DOCKET NUMBER 23 - 6162

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

United States of America	:	(E.D. Pa. No. 2-17-cr-00645-007)
	:	
v.	:	
	:	
James Williams,	:	
Petitioner	:	

Writ of Certiorari to the Supreme Court of the United States from Judgement rendered in the United States Court of Appeals for the Third Circuit

---

James Williams

#HV2129

SCI Houtzdale

P.O Box 1000

Houtzdale, PA 16698

QUESTIONS PRESENTED

Question 1:

In light of this courts decision in McKaskle v. Wiggins, 465 U.S 168, 104 S.Ct. 944, 79 L.Ed 2d 122(1984), as interpreted by the Third Circuit Court of Appeals in the instant case, when a defendant takes all the reasonable steps available to him to remedy percieved irreconcilable differences he has with his court appointed attorney, and the defendants requests are subsequently denied by the District Court, does the 6th Amendment as its corollary still afford a defendant the right to orally request "to move pro se from this moment forward", and to have such oral request thoroughly addressed by the Court before it is outright denied, and in subsequent proceedings deemed to either have been acquiesed and waived, or simply a request to glide in and out of self-representation?

Question 2:

Following this Courts decision in Burgess v. United States, 553 U.S 124, 128 S. Ct. 1572(2008), in the context of Career Offender sentencing enhancements , is it permissible as part of the categorical approach(or modified categorical approach) to combine two seperate terms in the Federal Controlled Substance Act', namely, 'Distribute' in §802(11) and 'Delivery' in §802(8), before deciding that the defendants Pennsylvania state convictions criminalizing 'Delivery' do cover the same elements encompassed in the Federal term 'Distribute'?

LIST OF PARTIES AND RELATED CASES

Petitioner, pro se:

James Williams, #HV2129, SCI Houtzdale, P.o Box 1000, 209 Institution drive, Houtzdale, PA 16698

For respondent:

Solicitor Gemeral of the United States, Room 5616, Department of Justice, 950 Pennsylvania Ave., N.W. Washington, DC 20530-0001

- United States v. Williams, NO. 17-645-1, U.S. District Court for Eastern District of Pennsylvania. Memorandum and/or opinion order as to Defendant's Motion for New Trial, entered March 20, 2020.
- United States v. Williams, NO. 17-645-1, U.S. District Court for Eastern District of Pennsylvania. Judgement Entered on May, 27, 2021
- United States v. Williams, NO. 21-2039, United States Court of Appeals for the Third Circuit. Judgement and opinion entered April 14, 2023(Direct Appeal)
- United States v. Williams, NO. 21-2039, United States Court of Appeals for the Third Circuit, Order entered May 17, 2023(granting Petitioner pro se status to file Petition for Rehearing, ect.,)
- United States v. Williams, NO. 21-2039, United States Court of Appeals for the Third Circuit, order entered June 21, 2023(Denying Petition for Rehearing en Banc)
- United States v. Williams, NO. 21-2039, United States Court of Appeals for the Third Circuit, order entered July 25, 2023(denying Motion to Recall Mandate)

TABLE OF CONTENTS

APPENDIX

A. Third Circuit Court of Appeals Judgement and Order

B. District Courtss Judgement and Order

C. Third Circuit Court of Appeals order denying timely Petition for Rehearing En Banc

D. Notice of Appeal

E. Letter from Petitioner to District Court regarding Counsel (february 4, 2019)

F. Letter from Petitioner to District Court regarding counsel (February 21, 2019)

G. Transcript of Hearing (March 7, 2019)

H. Transcript of Status Conference (April 4, 2019)

I. Petitioner's Motion to Proceed pro se

J. Transcript of Motion Hearing (July 18, 2019)

K. Petitioner's Pro Se. Rule 33 Motion for a New Trial

L. Goverment's Response in Opposition to Petitioner's Rule 33 Motion for New Trial

M. Petitioner's Pro Se reply to Government's Response in Opposition to Petitioner's Rule 33 Motion for New Trial

N. Transcript of Post-Trial Motion Hearing (December 12, 2019)

O. District Court's Order Denying Motion for New Trial (February 18, 2020)

Q. Pro Se Memorandum of Law in Support of Petitioner's Objections to Being a Career Offender

R. Goverment's Sentencing Memorandum

S. Petitioner's Pro Se Sentencing Memorandum

T. Petitioner's Pro Se Response to Goverment's Sentencing Memorandum

U. District Court Memorandum (May 25, 2021)

V. District Court Order Denying Petitioner's Objections to Career Offender Enhancement(May 25, 2021)

W. Transcript of Sentencing Hearing(May 12, 2021)

X. Docket Entries

Y. Constitutional and Statutory Provisions involved

TABLE OF AUTHORITIES

Page(s)

Circuit Appeals Court Decisions in Conflict with current case Decision

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 judgement below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is reported at 2023 U.S. App. Lexis 8938, No. 21-2039, Filed April 14, 2023.

The opinion of the United States District court appears at Appendix A(District Courts Judgement and Order), U and V(District Courts Memorandum and Order denying Petitioners Career Offender Objections) to the petition, and is reported at 2021 U.S. Dist. LEXIS 100451, criminal action No. 17-645-1, Decided, May 25, 2021, and Filed, May 27, 2021.

JURISDICTION

The date on which the United States Court of Appeals decided Petitioner's case was April 14, 2023. A pro se petition for rehearing en banc was timely filed in Petitioner's case. Petition for rehearing en banc was denied by the United States Court of Appeals for the Third Circuit on the following date, June 21, 2023, and a copy of the order denying rehearing appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions invloved

United States Constitution: Amendment 6

United States Sentencing Guidelines:

§4B1.1. Career Offender

§4B1.2. Definitions of Terms Used in Section 4B1.1

Federal Statutes:

Title 21. Chapter 13.

