failed to inform the Petitioner or the district court of this fact and such could not have been discovered through the exercise of due diligence until the Jackson decision. Ground One follows.

GROUND ONE: Due Process would require that Petitioner's unlawful sentence under the ACCA is vacated

In this country, it has been long held that a defendant has a "constitutional right to be deprived of liberty as punishment for criminal conduct only to the extent authorized by Congress." Whalen v. United States, 445 U.S. 684, 690 (1980). Relevant here, is the fact that Congress only authorized enhanced sentences under the Armed Career Criminal Act ("ACCA"), for "serious drug offenses," to which the form of the Controlled Substance Act ("CSA") Schedules incorporated into 18 U.S.C. § 924(e)(2)(A)(ii).

In Jackson, the court concluded that because "ioflupane" had been removed from the CSA in September 2015, that Petitioner's prior cocaine-related Fla. Stat. § 893.13 offenses were not "serious drug offenses" as defined in § 924(e)(2)(A)(ii). *Id.* Likewise, Petitioner's prior cocaine-related Fla. Stat. § 893.13 convictions are not "serious drug offenses" under § 924(e)(2)(A)(ii), because "ioflupane" had been removed from the CSA at the time of Petitioner's sentencing hearing, the Petitioner was sentenced on the basis of inaccurate information. See 18 U.S.C. § 3553(a)(4)(A)(ii) (requiring the statute to be applied is the statute in place at the time of sentencing).

It has been long held that, "sentences based upon erroneous and material information or assumptions violate due process." Townsend v. Burke, 334 U.S. 736, 740-41 (1948) (explaining the court's concern that "this prisoner was sentenced on the basis of assumptions concerning his criminal record which were materially untrue," and that, "[s]uch a result, whether caused by carelessness or design, is inconsistent with due process of law"); United States v. Tucker, 404 U.S. 443, 447 (1972) (remand for resentencing "a sentence founded at least in part upon misinformation of constitutional magnitude").

The Eleventh Circuit has likewise acknowledged the "due process right not to be sentenced on the basis of invalid premises or inaccurate information." United States v. Satterfield, 743 F.2d 827, 840 (11th Cir. 1984) (citing United States v. Hodges, 556 F.3d 366, 369 (5th Cir. 1977)). In Satterfield, the court recognized that although sentencing procedures are not required to be as exacting as those at

trial, the Fifth Amendment's guarantee of "due process assures the defendant he will be given adequate notice and an opportunity to contest facts relied upon to support his criminal penalty." Satterfield, 743 F.2d at 840, citing Townsend.

Here, the Government attorney, as a prosecutor, had a duty to ensure that the court had complete and accurate information regarding the fact that Petitioner's cocaine-related Fla. Stat. § 893.13 offenses were not "serious drug offenses" under § 924(e)(2)(A)(ii) at the time of the sentencing hearing. Thus, if an attorney for the Government is aware that the Court lacks certain relevant factual information [i.e., the fact that "ioflupane" had been removed from the CSA at the time of sentencing] or that the court is laboring under a mistaken premises, the attorney, as a prosecutor and officer of the court, see Smith v. United States, 375 F.2d 243, 247 (5th Cir.), cert. denied, 389 U.S. 841 (1937); United States v. Cox, 342 F.2d 167, 171 (5th Cir.), cert. denied, 381 U.S. 935 (1965), has the duty to bring the correct state of affairs to the attention of the court. For example, the American Bar Association ("ABA") Standards for Criminal Justice § 3-6.2 (1980) states:

(a) The prosecutor should assist the court in basing its sentence on complete and accurate information for use in the presentence. The prosecutor should disclose to the court any information in the prosecutor's files relevant to the sentence. If completeness or inaccuracy in the presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and to defense counsel.

(b) The prosecutor should disclose to the defense and to the court at or prior to the sentencing proceeding all information in the prosecutor's files which is relevant to the sentencing issue.

Moreover, the United States Supreme Court long ago set a standard for prosecutors that still applies today: "He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States, 295 U.S. 78, 88 (1935); see also Ponder v. Sec'y Dep't of Corr., 2020 U.S. Dist. LEXIS 8916 (N.D. Fla. 2020) ("When presented with a case in which a prosecutor struck foul blows but now says they had no effect on the outcome, one is left to wonder why the prosecutor crossed

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

T. B.

Date: 3/25/23



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Lack v. Houston, 487 U.S. 266 (1988)