

22-7533

No.

ORIGINAL

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IN THE
SUPREME COURT OF THE UNITED STATES

Terence Crawley - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

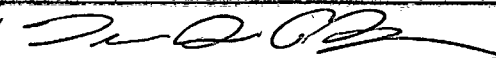
Terence Crawley

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QUESTION(S) PRESENTED

IN the context of a motion for a reduction in sentence pursuant to 18 U.S.C. § 3582(c) (1)(A), is the district court obligated to consider a defendants NON-frivolous arguments, in exercising its discretion to grant relief, in light of this Courts ruling in *Concepcion v. United States*, 142 S. Ct. 2389, 213 L. Ed. 2d 731 (2022)?

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: - N/A -

Related Cases

- United States v. Crawley, No. 1:10-cr-0005, U.S. District Court for the Eastern District of Tennessee at Chattanooga. Judgment entered April, 8, 2022. (Denial of § 3582(c)(1)(A))

- United States v. Crawley, No. 22-5320, U.S. Court of Appeals for the Sixth Circuit.

Judgment entered Nov. 29, 2022 (Denial of Appeal);
Judgment entered Feb. 15, 2023 (Denial of Timely Petition for rehearing en banc).

INDEX TO APPENDICES

APPENDIX A - United States Court of Appeals for the
Sixth Circuit, Denial of Appeal, pgs. 1-4 ;

APPENDIX B - United States District Court for the Eastern
District of Tennessee at Chattanooga,
Denial of Petition for 18 U.S.C. § 3582(c)(1)(A);

APPENDIX C - United States Court of Appeals for the Sixth
Circuit, Denial of Petition for Rehearing en banc.

TABLE OF AUTHORITIES CITED, CONT...

<u>CASES</u>	<u>PAGE NUMBER(S)</u>
United States v. Jenkins, 50 F.4th 1185 (D.C. Cir. 2022)	12
United States v. McCall, 56 F.4th 1048 (6th Cir. 2022)	12, 13
United States v. Jarvis, 999 F.3d 442 (6th Cir. 2021), cert. denied, 142 S. Ct. 760 (2022)	12, 23, 24
United States v. Wehunt, 230 F.Supp. 3d 838 (E.D. TENN. 1/24/2017)	15
Borden v. United States, 144 S. Ct. 1817, 210 L. Ed. 2d 63 (2021)	15, 20
Dean v. United States, 137 S. Ct. 1170, 197 L. Ed. 2d 490 (2017)	17
United States v. Ruffin, 978 F.3d 1000 (6th Cir. 2020)	18
Rosales-Mirales v. United States, 138 S. Ct. 1897, 201 L. Ed. 2d 376 (2018)	21
Dorsey v. United States, 567 U.S. 260 (2012)	21
Danville Christian Acad., Inc. v. Breshnar, 141 S. Ct. 527 (2020)	25

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United States v. McMurray, 653 F.3d 367 (6th Cir. 2011) PASSIM

Concepcion v. United States, 142 S.Ct. 2389, 213 L.Ed.2d 731 (2022) PASSIM

United States v. Chen, 48 F.4th 1092 (9th Cir. 2022) "

United States v. Ruvalcaba, 26 F.4th 14 (1st Cir. 2022) "

United States v. Maurin, 993 F.3d 821 (10th Cir. 2021) "

United States v. McCoy, 981 F.2d 271 (4th Cir. 2020) "

United States v. King, 40 F.4th 594 (11th Cir. 2022) "

United States v. Beckford, No. 22-10638, 2022 U.S. App. LEXIS 26495, 2022 WL 4372553 (11th Cir. 2022) "

United States v. Bledsoe, No. 22-2022, 2022 U.S. App. LEXIS 23011, 2022 WL 3536493 (3d Cir. 2022) 11-12

TABLE OF CONTENTS

	<u>PAGE(S)</u>
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3-8
REASONS FOR GRANTING THE PETITION	9-25
CONCLUSION	25-26
PROOF OF SERVICE	27

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 is unpublished;

The opinion of the United States district court appears at Appendix B to the petition is reported at, *United States v. Terence Crawley*, No. 1:10-cr-5, 2022 U.S. Dist. LEXIS 73222 (E.D. Tenn., April 8, 2022).