§ 802. Definitions

Title 28. Part VI. Chapter 81

§ 1254. Courts of appeals; certiorari; certified questions

Pennsylvania Statutes:

Title 35. Chapter 6.

§ 780-102. Definitions

§ 780-113. Prohibited acts; penalties

Due to the length of the above mentioned Constitutional and Statutory provisions involved in this case please see Appendix **Y** for full versions of the above highlighed citations. All citations can also be primarily found in the **Reasons for granting Certiorari** section of Petitioners Writ of Certiorari to this Court beginning at page 13 of said Writ.

STATEMENT OF THE CASE

This writ of certiorari raises two challenges to the conviction and sentence. First, whether, when Petitioner Williams stated unconditionally that he wished "to move pro se from this moment forward", was the District Court Constitutionally obligated to at least ensure that the petitioner's request was knowing, intelligent, and voluntary before outright denying his request without conducting a Faretta colloquy. And, next, whether the District Court erred in applying a Career Offender enhancement predicated on two prior Pennsylvania convictions which do not qualify as "controlled substance offenses" pursuant to U.S.S.G. § 4B1.2. The Facts relevant to these issues and those necessary for context are set forth below.

I. The offense conduct and the proceedings below.

On July 18, 2017, a confidential informant(CI) encountered Petitioner's co-defendant Aisha Jones at a Walmart in Bristol, Pennsylvania. She offered to sell the CI heroin. Jones gave the CI her phone number, and the CI agreed to purchase approximately $750 worth of heroin and crack cocaine. The CI then contacted the Bensalem Police Department, which in trun instructed the CI to contact Jones on the cell phone number she had provided and arrange for the purchase of heroin. The CI arranged to meet Jones the same evening in the Brookwood Shopping Center located at 1851 Street Road in Bensalem. The CI was given $200 in recorded cash.

That evening, Bensalem police and the CI went to the shopping center for the CI to conduct the purchase. At approximately 9:00 p.m., Petitioner Williams arrived in the Brookwood Shopping Center driving a Ford Mustang. Ms. Jones was in the passenger seat and her eight-year-old son was in the back seat. The CI entered the mustang on Ms. Jones' side, and shortly thereafter exited the Mustang and signaled to the police that the purchase had been made. Bensalem police then took Petitioner and his co-defendant into custody. A key from the ignition

of the Mustang was used to open the glovebox, in which heroin, crack cocaine, and a gun were located. A later search of the vehicles trunk produced 54 bags of heroin, marijuana, a grinder, and a digital scale.

Petitioner was indicted in the Eastern District of Pennsylvania in December 2017. Following a jury trial in which Petitioner was represented by appointed counsel, he was found guilty of one count of distribution of heroin, 21 U.S.C § 841(a)(1), (b)(1)(C) and 18 U.S.C § 2(Count one); one count of possession with intent to distribute heroin, 21 U.S.C § 841(a)(1), (b)(1)(C) and 18 U.S.C §2(count two); one count of possession with intent to distribute cocaine base("crack"), 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. §2(Count three); and one count of possession of a firearm by a felon, 18 U.S.C. § 922(g)(1)(count five). The jury acquitted Petitioner of possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. §§ 924(c)(1) and (2)(count four). Appx. X, pg. 8, entry 108.

On May 12, 2021, Petitioner was sentenced to 162 months' imprisonment on each of the four counts of conviction, to be followed by 6 years' supervised release, and $400 special assessment. Appx. B

II. Petitioner's request to proceed pro se.

At a pre-trial status hearing on April 4, 2019, Petitioner informed the District Court that he wanted "to move *pro se* from this moment forward." Appx. H, pg. 22: 16-17. This request, as explained below, came after his earlier requests for new consel and to proceed *pro se* for purposes of a motion were denied.

A substantial amount of pretrial litigation below included a motion to disclose the confidential informant, a motion to suppress, and a motion to compel production of phone records and recodings. Appx. X, pg(s) 4-6. In Febrary 2019, during this pretrial motion

litigation, Petitioner sent two letters to the District Court expressing concerns about his inability to work with appointed counsel. In the first letter, Petitioner advised the Court that "me and my lawyer continue to not be on the same page, can you please note my requests on the record?" Appx. E. Shortly thereafter, Petitioner wrote to the court again, setting forth his disagreements with counsel and explicitly requesting new counsel. Appx. F

At a hearing on March, 7, 2019, the court began by addressing Petitioner's letters. Appx. G, pg(s) 2-3. The Court heard from defense counsel, who indicated that she did not believe the two had irreconcilable differences and that the primary issue was with the pending motion to compel. Appx. G, pg(s) 3-5. Petitioner was not invited to address the matter, but as discussion between the court and counsel regarding the status of the motion continued he affirmatively sought to address the Court. Petitioner attempted to set forth his issues and disagreements with appointed counsel regarding both the motion to compel and a motion to suppress. Appx. G, pg(s) 7-12. He then expressed more broadly his concern that he could not go to trial with current counsel, explaining that his dissatisfaction "ha[d] culminated over the past eight months," asking "How can I go to trial with somebody who's not trying to represent me properly?," and concluding, "We have irreconcilable differences." Appx. G, pg(s) 12-14. The Court denied Petitioner's motion for new counsel without prejudice pending the outcome of the motion to compel without addressing any of Petitioner's other concerns. Appx. G, pg. 15. As the Court continued discussion with counsel as to the specifics of what the motion to compel was seeking Petitioner twice sought againg to explain his position and understand what the court was ordering, but was repeatedly told to "be quiet." Appx. G, pg(s) 16, and 18.

