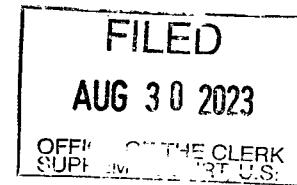


23-5504
No. _____

ORIGINAL

IN THE



SUPREME COURT OF THE UNITED STATES

JABRIEL F. LAKES — 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 FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JABRIEL F. LAKES
(Your Name)

P.O. BOX 1000
(Address)

Petersburg, VA 23804
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Did the District Court commit "error" that substantively violated Lakes' right when it failed to exclude the disputes of the objection to the PRS which is to be enclosed in the FBOP files; This file states that the PSR was adopted without change. This designation, in turn causes the BOP to classify Lakes as a violent offender, increase his residivism risk assessment sheet, and affect his ability to program and reduce the amount of time incarcerated.

Was the over-ruling of Lakes' objection to the firearm enhancement a "harmless error" that violated Lakes' rights?

When the District Court adopted the PSR without change, and did not append a copy of the "statement of reasons" addressing the objections and it's effect on the sentence imposed, was this a violation of Federal Rules of Criminal Procedure 32?

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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STATUTES AND RULES

21 U.S.C. §841 (a)(1), (b)(1)(B)
U.S. Sentencing Guidelines Manual §2D1.1(b)(1) (2021)
18 U.S.C. §3621 (e)(2)(B)
Federal Rules of Criminal Procedures §32

OTHER

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

[x] 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,
[x] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] 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 June 20, 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: _____, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution 5th Amendment
Title 42 U.S.C. §1983

STATEMENT OF THE CASE

Lakes was charged with possession with intent to distribute 50 grams or more of a substance containing methamphetamine, in violation of 21 U.S.C. § 841 (a)(1), (b)(1)(B). Lakes challenges the district court's application of a two-level enhancement for possession a dangerous weapon under U.S. Sentencing Guidelines Manual § 2D1.(b)(1)(2021), When calculating his advisory Sentence Guideline Range, and asserts that the error was not harmless.

The harmless error is erroneous as Federal Rules of Criminal Procedures 32 was violated, this designation, in turn with the enhancement render Lakes a violent offender making him ineligible for FBOP programs under 18 U.S.C. § 3621 (e)(2)(B) and effected Lakes' Recidivism Risk Assessment sheet, as well as His application of First Step Act earned Credits.

REASONS FOR GRANTING THE PETITION

On June 20, 2023 the Fourth Circuit United States Court of Appeals proceeded directly to an assumed error harmless inquiry. The Supreme Court has indicated that of the two possible meanings of harmlessness, the proper one is whether or not the error had an actual impact on the outcome and not whether a new trial would likely produce the same results, though it is impossible to speculate how the trial may have played out under different circumstances. The inquiry cannot be merely whether there was enough evidence to support the results, apart from the phase affected by the error.

Appeal from the United States District Court for the Southern District of West Virginia, at Charleston (2:19-cr-00074-2), Trene C. Berger, District Judge, Vacated and remanded Jason Dean Treadway's case for resentencing.

The District Court over-ruled Lakes' objection but failed to append a copy of the disputes to the PSR. Having adopted the PSR without change and not making clear that the firearm enhancement did not affect the sentence created the error.

Whether or not Lakes' substantive rights are violated by a guidelines calculation, which includes the two-level enhancement for the disputed possession of a firearm should not be the basis for harmless error review. Rather, the harmless error review analysis should concern itself with the categorization of Lakes' as a violent offender, which affects the execution of his sentence by the FBOP, when it calculates his recidivism score and his ability to earn and apply First Step Credits to his sentence.

The harmless error is erroneous as the FBOP uses the PSR for determination of eligibility to its various programs and for the classification of felons at various custody levels.

The importance of having the Supreme Court decide the questions involved in this case is to assure defendants objections to enhancements are not ruled harmless, creating error and substantively unreasonable sentences, when the Federal Rules of Criminal Procedures make sure defendant's rights are not violated. The Supreme Court decision will disallow unwarranted sentence disparities for defendants with similar charges, promote respect for Law, and assure defendants are rightfully categorized, which in turn will allow defendants to participate in programs that will reduce their sentence, and deter them from future criminal conduct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By: Gerald Lakes

Date: 8/18/23

Please see attached exhibits encluded.