

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_ Term, 2023

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LAWRENCE JEFFREY BROOKS.

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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PETITION FOR WRIT OF CERTIORARI  
FROM THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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Lawrence Jeffrey Brooks.

## **QUESTIONS PRESENTED**

- I. Whether the District Court erred by transferring the case back to the original District Court Judge after the case was reassigned to another District Court Judge by the Court without objection from the government.**
- II. Whether the District Court committed clear error at the Petitioner's sentencing hearing by finding that the government proved by a preponderance of the evidence the drug amounts attributable to the Petitioner and applying the enhancements which affected his guideline range of imprisonment and resulted in an unreasonable sentence and an unwarranted sentencing disparity.**
- III. Whether the Fourth Circuit Court of Appeals erred by granting the government's motion to dismiss the petitioner's appeal.**

## **LIST OF PARTIES TO PROCEEDING**

United States of America (Respondent)

Lawrence Jeffrey Brooks. (Petitioner)

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit rendered in his case on August 24, 2023.

**ORDER BELOW**

The order of the United States Court of Appeals for the Fourth Circuit granting the government's motion to dismiss the appeal, for which review is sought, is *United States v. Lawrence Jefferey Brooks*, No. 22-4571 (L) (4<sup>th</sup> Cir., August 24, 2023). The Fourth Circuit order is reproduced in the Appendix.

## **JURISDICTIONAL GROUNDS**

Judgment was rendered in the United States Court of Appeals for the Fourth Circuit on August 24, 2023. The jurisdiction of this Court is invoked under Title 28, United States Code §1254(1).

## **STATEMENT OF THE CASE**

During the course of the conspiracy, from April 2019 to May of 2019, the Petitioner Lawrence Jeffrey Brooks resided at 8617 Wood Lake Court, Apartment 302, Charlotte, North Carolina, with co-defendants Johnny Wells and Bobby Canaday. The apartment was rented by Johnny Wells. In May of 2019, law enforcement conducted surveillance of Petitioner, Johnny Wells and Bobby Canaday. They also obtained video recordings of them going to a Morningstar storage facility leased by Bobby Canaday in Charlotte.

On May 14, 2019, law enforcement conducted surveillance of Petitioner and observed him leave 8617 Wood Lake Court carrying a black book bag. Law enforcement followed him to the Morningstar storage facility and observed him carry inside a gray and black book bag. A short time later he was observed returning to his vehicle with the same gray and black book bag. He then departed the facility in his vehicle and shortly thereafter he was stopped for an alleged traffic violation. The officer seized from the gray and black book bag (that the Petitioner was observed carrying into and out of the Morningstar facility) 992.9 grams of 71.4% pure methamphetamine. Additionally, two firearms was seized from the black book bag he was observed carrying from the Wood Lake apartment to the

vehicle. (JA 194) Law enforcement also seized 6112 grams of 76.4% pure methamphetamine was seized from a large black bag which was of different purity than the methamphetamine seized from the Petitioner. (JA 194) The Petitioner was indicted in an eight-count Superseding Bill of Indictment filed in the Western District of North Carolina on September 17, 2019.

On April 21, 2022 approximately two weeks before the May 2, 2022 Trial date, the Petitioner's case was reassigned from United States District Court Judge Frank Whitney to Judge Graham Mullen by the Court. (JA 24) The government did not object to the case being reassigned. On April 28, 2022, the Petitioner pled guilty to Counts one, two and four of the First Superseding Bill of Indictment pursuant to a Rule 11(c)(1)(B) written Plea Agreement before the Honorable U.S. Magistrate Judge David Keesler. (JA 39,192) On May 9, 2022, the government filed a motion to transfer the case back to Judge Whitney. (JA 60, 61) Over the Petitioner's objection, the District Court granted this motion and the case was transferred. (JA 62-66)

The Presentence Investigation Report (hereinafter PSR) filed on June 16, 2022 alleged several enhancements regarding the Petitioner's conduct including leadership role, maintaining a premises to distribute controlled substance and using violence or threat of violence. (JA 197) The foreseeable drug amount attributable to the Petitioner was also an issue for the District Court to decide pursuant to the plea agreement. (JA 134-135) The PSR held him responsible for more than 4.5 kilograms of actual methamphetamine, resulting in a base offense level of 38. (JA

197) The Petitioner objected to the amount alleged in the PSR stating he should only be responsible for the 992.9 grams found on his person during the traffic stop.

(JA 212) Paragraph 31 of the PSR alleged that the Petitioner threatened violence. Paragraph 31 of the PSR also alleges that the Petitioner used violence during an alleged robbery.

The Petitioner appeared before U.S. District Court Judge Frank D. Whitney on September 29, 2022 for sentencing. (JA 67) Despite the Petitioner's objection to the drug amount attributable to him determined in the plea agreement and the objections to the three enhancements that added and additional eight points his base offense level, Judge Whitney determined that the government proved by a preponderance of evidence that they all apply. (JA 88, 104, 116) The District Court sentenced the Petitioner to a total term of imprisonment of 396 months. (JA 165) The Petitioner filed a written notice of appeal with the district clerk on October 6, 2022. (JA 174) The Petitioner filed an Appellate Brief with the Fourth Circuit Court of Appeals on April 6, 2023. The government filed a motion to dismiss the appeal on June 6, 2023 alleging that the Petitioner waived his right to appeal in his plea agreement. The Petitioner filed a reply to the motion to dismiss on June 16, 2023. On August 24, 2023 the Fourth Circuit Court of Appeals granted the government's motion to dismiss his appeal.