A status hearing was next held on April 4, 2019. Petitioner's differences with counsel remaind unresolved.

Initially Petitioner sought to simply be permitted to address the court *pro se* with respect to the motion to compel. He asked, "Can I proceed *pro se* for a minute?" and "Can I proceed *pro se* for a minute so I can speak myself because there's case law specific to this situation." Appx. H, pg. 21: 12-16. The Court declined his requesst to proceed *pro se* for purposes of the motion, at which time the Petitioner then took it upon himself to state his position on the record. In response to Petitioner's statements the Court disagreed with his analysis, and summed it up as "Defense counsel stategy." Appx. H, pg. 22: 3-11. Petitioner's prior counsel then interjected while the Court was speaking, and in doing so, based upon the petitioner's prior apprehensions with counsel and the Court's denials of his motion to substitute counsel, ect., led to the forseeable outcome of him asking to be relieved of counsel and to proceed *pro se* going forward:

THE DEFENDANT: I would like to move pro se from this moment forward.

THE COURT: No, we're not going to do this again until you think it through.

THE DEFENDANT: I have. I have. Appx. H, pg. 22: 16-20. At this point the court returned to counsel and discussion of the pending motion, ignoring the Petitioner's request. The court and counsel reviewed the remaining motions and scheduling. Petitioner Williams was not addressed, nor given the opportunity to address the court again. Appx. H, pg(s) 23-46

Trial took place the following week and a jury found Petitioner guilty of one count of distribution of heroin, one count of possession with intent to distribute heroin, one count of possession with intent to distribute cocaine base, and one count of possession of a firearm by a felon. He was acquitted of possessing a firearm in furtherance of a drug trafficking crime. Appx. X, entry 108.

In May 2019, following counsel's filing of a post-trial motion for acquittal, Petitioner again asked the Court to be permitted to proceed *pro se*, this time by written motion. Appx. Y. Petitioner stated: "again [was] writing you in regards to proceeding in a *pro se* capacity and representing myself. As I stated numerous times to date, I am unsatisfied and have been for a long time with my current representation....My complaints are based on the defense strategy...Ms. Grasso and I do not agree on much if anything at all in regards to how I should be defended." *id.* In July 2019, the Court held a hearing on Petitioner's written Motion and granted his second request to proceed *pro se* for the remainder of the case. Appx. J.

Petitioner Williams then filed a *pro se* Motion for a New Trial pursuant to Federal rule of Criminal procedure 33. Appx. K. Pertinent here, petitioner sought a new trial in part based on the denial of his right to self-representation and before trial. He asserted that:

> "had he been allowed to talk and not told to "remain quiet", he was going to, at the March 7th hearing assert his right [] to represent himself. Nonetheless, due to his status as a defendant, knowing he would have to be sentenced by the Court should he be found guilty, and being afraid he would futher anger Honorable Pratter, the defendant instead remained quiet as ordered."

Appx. K, pg. 13. He further argued that, again at the April 4, 2019 hearing, "despite the defendant's independent, knowing, and intelligent choice to represent himself," the court instead asked counsel asked counsel to "talk" to her client, "essentially telling her to get him under control and quiet him down." Appx. K, pg. 14. "Defendant as a result was strategically coralled into his trial without being afforded the opportunity to utilized a defense of his own choosing." *id.*

At a hearing on the motion, as Petitioner asserted that his request to "move *pro se* from this moment forward" was a clear and unequivocal request to proceed *pro se* from that moment forward, the District Court insisted that his request was limited to the motion under consideration at the time:

> THE DEFENDANT: With regards to that, YOUR HONOR, it was clear and unequivocal when I asked.
>
> THE COURT: Really? Where was that? You didn't like the way your lawyer was making the argument about some view you had about whether or not some nonexistent phone records should be pursued at the last minute right before trial. You said you wanted to make the argument. You didn't like the way she was making the argument.
>
> ***
>
> THE COURT: Nowhere do you say that. You show me where you said you wanted to be trial counsel.
>
> ***
>
> THE DEFENDANT: And then after that, Your Honor, I said I would like to move *pro se* from this moment forward.
>
> THE COURT: On the issue. You were talking about this issue.
>
> THE DEFENDANT: No-
>
> THE COURT: Really? Where do you say you want to be your own trial counsel?

***

MR. STENGEL: No, line 16, Mr. Williams stated, "I would like to move *pro se* from this moment forward" and then there was some discussion after that about his representation.

THE COURT: And I said, "No, we're not going to do this again until you think it through." You said, "I have. I have." I said, "Why don't you investigate the possibilities"; Ms. Grasso then said to do that -- and we're still all talking about this Microsoft subpoena issue and the telephone and the telephone records and the Communications Act.

THE DEFENDANT: I think-- so when Your Honor said, "No, we're not going to do this again until you think it through," what did you think that I was saying?

THE COURT: Don't you ask me a single question, sir.

THE DEFENDANT: I'm - that's - that's me saying I would like to move *pro se* from this moment forward. From this Moment forward.

THE COURT: We were talking about a particular issue about this-

THE DEFENDANT: No, I was talking about-

THE COURT: -- the issue about the Microsoft case and subpoenaing T-Mobile and all of that. That's as clear as day that you were not saying you wanted to be your own trial counsel, and on top of that, sir, where on the day of trial or any time during trial did you s ay you waanted to be *pro se*?

***

THE DEFENDANT: On April 4th at the pretrial conference when I said, "I would like to

move *pro se* from this moment forward."

THE COURT: Okay. Anyplace else where you were more clear?

