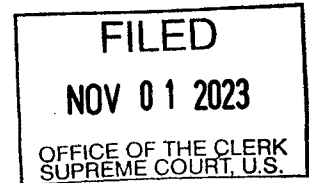


No. 23 - 6335



IN THE
SUPREME COURT OF THE UNITED STATES

Devonne Walker — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

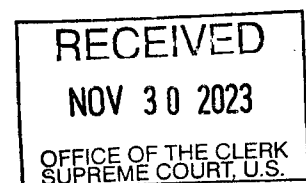
PETITION FOR WRIT OF CERTIORARI

Devonne Walker #52297-509
(Your Name)

FCI Coleman Medium P.O. Box 1032
(Address)

Coleman, FL 33521
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

1) Whether the lower court erred in applying a 4-level increase pursuant to U.S.S. Guideline § 3B1.1(a) in determining the Petitioner to be an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive.

2) Whether the district court erred in applying the 2-level increase pursuant to U.S.S. Guideline § 2D1.1(b)(1), in finding that a firearm was possessed but that it was clearly improbable the weapon was connected to the offense.

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Other

1. U.S.S. Guideline § 2D1.1(a)(5)
2. U.S.S. Guideline § 2D1.1(C)(1)
3. U~~3d~~S.S. Guideline § 2D1.1
4. U.S.S. Guideline § 2D2.1(b)(1)
5. U.S.S. Guideline § 3B1.1(a)
6. U.S.S. Guideline § 3E1.1(a)
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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☒ is unpublished.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 N/A 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☒ is unpublished.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☐ is unpublished.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 April 27, 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: August 28, 2023, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

Statute Provision

21 U.S.C. § 841(b)(1)(A)

21 U.S.C. § 841(b)(1)(B)

21 U.S.C. § 841(b)(1)(C)

United States Sentencing Guidelines

U.S.S. Guideline § 2D1.1(a)(5)

U.S.S. Guideline § 2D1.1(C)(1)

U.S.S. Guideline § 2D1.1

U.S.S. Guideline § 2D2.1(b)(1)

U.S.S. Guideline § 3B1.1(a)

U.S.S. Guideline § 3E1.1(a)

U.S.S. Guideline § 4B1.1(b)

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

STATEMENT OF THE CASE

A one count indictment was filed against the Petitioner in the Middle District of Florida on June 8, 2021 charging the Petitioner with conspiracy with intent to distribute a controlled substance in violation of 21 U.S.C. Section 846, 841(b)(A); 841(b)(1)(B), and 841(b)(1)(C).

The time period that the conspiracy supposedly was alleged to have transpired was between in or around March of 2018 through on or about October 10, 2019 and it involved supposedly 5 kilograms or more of a mixture and substance containing a detectable amount cocaine, a schedule II controlled substance; 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine a schedule II controlled substance; 1 kilogram or more of a mixture and substance containing a detectable amount of heroin, a schedule I controlled substance; 40 grams or more of a substance containing a detectable amount of fentanyl, a schedule II controlled substance and more than 50 kilograms of marijuana a schedule I controlled substance.

Petitioner involuntarily, unintelligently, and unknowingly pled guilty to this indictment through misinformation, manipulation, and misguidance by counsel with the impression that he would receive a much lesser sentence than he did receive.

During the Petitioner's change of plea hearing, Petitioner refused and declined to accept the alleged notice of maximum penalties, because he did not feel he was guilty of the above statue penalties for such conspiracy, especially when he was not arrested with anything at all especially no controlled substances in this conspiracy, yet charged with everything in it.

Petitioner also objected to the probation officer's application of a two-level firearm enhancement and 4-levels for being a leader or organizer of the conspiracy. The lower court's overruled the Petitioner's objections and determined the Petitioner to be a career offender, calculated the applicable sentencing guidelines to be a level 42, criminal history category VI, with an advisory sentencing range of 300 months to life. Petitioner was sentenced to 300 months in a Federal Prison followed by five years of supervised release.

Petitioner has exhausted all of his direct appeal rights from the U.S. District Court from a notice of appeal to a direct appeal, and then a rehearing hearing, Enbanc request in which was denied, and now to the United States Supreme Court for this writ of *certiorari* request from this Honorable Court.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable United States Supreme Court has the option to either accept this case or deny certiorari to this United States Supreme Court. However, Petitioner humbly request for the Supreme Court to accept this writ of certiorari because Petitioner was definitely improperly enhanced for a firearm that he had no dimonion nor control over 1000 miles away from his residence in someone else's home that he was not living at nor was a residence of. Petitioner was also labelled a leader and or organizer when in fact he was neither of the two.

