

No. 23-6612

23-6612

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JAN 10 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Cornelius R. Caple

(Your Name)

— PETITIONER

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the 11th Circuit

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

PETITION FOR WRIT OF CERTIORARI

Cornelius R. Caple

(Your Name)

P.O. Box 1032

(Address)

Coleman, FL 33521

(City, State, Zip Code)

N/A

(Phone Number)

RECEIVED

JAN 29 2024

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether the Lower Court's erred in declaring the Petitioner a career offender in violation of Borden -v- United States, 141 S. Ct. 1817 (2021); Jackson -v- United States, 22-6640, U.S. Supreme Court Cite; and Brown -v- United States, 22-6389, U.S. Supreme Court Cite.

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:

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<u>U.S. -v- Erlinger</u> , 142 S. Ct. 1817 (2021)	(3)
<u>Johnson -v- U.S.</u> , 130 S. Ct. at 1269-70 (2010)	(5)
<u>Johnson -v- U.S.</u> , 135 S. Ct. 2251 (2015)	(5)
<u>Leocal -v- Ashcroft</u> 543 U.S. 1, 9-10 (2004)	(5)

STATUTES AND RULES

- 21 U.S.C. § 841(a)(1)
21 U.S.C. § 841(b)(1)(c)

OTHER

- Fla. Stat. Section 893.13
Fla. Stat. Section 784.021 (1993)

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October, 19, 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: _____, 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. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix _____.

- A timely petition for rehearing was thereafter denied on the following date: N/A, 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 N/A (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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 "B" 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 N/A; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the N/A court appears at Appendix _____ to the petition and is

[] reported at N/A; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution

Sixth Amendment of the United States Constitution

STATEMENT OF THE CASE

In 2019, a federal grand jury sitting in the Southern District of Florida returned a four-count indictment against Petitioner, charging him with four counts of possession with intent to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C). Three counts alleged the controlled substance contained a detectable amount of heroin and one count alleged a detectable amount of fentanyl. Petitioner pled guilty to all four counts. The Petitioner's Presentence Report classified him as a career offender, pursuant to U.S.S.G. § 4B1.1(a), based upono invalid Florida state prior convictions for possession of heroin and cocaine with intent to sell under Fla. Stat. § 893.13 and a prior Flordia conviction for aggravated assault with a firearm, and determined his advisory guideline range was 151 to 188 months imprisonment.

Petitioner objected to being a career offender.

Petitioner's objections were overruled and he was declared a career offender and sentenced to 132 months in a Federal United States Prison, where he now resides.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable Court does not have to accept this case, and that this Honorable United States Supreme Court has it's own discretion as to whether it wants to reject and or accept a writ of certiorari. However, Petitioner request that this Honorable Court accepts this writ of certiorari, based on Jackson -v- United States, United States Supreme Court cite 22-6640; Brown -v- United States, U.S. Supreme Court Cite 22-6389; and Erlinger -v- United States, U.S. Supreme Court Cite 23-370, and Borden -v- United States, 142 S. Ct. 1817 (2021).

Petitioner's writ of certiorari, would very well affect the nation as a whole, and would set the stage for other cases to perform on. This is the reason why Petitioner is requesting this Honorable Court to accept his writ of certiorari.

ARGUMENT ONE

- 1) Petitioner's two state priors, or the State of Florida were used to career the Petitioner, for Florida state section 893.13, for cocaine and for aggravated assault with a firearm for which the Petitioner was sentenced to 132 months in a Federal United States Prison. Petitioner's two state priors, not eligible for career offender enhancement purposes, because aggravated assault with a firearm in Petitioner's case in point must be intentionally and deliberately, and with purposeful conduct that was "specific conduct".
- 2) Petitioner's aggravated assault was without deliberate mens rea, and without specific conduct. Therefore according to Borden -v- United States, it was not eligible for career offender status, nor was this state prior determined by a jury beyond a reasonable doubt, by a Jury. United States -v- Erlinger, 23-370, U.S. Supreme Court Cite.
- 3) Petitioner's second state prior that was used to career him based on a Florida State prior section 893.13, was not eligible for career offender status, based on Jackson -v- United States, U.S. Supreme Court cite, 22-6389 / Brown -v- United States, U.S. Supreme Court cite 22-6640. Petitioner's cocaine charge was also inappropriate for career offender status based on Erlinger/Brown/ and Jackson, supra.

4) According to United States -v- Johnson, 135 S.Ct. 2251 (2015); Johnson -v- United States, 130 S. Ct. at 1269 (2010); Leocal -v- Ashcroft, 543 U.S. 1, 9-10, (2004); and Borden, supra, Petitioner's State prior for aggravated assault with a firearm for Fla. State section 784.021 (1997) offense was committed with recklessness, and was not intentionally nor deliberately. See Borden, supra.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Cornelius Caple
Cornelius R. Caple

Date: Jan 10th, 2024