THE DEFENDANT: That's as clear as it needs to be.

Appx. N, pg(s) 23: 18-25 through 30:1-3. Later that Court questioned whether Petitioner's former counseld could verify his intent at the time of the request:

THE COURT: And that is, it would be Ms. Grasso, for example, or somebody would have to say Oh, yes, consistent with what he's saying, he meant April 4th, he lod me via e-mail, and then the would would have to be truthful and say, Yes, there were subsequent things. I mean, thuis is just step one of more steps.

***

THE DEFENDANT: Yeah, I don't-- I just don't think that that's really necessary for us to even go through that, Your Honor. A two-prong inquiry was never performed. I clearly-

THE COURT: I want you to listen carefully, Mr. Williams. I am giving you extra opportunity to make you best presentation of a signifcant nature on this issue. Appx. N, pg(s) 46-50

The district court denied Petitioner's motion for a new trial. With respect to the asserted Sixth Amendment violation, the court concluded that Petitioner did not make "an unequivocal request" to represent himself. Appx. O, pg(s) 9-12. The court acknowledged Petitioner's explicit statement "I would like to more *pro se* from this moment forward" at the April 4, 2019 hearing, but found it undermined by the fact that, without the ever addressing his request, Petitioner's

counsel then went on to present arguments and "[n]ot at any point during the remainder of the hearing did Mr. Williams raise the issue of proceeding *pro se*." Appx. O, pg. 11. The Court then added that "[e]ven if Mr. Williams' request to self-representation had been unequivocal...he clearly abandoned it when he accepted counsel's representation without reasserting his right to self-representation." Appx. O, pg. 12.

III. Sentencing

The presentence report calculated an advisory Guidelines range of 262 to 327 months' imprisonment based on a career offender offense level of 34, pursuant to U.S.S.G. § 4B1.1. PSR¶¶ 27, 71. The career offender enhancement was based on two prior "controlled substance offenses," as defined U.S.S.G. § 4B1.2(b), both involving convictions in the Bucks Couny Court of Commom Pleas under the Pennsylvania drug statute at 35 Pa. Stat. § 780-113(a)(30). see: Commw. v. Williams, CP-09-CR-4100-2007; Commw. v. Williams, CP-09-CR-3846-2011. PSR¶¶ 31, 33; Appx. R, pg(s) 32-44.

Petitioner filed written objections to the career offender enhancement. Appx. Q. Specially, he argued that the Pennsylvania statute encompasses attempted delivery offenses, whereas the Guildelines definition of "controlled substance offense" encompasses only completed offenses. *id.* Thus, the Pennsylvania statute being broader in scope, convictions under the statute are not categorically "controlled substance offenses" pursuant to § 4B1.2(b). Petitioner further argued that the argument he was making in his objections is one First Impression, in significant part, due to his reliance on this Courts decision in Burgess v. United States(citations omitted), and that as a result the Third Circuit Court of Appeals prior rulings did not have binding affect on the proceedings in the instant case. Appx. Q; see also: Appx. T, pg(s) 1-13

The District court rejected Petitioner's challenge to the career offender enhancement. The court reasoned that Circuit precendent remains valid and controlling. The court at sentencing thus adopted the PSR calculations including the career offender enhancement. Appx. W, pg. 44-45. Following sentencing arguments for variance, the court imposed a sentence of 162 months' imprisonment on each of the four counts of conviction to run concurrently. Appx. W, pg. 87. The Statutory Maximum, at the time of petitioner's sentencing, on each drug offenses (counts one, two, and three) is 30 years' imprisonment, 21 U.S.C. §841(b)(1)(C), and on the firearm offense(count five) was 10 years' imprisonment, 18 U.S.C. §922(g).

Petitioner filed a timely notice of appeal inwhich he was represented by the Federal Public Defenders Office. On April 14, 2023, in a non-precedential opinion, the Third Circuit Court of Appeals affirmed the petitioner's convictions as to counts one, two, and three, and remanded for resentencing due to the District Court sentencing the petitioner to more time than what was statutorily permissible under 18 U.S.C. §922(g) at the time of his May 12, 2019 sentencing date. Appx. A. Petitioner then filed a motion to proceed *pro se* for purposes of filing a Petition for rehearing en banc, which the Third Circuit Court of Appeals granted after Attorney Brett G. Sweitzer, for the Federal Public Defenders Office filed a motion on behalf of petitioner to withdraw representation, ect. A timely Petition for Rehearing en Banc was filed by the petitioner which the Third Circuit Court of Appeals denied without opinion on June 21, 2023. Appx.C. Due to the Third Circuit Court of appeals remand as to count five of the Petitioner's conviction, and the petitioner's intent to file a Writ of Certiorari to the Supreme Court of the United States, the Petitioner then filed a "Motion to Recal the Mandate pending filing and Decision of Petition for Writ of Certiorari" in the Third Circuit Court of Appeals which was subsequently denied on July 25, 2023. As required be S. Ct Rule(s) petitioner recently filed an

Application for a Stay Pending Review on Petition for a Writ of Certiorari from Judgement rendered in the United States Court of Appeals for the Third Circuit", and a "Motion to Proceed in Forma Pauperis".

Reasons for Granting the Petition

The Third Circuit Court of Appeals decision to affirm the District Courts decisions as cited above not only conflicts with the decisions of their own prior rulings, but also that of other Circuit Court of Appeals decisions on the same matter. Furthermore, the Third Circuit Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, and has decided an important federal question in a way that conflicts with relevant decisions of this court. see: S. Ct. Rule 10(a) and (c).

