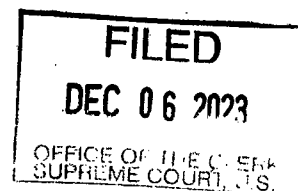


No. 23 - 6452



IN THE
SUPREME COURT OF THE UNITED STATES

Shannon R. Thomas — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for 8th circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Shannon R. Thomas
(Your Name)

Federal Correctional Complex
USP #1, P.O. BOX 1033
(Address)

Coleman, Florida 33521-1033
(City, State, Zip Code)

W/A
(Phone Number)

QUESTION(S) PRESENTED

- #1. If a person like the petitioner do not qualify or fall under the 924(c)(1)(C) penalty enhancement can the District Courts still convict the defendant under the 18. U.S.C. 924(c)(1)(C) without jurisdiction?
- #2. Since only Congress can make new laws and Congress Amended 924(c)(1)(C) of First Step Act Dec 21, 2018 to Apply only to repeat offenders in a subsequent judgment did District Court lacked jurisdiction under this subsection rendering the Judgment as to counts 3, 9, 11, 17, 19, 21, 23, 29, 31, 35 void?
- #3. If a defendant like the petitioner was sentence in 2019 or any time after Congress signed the First Step Act into law don't that mean the defendant can reap the benefits of the new law or the new law Apply to them without it being retroactive?
- #4. Since petitioner got Assaulted in Federal custody by an inmate lock in a secure cell and was neglected of medical care fender deliverance indifference and cruel & unusual punishment violation of defendant or prisoner 8th Amendment and Safety & Protection; Duty of care under Federal Statute U.S.C. 404.2 (A), (B) Federal Prisoners right and Correction Officer and Medical Staff Duties is or do the above fall or can be consider extraordinary & compelling reasons for compassionate release under 3582 (c) (1)(A) and ~~181.1(B)~~ 181.1(B)
- #5. Is Family Circumstances not limited to just that, and can be comprise of family circumstances and "other" reasons AS determined by the F.B.O.P. U.S.S.G. Section 1B1.13 Application Note for a forth 1B1.13 category specifically includes another extraordinary and compelling reasons "other", or in combination of or with the first three is this true?
- #6. If petitioner mother is the caregiver of petitioners two older maternal sibles and petitioner mother need him to be her caregiver

and overseer now do to her underlying health problems one major one being the open heart surgery to unclog her ~~4~~ ⁴ ~~Heart~~ Arteries to her heart and she is still waiting for another or additional open heart surgery do to two Arteries clogging back up is this extraordinary and compelling reasons under family circumstances & other for compassionate release.

7. Is not one of the main reasons to send a once-criminal like petitioner to prison is for rehabilitation, provide education and vocational training, medical care, and other correctional treatment in the most effective manner under 18 U.S.C.A. Section 3553? And if the answer is yes petitioner ASK respectfully, if petitioner was to take full advantage of what 3553 have to offer with proof from GED & Assortment of other Certificates and Psychology Dr's & Psychology Specialists observation and evaluation is not the petitioner eligible for a second chance to Amend his wrongs And can be consider for a rehabilitated person and is no threat or danger to Community or society? And if not looked at in this manner want it contradict sending a criminal to jail or prison to rehabilitate?

#8. Did the Supreme Court held that evident or evidence of post-sentencing rehabilitation may be highly relevant to several of the Section 3553 factors that Congress has expressly instructed District Courts to consider?

#9. If trained Psychology Doctor's & specialists and Recidivism calculations Algorithm / Pattern Score say Petitioner is not a threat or danger to himself nor the society or Community is petitioner not worth giving a second chance?

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. Adam Cain .US Attorney | 8. Paige A. Wymore Wynn (Clerk |
| 2. Benton, Appeals circuit Judge | 9. The rehearing panel for the Appeals Court |
| 3. Byron H. Black US Attorney | 10. She pherd, Appeals circuit Judge |
| 4. David, Alan Raskin US. Attorney | 11. Teresa A. Moore US. Attorney |
| 5. Kays, Greg Honorable Judge | |
| 6. Kelly Appeals circuit Judge | |
| 7. Mary Kate Botterfield U.S. Attorney | |

