No. 23-6954

IN THE

SUPREME COURT OF THE UNITED STATES

CHARLES BRUCE THOMAS — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE 7TH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLES BRUCE THOMAS
(Your Name)

P.O. BOX 1700
(Address)

GALESBURG, IL 61402
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

WHETHER THE 7TH CIRCUIT COURT OF APPEALS DECISION IN THE CASE AT BAR IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT 'S DECISION IN WITTE V. UNITED STATES, 515 U.S. 398, 115 S.CT. 2199, 132 L.ED 2d 351 (1995) AND LIKEWISE WITH IT'S OWN DECISION UNITED STATES V. BLKACKWELL, 49 F.3d 1232 (7th CIR. 1995) AND UNITED STATES V. PHIPPS, 68 F.3d 159 (7TH CIR. 1995)

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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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

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is 23-1377 (7TH CIR. 2023)

[ ] reported at UNITED STATES V. THOMAS ; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

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

[ ] reported at ~~N/A~~ 4:98-CR-40004-001 ; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A 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[ ] is unpublished.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 N/A to the petition and is

[ ] reported at N/A ; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was August 24, 2023.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 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 N/A (date) on N/A (date) in Application No. N/AA.

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 N/A.

[ ] 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 N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A N/A.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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U.S.S.G. § 5G1.3(b). It provides that when a defendant recieved a prison sentence for an "offense that is relevant conduct to the instant offense of conviction," the sentencing court shall adjust the sentence for any period of imprisonment already served on the undischarge term of imprisonment, U.S.S.G. § 5G1.3(b)(1) and "the sentence for the instant offense shall be imposed to run concurrently to the remainder of the undischarged term of imprisonment, "U.S.S.G. § 5G1.3(b)(2).

Federal Rule of Criminal Procedure 52(b) provides that "a plain error that affects substantial rights may be considered even though it was not brought to the district court's attention." United States v. Olano, 507 U.S. 725, 113 S.C.t. 1770, 123 L. Ed.2d 508 (1993); see also Molina-Martinez v. United States, 578 U.S.____, 136 S.Ct. 1338, 1343, 194 L.Ed.2d 444 (2016)

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STATEMENT OF THE CASE

On November 6, 1997, Defendant Charles Thomas's life changed dramatically. On that date, his girlfriend, Anissa Green, died. On November 6, 1997, officers executed a search warrant on his residence, and discovered a 25 caliber semi-automatic pistol with a magazine and ammunition, crack cocaine and marijuana, a scale, money, and other instruments associated with the distribution of controlled substance. PSR ¶ ¶ 9-10.

On November, 7, 1997, Defendant Thomas was charged in Jefferson County, Illinois, with first degree murder of Ms Green, by causing blunt force trauma to her face and head. The information alleged that the defendant caused the death of Ms. Green on November 6, 1997, by beating her, causing blunt trauma to her face and head, thereby causing her death. In January 1998, Defendant was charged in federal court with having possessed, with intent to distribute, a mixture and substance containing cocaine base, in violation of 21 U.S.C. § 841(a)(1) (Count 1), and with being a felon in possession of a firearm, in violation of 18 U.S.C. § 922(g)(1) (Count 2), also on November 6, 1997.

Defendant Thomas proceeded to trial in both cases. The State murder case commenced on September 14, 1998. In the murder case, Defendant Thomas planned to argue that Ms. Green's death was cause not by a beating, but by her falling down the stairs due to crack cocaine intoxication. As it turned out, the laboratory reports were consistent with blunt force trauma either by beating or falling down the stairs, and Ms Green did have cocaine in her system. In light of this, the state amended the indictment on September 15, 1998, after the jury trial had commenced, to include

the alternative means of commission of first-degree murder: forced ingestion of cocaine. Defendant Thomas was convicted of murder on September 22, 1998, after a jury trial. he was sentenced on November 6, 1998, to 60 years in prison for murder. Defendant Thomas also invoked his right to trial in the federal prosecution. A three-day jury trial was held in February 1999. He was convicted of possession with intent to distribute crack cocaine but acquitted of the firearm charge on February 18, 1999. On June 3, 1999, Defendant Thomas was sentenced to a 300-month prison term, to run consecutive to the state court case. (Appendix K), (Appendix I)

