

23-5912

U.S.C.A. — 7th Circuit
RECEIVED

No. 1:20-CR-00062(1)

AUG 21 2023 2

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

AUGUST TERM 2023

FILED

OCT 18 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

DARRELL CATHEY — 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 7th Cir.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DARRELL CATHEY
(Your Name)

USP Big Sandy P.O. Box 2068
(Address)

INEZ, KY. 41224
(City, State, Zip Code)

J/A
(Phone Number)

QUESTION(S) PRESENTED

Whether Defendant CATHEY was
enhanced properly, because the
charge he was enhanced on was
not a crime of violence.

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

N/A

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OF LAW

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

☒ For cases from **federal courts**:

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

☒ reported at 22-1460; 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☐ is unpublished.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 NA 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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 MAY 26, 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

1.) 5th AMENDMENT RIGHT TO DUE PROCESS.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

2.) 6th AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

SEE: MEMORANDUM OF LAW:

HAINES V. KERRER, 404 U.S. 519, 520 (1972), pro SEE filings are held to less stringent standard than formal PAPERS DRAFTED BY LAWYERS.

STATEMENT OF THE CASE

See Attached Memorandum
OF LAW.

MEMORANDUM OF LAW

Defendant Cathey Challenges the Calculations of the District Court where it erred by imposing an enhanced sentence above the guidelines for an Aggregated Battery that was NOT A Crime of Violence under the Battery Statute in Illinois (720 ILCS 5/12-3).

A Crime of Violence for Enhancement under the U.S.S.G Manual is defined as Murder, Manslaughter, Kidnapping, Aggravated Assault, Forcible Sex offense, Statutory Rape, Sexual Abuse of A Minor, Robbery, ARSON, Extortion, Extortionate Extension of Credit, burglary of A dwelling, or any offense that has as an element the use, Attempted use, or threatened use of physical force against the person of another. SEE; United States v. Luque-Barahona, 272 Fed. Appx. 521 (April 2, 2008).

Battery is not one of the enumerated offenses, so it qualifies as a Crime of Violence only if the use, Attempted use, or threatened use of physical force against the person of another is one of the statutory elements. U.S.S.G § 21.2 CM. application n.1 (B)(iii). These methods are not simply "factual means" of committing A single element. Rather, they are elements, one of which must be proved beyond A reasonable doubt

1,

in order to sustain a conviction for Battery.
SEE: PEOPLE V. NICHOLS, 2012 IL App.

Defendant Cathey States that the Battery he was charged with WAS NOT A CRIME OF VIOLENCE, as he only Did 50% of his Sentence. The BATTERY that is A CRIME OF VIOLENCE CARRY'S 85% OF THE SENTENCE. STATE LEGISLATURES DO NOT DEFINE THEIR CRIMES WITH AN EYE TO THE FEDERAL SENTENCING GUIDELINES. THE RESULTS IS THAT FEDERAL JUDGES MUST OFTEN GRAPPLE WITH WHETHER A STATE CRIME FITS THE DEFINITIONS FOUND IN THE FEDERAL SENTENCING GUIDELINES.

So therefore, by enhancing MR. CATHEY'S SENTENCE FOR A NON-BODILY HARM BATTERY, THE DISTRICT ERRED BECAUSE THERE WAS NO BODILY HARM DONE, AND NO HOSPITAL REPORTS TO SHOW THAT BODILY HARM WAS DONE. MERELY SAYING BODILY HARM WAS DONE IS NOT ENOUGH TO SATISFY THE PRONG. THUS, MR. CATHEY'S SENTENCE IS UNCONSTITUTIONAL IN VIOLATION OF THE 5TH AMENDMENT, AND THE DISTRICT COURT MADE A PROCEDURAL ERROR VIOLATING THE DEFENDANT'S RIGHT TO DUE PROCESS.

Counsel was ineffective in failing to investigate and failing to communicate with defendant during pre-trial proceedings. Defendant was highly prejudiced by this because had counsel investigated the Aggravated Battery

in which Defendant Cathay was charged with, he would have found out that it was the non-violent battery Defendant did 50% of his sentence on, and would have objected to the District Courts illegal enhancement. Counsel's performance was deficient and below the standards and it prejudiced the defendant. Citing Strickland v. Washington, 466 U.S. 668, 687 (1984).

MR. CATHAY states that there is a reasonable probability that, but for Counsel's unprofessional errors, the results of the proceeding would have been different. He would have not gotten enhanced for a non-violent battery.

For the foregoing reasons stated herein, A Certiorari should issue.

* Darrell Cathay

DARRELL CATHAY

U.S.P Big Sandy

P.O. Box 2068

Inez, KY. 40224

DATE:

8-8-2023

REASONS FOR GRANTING THE PETITION

A Writ of Certiorari should issue in this case to review the Federal Constitutional question raised herein. Pursuant to Rule 10, S. Ct. R., Compelling reasons support certiorari review at bar based on the following issue:

Whether Certiorari is warranted despite the Seventh Circuit's decision to deny Defendant CATHEY's Direct Appeal.

Based upon the errors stated herein, Darrell
Cathay has been unlawfully convicted and
sentenced. This Honorable Court should entertain
certiorari review to further scrutinize the Federal
Constitutional issues **CONCLUSION**
at BAR.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Darrell Cathay

Date: 8-8-23