

No. 23-_____

IN THE
Supreme Court of the United
States

DEANGELO DEVON GRANT,
Petitioner,
V.

UNITED STATES OF AMERICA.,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals for the
Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Noah R. Friend NOAH R. FRIEND LAW FIRM, PLLC P.O. BOX 341 VERSAILLES, KY 40383 Tel. (606) 369-7030 Fax. (502) 716-6158 Email. noah@friendlawfirm.com <i>Criminal Justice Act</i> <i>Counsel for Petitioner</i>
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Question Presented

Does utilizing a provision of the United States Sentencing Guidelines for “actual” weight of methamphetamine, rather than the charged offense of “mixture or substance” weight, constitute an impermissible constructive amendment of the indictment?

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PETITION FOR A WRIT OF CERTORARI

Deangelo Devon Grant, an inmate currently incarcerated by the United States Bureau of Prisons, by and through undersigned counsel, appointed pursuant to the Criminal Justice Act, respectfully petitions this Honorable Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is not published in the Federal Reporter, but is available at 2023 WL 2991791. The District Court did not enter a written opinion on the issues raised herein.

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury.” U.S. Const. amend V.

STATEMENT OF THE CASE

The Defendant was indicted for possession of a mixture or substance containing methamphetamine. He entered a guilty plea without a written plea agreement.

The Defendant came before the United States District Court for the Eastern District of Kentucky for sentencing on July 18, 2022. Based upon the application of the United States Sentencing Guidelines, as set forth within the Presentence Investigation Report, the District Court found that the Defendant's base offense level was 38. The Defendant was sentenced to 264 months of imprisonment.

REASONS FOR GRANTING THE PETITION

Both the District Court and Court of Appeals erred by supporting the use of a higher guideline range than what was called for within the indictment, and for the charges for which the Defendant entered a plea of guilty.

The Fifth Amendment provides that "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." U.S. Const. amend V.

"Constructive amendments are deemed 'per se prejudicial' because they infringe[] upon the Fifth Amendment grand jury guarantee." *United States v. Ferguson*, 681 F.3d 826, 830 (6th Cir. 2012) citing

United States v. Hynes, 467 F.3d 951, 961 (6th Cir. 2006). A constructive amendment of the indictment is deemed to have occurred when “there is a substantial likelihood that the defendant may have been convicted of an offense other than the one charged in the indictment.” *United States v. Kuehne*, 547 F.3d 667, (6th Cir. 2008).

This logic should extend to application of a separate guideline from that for which the Defendant actually entered a plea of guilty. In the case *sub judice*, the Defendant was indicted for conspiracy to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine. However, based upon Note (B) to USSG § 2D1.1(c), the Defendant was sentenced under a guideline for “actual” methamphetamine weight, rather than the “mixture or substance” weight. This resulted in a two-level increase to the Defendant’s base offense level.

The United States Sentencing Guidelines should not be utilized as a method of increasing sentences through post-guilty plea constructive amendments of the indictment. Criminal defendants must be sentenced based upon the terms of the indictment, and the crimes to which they pled, not to offenses which were never (but could have been) charged at the outset.

This Honorable Court should issue a writ of certiorari to address this issue of vital importance to criminal defendants nationwide.

CONCLUSION

For the foregoing reasons, Mr. Grant respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

NOAH R. FRIEND
Criminal Justice Act
Counsel
NOAH R. FRIEND LAW FIRM
P.O. Box 341
Versailles, KY 40383
Tel. (606) 369-7030
Fax. (502) 716-6158
Email.
noah@friendlawfirm.com

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