Petitioner humbly request that this Honorable Supreme Court accept this writ of certiorari for the defendants that will come after the Petitioner and who will also be improperly enhanced based on false pretense for enhancements of a firearm that an individual have no dimonion or control over and is a thousand miles away from where the Petitioner himself lives in a house that the Petitioner does not live in. Petitioner also request and hopes and prays that this writ of certiorari will be accepted based on the fact that Petitioner was never a leader nor an organizer, yet enhanced as if he was.

If the United States Supreme Court accepts this case, it will alliviate other defendants from being improperly enhanced and overly enhanced for crimes that they should never have been enhanced for without any indicia of reliability to even enhance the Petitioner from the very start. Petitioner should never have received either of the two enhancements especially when there was no indicia of reliability for such enhancements.

Petitioner hopes and prays that this Honorable United States Supreme Court uses it's discretion and accepts this writ of certiorari based on all of the stated reasons in this reason for granting this petition so that other defendants throughout the nation will not in the future be improperly enhanced as the Movant has been and without any indicia of reliability for such two enhancements.

Petitioner states the following arguments in this petition for a writ of certiorari request to this Honorable United States Supreme Court.

Argument One

Whether the lower court erred in applying the 4-level increase pursuant to U.S.S. Guideline § 3B1.1(a) in determining the Petitioner to be an organizer or leader of criminal activity that it stated involved five or more individuals or otherwise extensive.

1) The Lower Court erred substantively in applying the 4-level increase pursuant to U.S.S. Guideline § 3B1.1(a) in determining the Petitioner to be an organizer or leader.

2) Prior to the Petitioner's sentencing he objected to the probation's recommending that his total offense level be enhanced by 4-levels for being an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive under U.S.S Guideline § 3B1.1 stating that it did not apply in his

case.

3) According to the sentencing guidelines, a "participant" is a person who is criminally responsible for the commission of the offense but need not have been convicted. A person who is not criminally responsible for the offense would be an informant or law enforcement, are not participants. U.S.S. Guideline § 3B1.1, application not 1(A). A person that doesn't know about a conspiracy, but happens to act in a way that advances some purpose of one, doesn't automatically become a conspirator. Instruction 013.1, Eleventh Circuit pattern jury instructions, criminal cases, 2019.

4) In order for the lower courts in Petitioner's case to engage in meaningful review, it was required to make a reasonably specific finding or the record must be and was required to be sufficiently clear, in Petitioner's case in point it was not sufficiently clear nor was it with sufficient findings. See U.S. -v- Skyes, 637, F.3d 146 (2nd Cir. 2011). Failure of the lower court's to do so as is required and or failure to do so required reversal in Petitioner's case. United States -v- Tai, 750 F.3d 309 (3d Cir. 2014).

5) In Petitioner's case the lower court simply stated without any sufficient nor specific findings in order to enhance the Petitioner for being a leader or organizer, the lower court stated without "specific findings and without being clear".

I'm going to overrule the defense objection
with respect to the role enhancement in

paragraph number 27. I find the Government has met its burden of proof by a preponderance of the evidence that Mr. Walker was an organizer, manager, or leader of the organization such as to warrant the four level enhancement under 3B1.1(a) Doc. 134.86

When announcing this ruling by the lower court it simply failed to articulate any specific findings as to the identities of those individuals who were deemed "participants" in the Petitioner's case or even that the total number of participants was even five or more. For example Mr. Stackhouse identified Lonnie Hammond as a runner who ran errands and whose actions were directed by the Petitioner. He did not, however, testify as to the specific errands Hammond ran for the Petitioner or that he had knowledge of any criminality of the Petitioner's conduct. Ms. Savage testified that she did believe that Mr. Hammond's reason for being with the Petitioner would suggest that the evidence is insufficient to establish that Mr. Hammond was a "participant" in this criminal activity. However, the lower court made no findings as to whether it was relying on the extensiveness of the activity as the basis for enhancing the Petitioner as opposed to the number of participants.

The errors are clear in this case in regards to this four (4) point enhancement. Petitioner was improperly enhanced without any indication of reliability through a preponderance of evidence in this case, and without specific findings. Petitioner's four (4) level enhancement was inadequate and insufficient without a

preponderance of evidence and not sufficiently clear as it required when enhancing the Petitioner for a (4) four level enhancement. See. United States -v- Skys, 7637 F.3d 146 (2nd Cir. 2011); and United States -v- Tai, 750 F.3d 309 (3rd Cir. 2014).

6) The errors are clear in this case, they are plain and they affected the lower court's fairness and integrity and the judicial proceedings in this case, and should not be left unchecked. United States -v- Vonn 535 U.S. 55, 5122 S.Ct. 1043 (2002).

