

23-6357

No. \_\_\_\_\_

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SUPREME COURT, U.S.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

DALTON SMITH — PETITIONER  
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE FOURTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dalton L. Smith, Pro Se

(Your Name)

Satellite Camp Prison, Williamsburg

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(Address)

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(City, State, Zip Code)

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(Phone Number)

QUESTION(S) PRESENTED

1. Whether the denial of the Petitioner's 18 U.S.C. §3582(c)(1)(A) Motion is contrary to this Court's ruling in CONCEPCION? see *infra*.

## 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:

1. J. Agee, Circuit Judge
2. Hon. Joseph F. Anderson Jr., Senior District Judge
3. Drelton A. Carson Jr. (Suspended)
4. J. Floyd, Senior Circuit Judge
5. J. King, Circuit Judge
6. Stanley D. Ragsdale, U.S. Attorney
7. Dalton Laquane Smith, Petitioner
8. August G. Swarat II, Defense Counsel
9. William Kenneth Wheterspoon, U.S. Attorney

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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 U.S. v. Smith, 2022 U.S. Dist. LEXIS; or, 157181  
[ ] has been designated for publication but is not yet reported; or,  
[ ] is unpublished.

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

reported at U.S. v. Smith, 2022 U.S. Dist. LEXIS; or, 157181  
[ ] 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[ ] is unpublished.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 July 12, 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: September 19, 2023, and a copy of the order denying rehearing appears at Appendix C.

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).

STATEMENT OF THE CASE

On August, 30, 2022, the U.S. District Court for the District of South Carolina denied the Petitioner's Compassionate Release Motion pursuant to 18 U.S.C. §3582(c)(1)(A). The decision was rendered because the Court asserts that the Petitioner would still be a Career Offender under §4B1.1 of the U.S. Sentencing Guidelines.

The Court further asserts that his rehabilitation is commendable but rehabilitation alone is not enough to warrant relief. See United States v. Smith, 2022 U.S. Dist.LEXIS 15781 at LEXIS 9 (August 20, 2022).

On July 12, 2023 the Fourth Circuit Court of Appeals AFFIRMED "[c]oncluding that the district court did not abuse its discretion in [finding] there was no extraordinary or compelling reason to reduce Smith's sentence." See United States v. Smith, 2023 U.S.App.LEXIS 17654, No. 22-7383 (July 12, 2023).

On September 19, 2023 the Petitioner's petition for rehearing and rehearing enbanc was denied because no judge requested a poll under Fed.R.App.P.35 on the petition for rehearing enbanc.

The Petitioner now petitions this Court for a Writ of Certiorari because precedent judicial decisions in the Fourth Circuit is decided in the Petitioner's favor prior to the denial in the district court and the affirm by the appellant court.

The Petitioner is a Pro Se litigant and humbly asks that this Court Construe his Petition most liberally. Haines v. Kerner, 404 U.S. 519, 520 (1972).

REASONS FOR GRANTING THE PETITION

1. The denial of the Petitioner's 18 U.S.C. §3582(c)(1)(A) Motion (Compassionate Release) is contrary to this Court's ruling in United States v. Concepcion, 142 S.Ct. 2389, 2404, 213 L.Ed. 2d 731 (2022).

Moreover, in light of United States v. Simmons, 649 F.3d 237; 2011 U.S.App LEXIS 17038, No.: 08-4475, USCA4 (Aug. 17, 2011); and United States v. Chambers, 956 F.3d 667,; 2020 U.S.App.LEXIS 13106, No. 19-7104, USCA4 (Apr. 23, 2020); the Appellant's prior convictions as a matter of law do not qualify as prior predicates to enhance; because the least culpable conduct to 'distribute' under S.C. Code §44-53-375(B) is 'attempted transfer'. Conspiracy, attempt, and aiding and abetting are 'inchoate offenses' that are not "controlled substance offenses" as defined by the U.S. Sentencing Guidelines. See United States v. Jackson, USCA4, 2023 U.S. App.LEXIS 8447, No. 22-4179 (4th Cir. 2023); citing: Chambers, 956 F.3d 667.

Among other things, after the passing of the First Step Act of 2018, Pub. L. 115-391, 132 Stat. 5194, Title IV Sec. §401, the §802(44) of the CSA was amended to §802(57) and now reads "(57).

The term 'serious drug felony' means an offense described in section 924(e)(2) of title 18, United States Code, for which:

- '(A) the offender served a term of imprisonment of more than 12 months; and
- '(B) the offender's release from any term of imprisonment was within 15 years of the commencement of the instant offense."

Moreover, the Appellant has served less than 12 months on all of his prior convictions and more than ninety percent of those prior convictions he served a term of probation. Among other things, §4B1.4 and §4B1.2 of the U.S. Sentencing Guidelines share the same "controlled substance" definition. See U.S.S.G. of 2021

More importantly, the Circuit Court in Smith, 2022 U.S. App.LEXIS 17654 affirmed the district court's decision that he'd still be a Career Offender even though he is no longer an Armed Career Criminal. See Smith, 2022 U.S.Dist.LEXIS 157181 at LEXIS 9. That decision *supra* is contrary to this Courts decision in Concepcion, 142 S.Ct. 2389, because both the district court and the appellant court are not recognizing the intervening changes of the law as extraordinary and compelling reasons warranting relief.

As matter of law, in light of Simmons, Chambers, Jackson, and the First Step Act of 2018, the Petitioner, Smith is not an Armed, Career, Criminal as the Court concedes nor is he a Career

Offender.

This Court should use its discretion to grant this Petition because both the district court and the Fourth Circuit Court of Appeals are in violation of Rule 10(c) of this Courts rules as follows: "[a] state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court."

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Albert J. Smith

Date: 12-14-23