JURISDICTION

The date on which the United States Court of Appeals decided my case was November 29, 2022.

The date on which the United States Court of Appeals denied the petitioner's timely petition for Rehearing en banc was Feb. 15, 2023. A copy of the order denying rehearing appears at Appendix C.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Sentencing Guidelines (2010) § 4B1.2 (2); § 4B1.1; § 4B1.3
18 U.S.C. § 3553 (2)

18 U.S.C. § 3582(c)(1)(A)

* All mention to ECF No. 1:10-cr-5 & All "Doc.'s", refer to documents filed in the District Court.

* All mention to ECF No. 22-5320, refer to documents filed in the Sixth Circuit Court of Appeals.

STATEMENT OF THE CASE

On Sept. 19, 2011 Terence Crawley, the petitioner, was sentenced to 188 mths. for aiding and abetting a bank robbery, in violation of 18 U.S.C. § 2 and 18 U.S.C. § 2113(d) - pursuant to the Career Offender Guidelines of the 2010 United States Sentencing Guidelines (U.S.S.G.) § 4B1.1. In addition, Crawley was sentenced to a consecutive 84 mths. for a violation of 18 U.S.C. § 924(c) for a total combined sentence of 272 months.

Essential to Crawley's claim is the fact that at his original sentencing proceedings the district court specifically found that Crawley had two convictions for a "Crime of Violence" as is defined by U.S.S.G. § 4B1.2(a), i.e. a Maryland First Degree Assault and a Maryland Unarmed Carjacking (2002). The district court never conducted a categorical approach of either offense, and instead relied upon Police Reports contained in the (PSR) Presentence Report to determine the NATURE of these prior convictions. This finding was an ERROR due to the Sixth Circuit's precedent established in *United States v. McMurray*, 653 F.3d 367 (6th Cir. Aug. 11, 2011) holding that an offense which rests upon reckless conduct does not constitute "the use of physical force" and is not a violent felony under the 'force clause' or the so-called 'residual clause'. Crawley avers that MD First Degree Assault is such an offense and that his categorization as a 'Career Offender' is in violation

of 18 U.S.C. § 3553(a)(4) requirement that the district court determine the "applicable" "category of defendant" and "sentencing range". In other words, the original sentencing court relied upon a clearly erroneous finding of fact and improperly applied the law 18 U.S.C. § 3553(a).

On 9/14/2020 Crawley filed for Compassionate Release raising several basis which support extraordinary and compelling circumstances" such as: "The court now has the judicial discretion to consider the seven year consecutive mandatory minimum Crawley faces" in light of *Dean v. United States*, 137 S.Ct. 1170 (2017), "The Covid-19 Pandemic poses significant threat to Crawley" due to his medical condition, "Crawley is the only available caregiver for his incapacitated Father" in a post-Covid world; and several § 3553(a) factors regarding Crawley's "youthfulness" at the time of offense, rehabilitation, etc..

The Government ("gov.") argued among other things, that "Post Legal Developments cannot serve as a basis for compassionate release". The district court did not address or consider any of Crawley's claims, yet it expressly found that "Defendant's medical records... reflect" that he is ^{not} "at a risk of serious complications were he to contract covid-19". See District Courts Order, Appendix B.

However, the Court went on to say that "the Court

will proceed on the assumption that [Crawley's] Father's condition and need for care presents an extraordinary and compelling basis [] for relief." Id. Nonetheless, the court noted that Crawley has a "272 months" sentence and that since he has only served "127 months" "Under these [] circumstances, the Court cannot conclude that a release nine years early is consistent with the §3553(a) factors," and Denied Crawley's motion. Id.

Thereafter, Crawley filed a timely "Motion for Reconsideration" on 11/16/2020, a "Motion for Judicial Notice" on 10/26/2020. In the "Judicial Notice", Crawley sought to have his medical records which indicate he has a Cardiac Arrhythmia included in the court's reconsideration. These motions were denied and found to be moot.