Defendant Thomas filed a direct appeal following his federal conviction. He argued that the evidence supporting his conviction was inadequate as a matter of law. United States v. Thomas, 4:00-cv-4304, (S.D. Ill. Dec 6, 2000). In his motion, defendant attempted to draw out the related nature of his murder and drug convictions. Arguing that the federal conviction violated his constitutional protection against double jeopardy, defendant pointed to the following facts: 1) he had been tried in the state court for murder on the theory that he forced cocaine into the victim; and 2) the state prosecutor presented the same cocaine, scale, gun, money, papers, and cannabis that was used by the federal prosecutors to charge him with possession of crack cocaine. The district court denied defendant's motion in September 2002. Thomas v. United States, 4:00-cv-4304 (S.D. Ill. Sept 4, 2002). (Appendix L)

In 2016, Defendant Thomas obtained permission from the 7th Circuit to file a second or successive habeas petition. United States, No. 16-1788 (7th Cir. May 5, 2016). Defendant cited to

Cross v. United States, 892 F.3d 288 (7th Cir. 2018), arguing that his sentencing under the career offender provision of the then-mandatory sentencing guidelines was inappropriate and that he was entitled to resentencing under the non-career offender guideline range. Thomas v. United States, 3:16-cv-744 (S.D. Ill. Oct. 30, 2018). The government agreed, and the district court granted defendant's motion.

In preparation for the resentencing hearing, Defendant Thomas requested a full hearing on the sentencing factors. He sought to contest the relevant conduct drug quantity findings in the PSR. Tr. 10/14/2021 at 2-4. At defendant's initial sentencing in 1999, his attorney represented that there were no objections to the PSR, but defendant himself objected during the hearing to the PSR's drug quantity calculation, which was largely predicated on hearsay. The district court overruled the objection in 1999, and defendant sought to reopen the issue in the new sentencing hearing. The court ordered the parties to brief the issue, and ultimately decided that the scope of the resentencing would extend to resentencing under the advisory Guidelines while applying intervening caselaw and retroactive statutes. The court decline, however, to make new findings of fact related to the drug quantity calculation.

Defense Counsel, on defendant's behalf, argued that a 151-month sentence remained excessive, and advocated a 121-month sentence, to run concurrent to the murder sentence. The court announced a sentence of 144 month's imprisonment to run consecutive to defendant's Jefferson County case. (Appendix C.)

REASONS FOR GRANTING THE WRIT

THE 7TH CIRCUIT COURT OF APPEAL DECISION IN THE CASE AT BAR IS IN CONFLICT WITH THE UNITED STATES SUPREME COURT'S DECISON IN WITTE v. UNITED STATES, 515 U.S. 398, 115 S.CT. 2199, 132 L.ED 2d 351 (1995)AND LIKEWISE WITH IT'S OWN DECISION UNITED STATES v.BLACKWELL, 49 F.3d 1232(7TH CIR. 1995) AND UNITED STATES v. PHIPPS, 68 F.3d 159 (7TH CIR. 1995)

The district court sentenced the defendant to 12 years imprisionment, consecutive to his 60 year state sentence. The court deemed a consecutive sentence necessary because Thomas's cocaine conviction had nothing to do with the murder, and he needed to be punished for his cocaine conviction. (Appendix C) For the following the 7th Circuit's view is distorted and inturn misplaced. (Appendix A) Of significance, the probation officer concluded that defendant possession with intent to distribute crack cocaine federal conviction was not related to the state court murder conviction. (See Doc. 169, P. 13 ¶ 77) by not considering the state murder conviction as relevant conduct meant that the district court could run defendant's federal sentence concurrent with, partially concurrent with, or consecutive to the undischarged state sentence. (Appendix A) The State and Federal convictions are indeed connected for a pletha of reasons begining with the November 6, 1997 seach warrant (Appendix F) executed on the same produced the cocaine that the state's amended indictments (Count I and II) alleged in relevant part that: "defendant beat Anissa Green to the face and head, "and/or" forced Anissa Green to ingest cocaine thereby causing her death" and used as evidence to convict in the state trial and the exact

evidence (Appendix F-5) was also used as evidence to convict the defendant in the federal trial which resulted in a 12 year prison term to run consecutive to the 60 year State prison term handed down for his conviction in the state case. (Doc. 169, P. 4 ¶ 9)