Petitioner request remand from this Honorable United States Supreme Court back to the Lower Court: based on this improper (4) four point enhancement, that does not meet the requirements of Petitioner being enhanced (4) four points for being a leader or organizer, because there was no indicia of reliability, no specific finding for this (4) four point enhancement, nor was there any sufficient evidence, nor reasonably specific findings, nor was the record sufficiently clear, as stated above.

Argument Two

The lower court clearly and plainly erred in applying a 2-level increase in this case pursuant to U.S.S. Guideline § 2D1.1 (b)(1), in finding that a firearm was possessed but that it was not clearly improbable the weapon connected to the offense.

The lower court in this case applied a two point enhancement against the Petitioner under U.S.S. Guideline § 2D1.1(b)(1) based

on two firearms; a rifle found during the execution of a search warrant at the residence of Tymane Hamilton in Phoenix, Arizona and a said to be stolen firearm located in the rear passenger area area of the vehicle, that Petitioner was supposedly seen driving prior to his arrest.

An adjustment under U.S.S. Guideline § 2D1.1(b)(1) should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected to the offense. United States -v- Hansley, 54 F.3d 709 (11th Cir. 1995). Once the government has shown by a preponderance of evidence that the firearm was present at the site of the charged conduct the evidentiary burden shifts to the Petitioner to show that a connection between the firearm and the offense was clearly improbable. Hansley, Supra, states that if a dangerous weapon (including a firearm) was possessed, increase by two (2) levels. The enhancement should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected to the offense. U.S.S. Guideline § 2D2.1 cmt. 11(A).

In Petitioner's case, one of the firearms upon which the Court based the enhancement was found in a vehicle being driven by the Petitioner prior to his arrest. According to testimony elicited during the Petitioner's sentencing hearing, the gun was located inside a bag in the rear seat area of the vehicle. Petitioner's identification was found in the front seat area. There was no evidence presented, however, to establish the Petitioner's knowledge of the presence of the firearm in the vehicle or actual possession of it by the Petitioner. Therefore, the Lower Court erred in finding the Petitioner actually or constructively possessed

it in applying the enhancement based on this weapon. No D.N.A. of the Petitioner's fingerprint evidence was ever presented indicating that Petitioner had ever handled nor possessed the firearm nor was there ever any evidence presented or testimony establishing the identity of the owner of the vehicle. Because no evidence was presented to establish the Petitioner's knowledge of the presence of the firearm in the vehicle or actual possession of it by Petitioner, the Lower Court's erred fundamentally and substantively through plain error in finding the Petitioner actually or constructively possessed it and applying the enhancement based on this weapon.

The Lower Court also agreed on the enhancement based on the discovery of a Rifle in the residence of Tymane Hamilton, for a U.S.S. Guideline § 2D1.1(b)(1) firearms enhancement for a co-conspirator possession be applied to a convicted defendant, the government must prove by a preponderance of the evidence: (1) the possession of the firearm was a co-conspirator, (2) the possession was in furtherance of the conspiracy, (3) the defendant was a member of the conspiracy at the time of possession, and (4) the co-conspirator possession was reasonably foreseeable by the defendant. United States -v- Gallo, 195 F.3d 1278, 1284 (11th Cir. 1999).

While Petitioner concedes the rifle was found in the residence of a co-conspirator along with narcotics that were part of the conspiracy, there was no evidence to support either his actual knowledge of the presence of the gun or that it was reasonably foreseeable to him. Kanisha Savage testified that she introduced Tymane Hamilton to Petitioner, with who it can be inferred she had an existing relationship and who she knew to be a marijuana supplier. She testified she had been in his residence as recently as the day

before the execution of the search warrant and that she was unaware of the presence of any firearms in the home. While there was presented testimony that Petitioner had been inside the residence, there was no evidence presented to establish either that she knew the weapon was there or that Mr. Hamilton had used the weapon or any other, in furtherance of the conspiracy. As a result, there was insufficient information to establish the possession of the weapon by the Petitioner's co-conspirator as being reasonably foreseeable to the Petitioner. As such, Petitioner's enhancement for this gun enhancement should be remanded back to the lower court for a sentencing reduction and a new presentence report submitted. The error is clear, it is plain, and it affected the judicial proceedings, in this case, and the courts integrity, and if left unchecked would ruin the court's judicial fairness, based on all of the above stated reasons in this writ of certiorari. United States -v- Olano 507 U.S. 725, (1993), United States -v- Vonn 535 U.S. 55 (2005), Petitioner is presently serving an improper enhanced sentence in violation of the Petitioner's substantial rights, for which prejudiced the Petitioner and caused him to be improperly enhanced in violation of his substantial rights. Petitioner hopes and prays that a writ of certiorari will be granted in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Devonne Walker #52297-509

Date: November 1, 2023