

No.

23-6994

FILED

FEB 29 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

Donald Reynolds

— PETITIONER

(Your Name)

vs.

United States of America

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit

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

PETITION FOR WRIT OF CERTIORARI

Donald Reynolds

(Your Name)

FCI Beckley, P.O. Box 350

(Address)

Beaver, WV 25813

(City, State, Zip Code)

(Phone Number)

RECEIVED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

While a federal prisoner's direct appeal is pending for sentencing issues, and retroactive Amendment 821 is enacted which now lowers the appellant's guidelines range, is the appellate court required to remand to the district court for resentencing?

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:

RELATED CASES

TABLE OF AUTHORITIES CITED

CASES

United States v. Rickey Claybron, 2023 U.S. App.
LEXIS 33625 (7th Cir. Dec. 19, 2023)

PAGE NUMBER

10

STATUTES AND RULES

28 U.S.C. 2106

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OTHER

Retroactive Amendment 821 of the United States Sentencing Guidelines

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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 _____ 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☒ is unpublished.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 _____ 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☐ is unpublished.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☐ is unpublished.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.

1.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was October 5, 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: January 19, 2024, 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 _____.
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

Part A of Amendment 821 limits the overall criminal history impact of "status Points" at 4A1.1. The amendment is retroactive, and enacted by the United States Sentencing Commission. The Amendment, while the Petitioner was on direct appeal was invoked.

28 U.S.C 2106 permits resentencing on remand from a court of appeals or the Supreme Court.

Dorchy v. Kansas, 264 U.S. 286 (1924)

STATEMENT OF THE CASE

In 2007, Petitioner was convicted on counts of bank robbery and firearm-related offenses. He appealed his sentence following the 2022 vacatur of his 18 U.S.C 922(g)(1) conviction and concurrent sentence, arguing that retroactive Amendment 821, which was coming down the pike should have been applied to lower his criminal history category and consequently his sentencing range on the bank robbery count.

While the direct appeal was still pending Amendment 821 went into effect on November 1, 2023. The Court of Appeals had jurisdiction of the case, and was alerted of the Amendment 821 through Petitioner's "28(j)" letter and his "Motion to Stay" and his "Motion for Rehearing or Rehearing En Banc."

Given the lower guidelines range Petitioner would have had if the Amendment had been in effect at his original sentencing remand was proper under 28 U.S.C 2106.

REASONS FOR GRANTING THE PETITION

The law is being applied differently in the Seventh Circuit than it is in the Eleventh Circuit on the same identical issue.

The Seventh Circuit Court of Appeals was met with the same set of circumstances in the case of: *United States v. Rickey Claybron*, 2023 U.S. App. LEXIS 33625 (7th Circuit Dec. 19th, 2023). Petitioner invites this Honorable Court to resolve the conflict in the circuit courts.

The government and the Eleventh Circuit both make clear on direct appeal that "We do not consider proposed amendments until they become effective..." Yet, when Amendment 821 became effective while on direct appeal, the government never, in turn, moved for summary reversal, nor did the Eleventh Circuit Court of Appeals, thus allowing an erroneously calculated advisory guideline range to stand in place. This is an error that clearly affected Petitioner's substantial rights and the fairness, integrity, or public reputation of judicial proceedings. The United States Sentencing Commission estimated in its Impact Analysis that Part A of Amendment 821 relating to "Status Points" would impact 11,495 incarcerated individuals, such as Petitioner.

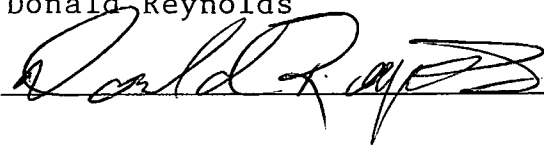
Because Amendment 821 reflects evidence-based policy determinations that apply with equal force to previously-sentenced individuals, remand was required due to the post-sentencing retroactive change. The lower court should have applied the law in effect at the time of its decision not the law in effect at the time the appeal was filed.

Due to the conflict in a decision in another appellate court, this Court is needed to resolve it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,
Donald Reynolds

A handwritten signature in black ink, appearing to read "Donald Reynolds", written over a horizontal line.

Date: February 27, 2024