Of significance, both the state and federal indictments charge November 6, 1997 as the date each offense occurred (Appendix G), (Appendix H), (Appendix J) and both offense state and federal took place in Jefferson County on November 6, 1997 the county in which Mt. Vernon is located. Furthermore, the state and federal offenses are part of a single episode or ongoing series[] offense that occurred on November 6, 1997. Defendant invites the court to consider that same course of conduct and common scheme or plan are terms of art defined in the commentary to section 1B1.3. Two offenses form the same course of conduct if "they are significantly connected or related to each other as warrant the conclusion that they are part of a single espisode, spree, or ongoing series[] offense. U.S.S.G. § 1B1.3 comment (n. 9 (B)) (Nov. 1, 1995) (emphasis added) United States v. Hodges, 354 F.3d 303, 313 (4th Cir. 2004). In evaluating whether two or more offenses meet this test, the "sentencing court" should consider "the degree of similary of the offense, the requlariţy (repetitions) of the offense, and the time interval between the offenses." Id.; see also United States v. French, 46 F.3d 710, 717 (8th Cir. 1995)(finding state perjury conviction to be relevant, thus warranting concurrent sentences under §

5G1.3 (b), because offenses were "based upon action taken ... during the same time period, in the same general geographic area, for the same purpose, as part of a common plan . . . and involving the same set of . . . assests"). See United States v. Hodge, 354 F.3d 305, 313 (4th Cir. 2004)(quoting USSG § 1B1.3 cmt. n. 9(B). Striking is, the probation officer's PSR (Doc. 169) held the defendant liable for drug quantities for prior distributions stretching back as early as the summer of 1995, potentially earlier. (Doc 169, P. 3-5, ¶¶ 7-17). The records also make clear that Defendant Thomas's murder conviction for the death of Anissa Green included the allegation that she died from ingestion of cocaine on November 6, 1997. The state prosecutor used much of the same evidence to convict the defendant of the murder as was used in the federal court to convict him of drug trafficing, including the cocaine, scale, gun money, papers, and cannabis found in his residence on November 6, 1997. Thomas v. United States, 4:00-cv-4304, R.1 at 4-5 (S.D. Ill.Dec. 6, 2000).

The records of conviction clearly demonstrate that Anissa Green's death occurred "during the commission of the offense of conviction" and constituted harm that "resulted from defendant's trafficking of cocaine. The district court, therefore, erred when it concluded that the murder conviction and the drug trafficking conviction were "totally unrelated". Resent. Tr. 19, App. 9. The district court was operating under this misinformation, as the description of the murder conviction in the RSR omitted completely the connection between the cocaine and the death. (Doc. 169, P. 7-8, ¶ 39). However, the defendant had previously

brought the connection to light in a § 2255 petition. Thomas v. United States, 4:00-cv-4304, R.1 at 4-5 (S.D. Ill.Dec. 6, 2000). In any event, (1) Defendant was charged with beating Anissa Green about[]the head and face causing blunt trauma to the head (count I). Thomas was charged with beating Anissa Green about the head and face and forcing Green to ingest cocaine (count II)(Doc. 169, P. 8, ¶ 39). However, the truth of the matter is Thomas was charged in count I and II with beating Anissa Green about the head and face and forcing Green to ingest cocaine, a controlled substabce, thereby causing Anissa Green's death (Appendix G), (Appendix H); (2) That on November 7, 1997, a search warrant was executed at the residence of Charles Bruce Thomas at 517 S. 18th Street in Mt. Vernon, Il (Id at P. 4, ¶ 9). The truth of the matter is the search warrant was executed on November 6, 1997, not the following day of November 7th; (3) Investigative reports and court documents reflects Charles Bruce Thomas was responsible for the death of Anissa Green on September 22, 1997 (Id at P. 8, ¶ 39). The truth of the matter is, the correct date was November 6, 1997 that Charles Bruce Thomas was accused and arrested for the death of Anissa Green. What can be discern for the above discussion is the probation officer's PSR on Defendant Thomas is inaccurate and thus unreliable. See United States v. Corona-Gonzalez, 628 F.3d 336, 343 (7th Cir. 2010)(A convicted defendant "has a due process right to be sentence on the basis of accurate and reliable information). Therefore, when a sentencing court 'selects a sentence based on clearly erroneous facts," it is considered a "significant procedural error."