Then in 2021, after Crawley contracted covid-19 at FCI Berlin and he learned that offenses based on "reckless" conduct are not crimes of violence he filed another Motion for a Reduction in his Sentence "in light of United States v. McMurray,⁶⁵³ 365 F.3d 367 (6th cir., Aug. 11, 2011)." *1 The district court denied this motion and his other reconsideration motions on 4/8/2022,

¹ Crawley only became aware of this claim after the passage of Borden v. United States, 141 S. Ct. 1817 (2021). Up until then he did not know that 'McMurray' was law at his sentencing.

The Gov. was successful in convincing the court of appeals that Crawley's argument was of the "post-sentence legal developments" species, focusing on what Crawley's sentence would be Today. Although this was indeed not Crawley's argument, the court of appeals went on to hold that even where the district court has found that a defendant has passed or met the threshold inquiry of 18 USC §3582 (c) (1) (A), that "extraordinary and compelling" reasons exist which warrant a reduction, the district is "not obligated" to consider arguments raised by the defendant which relate to the applicable §3553(a) factors serving as a basis for its denial. See Appendix A, pg. 3-4.

Currently, there is a nationwide circuit split amongst the court of appeals concerning whether "post-sentence legal developments" are a factor district courts must consider in the threshold inquiry of §3582 (c) (1) (A), once raised by a defendant. In addition, the Sixth Circuit has an intra-circuit split on whether district courts may or must consider post-sentencing legal developments at the threshold inquiry phase of §3582 (c) (1) (A) and even where the defendant has met the threshold inquiry.

The present case before this Court represents an opportunity to reconcile the overwhelming dissension amongst the lower courts to provide clarity and uniformity in a manner which restores the public confidence that courts will make decisions which are consistent with the country's constitutional protections reflected by the votes of the republic as a whole.

The effect of the First Step Act of 2018, with regard to 18 U.S.C. § 3582(c)(1)(A), is to remove the Bureau of Prisons as an authority on what may or may not constitute a showing of "extraordinary and compelling" circumstances, and turn this over to the courts. Just as in the case of *Concepcion*, unless Congress or the Constitution limits the information a court may consider in its § 3582(c)(1)(A) threshold inquiry and its § 3553(2) analysis, courts are "always obligated to consider non-frivolous arguments presented" by defendants. *Concepcion*, at 2396.

REASONS FOR GRANTING THE PETITION

This Court should GRANT the petition for the following reasons:

(1) In the present case, the district court failed to consider Crawley's well pleaded arguments which demonstrated that in light of *United States v. McMurray*, 653 F.3d 367 (6th Cir. Aug. 11, 2011), Crawley's prior conviction for Maryland First Degree Assault was not a "crime of violence." So this meant he was incorrectly classified as a "Career Offender" under 2010 U.S.S.G. § 4B1.2, § 4B1.3, and his sentence was thus the product of a clearly erroneous finding of fact by the original Sentencing Judge.;

(2) The District Court's reasoning for DENYING Crawley a reduction in his 272 mth. sentence was primarily based upon the Court's finding that the length of Crawley's sentence was "still significant". See Appendix B, at 2. So, this reasoning was founded on the premise that although Crawley has demonstrated "extraordinary and compelling" reasons for relief, the mere length of his wrongfully determined Career offender sentence makes it inequitable to grant him any relief. This reasoning demonstrates that the district court never

"considered the applicable §3553(a)(4) factors of the applicable sentencing range established for ... the applicable category of defendant ...", in light of Crawley's argument that he was sentenced in the wrong sentencing range & wrongly categorized as a career offender.!

(3) The Sixth Circuit court of Appeals decisional path in ruling that the district court did not abuse its discretion in failing to "expressly consider Crawley's claim that he has NEVER been a career offender in light of 'McMurray' was erroneously founded on the premise that the district court was "not obligated" to consider Crawley's claim. See Appendix A, at 4! This ruling is in stark contrast to this Court's recent decision in *Concepcion v. United States*, 192 S. Ct. 2389, 213 L. Ed.2d 731 (2022), which expressly held that "district courts are always [] obligated to consider non-frivolous arguments presented by the parties," id. at 2396 (emphasis added).!