RELATED CASES

United States v. McCoy, 981 F. 3d 271, 274 (4th cir. 2020)
United States v. Jones, 482 F. Supp. 3d 969 (N.D. Cal. Aug 27, 2020)
United States v. Haynes, 456 F. Supp. 3d 496, 514-16 (E.D.N.Y. 2020)
United States v. Redd, 444 F. Supp. 3d 717, 723-724 (E.D. VA. 2020)
Concepcion v. United States, 597 U.S. (2022)

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APPENDIX D	United States District Judge Greg Kays Denying motion on July 18, 2023
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OTHER

Merriam Webster's Collegiate Dictionary 228 (11th ed 2005) ~~in~~ 10

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 D 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 August 14, 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 18, 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

- United States Const. Amend V (under due process)
- United States Const. Amend VIII (cruel and unusual punishment)
- 18 U.S.C. 924(c)(1)(C) and 2
- 18 U.S.C. At 3353 under First Step Act of Dec 21, 2018 7pg
- 18 U.S.C. First step Act section 403
- 18 U.S.C. 404.2 (A)(B)
- 18 U.S.C. 3142 (g), USSC 6 12B1.13
- 18 U.S.C. 924(c)(1)(A)(ii)

see Appendix E

STATEMENT OF THE CASE

In August 9, 2017 a grand jury, in the Western District of Missouri return a second superseding indictment charging the Petitioner with Conspiracy to commit Hobbs Act robbery and Hobbs Act robbery and possession of a firearm in the furtherance of a crime of violence. Petitioner proceeded to trial in or on May 10, 2019. A jury returned verdicts of guilty on: 1) Conspiracy to Commit Hobbs Act robbery; ~~2) U.S.C. section 1951(a)~~; 2) Felon in possession of a firearm 18 U.S.C. section 922(g)(1), and 924 (a)(2); 3) Ten counts of Hobbs Act robbery 18 U.S.C. section 1951(a) and 2; 4) Ten counts of Possession of a firearm in a furtherance of a crime of violence 18 U.S.C. section 924 (c)(1)(A)(ii), (c)(1)(C) and 2.

At sentencing hearing on October 8, 2019, the Honorable Judge D. Greg Kays for the United States District Court of Western District of Missouri. Sentence Petitioner to Life on the last 18 U.S.C. Section 924 (c)(1)(A)(ii), (c)(1)(C) and 2 brandishing count and Seven years for each of the nine remaining brandishing 18 - U.S.C. Section 924 (c)(1)(A)(ii), (c)(1)(C) and 2, to run consecutive to one another for a total of 63 yrs imprisonment. After the New Law the First Step Act of Dec 21, 2018 Clarify title "Clarification" of 924(c) 924(c)(1)(C) in section 403 of First Step Act was signed in to make clear on how to apply the penalty Enhancement charge to prevent a miscarriage of justice, gross disparity and egregious and highly unusual case rendering relief for lack of jurisdiction.

Also Petitioner was charge and convicted on Ten counts of Hobbs Act robbery 18 U.S.C. section 1951(a) and 2 receiving Nine yrs for each one, Nine yrs for felon in possession of a firearm 18. U.S.C. section 922

Statement of the Case (cont'd)

(g) (1) and 924 (a) (2), Nine yrs for the Conspiracy to Commit Hobbs Act robbery all counts to be ran concurrent with one another.

On January 25, 2023 the Petitioner filed a second 18 U.S.C. 3582(c)(1)(A) Sentence reduction / Compassionate Release raising Actual & Factual jurisdiction errors, miscarriage of justice, gross disparity, egregious and highly unusual case as to his illegal 924 (c)(1)(A)(ii), (c)(1)(C) and 2 convictions on 10 counts. Petitioner raise the relevant heightened risk of suffering a negative outcome from Covid-19 and its deadly variances since petitioner have Asthma a chronic ~~disease~~ and the different medication he take daily. Petitioner raised Actual and Factual under penalty of perjury Family Circumstances and 'Other' where the petitioner mother need him to be her caregiver and over looker of his two ill older maternal sisters (she is his mother) the primary caregiver. Petitioner oldest sister the first born of the three of them suffer from severe mental and physical disease. His other older sister who is the middle or second of them suffer NFD / NFD (Neurological Functional Disease) that have her suffering from daily seizurers, migrains, and brain shut downs that have her wheelchair bound at times. Petitioner expressed that their mother (his mother) had just had a open heart surgery to unclog her four heart vessels. That she is ~~de~~ still dealing with being two is ~~now~~ still clogged. And she is awaiting additional heart / open heart surgery for a second time. Also petitioner raised Actual & Factual under penalty of perjury issues of Lack of Safety and Protection, and Medical care violation of 8th Amendment while in Federal Custody breaching "Duty of Care" under Federal Statute 18 U.S.C. 404.2 (A)(B). Stemming from the miscarriage of justice and Lack of jurisdiction charging and convicting and sentencing petitioner with 924 (c)(1)(A)(ii), (c)(1)(C) giving him a Life plus 63 yrs sentence that heighten his custody level to where he had to be sent to a United States