6th Amendment Right to Self-Representation

In this instance, Petitioner respectfully requests this Court grant certiorari, and asserts that this case not only contains significant instances of erroneous rulings on the part of the Lower Courts, but more importantly, thereby, has led to the national importance of having the Supreme Court decide the question(s) involved. Granting certiorari will ensure that the necessary steps are taken to further safeguard the Petitioners, and similarly situated defendants', Sixth Amendment right to make his, or her own defense.

The Third Circuit Court of Appeals erroneously held that, "The District Court did not err in denying defendant the right to proceed pro se before his trial because it was not clear to the district court during the hearing in question, that the defendant wanted to fire appointed defense counsel and assume all aspects of his defense. The defendant's pretrial statements about self-

representation were far from clear and unambiguous." Appx. A. This ruling clearly overlooks Supreme Court precedent addressing this very issue and is respectfully unsupported by the record.

As noted above, the Petitioner in no uncertain terms stated, "I would like to move *pro se* from this moment forward." Based upon the record, petitioner's statement was immediately understood and denied by the District Court when she stated, "No, we're not going to do this again until you think it through." The record further reflects that the District Court's statement was immediately followed by the Petitioner in no uncertain terms stating, "I have. I have." in an effort to have his right to self-representation upheld and not outright denied like his prior requests on the subject of 6th Amendment Rights. see: Appx. H., pg. 22: 16-20. While upholding the District Courts decision the Third Circuit Courts of Appeals relied almost exclusively on this Courts decision in Mckaskle v. Wiggins, 465 U.S 168, 183, 104 S.ct. 944, 79 L.Ed. 2d 122(1984). The Third Circuit Court of Appeals reliance on Mckaskle v. Wiggins,(citations omitted) to conclude that "we agree with the District Court that the record suggests that [petitioner] wanted to 'glide in and out of self-representation'" when he stated "I would like to move *pro se* from this moment forward" has thus led to petitioner appealing to this Court to answer the following question of significant importance on Certiorari:

> In light of this decision in Mckaskle v. Wiggings, 465 U.S 168, 104 S. ct 944, 79 L. Ed. 2d 122(1984), as interpreted by the Third Circuit Court of Appeals in the instant case, when a defendant takes all the reasonable steps available to him to remedy percieved irreconcilable differences he has with his court appointed attorney, and the defendants requests are subsequently denied by the district court, does the 6th

Amendment as its corollary still afford defendants the right to orally request "to move *pro se* from this moment forward", and to have such oral request thoroughly addressed by the Court before it is outright denied, and in subsequent proceedings deemed to either have been acquiesced and waived, or simply a request to 'glide in and out of self-representation'?

Petitioner respectfully asserts that the answer to such question is an astounding **Yes** and notes that the lower courts decision conflicts with the ruling in Faretta v. California, 422 U.S. 806, 95 S.ct 2525, 45 L.Ed 2d 562(1975) and consistent Federal rulings that the Sixth Amendment to the Constitution of the United States guarantees to every criminal defendant the "right to proceed without counsel when he voluntarily and intelligently elects to do so." *id.* at 807

The Sixth Amendment speaks of the assistance of counsel, and an assistant, however expert is still an assistant. the lauguage and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant--not an organ of the State interposed between an unwilling defendant and his right to defend himself properly. *id.* An unwanted counsel represents the defendant only through a tenous and unacceptable legal fiction. Unless the accused has acquiesced in such representation, the defense presented is not the defense guaranteed him by the Constitution, for in a very real sense, it is not his defense. *id.* at 821. Thus, a defendant who chooses to represent himself must be allowed to make that choice, even if it works "ultimately to his own detriment." *id.* at 834. This Court also stated: "the right to defend is personal", and a defendant's choice in exercising that right "must be honored out of 'that respect for the individual which is the lifeblood of the law". see: Illinois v. Allen, 397 U.S. 337, 350-351, 90 S.ct. 1057, 25 L.Ed. 2d 353(1970).

The above mentioned reasoning was never addressed by the lower court. Furthermore, instead of outright denying the Petitioner's request to "move *pro se* from this moment forward", and in subsequent proceedings construing such request as equivocal, and/or acquiesced and waived, the Court was required to thoroughly address Petitioners request consistent with the following:

It is the tension between the right to have counsel and the right to represent oneself that places upon the trial court the weight responsibility of conducting a sufficiently penetrating inquiry to satisfy itself that the defendent's waiver of counsel is knowing and understanding as well as voluntary. See, e.g., Von Moltke v. Gillies, 332 U.S. 708,720, 92 L.Ed. 309, 68 S.ct. 316(1948). Requiring a trial judge to be vigilant when a defendant waives his constitutional right even predates Von Moltke. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial court, and it would be fitting and appropriate for that determination to appear on the record. Johnson v. Zerbst, 304 U.S. 458, 465, 82 L. Ed. 1461, 58 S.Ct. 1019(1938). A judge can make certain that an accused's professed waiver of counsel is understandingly and wisely made only from a penetrating and comprehensive examination of all the circumstances under which such a plea is rendered. Von Molke, at 723-24.

Notably, in the instant case the Third Circuit Court of Appeals heavily relied on this Courts decision in Mckaskle yet seemingly overlooked the fact that this Court said in Mckaskle, "the right to appear *pro se* exitst to affirm the dignity and autonomy of the accused"..."when a defendant appreciates the risks of forgoing counsel and chooses to do so voluntarily, the

constitution protects his ability to present his own defense even when that harms his case", *id.* at 177, n. 8., "the right is either respected or it is denied, its deprivation cannot be harmless."*id.* at 177, n.9.

