

JUN 12 2023

OFFICE OF THE CLERK

No. 23-5340

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Lewis Gilmore Hurst — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fifth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lewis Gilmore Hurst
(Your Name)

P.O. Box 26040
(Address)

Beaumont, Texas 77720
(City, State, Zip Code)

NONE
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER THE COURT OF APPEALS FOR THE FIFTH CIRCUIT MAY PROHIBIT CONSIDERATION OF SENTENCING ERRORS UNDER 18 USC §3582(c)(1)(A).

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:

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OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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 is unpublished.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 E 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 is unpublished.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 is unpublished.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 is unpublished.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 5-2-23.

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: _____, 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. § 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).

STATEMENT OF THE CASE

Petitioner (hereinafter Hurst) filed a motion for compassionate release, pursuant to 18 U.S.C. 3582(c)(1)(A), in the United States District Court for the Southern District of Texas.

Hurst's motion was granted in part and denied in part on Sept. 14, 2022. Hurst's sentence was reduced due to the new provisions concerning 924(c) stacking laws set out in the First Step Act of 2018. Hurst's other three (3) extraordinary and compelling circumstances were denied by the district court. This request for Certiorari stems from the denial of Circumstance #2: that Hurst was illegally sentenced under U.S.S.G. 4B1.1 and that this was extraordinary and compelling in that all of the officers of the court, i.e., the Court, the United States Attorney, Hurst's attorney, and the probation department allowed this error to proceed unnoticed and uncorrected. The District Court determined that this was an ordinary trial error and not extraordinary and compelling. Hurst's appeal of this ruling challenged the District Court's discretion in finding that this error was not extraordinary and compelling. Hurst's position was backed by numerous cases, some within the Fifth Circuit, that had found the opposite to be true.
(please see Appellant's Brief at Appx. D)

In affirming the district court's decision, the Fifth Circuit did not address the Court's discretion but instead ruled that the district court could not consider sentencing errors in a motion under 18 U.S.C. 3582(c)(1)(A).

This petition stems from that determination.

REASONS FOR GRANTING THE PETITION

The Fifth Circuit, with its ruling in United States v. Escajeda, 58 F.4th 184; 2023 U.S. App. Lexis 1041 (5th Cir. 2023) - the case relied upon by the Fifth Circuit in its denial of Hurst's appeal - has effectively limited 18 U.S.C. 3582's power to operate as Congress intended subsequent to the first Step Act of 2018.

The Fifth Circuit is also in contravention of this Court's ruling in Concepcion v. United States, 142 S. Ct. 2389; 213 L. Ed. 2d 731; 2022 U.S. Lexis 3070. (Decided June 27, 2022) The question in Concepcion - as stated by the Court - was whether a district court adjudicating a motion under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison) in adjudicating a First Step Act motion. The Concepcion held that they may, stating that, "It is only when Congress or the Constitution limits the scope of information that a district court may consider in deciding whether, and to what extent, to modify a sentence, that a district court's discretion to consider information is restrained." This ruling by this Court is not specific to any First Step Act provision but to sentence modifications in general. The Concepcion Court did not hold that individual circuit courts could decide, on their own, to prohibit specific issues from consideration. Congress did not restrain courts from considering specific issues other than those set out in the 3582 statute. Therefore, the Fifth Circuit erred when it prohibited district courts from considering sentencing errors when adjudicating a motion for sentence modification under 18 U.S.C. 3582(c)(1)(A). Concepcion

REASONS FOR GRANTING THE PETITION
(page 2 of 2)

ruled that judges have the authority to determine what constitutes extraordinary and compelling circumstances as part of their sentencing discretion. The Escajeda court prohibits consideration of a specific, non-frivolous issue. Concepcion does not rule on a specific extraordinary and compelling circumstance but teaches that NO non-frivolous issue may be excluded from consideration except those items set out specifically by Congress: "rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason."

28 U.S.C. 994(t)

CONCLUSION

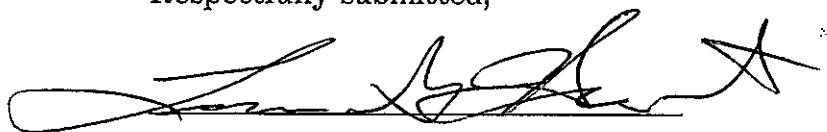
Instead of welcoming the new opportunity afforded by the First Step Act provisions of 3582 to correct assumedly inadvertant errors at initial sentencing, the Fifth Circuit seeks to prohibit those corrections. It begs the question of how pervasive these types of errors are in the Fifth Circuit specifically and the system as a whole. It would seem that a body of jurists would desire the confidence of the American people in the knowledge that incorrect and/or illegal sentences were eventually going to be found and corrected. The interests of justice and fairness, in the eyes of a just and humane society, should always trump its interest in finality. The Concepcion Court itself admits that 18 U.S.C. 3582 is a statute that is designed to reopen final sentences for reconsideration.

Hurst asks this Court to reiterate its ruling in Concepcion and direct the Appeals Court to remand his case to the District Court for consideration and a determination on the merits of the challenged sentencing error.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda S. Lasky". The signature is fluid and cursive, with a small "X" at the end.

Date: June 12, 2023