Statement of the Case (cont'd)

Penitentiary (U.S.P.). Petitioner under penalty of perjury had to fight for his Life in a secured cell with another inmate and prisoner. Petitioner received multiple stabbings injuries to body & Head. Then was neglected proper medical care resulting and rendering cruel & unusual punishment, gross negligence, and Del.

That petitioner is still trying to seek some kind of justice for his irreparable progressing injuries. through a Civil Lawsuit / Bivens Claim, Thomas v. Antonelli, et al 5: 5:22-cv-00496-PGB-PRL. All above Factual & Actual merit issues - falling under in this motion of 18 U.S.C. 3582 (c) (1) (A) Compassionate release / Sentence reduction, as U.S.S.G. section 1.B.1.B extraordinary and compelling reason and "others" and the changes in law that should of Applied to petitioner at sentencing individually and in combination, constitute "extraordinary & Compelling" reasons for compassionate release. Petitioner stated "The correct interpretation of section 3582 (c) (1) (A) based on the text, Statutory history and structure, and consideration of Congress's Ability to override any of the Commission's policy statements at anytime... - is that when a defendant brings a motion for sentence reduction under the amended provision, the courts can determine whether any extraordinary and compelling reasons "other" than those delineated in U.S.S.G. section 1B1.8 cmt. n. 1. (A) - (C) warranting granting relief."

Petitioner Also raised his rehabilitation milestones & progress that is Actual & Factual under penalty of perjury. That is backed by he stated: Not only backed by the new Law Abiding citizen that he know and Feel he is Now that he love GOD & himself. But his rehabilitation is backed by Officials in the field of psychology human behavior, Manipulation behavior, Criminal behavior, deceitful behavior and intentions. These Officials is Dr's and Specialists that have been Observing, monitoring and

Statement of the Case (cont'd)

teaching & guiding him for over two yrs continuously in the BOP rating 80% per recidivism prevention program "The Challenge Program". Petitioner presented under the ~~title~~ title Attachments his Assortment of Certificates and degrees including his GED he Attain while being a active participant in one of the most Biggest programs by BOP rating and the change petitioner. stated he see in hisself. Also petitioner present under the same title statements and progress reports from Drs & Specialists. Acknowledging the change in Petitioners Thinking and behavior calling him a mentor, a model of appropriate behavior and serves as a positive role model and he provides useful positive feedback to others to say the least. The Challenge Program by BOP ratings that those who complete the program 80% do not recidivise in come back and become productive citizens. Also petitioner raised in support of his rehabilitation is his pattern score number is now negative or low number According to BOP's calculations. He basically has a calculation of NO RISK OF Recidivism which support that he is Actually & Factually NO danger or threat to hisself of Society and Community. That the Supreme Court held that Evidence of Post Sentencing Rehabilitation may be highly relevant to several of the section 3553 (a) Factors that Congress has Expressly instructed district courts to consider at sentencing.

Petitioner also raised, if granted the courts can order additional terms of supervised release as set forth to ensure public safety such as house confinement or detention / halfway house.

Petitioner also raised Section (B) cites Congress in the First Step Act did not Contravene well establish sentencing practices pp. 11, 18. And petitioner cited *Concepcion v. United States*. The Courts therefore holds that the

Statement of the Case (cont'd)