(4) The First, Ninth and Tenth circuits have held that the broad ruling in *Concepcion* that district courts are only restricted by Congress or the Constitution in exercising

their discretion as to whether and how much they will reduce a petitioner's sentence in the context of 18 U.S.C. § 3582(c)(1)(A), means that courts can consider non-retroactive legal developments as a contributing factor, at the threshold inquiry. See *United States v. Chen*, 48 F.4th 1092, 1098 (9th Cir. 2022); *United States v. Ruvalcaba*, 26 F.4th 14, 28 (1st Cir. 2022); *United States v. Mau Mau*, 993 F.3d 821 (10th Cir. 2021).

The Fourth Circuit holds that non-retroactive legal developments may, on its own, be sufficient to establish "extraordinary and compelling" circumstances when it creates a resulting disparity between the original sentence and the sentence a defendant may receive today. See *United States v. McCoy*, 981 F.3d 271, 285 (4th Cir. 2020).

On the other hand, the Seventh, Eleventh, Third and the District of Columbia Circuits all hold that non-retroactive legal developments may not be considered in the context of the threshold inquiry of 18 U.S.C. § 3582(c)(1)(A). See *United States v. King*, 40 F.4th 594, 596 (7th Cir. 2022); *United States v. Beckford*, No. 22-10638, 2022 U.S. App. LEXIS 26475, 2022 WL 4372553, at *3 (11th Cir. Sept. 22, 2022); *United States v. Bledsoe*, No. 22-2622, 2022 U.S. App. LEXIS

23011, 2022 WL 3536493, at *2 (3d Cir. Aug. 18, 2022), and
United States v. Jenkins, 50 F.4th 1185, 1199-1200 (D.C. Cir. 2022).

The Sixth Circuit has taken a decidedly evasive
approach in its recent decision *U.S. v. McCall*, 56 F.4th
1048, 2022 U.S. App. LEXIS 35473, 2022 FED App. 0274P
(6th Cir. Dec. 22, 2022). There the Sixth Circuit sought
to resolve an intra-circuit split concerning whether 'Concealment'
means that lower courts may take non-retroactive legal
developments into consideration in the context of a motion
by a defendant under 18 U.S.C. § 3582(c)(1)(A).

Ultimately, the court held that non-retroactive legal
developments may never be taken into consideration alone
or in combination with other factors when addressing
the threshold inquiry of whether 'extraordinary and
compelling reasons exist under § 3582(c)(1)(A)'. The
court went on to hold 'Concealment' stands for the
proposition that once a defendant has shown 'some[]
'extraordinary and compelling reason' justifying a sentencing
reduction" (citing *United States v. Jarvis*, 999 F.3d 442, 445
(6th Cir. 2021), cert. denied, 142 S. Ct. 760 (2022)), a district
court may "consider subsequent developments", legal or

factual, "in deciding whether to modify the original sentence, if so, in deciding how much." See *McCall*, at 2022 U.S. App. LEXIS 31.

So as of today, depending upon where a defendant is sentenced, the question of whether the district court is permitted to consider non-retroactive legal or factual developments in the context of the "threshold inquiry" of 18 U.S.C. § 3582 (c)(1)(A) is one of location versus a uniform voice of all the courts.

Perhaps ancillary to the above status quo, is whether the district court is "always obligated", *Concepcion* at 2396, to at the very least "consider" a defendant's non-frivolous arguments and demonstrate that it has "reasoned through", *id.* at 2404-05, the defendant's arguments regarding any clearly erroneous factual findings which are the very reason or cause of his or her existing sentence.

The question presented by the petitioner, pointed as it may be, begs this Court to separate the wheat from the chaffe in the varying decisions of the circuit courts to illuminate a clear path forward for lower courts.

Crawley will address each point in succession.

I & II. The District Court failed to Consider Crawley's claim that his 272-mth. sentence is Based upon the Clearly Erroneous Factual Finding by his original sentencing court that Crawley has two prior crime of violence as defined by 2010 U.S.S.G. § 4B1.2(a).