The Third Circuit lower Courts never gave the defendants right to self-representation the Constitutionally required respect if deserved. In essence the Third Circuit lower Courts decisions have construed this Courts rulings in Mckaskle v. Wiggins(citations omitted) to have increased the burden on defendants when invoking their right to self-representation, by requiring them, after taking all other possible steps to remedy percieved irreconcilable differences they have with their counsel, to state-at the least- something more specific then "I would like to move pro se *from this moment forward.*" In this respect the Third Circuit lower courts decisions further conflict with this Courts rulings which state that a defendant need not "recite some talismantic formula hoping to open the eyes and ears of the court to his request" to invoke his/her Sixth amendment rights under Fareeta. Indeed, such a rquirement would contradict the right it was designed to protect as a defendants Sixth Amenment right of self-representation would then be conditioned upon his/her knowledge of the precise language needed to assert it. The law simply requires an affirmative, unequivocal request.

In this case the District Court initially denied the petitioners request.(see: Appx. H. pg. 22: 16-20) This is so despite both the District Court and Third Circuit Court of Appeals correctly stating in their own opinions that "Courts **must** indulge every reasonable presumption against waiver of counsel". Johnson v. Zerbst, 304 U.S. at 464.

By way of their denials of the Petitioners fundemental right to self-representation, the Third Circuit Court of Appeals lacked jurisdiction to decide the Petitioners Appeal and confirm

his conviction and sentence in all aspects except as to count five of petitioners superceding indictment. Furthermore, the District Court lacked jurisdiction to sentence the petitioner on May, 12, 2021, and if the Petitioner's Application for a stay and Writ of Certiorari are denied, said Petitioner will again be sentenced by the District Court despite the District Court lacking jurisdiction to do so. see: Johnson v. Zerbst, 304 U.S. at 468 which states: A courts jurisdiction at the beginning of trial may be lost "in the course of the proceedings" due to failure to complete the court as the Sixth Amendment requires...If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The Judgement of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus." Petitioner respectfully alleges that this Courts ruling in Johnson as mentioned above equally applies to a Writ of Certiorari from the judgement rendered in a Federal Court of Appeals.

Decision to deny Petitioner's Career Offender issue

The Petitioners guidelines range was enhanced pursuant to §4b1.1 based on two prior convictions under Pennsylvania drug statute at 35 P.A §780-113(a)(30). Application of the Career Offender provision at sentencing was error, as the Pennsylvania drug statute is categorically broader in scope than the guidelines definition of "controlled substance offense" for at least on reason: The least culpable conduct covered by §§ 780-113(a)(30) is attempted transfer of a controlled substance.

Binding precedent in this court dictates that the Categorical approach applies here. See: Descamps v. United states, 570 U.S. 254, 260(2013). An offense qualifies as a predicate only if all of the criminal conduct triggering liability under the statute defining the offense, including the

least criminalized conduct, would also trigger liability under the career offender provision of the Federal Sentencing Guidelines.

Applying the Categorical approach to Petitioner's prior Pennsylvania convictions under 35 P.a §780-113(a)(30) does not qualify them as "controlled substance offenses"

The Pennsylvania drug statute *prohibits*, in relevant part: "the manufacture, *delivery, or possession with intent to deliver*, a controlled substance." Thus, the text of §780-113-(a)(30) and it's definitional provisions provide that a conviction under the statute can rest on either the completed or attempted transfer of a controlled substance.

The term "controlled substance offense" in the Career Offender provision of the sentencing guidelines is defined as: an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that *prohibits* the manufacture, import, export, *distribution*, or despensing of a controlled substance....*or the possession of a controlled substance...with intent to...* manufacture, import, export, *distribute* or despense.

In this instance, Petitioner respectfully asserts that it is of national importance that this court grant certiorari due to the substantial increase Career Offender status has on a defendant's guidelines range, and the fact that the Third Circuit, and other Circuit Courts, have engaged in actions which add to those deemed permissible by the Supreme Court when performing the Categorical(or Modified Categorical) approach. Actions, of which when present in a defendants case, like they are in the Petitioner' case, amount to a Lower Court answering a question of law, and national importance, in the affirmative despite those affirmations and actions supporting them conflicting with rulings of the Supreme Court.

Furthermore, in the interest of ensuring that defendants similarly situated as the petitioner are not contiually subjected to unwarranted sentencing disparities in this unapproved manner, the petitioner respectfully asserts that the following question should be settled by this court and answered in the negative:

> Following this Courts decision in Burgess v. United States, 553 U.S 124, 128 S. Ct. 1572(2008), in the context of Career Offender sentencing enhancements, is it permissible as part of the categorical approach(or modified categorical approach) to combine two seperate terms in the Federal Controlled Substance Act, namely, 'Distribute' in §802(11) and 'Delivery' in §802(8), before deciding that the defendants Pennsylvania state convictions criminalizing 'Delivery' do cover the same elements encompassed in the Federal term 'Distribute'? Proposed answer: No.

Of significant importance to this section of the Petitioners Writ of Certiorari is the Lower Court of Appeals assertion in their opinion that "in a letter filed with this court, Williams commendably acknowledged that Dawson and Womack forclose his arguments that his conviction under 35 P. A §780-113(a)(30) do not qualify as controlled substance offenses under the guidelines. As a result, all agree that the district court properly applied the career offender enhancement. see: Appx. A, pg. 7. As stated by the Petitioner in his Petition for rehearing En Banc filed with the lower court, "To defendants knowledge he has never filed any such letter with the court himself, and has no idea if prior counsel, Christy Martin, did so-without his consent- on his behalf. Instead, based on the fact that Mr. Williams filed a letter with the Court inwhich he requested prior counsel to request oral argument in light of the 3rd Circuits decision in Dawson, the defendant believes the panel misconstrued the letter he sent to prior counsel. see:

docket in appeal #21-2039 detailing letter Petitioner filed with the Court.