it is considered a "significant procedural error". Corona-Gonzales, 628 F.3d at 340 (alteration in original)(emphasis omitted), quoting Gall v. United States, 552 U.S. 38, 51, 128 S.Ct. 586 169 L.Ed.2d 445 (2007); also see United States v. Oliver, 873 F.3d at 601, 608 (7th Cir. 2017).

The district court has the ultimate responsibility to ensure that the Guideline range it considers is correct and failure to calculate the correct guideline range constitutes procedural error. Peigh v. United States, 569 U.S. 530, 541, 133 S.Ct. 2072 186 L.Ed 2d 84 (2013). U.S.S.G. § 5G1.3 (b) provides that if a defendant has an "Undischarged term of Imprisonment that resulted from offense(s) that have been fully taken into account in the determination of the offense level for the instant offense, the sentence for the instant offense shall be imposed to run concurrently to the undischarged term of imprisonment." In other words, a sentencing judge must give a convict credit for an undischarged term of inprisonment attributed to offense that are accounted for by the instant offense. United States v. Phipps, 68 F.3d 159, 160-161 (7th Cir. 1995). This provision accounts for the fact that the prisoner is being sentence by two different entities (state and Federal governments) for the samr conduct. Section 5G1.3 (b) ussuages potential injustice through a "cordination of sentence" that "approximates the total penalty that would have been imposed had the sentences for the different offenses been imposed at the same time, Witte v. United States, 515 U.S. 398 404-05, 132 L.Ed.2d 301, 115 S.CT. 2199 (1995), thereby insuring that the convict is not penalized twice for the same conduct.

United States v. Blackwell, 49 F.3d 1232, 1241 (7th Cir. 1995)

In fact, the district court ignored said principle of law in making its own decision to run the sentence consecutive dispite U.S.S.G § 5G1.3(b)(1)[], Blackwell and This Court's decision in Witte. As a consequense, the district and appeals courts decisions were at odds with the spirit and princle discussed in Witte, 515 U.S. 398 at 404-05, 132 L.Ed 2d 307, 115 S.Ct. at 2199 and Blackwell, 49 F.3d at 1241 in regard to same conduct. What can be discern here is the probation officer, the prosecutor, and specifically the district court deliberately reframed from portraying Defendant Thomas course of conduct for one reason- to maniplate the application of the guidlines so that Defendant thomas's federal sentence would run consecutively to the State sentence rather than run concurrent in accord with U.S.S.G. § 5G1.3(b)(1)[] due to the prosecutor and court's displeasure in part with defendant's new guideline designation of no longer a career offender under the residual clause of U.S.S.G. § 4B1.2(a)(2) (1998) which invalidates the mandatory residual clause of § 4B1.2(a)(2) on grounds of unconstitutional vagueness and inturn having to vacate defendant's 25 year sentence. See Thomas v United States, No. 16-cv-774 (Doc. 11 at 6)(S.D. Ill.Dec. 13, 2018).

Such is highlighted in the district court's sentence announcement in regard to Defendant Thomas's request for a concurrent sentence, the Court stated: "I know you want this to run concurrent with the state sentence, if I did that, there would be absolutely no punishment for the federal crime you committed. Its unrelated totally unrelated to the state crime your currently serving. So