Crawley argued in (Doc. 220, Case No. 1:10-cr-5), that his Maryland First Degree Assault conviction rests upon reckless conduct under Maryland law. Thus, on the day CRAWLEY WAS SENTENCED (9/19/2011), this MD ASST. was not a crime of violence under either the elements clause, the enumerated clause or the residual clause in light of United States v. McMurray, 653 F.3d 367 (6th Cir. Aug. 11, 2011). Crawley pointed out that this clearly erroneous factual finding by his original sentencing Judge Harry S. Matthee, Jr. also permeated the 18 U.S.C. § 3553(a)(3) - (a)(4) factors which require the court to determine the applicable sentencing range established for... the applicable category of defendant. "§ 3553(a)(4).

This error created a huge disparity between his original applicable guidelines of (51-71 mths.) and the (188-235 mths) he became subject to as the official starting point of his ultimate sentence for violation of

18 U.S.C. § 2113(d) ¶ 2. This error in Crawley's starting point was/is exacerbated by the fact that (1) Crawley's original sentencing Judge Harry S. Mathice, Jr. issued a strongly worded and very compelling discourse in

United States v. Wheat, 230 F. Supp. 3d 838 (E.D. Tenn.,

11/24/2017) (holding that Voisine v. U.S. (2017), did not

overturn the Sixth Circuit's ruling in U.S. v. McMurray, 653

F.3d 367 (6th Cir. 2011) which held that offenses which rest

upon reckless conduct are not a "use of physical force"

(2) Harry S. Mathice, Jr. was also the same Judge

who - reluctantly - found Mr. Borden a Armed Career

Criminal based upon a Tennessee Aggravated Assault in

the fact the Sixth Circuit overturning "McMurray" in

light of "Voisine". Later, this Court would rule in

Borden v. United States, 144 S. Ct. 1817, 210 L. Ed. 2d

63 (2021) that Harry S. Mathice, Jr. was wrong in

finding Borden an A.C.C.A. offender but that Tenn.

Agg. Assault is not a "violent felony" because it can

be committed recklessly.

Crawley did not ask the District Court to
Correct this Error. Rather, he asked the Court to

take this Factor and consider its impact upon his 18 U.S.C. § 3553(a)(3) & (a)(4) factors, See (Doc. 220, ECF No. 1:10-cr-5, at pgs. 6-15). He specifically asked the court to consider the applicable "sentencing range established for... the applicable category of defendant" 18 U.S.C. § 3553(a)(4) with FRESH EYES.

Instead, as evidenced by the district court's ORDER DENYING Crawley relief, the district failed to consider all together Crawley's argument. See Appendix B, pg. 2, ("Defendant argues that the Court failed to consider his rehabilitative efforts and the harshness of his sentence. (See e.g. Doc. 208, at 4-6) The Court acknowledges Defendant's rehabilitative efforts while incarcerated and sympathizes with his desire to return to his children and other family members. See e.g. Doc. 220, at 3-5, 19-20)). The Court did not cite the huge-ten page- portion of his motion addressing the original sentencing court's clearly erroneous factual finding. The court's reference to the "harshness of his sentence" refers to Crawley's argument in (Doc. 208, at 4-6) that the court did not consider his argument

that *Dean v. United States*, 137 S.Ct. 1170, 197 L. Ed. 2d 490 (2017) now gave the court discretion to consider the seven yr. mandatory minimum sentence he faces for violation of 18 U.S.C. § 924(c) in choosing to reduce his 188 mth. sentence in his original motion for reduction in sentence, (Doc. 188, ECF No. 110-cv-5, pg. 1211-1216).

In light of the fact that the district had already found that Crawley had met the "threshold inquiry" of 18 U.S.C. § 3582(c)(1)(A), due to his father being incapacitated and Crawley being his only child and available caregiver, the only determination the court needed to make was applying the relevant 18 U.S.C.

§ 3553(a) factors and considering *Crawley's* argument addressing those factors. Since the court is required by law to re-apply or re-assess the applicable 18 U.S.C. § 3553(a) factors once the defendant has met the threshold inquiry, a failure to consider a relevant § 3553(a) factor which the court ultimately relies on as a basis for denying relief, e.g. length of time remaining on the existing sentence is a clear abuse of discretion. Where the court ignores

the defendants' non-frivolous arguments concerning a clearly erroneous factual finding that is tethered to the applicable § 3553(a) factors - relied on by the court - this Court should rule is an abuse of its discretion.