Partly as a result of misconstruing the alleged letter sent to the Third Circuit Court of Appeals by the Petitioner, the lower Courts never addressed the most significant points raised by the petitioner in his objections to being considered a Career Offender for sentencing purposes.

Points not raised, argued or analyzed, and thus overlooked by the Lower Court of Appeals

Burgess v. United States

The Lower Court in the instant case erroneously held that the term 'Distribute' used in the Guidelines term 'Controlled Substance Offense' covers the same conduct as the term 'Delivery' used in 35 P.A. §780-113(a)(30). see. Appx. A(which relied heavily on the Third Circuit Court of Appeals decision in United States v. Dawson, 32 f.4th 245, n. 14, stating: "the question before us...concerns how to define a term..distribution...which is already on the list of §4b1.2(b) offense categories and is not itself defined within the guidelines.")

As pointed out by the Petitioner in a letter he filed with the Lower Court to prior appellate counsel Mrs. Christy Martin, the Dawson panel and prior 3rd Circuit career offender decisions, have repeatedly conbined the definitions of 'Distribute' and 'Delivery' housed in the Federal Controlled Substance Act(hereinafter Federal CSA), and/or Blacks Law Dictionary and/or Oxford English Dictionary when deciding how to define 'Distribute' and 'Delivery' in the Career Offender context. Review of the decision in Dawson- which the Lower Courts appeals panel discussed in the their opinion- makes that abundantly clear. Nevertheless, Petitioners objections- by way of the defenses arguments citing to Burgess v. United States, 553 U.S 124, 128 S. Ct. 1572(2008) makes it clear that the attempt to combine the definitions of 'distribute' and 'delivery'

which are definitively defined in two distinct statutes, i.e. §802(11), and §802(8), respectively, is impermissible. This is so because this Court stated in Burgess: "as a rule, a definition which declares what a term 'means' *excludes any meaning not stated,"* and futher stated: "when a statute includes an explictit definition, a court *must* follow that definition." see: Burgess, 553 U.S 124(emphasis added). The decision in Burgess specifically addressed whether it was permissible to combine two seperate terms in the Federal CSA. Unlike the goverment in Burgess, and the defendant in the instant appeal, the Dawson defense never argued that it was impermissible to combine two seperate terms in the Federal CSA. Thus, the Lower Courts decision in the instant case never addressed the question of national imporance that this Writ of Certiorari presents. see: Appx. Q, pg.(s) 20-21, and Appx. T, pg.(s) 2-10; see also: Appx. W, pg.(s) 34:12-25 through 37:1-11

Prohibits

As stated above, the term "controlled substance offense" is defined as: an offense under federal or state law...that *prohibits...distribution...or possession with intent to distribute*(alteration in original). Anotjer key argument contained in the filings by the Petitioner, which was never addressed by the lower court in this case and adds to the national importance of having this Court settle the question presented in the context, is that which addresses Congress' express use of the word *prohibits* in the guidelines definiton of "controlled substance offense" as opposed to the word includes used in the Armed Career Criminal provision of the guidelines. Notably, the Lower Court, by way of their reliance on Dawson, never acknowledged that the Dawson defense never made any argument centerd around Congress' use of the word *prohibits* in the term "controlled substance offense". Thus, due also in part to the miscstrued letter, such

significant point was not addressed by the Lower Courts decision when deciding what the Federal CSA's definition of 'Distribute' in §802(11) means. Had the Lower Court addressed these arguments they would see that 'Prohibits' can mean: to "restrain a certain action" or "to limit, confine, abridge, narrow down, or restrict." see: online version of Blacks Law Dictionary. This definition reinforces that 'Prohibits' is narrowing, definitive term rather that an elastic one.

Indeed, this Court has also said as much by clarifying that *for criminal law purposes* an offense that 'prohibits' specified conduct 'forbids' that conduct- nothing more. see: Connally v. General Constr. Co., 269 U.S 385, 391(1926)("criminal statutes prohibt conduct by forbidding it"). see also: Salinas v United States, 547 U.S 188(2006)(which found that possession is not a 'prohibited' offense under §4b1.2) and thereby without impermissibly combining the terms 'distribute' and 'delivery' the decision in Salinas would imply that attempts are not *prohibited* in the term 'controlled substance offense' either. see: Appx. Q, pg(s) 23-25

James v. United States

The Lower Courts also overlooked this Courts ruling in James v. United States, 550 U.S. 192, 197(2007), as cited by the Petitioner in his objections. Notably, by way of their reliance on Dawson, the Appeals panel in the instant case affirmed the decision in Dawson which stated: that "the position that attempted transfers does no qualify commits the defendant to the untenable position that §841(a) does not qualify." The government in the instant case also made the same argument at Petitioners Sentencing Hearing on May 12, 2021. see: Appx. W, pg. 29: 11-25. Despite the Government, and Dawson panels' statements this, respectfully, is not so because of this Courts ruling in James, the fact that Congress made Federal inchoate crimes completely seperate from substantive crimes, and 4b1.2(b)'s use of the restrictive word *prohibits* in its

definition of the term "controlled substance offense". see: Appx. Q, pg.s 26-27, §802(11) and § 802(8), seperately, after adhering to the rulings in Burgess, 553 U.S. 124, 124, 129, 130(2008), and Appx. W, pg. 34: 12-18.