## REASONS FOR GRANTING THE WRIT

**I. The United States Fourth Circuit Court of Appeals erred in granting the government's motion to dismiss the Petitioner's appeal based on him waiving his appellate rights in his plea agreement. The issues raised on appeal could not have been contemplated by the Petitioner when he agreed to enter a guilty plea and therefore did not fall within the scope of the waiver provision. Additionally, the District Court erred at sentencing and the Judgment should be vacated and he should be resentenced.**

According to *U.S. v. Marin*, 961 F.2d 493, 496 (4th Cir. 1992) "a defendant who waives his right to appeal does not subject himself to being sentenced entirely at the whim of the district court." Appellate Courts will not enforce valid waiver provisions to preclude "a few narrowly-construed errors' that automatically fall outside its scope of the waiver. *U.S. v. Copeland*, 707 F.3d 522, 530 (4th Cir.). In *U.S. v. Poindexter* 492 F.3d 263, 270 (4<sup>th</sup> Cir. 2007), the Court said "we have 'refused to enforce valid appeal waivers for a narrow class of claims. . .based on our determination that those claims were not within the scope of the waiver'...This narrow class of claims involves errors that the defendant 'could not have reasonably contemplated' when the plea agreement was executed." Furthermore, "the type of 'illegal' sentence which a defendant can successfully challenge despite an appeal waiver involv[es]... fundamental issues,' including claims that 'a district court exceeded its authority,' premised its sentence 'on a constitutionally impermissible

factor such as race,’ or violated the ‘ post-plea... right to counsel.” Copeland, 707 F.3d @ 530 (quoting *U.S. v. Thornsberry*, 670 F.3d 532 (4<sup>th</sup> Cir. 2012)).

The Petitioner contends in his Appellate brief that the government filed a motion to have the case transferred back to the original District Court Judge after the Petitioner’s case had previously been reassigned to another District Court Judge. The government did not object to the case being reassigned. Only after the Petitioner pled guilty the government wanted it transferred back to the original Judge solely for sentencing. This was not something that could have reasonably been contemplated by the Petitioner when he agreed to enter a guilty plea. When the case was originally reassigned the government did not express any concerns about that District Court’s Judge ability to preside over the trial of this matter. This was not a complex case. The only issue after the Petitioner entered a guilty plea would have been based on the evidence presented at sentencing regarding any sentencing issues and nothing involving the previous history of the case and co-defendants and co-conspirators. The government’s actions resulted in an unwarranted sentence disparity that the Petitioner could not have contemplated when he signed his plea agreement and as a result the appeal should not have been dismissed.

Furthermore, the Petitioner contends that the District Court committed other errors that he could not have contemplated when he entered his guilty plea. The District Court applied several enhancements that was not proven by the government. These enhancements were all alleged by the government. The

Petitioner contends that the alleged enhancements that the District Court applied to him was only alleged by the government because he didn't cooperate. During the sentencing hearing, Assistant United States Attorney Steven Kaufman said that they tried to convince the Petitioner that he had to cooperate. He said he told the Petitioner that his only two choices were trial or plead guilty and cooperate. The Petitioner decided to plead guilty without cooperating and the government did all they could to ensure he got a life sentence since he didn't cooperate. The Petitioner's co-defendant Bobby Canaday didn't cooperate yet he got 15 years compared to his 396 month sentence.

The Petitioner's sentence was unreasonable considering all the facts of the case and sentences of co-defendants and co-conspirators. The facts and evidence did not support a four point enhancement for a leadership role. There was absolutely no evidence that the Petitioner maintained that storage unit or any other unit for the purposes of manufacturing or distributing drugs. The Petitioner denies that he ever threatened anyone in connection with this case. The government failed to prove by a preponderance of the evidence that the drug amount and the enhancements should be applied by the Court to the Petitioner. The sentencing disparity between two similarly situated defendants was unfair. The District Court committed clear error that could not have been reasonably contemplated by the Petitioner when he signed his plea agreement and entered a guilty plea. The Petitioner's Fourth Circuit appeal should not have been dismissed and was clear error committed by the Court.

## CONCLUSION

For the foregoing reasons, the United States Supreme Court should grant this Writ of Certiorari.

This the 22nd day of November, 2023.

/s/ MATTHEW JOSEPH  
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# APPENDIX

FILED: August 24, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-4571  
(3:19-cr-00211-FDW-DCK-1)

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LAWRENCE JEFFREY BROOKS,

Defendant - Appellant.

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O R D E R

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Lawrence Jeffrey Brooks seeks to appeal his 396-month sentence imposed following his guilty plea to conspiracy to distribute and possess with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1), (b)(1)(A); possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(2), (b)(1)(A); and possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1). The Government moves to dismiss the appeal as barred by the waiver of appellate rights contained in Brooks' plea agreement. Upon review of the record, we conclude that Brooks knowingly and voluntarily waived his right to appeal and that the issues he seeks to raise

on appeal fall squarely within the scope of his waiver of appellate rights. Accordingly, we grant the Government's motion to dismiss.

Entered at the direction of the panel: Judge Quattlebaum, Judge Heytens, and Senior Judge Motz.

For the Court

/s/ Patricia S. Connor, Clerk

FILED: September 15, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-4571  
(3:19-cr-00211-FDW-DCK-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

LAWRENCE JEFFREY BROOKS

Defendant - Appellant

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M A N D A T E

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The judgment of this court, entered August 24, 2023, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Nwamaka Anowi, Clerk