This Court has held that lower courts have the same broad discretion at "initial sentencing" and "sentencing modification hearings." *Concepcion*, at 2399. The very purpose of a motion by § 3582(c)(1)(A) is to obtain a second look at resentencing. See *Shon Hopwood*, Second Looks & Second Chances, 41 *CARDOZO L. REV.* 83, 102 (2019); see also *United States v. Ruffin*, 978 F.3d 1000 (6th Cir. 2020) (noting the "discretionary nature of a motion-of-sentence decision under § 3582(c)(1)(A).").

Where a defendant has satisfied the threshold inquiry of § 3582(c)(1)(A), the remaining task of the court is for a judge at sentencing consider[ing] the whole person before him or her as an individual. *Concepcion*, 142 S. Ct. at 2395. With that said, if lower courts are not held to this "longstanding tradition in American law," *id.*, defendants across the nation will not truly have access to a holistic re-visiting of the applicable 18 U.S.C. § 3553(a) factors.

Instead, even where a district court has found that a defendant has demonstrated extraordinary and

compelling reasons" which justify[] a reduction in an otherwise lawful sentence, they will nonetheless be subjected to an arbitrary assessment of the §3553(a) factors which ultimately fails to achieve the goals of sentencing in the first place. So, requiring district courts to consider a defendants non-frivolous arguments regarding errors which are the cause or proximate cause of an incorrect starting point in their guidelines, and to give considerable weight to this factor in its re-assessment of the applicable §3553(a) factors, ensures that the spirit of §3582(c)(1)(A) will be empowered to do what it is designed to do.

III. The Sixth Circuit Courts decisional path in ruling that the District Court did not abuse its discretion was founded on the erroneous premise that the District Court is "not obligated" to consider Crawley's claims.

When examining a thing, and providing an explanation of the phenomena one perceives, context is very important.

Here, the Sixth Circuit's ruling looks at Crawley's argument in the wrong context, and its explanation of its decision is nothing more than a house of cards.

First, the circuit incorrectly concludes that "Crawley argues" that the district court should have "taken into account" "changes to the United States Sentencing Guidelines" ... and that if he were "sentenced today" for his offenses he would not have a career offender guidelines range of 272-319 mths. See Appendix A, at 3. The court states, incorrectly, that Crawley "seems to rely" on Borden v. United States, 144 S. Ct. 1817 (2021), which held that offenses that require only reckless conduct do not qualify as a violent felony. Id.

To the contrary, Crawley's motion for reduction-in-sentence (Doc. 220, ECF, 1:10-cr-5) states in its heading and consistently throughout that Crawley was NEVER a career offender "AT THE TIME OF HIS SENTENCING" in light of United States v. McMurray, 653 F.3d 367 (6th Cir. Aug. 11, 2011). See (Doc. 6, pg. 10-12, ECF No. 22-5320); and (Doc. 220, pg. 1, pgs. 5-14, ECF No. 1:10-cr-5).

The distinction between an a claimed error that occurred at the time of sentencing -versus- a legal development which is non-retroactive that occurred post-sentencing is huge.

The first brings into focus an impropriety which may have exposed the defendant to a further restraint on his liberty than Congress and/or the U.S. Sentencing Commission may have envisioned under the otherwise applicable sentencing guidelines range. This Court has consistently held that a guidelines error and the resulting sentencing disparity "seriously effects" ... the "risk of unnecessary deprivation of liberty" and "particularly undermines the fairness, integrity, or public reputation of judicial proceedings ...". See Rosales-Mireles v. United States, 138 S.Ct. 1897, 1905-06, 201 L.Ed. 2d 376 (2018).

Furthermore, as Crawley pointed out to the district court, "This sentencing disparity is not the result of 'ordinary practice' of withholding NEW rules of sentencing procedures from defendants already sentenced." Dorsey v. United States, 567 U.S. 260, 280 (2012). So factoring in an error that occurred at sentencing can never implicate principles of finality.