First Step Act allows District Courts to consider interviewing changes if Law and Facts is set forth, to reduce a sentence pursuant to the FSA as petitioner case is. When deciding a FSA motion District Courts bear the standard obligation to explain their decisions and demonstrate that they considered the parties non-frivolous arguments (see Golan v. Saada, 595 U.S. 306). Conception also remind the lower courts to not miss the fact that the convicted person is an individual. Id. 597. Also petitioner raised that it's a fact "When considering a motion under 3582 the court is not relinquished from taking these laws and orders into consideration. A defendant standing before a court merely - years or sometimes even decades prior to requesting relief is not the same person with the same defects that lead to the committing of the crime or crimes that ~~lead~~ him or her is seeking relief from. Because people grow, mature and evolve cause conditions and circumstances change. Petitioner respectfully had asserted that ~~it is~~ "It is again difficult if not impossible to determine who, after having been convicted of a serious crime, has the capacity for change. That is, like Petitioner has the capacity for Rehabilitation and redemption, then Petitioner cited GOD Law and what the Judge swear in on, the Bible (Holy Bible 1 Corinthians 2: 10-15 from Attachment A). This type of reasoning must not be only considered an argument for rehabilitation but that the defendant's sentence exposure is no longer in the scope of what is necessary under section 3553 factors as opposed to that at a defendant's initial sentencing. Congress for all purposes provided advisory guideline ranges to help the courts avoid sentencing disparities amongst defendants that have like or similar criminal histories. Petitioner then stated that prior to his conviction he was a non-violent felon, he only had a second degree robbery in his criminal history which is a non-violent crime. Moreover if the courts was to look into the nature of the crime one will see the case the will conclude

Statement of the Case (Cont'd)

He was unaware of the robbery being act out. He was only there merely presence with bad or the wrong company with an immature "I can't tell" 18 year old brain that studies show males tend to reach full maturity at the age of 25 or 40 years of age. Although it has been determined that rehabilitation coupled with other factors could be enough to overcome the intent threshold required as Congress determined. Also Petitioner quoted a ~~of~~ list of granted Compassion Release motions and Sentencing disparities. These motions was granted and the First Step Act Clarification of 924(c)(1)(A) and (C)(1)(C) should have applied to petitioner since he did not get sentence until 2019 After the First Step Act was sign into Law by the Honorable Congress. (Please see Attachment

All factuall & Legal Arguments & violations was deny by the Appeals Court for the 8th circuit, ST Louis, Missouri. Petitioner sent a Affidavit in support of his Appeal to the Appeal courts of his circuits. The Affidavit high lighted the Key Actual & Factual legal miscarriage, lack of jurisdiction and justice and Arguments of merit and was deny any time of justice.

REASONS FOR GRANTING THE PETITION

On Oct 8, 2019 petitioner was sentence to 63- yrs for nine of his 10 mandatory minimum 7yr br- anishing 924(c)(2)(A)(ii), (c)(1)(C) and 2 charges. Also petitioner was or receive a Life sentence for the last or tenth mandatory minimum 7yr branishing 924(c)(1)(A)(ii), (c)(1)(A) and 2 charge. Petitioner do not qualify for or fall under the (c)(1)(C) penalty enhancement that is At- tach to All ten of petitioner madatory minimum 7yr branishing 924(c)(1)(A)(ii) charges. Congress passed and Sign the First Step Act into Law on Dec 21, 2018. In this New provision Congress Clarify the once gross misAppli- cation or used of 924(c)(1)(C) charge under the title of "Clarification". The term "Clarification" used by Congress to describe section 403 of the First Step Act, generally, is define as: "to make clear, to free of confusion, to make understandable, or to become clear (Merriam-Webster's coll- egiate Dictionary 228 (11th ed 2005)). This definition and Clarification of the language in section 924(c)(1)(C) prior to Dec 21, 2018 was either unambiguous, but misapplied, or it contained a "vagueness" resulting in a misinterpretation that required "Clarification". Petitioner respectfully assert that ~~do not not~~ court lack jurisdiction in the use of the (c)(1)(C) and 2 to heighten petitioner 924(c) charges. Only Congress elected representatives have the right to, and power to write new federal criminal laws not District courts. After Congress First Step Act "Clarifi- cation" of the use of 924(c)(1)(C) of Dec 21, 2018, peti- tioner Oct 8, 2019 sentence cause a miscarriage of ju- stice and a infringed upon organic Law which Allow's Peti- tioner protection (ie. his Constitutional Right). Petitioner stand putative under constitution as a victim of injustice under common law therefore rendering Petitioner Actualy Factual, & Legally innocent. Because there is no factual law basis evindence for petitioner 924(c)(1)(C) charges because he is legally and factually innocent of the offense. Or said another way, Petitioner respectfully st- ate that he stands convicted of an offense that does