Had the defense in Dawson cited to the ruling in James it would have opened the door for defense counsel to argue and point out that "the position that attempted transfers does not qualify *does not* commit the defendant to the untenable position that §841(a) convictions do no qualify either for Career Offender purposes." Consitent with this understanding, this Court in James found that attempted Burglary in not Burglary.

Impermissible Hypotheticals

The Dawson panel, and thereby Third Circuit Court of Appeals panel in the instant case, also based their opinion on a series of hypothetical examples of Distribution and/or Delivery. These examples were based on hypothetical facts which the Court was respectfully not permitted to assume pursuant to this Courts rulings in United States v. Shepard, 544 U.S. 25, and Moncrieffe v. Holder, 569 U.S. 184, 191, which state in respective order: Courts *must* "ignore that actual manner inwhich the defendant committed the prior offense" and "presume the defendant...engaged in no more than the minimum conduct criminalized by the statute." see: Appx. Q, pg. 3, and Appx. T, pg(s) 9-10(defense describing a realistic hypothetical based on the least criminalized conduct under 35 P.S §780-113(a)(30).

Unlike the appeal at hand, the defense in Dawson never made any of these arguments to support their Career Offender objections. Futhermore, the example of a hypothetical Petitioner made in his objectionsis obverse like the panel in Dawson said Dawson's should have been.

Due to the Petitioners reliance on Burgess, James, the term "controlled substance offenses" use of the limiting term *prohibits*, Moncrieffe, Shepard, and other relevant arguments in the Petitioners filings in connection with his Career Offender objections(or flowing therefrom), the Petitioner respectfully asserts that the Textual argument derived therefrom has yet to be addressed by the Third Circuit Court of Appeals, and more importantly the Supreme Court of the United States. As such, the defense in the instant case has raised numerous points and arguments that prior defenses did not raise in the Career Offender objections and presents a First Impression Argument that was overlooked by the Lower Courts. Therefore, in regards to the Lower Courts decison in this instance, and the decisions it relied on, i.e. Dawson, ect., it is relevant to state that "Judicial decisions do not stand as binding precedent for points that were not raised nor argued, and hence not analyzed." Legal Services Corp. v. Valasques, 531 U.S. 533, 557(2001). Furthermore, as stated by this Court, "even if a court assumed in a prior case that a statutory term applied to a particular situation...the court is not bound by its prior *sub silentio* holdings when a subsequent case finally brings to the Court a textual issue as to whether the statutory term applies to the particular situtation, where (1) the Court did not address such issue in any of the prior cases, and (2) in none of the prior cases was the resolution of such issue necessary to the decision." Will v. Mich. Dep't of State Police, 491 U.S. 58, 63(1989). see: Appx. W, pg(s) 10-11, 19-20; see also: Petitioner's Petition for Rehearing En Banc, pg.(s) 14-15(timely filed in the Third Circuit Court of Appeals)

6th Amendment issues conflicts with other Circuit Courts of Appeals

The decision in the instant case conflicts with the following rulings in its own Court of Appeals , and other Circuit Court appeals decisions:

3rdCircuit: United States v. Taylor, 21 f.4th 94(2021); United States v. Chanberlain, 326 Fed. Appx. 640(2009); United States v. Jones, 452 f.3d 223(2006)(requiring a detailed colloquy); 4th: United States v. Ductan, 800 f.3d 642, 646(2015); 6th Circuit: Akins v. Easterling, 648 f.ed 380(2011); United States v. Thornton, 2017 U.S. Dist. Lexis 145740(2017); 7th Circuit: Jones v. Berge, 246 F. Supp. 2d 1045, 1053(2003); Kidd v. Lemke, 734 F.3d 696; 9th Circuit: Shafer v. Bowersox, 329 F.3d 637(2002); Wilkins v. Bowersox, 145 F.3d 1006(1997); 9th Circuit: United States v. Balough, 820 F.2d 1485(1987); Moran v Godizez, 57 F.3d 690(1994); 10th Circuit: Maynard v. Boone, 569 F.3d 665(discussing how "Trial Court *must* satisfy itself that the waiver...is knowing and voluntary" and Citing to this Courts decision in Von Moltke v. Gillies); United States v. Taylor, 183 F.3d 1199(1999); United States v. Allen, 895 F.2d 1577(1990)

All of the above cited cases agree with this Courts rulings that a defendant has a 6th Amendment right to conduct his/her own defense, and/or that the Trial court must perform a "penetrating and comprehensive examination" once a defendant asserts his right to self-representation, and that that examination must be reflected by the record.

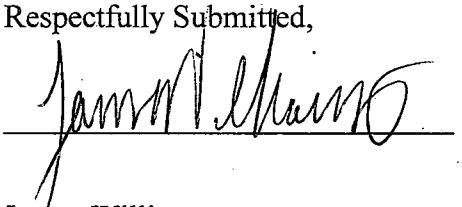
Conclusion

Due to the fact that the Lower Courts never allowed the Petitioner to proceed pro se once he knowingly, intelligently, and unequivocally asserted his right to do so by stating "I would like to move pro se from this moment forward", and did not at least perform this courts standard of determining whether there was an intelligent and competant waiver by the petitioner by -at least- performing a "penetrating and comprehensive examination" before outright denying the petitioners request, the Petitioner respectfully requests that this Court grant Certiorari for the 6th Amendment issue argued above.

Furthermore, based on the arguments the Petitioner has made herein, and the fact that most, if not all were never address by the Lower before deciding that the Petitioner did qualify as a Career Offender for sentencing purposes, the Petitioner respectfully asserts that this Court should grant Certiorari to settle the question presented herein in the Career Offender context.

The petition for a writ of certiorari should be granted.

Respectfully Submitted,



James Williams, pro se

Dated: September, 19, 2023