Given that a court proceeding over a "modification

hearings", *Concepcion*, 142 S.Ct. at 2399, has the same discretion as "initial sentencing", once a defendant has met the "threshold" requirement of 18 U.S.C. § 3582(c)(1)(A), a court applying the applicable § 3553(a)(4) & (a)(2) factors must give considerable weight to substantiated errors, raised by the defendant, that result in an incorrect "starting point" in the guidelines. If a court is to truly honor the targeted purpose of a § 3582(c)(1)(A) motion by the defendant, i.e. providing a FRESH LOOK at the sentence, it cannot be permitted to bifurcate its mandate under 18 U.S.C. § 3553(a)(2) - (a)(4) to avoid "unwarranted sentencing disparities", determine the applicable "sentencing guidelines range set for" "... the applicable category of defendant", from the impropriety of an error at sentencing which is the direct or proximate cause of an incorrect starting point.

On the other hand, a change in the law which creates a sentence disparity between the original sentence - free from error - and the sentence a defendant could receive today, implicates that the nation's view of the appropriate amount of restraint on one's liberty has evolved in favor of the defendant.

The fact that the court must conduct an "individualized" assessment of the "whole person", *Concepcion*, 142 S. Ct. at 2395 (quoting *Koon v. United States*, 518 U.S. 81, 113, 116 S. Ct. 2035, 135 L. Ed. 2d 392 (1996)), "when deciding" both "whether to modify a sentence at all, and if so, to what extent." *Id.* at 2400, suggest that the "only limitations" a court has are those imposed by "Congress ... or ... the Constitution". *Id.*

Thus, *Concepcion* makes it clear that a court is permitted to consider non-retroactive legal developments in its re-assessment of all the relevant § 3553(a) factors. The Sixth Circuit does not dispute this. The error of the Sixth Circuit rests in its holding that a court is "not obligated" to consider *Borden* in its reanalyzing of the § 3553(a) factors. See Appendix A, at 3-4.

The court relied on its decision in *United States v. Jarvis*, 999 F.3d 442, 445 (6th Cir. 2021) cert. denied, 142 S. Ct. 760 (2022). *Jarvis*' reasoning begins and ends with the holding that a defendant must first "show" some[] extraordinary and compelling

reason "justifying" a sentencing reduction." *Id.*, then "Concepcion's holding comes into play." See *McCall*, 56 F.4th 1048 at 2022 U.S. App. LEXIS 30.

That it to say that a court may then consider post-sentencing developments whether legal or factual. According to the Sixth Circuit, this method "when analyzing the §3553(a) factors is a 'superior means' for promoting 'fairness and case-by-case sentencing decisions'." *Id.* at 24, (citing *Jarvis*, 999 F.3d at 445).

Irregardless of whether the argument presented by a defendant is one of an - at the time of sentencing - error [or] an error which is the result of a change in law, the Sixth Circuit's position fails to align with Concepcion's mandate that "district courts are always [] oblig[ate]d to consider [] non-frivolous arguments presented by the parties..." *Concepcion*, 142 S.Ct. at 2396.

This court has previously reprimanded the Sixth Circuit's "decisional path", finding that "the court had an obligation to address the plaintiffs' arguments." See Danville Christian Acad., Inc. v.

Bestbear, 141 S.Ct. 527, 528 (Dec. 17, 2020). A ruling requiring lower courts to consider a defendants non-frivolous arguments, and give considerable weight to errors which occurred at the time of sentencing when re-analyzing the applicable 18 USC § 3553(a) factors will provide balance and certainty that equity & fairness are not stripped from § 3582(c)(1)(A) targeted purpose.

Furthermore, this rule would strike a balance between the differing opinions of all the lower courts.

Conclusion

The Sixth Circuit, having ruled in Crawley's appeal that the district court was "not obligated" to consider his non-frivolous argument that he has NEVER been a Career offender in light of 'McMurray' & 'Borden'.

Thus, the court has made a ruling which goes directly in contravene to this Court's holding in "Concepcion" that district courts are "always obligated" to "consider"

[Crawley's] arguments. Similarly situated defendants across the country face the same circumstances, even where they have satisfied the "threshold inquiry" of §3582(C)(1)(A). For these reasons, Crawley asks that this Court vacate the opinion of the Sixth Circuit and require the district court to consider Crawley's claims, and whatever other relief this Court finds necessary. The Petition for Writ of Certiorari should be granted.

Respectfully Submitted,

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181

