

No. _____

ORIGINAL

23-6857

FILED

OCT 26 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Lamar Gibson — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

11th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lamar Gibson
(Your Name)

P.O. Box 3850 - Victorville Med-2
(Address)

Adelanto, Ca. 92301
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1) Did court reporters violate petitioner's due process, fair trial and 1st Amend rights when they violated 28 USC 753 (b), by omitting, manipulating and altering trial testimony that was substantial and significant as declared in affidavit submitted in support and did the lower courts committed reversible error in it's assessment of facts relating to claim when they stated petitioner did not point to or enumerate parts that was missing?
- 2) Whether appellate counsel ineffective for failure to challenge accuracy of transcripts that was in violation of 28 USC 753(b), as instructed to do so?
- 3) Whether trial counsel ineffective for failing to object to jury selection in violation of F.R. Crim. P. 24(b) and 43(a), resulting in bias jury and unfair trial?
- 4) Whether lower court(s) committed reversible error when it failed to reach all due process claims submitted in COA, specifically predicate relating to career offender designation that was pending at the time it vacated sentence in another case while petitioner's claim was before that court that was in the same posture as the defendant in U.S. v Gregory Welch was at the time this court decided Johnson (ACCA predicate) See Brandon Dupree 11th Cir 2023 57th 4th 1269 (1-18-2023)?
5. whether the penalties under (b)(1)(A) and (b)(1)(B) are the same for purposes of career offender designation with base offense level 37 resulting in sentence of 360- life under both and if not whether lower court committed reversible error?

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U.S. v. Weissar, 417 F.3d 336, 342 (2nd Cir. 2005)

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6th Amend

Davis v. Alaska, 415 U.S. 308, 318, 39 L. Ed. 2d 347, 94 S. Ct. 1105 (1974)

Tucker v. Day, 969 F.2d 155, 159 (5th Cir. 1999)

Castillo v. Florida, 702 F.3d 1281 (7-22-2013)

U.S. v. Russell, 205 F.3d 768 (11th Cir. 3-1-2000)

Hernandez v. U.S., 202 F.3d 486, 2000 WL 123937, at *3 (2nd Cir. 2000)

Strickland, 466 U.S. at 102, 104 S. Ct. 2067

Virgil v. Dretke, 446 F.3d 598

U.S. v. Todd, 287 F.3d 1160 (5-7-2002 D.C. Appeals Court)

F.R. Crim. P. 43 (a)(2)

5th Amend Due Process

U.S. v. Curtis, 635 F.3d 704 (11th Cir. 3-11-2011)

U.S. v. Arbolaez, 450 F.3d 1283, 1295 (11th Cir. 2006)

Chadwick v. Green, 740 F.2d 897, 900 (11th Cir. 1984)

U.S. v. Bradford, 237 F.3d 1306, 1311 (11th Cir. 2001)

Lewis v. U.S., 146 U.S. 370, 376 (1982)

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Proffitt v. Wainwright, 685 F.2d 1277, 1260 (11th Cir. 1982)

U.S. v. Navaton, 271 F.3d 968, 999 (11th Cir. 2001)

Gray v. Greer, 800 F.2d 644 (7th Cir. 1985)

Davila v. Davis, 198 L. Ed. 2d 603, 137 S. Ct. 2058 (6-26-17)

Pollard v. White, 119 F.3d 1430 (3-20-97)

Christopher v. Harbury, 536, 403, 153 LEd 413, 122 S. Ct. 2179 (2002)

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Smith v. Robbins, 522 U.S. 269, 288, 120 S. Ct. 746, 145 L. Ed. 756 (2000)

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Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830, 83 L. Ed. 2d 821 (1985)

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U.S. v. Charles 313 F.3d 1278, 1283 (11th Cir. 2002)

U.S. v. Preciado-Cordobas, 981 F.2d 1206, 1212 (11th Cir. 1993).

1st Amend. violation (denial of access to courts)

U.S. v. Nolan, 910 F.2d 1553 (2-24-1990)

Houston v. U.S. 419 F.2d 30, 34 (5th Cir. 1969)

U.S. v. Gallo, 763 F.2d 1504 (6th Cir. 1985)

U.S. v. Selva, 559 F.2d 1303, 1306 (5th Cir. 1977)

U.S. v. Gregory, 472 F.2d 484 (5th Cir. 1972)

U.S. v. Elmore 2018 U.S. App. LEXIS 22445

U.S. v. Huggins, 191 F.3d 532, 534, 537 (4th Cir. 1999)

U.S. v. Haber 851 F.3d 881, 890 (10th Cir. 2001)

U.S. v. Joseph 140 Fed. Appx 107 (7-8-2005)

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U.S. v. Smalls 487 Fed. Appx 302 (7th Cir. 6-28-2012)

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U.S. v. Dupree 57 F.4th 1269 (11th Cir. 2023)

U.S.S.G. 4B1.2(b)

U.S. v. Weir, 51 F.3d 1031 (10 Cir. 1995)

U.S. v. Smith 54 F.3d 690 (11th Cir. 1995)

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21 U.S.C. 846

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Collier v. Jones 910 F.2d 770, 774 (11th Cir. 1990)

21 U.S.C. 851

Fair Sentence Act 2010

First Step Act 2018

U.S. v. Bigman 906 F.2d 392, 395 (9th Cir. 1990)

De Luna v. Lynaugh 873 F.2d 757, 760 (5th Cir.)