the sentence i'm going to give you will be running consecutively to your current state sentence because there needs to be some accountability for the crime you committed for the federal crimes." (Doc. 46, P. 4, ¶ 2)(Appendix C). The district court's reasoning is very telling, for instance if the court's sole concern with running the sentence concurrent was that there would be absolutely no punishment for the federal crime, none whatsoever, so he can't do that and that the defendant have to serve some punishment for the federal crime, seemingly suggest that from the standpoint of the court he does not have the authority to run the federal sentence concurrent. However, case law authorities suggest the court do have the authority to run the federal sentence concurrent with the state. See Ruggiano v. Reish, 307 F.3d 121, 124 (3d Cir. 2002); United States v. O'Hagan, 139 F.3d 641, 656-58 (8th Cir. 1998)(Upholding downward departure to compensate for the lost opportunity to obtain a sentence fully concurrent with a previous state sentence.); Blackwell, 49 F.3d 1232, 1240 (7th Cir. 1995)(noting that downward departure to credit defendant for discharge state sentence is appropriate); U.S.S.G. § 5G1.3 cmt n. 7 (stating that a downward departure is permitted when the sentence in the instant case would have run concurrently to a discharged term of imprisonment under § 5G1.3(b).

Furthermore, since the district court opine that running the sentence concurrent would fail to provide necessary punishment he would have been well within his authority to run the sentence partially concurrent (U.S.S.G. § 5G1.3(c)) since his sole concern was if he run the sentence concurrent there would be absolutely

no punishment for the federal crime. Accordingly, what would be reasonable, just, fair andconsistent with Rule 52(b), U.S.S.G § 5G1.1, Phipp, 68 F.3d at 160-161, Blackwell, 49 F.3d at 1241 and Witte, 575 U.S. 398 at 404-05 would be to run the sentence partically concurrent. Such would square with the landscape of the case at bar and all the issues involved and clear up the assertion that the district court deliberately reframed from portraying defendant's course of conduct as relevant conduct for one reason-to maniplate the application of the guideline so that his federal sentence could not run consecutively to the state sentence. See U.S. v. Jones, 233 F. Supp.2d 1067 (E.D. Wis. 2002).

Moreover, after serving 27 years already on the undischarged state sentence with a minimum of three more to serve so then to tact on an additional 12 years consecutively to the remaining 3 years would amount to an unreasonable application of the guidelines in view of the realization that accross the country the DOJ has agreed to use powder cocaine guideline range for crack cocaine cases in line with its policy. See United States v. McKinney, 2022 WL 1136185 at *4 - *5 (D. Kan. Apr. 18, 2022)(government agreeing that the defendant would be sentenced today using a 1:1 ratio for crack and powder cocaine); United States v. Ellis, No. 19-cr-857, R. 242 (S.D.N.Y. Feb. 7, 2022)(government sentencing memorandum urging the court to consider the powder cocaine guideline range in sentencing crack cocaine defendant); United States v. Anderson, No. 20-cr-112, R. 37 at 2 (W.D. Mo. July 20, 2022) (sentencing memorandum where both parties objected to the PSR

reflecting a base offense level for crack cocaine rather than powder cocaine "in accordance with U.S. Department of Justice policy"); United States v. Wedlow, No. 20-cr-6127, R. 59 at ¶ 13 (W.D.N.Y. Jan 6, 2022)(plea agreement where the government openly supports the use of powder cocaine guideline to sentence crack cocaine defendant); United States v. Jackson, No. 20-cr-10270 R. 55 at 1 (D. Mass. Dec. 7, 2021) (government sentencing memorandum requesting "the sentencing range that would apply if the crack cocaine involved in the offense and relevant conduct were treated the same as cocaine powder").

Federal Rule of Criminal Procedural 52(b) provides that "a plain error that affects substantial rights may be considered even though it was not brought to the district court's attention. United States v. Olano, 507 U.S. 725, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993). Although "Rule 52(b) is permissive, not mandatory," Olano, 507 U.S. at 735, 113 S.Ct. 1770 it is well established that courts "should " correct a forfeited plain error that affected substantial rights "if the error "seriously affects the fairness integrity or public reputation of judicial proceeding." Id at 736, 113 S.Ct. 1770. (See Appendix M, P.1-4)

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Charles B Thomas

Date: 17 January, 2024.

OFFICIAL SEAL
ANDREW C STODOLKIEWICZ
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires Nov. 02, 2025

Sworn & Subscribed to this 17th day of January, 2024 before me

Andrew C Stodolkiewicz
NOTARY PUBLIC