Reasons For Granting The Petition

not exist, please see *Reyes Requena v. United States*, 243 F.3d. 893, 904 (5th cir. 2001) (recognizing that a defendant's claim that "he had been imprisoned for non-criminal conduct" counts as a claim of actual innocence. Ultimately, if the courts find that: "The sentence imposed was not Authorized by law or otherwise open to collateral Attack, or that there has been such a denial or infringement of the Constitutional rights of the prisoner to render the judgement vulnerable to collateral Attack, the court shall vacate and set the judgement aside & shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as it may appear appropriate." Petitioner respectfully Assert that it is a disparity in the sentence that he is serving compared to the legal sentence he was supposed to receive or able to receive provide extraordinary and Compelling reasons for Compassion relief. (lack of jurisdiction please see *Good Cause*" under Fed. R. Crim P. 12 (c)(3)) (*United States v. Trans* (2d Cir 2000))

② It's a fact under penalty of perjury that Petitioner mother is in need a caregiver. She had an open-heart surgery to unclog her four heart arteries. She still waiting for enough time to pass to receive a second or additional open-heart surgery to Address the two arteries that got back clogged up. Petitioner mother is the caregiver of her two oldest children (Petitioner two maternal big sister petitioner is the baby or youngest of the three) And their mother is the overseer and caregiver of the petitioner oldest maternal sister two kidz who is young one is a young teenager. Petitioner two big sisters is both suffering from chronic mental and physical diseases and now The caregiver (Petitioner & his sister mother) is now suffering from heart disease and they are in need Petitioner. Under the pursuant 18. U.S.C. Section 3582 (c)(2)(A), family circumstance, family member becomes incapacitated without an Alternative caregiver; and "other reasons" as determined by the B.O.P. U.S.S. Section 1B1.13, and the change in Law. ③ Petitioner State it's a fact under penalty

Reason For Granting The Petition

of perjury that he was exposed to danger while in in the care and custody of Federal Bureau of Prisons. When he had to fight for his life in a Federal secure cell with another inmate and petitioner receive multiple stab wounds to Head, face, & body then was neglected adequate and efficient medical care once return from outside hospital with Doctor's order on how to care for my petitioner injuries. Rendering cruel and unusual punishment & deliberate indifference. Now petitioner suffers from irreparable injuries such as photophobia, headaches, migraines that can lead to seizures, emotional & sp. please see "Lack of Safety and Protection and Medical care" Violation of 8th Amendment while in Federal custody "Duty of Care" under Federal Statute 18 USC 404.2 (A)(B). And please see Petitioner civil lawsuit against FCC U.S.P. #1 Coleman, Thomas v. Antonelli, et al, case No: 5:22-cv-00496-PGB-PRL.

① In closing Petitioner state under penalty of perjury that he develop healthy skill sets since his incarceration. He can proudly say that he can look in the mirror in be proud of the new man he see with ~~the~~ his new rehabilitated soul, heart, & mind thanks to the GOD the Courts swear in by, The Honorable Courts, all the Law enforcement that help get a lost addicted soul off the streets to be held Accountable, Thanks to the B.O.P., education and vocational training, correctional treatment, The Challenge Program and the Drs & Specialists in the program and out here at Coleman USP #1 and his family who is a supportive factor in his re-entry home plan and safety net to prevent recidivism. Petitioner have a great chance of employment other from the fact that he will be his mother caregiver and family (siblings) over see the he states he get more of an ~~psysic~~ income than tangible. Petitioner rehabilitate is not only backed by how he feel and the Certificates in a range of different need address areas in his life but it's backed By Psychologist Doctor's and Specialists who is the best trained at detecting deceit and

manipulation and human behavior. Also his pattern score ~~show~~ or Attest to Petitioner not being an danger or threat to hisself or Community (please see writ of certiorari)

In summary the lower courts conflicted with Congress decision and Law on multiple Accounts by not exercising their power granted by the Higher table or Courts / Supreme Court / Congress. Within petitioner Sentence and doing his sentence being served out once they was aware of the injustice and lack of Jurisdiction infringe upon Petitioner. The lower Courts extensively departed from the usual and Accepted course of Judicial proceedings and sanctions to where it is a dying need call for the exercise of the Supreme Court supervisory power to return or restore Justice for All. Thank You. So help me GOD.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Memor R. Thaud

Date: December 6, 2023