LaBruna v. U.S. Marshal 665 F.2d 439, 442 (2nd Cir. 1981)

U.S. v. Cignari, 952 F.3d 1301 (3-17-20)

U.S.S.G. Ch. 5, Pt. A.

U.S. v. Robinson U.S. Dist. LEXIS 197427 (11-13-2019)

Apprendi v. New Jersey 530 U.S. 466, 120 S.Ct. 2348 (2002)

Alleyne v U.S. 570 U.S. 99, 133 S.Ct. 2151 (2013)

U.S. v Johnson U.S. Dist LEXIS 88858 (5-19-2020)

18 USC 3553(a)

TABLE OF AUTHORITIES CITED

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21 USCS 846

21 USCS 851

21 USCS 3553(a)

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28 USCS 2253

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USSC Ch. 5, Pt. 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 B to the petition and is

☐ reported at U.S. v Gibson, 678 Fed. Appx. 823 (2017); or, (11th Cir. 2017)
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

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

☐ reported at U.S. Dist. LEXIS 172112 WL 4134400 (N.D. Fla. 9-10-2021); 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 2-16-2023.

☐ 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: 7-18-2023, and a copy of the order denying rehearing appears at Appendix D.

☐ 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

5th Amend Due Process
6th Amend (fair trial) (bias jury) (ineffective assistance of counsel)
1st Amend (denial of right to access)
21 USCS 841(b)(1)(A)(iii)
21 USCS 841(b)(1)(B)(iii)
21 USCS 846
21 USCS 851
18 USCS 3553(a)
28 USCS 2253(c)(2)
28 USCS 2255
28 USCS 1254
28 USCS 1291

STATEMENT OF THE CASE

A Federal grand jury indicted Gibson and Shawn Maurice Greer on three counts related to the distribution of crack cocaine. Count One charged Gibson and Greer with a conspiracy to distribute 50 or more grams of crack cocaine, 21 USC 841, 846. Count Two charged Gibson and Greer with distribution of 50 or more grams of crack cocaine on 2-22-2008, 21 USC 841(a)(1), (b)(1)(A). Count Three charged Gibson and Greer with attempt to distribute 50 or more grams of crack cocaine on 5-22-2008, 21 USC 841, 846. The jury convicted Gibson on all 3 counts on 10-11-2012. The district court sentenced Gibson to 360 mos on counts 1-3 to run concurrent on 3-14-2013. He timely appealed and the 11th Cir. affirmed on all grounds on 1-31-2017. Gibson sought certiorari and U.S. Supreme Court denied cert on 1-8-2018. Gibson filed his 28 USC 2255 on 1-7-2019, raising several grounds for relief including violations of 28 USC 753(b), denial of a public trial, denial of the effective assistance of counsel, Fraud on the court (Hazel Atlas), suppression of evidence by prosecutor (prosecutorial misconduct), First Step Act and ESA and his status as a career offender. The district court denied on all grounds and denied COA on 9-10-2021. Gibson sought COA from 11th Cir after being granted Fed. R. App. P 4(a)(6) relief on (4-25-2022) (limited remand) 7-12-2022. On 2-16-2023 the 11th Cir. denied Gibson's request for COA, after granting relief on same issue in another case (Dupree, relating to inchoate offense). Gibson sought rehearing and was denied on 7-28-23 and on 10-25-2023 he filed for cert. within the 90 days for petitioning Supreme Court.

REASONS FOR GRANTING THE PETITION

The reason this court should exercise discretion and grant cert is to prevent a continued miscarriage of justice, due process violation relating to trial transcripts that's in violation of 28 USC 753, fraud on court by trial attorney by submission of false affidavit and Hazel-Atlas claim and Welch type claim that was pending in COA that lower court failed to reach relating to 846 predicate that was used for career offender classification and bias juror whose name was intentionally removed by court reporter because of prejudicial statement she made when she told the court her brother-in-law was addicted to heroin and her mother-in-law overdose on prescription medication. The lower court committed reversible error on issue of 28 USC 753(b) violation when court determined petition. None did not enumerate or specify what parts of the records was missing, when in fact he pointed to and enumerated in affidavit that was submitted in support of 28 USC 2255. For these reasons and more this court should grant cert and remand to lower court and/or in the alternative vacate, reverse because of denial-of-access to courts as a result of altered, manipulated and deleted transcripts. Remand is warranted because lower court failed to reach all due process claims in application for COA.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Yaron Milson Pro Se

Date: 1-30-24