

No.

**23 - 7078**

FILED  
AUG 17 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

IN THE  
SUPREME COURT OF THE UNITED STATES

JEFFERY WAYNE TAYLOR

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. District Court For The Western District of Missouri

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

PETITION FOR WRIT OF CERTIORARI

Jeffery Wayne Taylor #33329-045

(Your Name)

FCC-Yazoo City Medium U.S.P.

P.O. Box 5000

(Address)

Yazoo City, MS 39194-5000

(City, State, Zip Code)

IN PRO SE (PRO PER )

(Phone Number)

**QUESTION(S) PRESENTED**

- I. IS IT A VIOLATION OF THE CONFRONTATION CLAUSE WHEN EXERCISING ONE'S RIGHT TO TRIAL, THAT AN OUT-OF-COURT STATEMENT CONNECTING THE DEFENDANT DIRECTLY TO THE CRIME HE OR SHE IS ACCUSED OF IS ADMITTED DURING TRIAL MAKING IT IMPOSSIBLE TO CROSS-EXAM THE WITNESS' OUT-OF-COURT STATEMENT -
- II. IF ACQUITTED UNDER COUNT I's CONSPIRACY OFFENSE, IS IT A VIOLATION OF THE CONFRONTATION CLAUSE FOR THE COURT TO RELY ON THE SAME OUT-OF-COURT STATEMENTS WITHOUT ANY CONFRONTATION BY DEFENDANT OR CROSS-EXAM, TO CONVICT DEFENDANT ON THE REMAINING DISTRIBUTION COUNTS -
- III. THE FIRST STEP ACT'S PRINCIPLES INCLUDE THE OFFENSE OF CONVICTION THAT DEFENDANT WAS FOUND GUILTY OF NOT JUDGE RELATED RELEVANT CONDUCT FACTS TO EXTRAPOLATE, APPROXIMATE, OR DEDUCT THROUGH INFERENCE TO DETERMINE A DRUG QUANTITY; IS IT DUE PROCESS VIOLATIONS WHEN THE COURT USES ITS PREPONDERANCE OF EVIDENCE STANDARD TO DETERMINE AN AMOUNT ABOVE THE TRIAL FINDINGS OF 0 TO 20-YEARS TO 5 TO 40-YEARS -

## 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. United States of America
2. Jeffery Wayne Taylor - Petitioner/Pro Se

## RELATED CASES

Ohio v. Roberts, 448 U.S. 56, 63-64, 65 L.Ed.2d 597, 100 S.Ct. 2531 (1980)

Crawford v. Washington, 541 U.S. 36, 158 L.Ed.2d 177, 124 S.Ct. 1354 (2004)

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

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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 A to the petition and is Case No. 23-04035-cv-C-SRB

~~Western~~ District of Missouri ~~Jeffery Wayne Taylor~~  
[x] reported at \_\_\_\_\_; or, v.  
[ ] has been designated for publication but is not yet reported; or, U.S.A.  
[ ] 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 COA was DENIED - NO COA was filed -

The date on which the U.S. District Court decided my § 2255 Petition [ ] No petition for rehearing was timely filed in my case. was

[ ] 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 \_\_\_\_\_. 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

### STATUTES:

21 U.S.C. § 841(a)(1)

21 U.S.C. § 846

21 U.S.C. § 841(b)(1)(C)

21 U.S.C. § 841(b)(1)(B)

FIRST STEP ACT OF 2018

FAIR SENTENCING ACT

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution:

AMENDMENT ✓

AMENDMENT ✓

Confrontation CLAUSE

## STATEMENT OF THE CASE

On July 11, 2018 the Government filed its Indictment against Petitioner Jeffery Wayne Taylor alleging in Count 1, Conspiracy to Distribute Cocaine Base in violation of 21 U.S.C. § 846, and Counts 2, 3, and 4, Distribution of Cocaine Base in violation of 21 U.S.C. § 841 (a)(1). On July 6, 2020, a one day bench trial was held with U.S. District Court Judge Stephen Bough in Western District of Missouri. Defendant/Petitioner ("Taylor") by and through his attorney, filed a pretrial Motion To Disclose the Identity and Inducements of Confidential Informant and Motion in Limine Objecting to the Admissions of Audio Recordings. Both Motions were taken up and overruled by the Trial Court before evidence was presented.

At the close of evidence, Taylor was found guilty of Counts 2, 3, and 4. The Trial Court asked the parties to brief the legal standard for conspiracy as to Count I. On November 24, 2020, the Trial Court granted Taylor's Motion For Acquittal and was found not guilty as to Count I.

On February 2, 2021, the Trial Court sentenced Taylor to 240 months in prison as to each of Counts 2, 3 and 4 to be served concurrently by 6-years of Supervised Release.

A Notice of Appeal was filed on June 14, 2021. Being untimely on his Notice of Appeal, Taylor was appointed counsel to show cause as to why the Appeal should not be dismissed on June 17, 2021. On July 6, 2021, the Eighth Circuit allowed the appeal to proceed. Counsel filed an ANDER'S BRIEF and Taylor's Appeal was Affirmed.

Taylor then filed a Motion To Vacate, Set-Aside, or Correct his Sentence, pursuant to 28 U.S.C. § 2255. Taylor's § 2255 was DENIED and COA DENIED on August of 2023.

Taylor now moves with this Writ of Certiorari.

## REASONS FOR GRANTING THE PETITION

This Court should accept Mr. Taylor's writ with respect to his unconstitutional sentence because the constitutionality of federal sentencing practices has recently been caught in the middle. This Court must therefore assure that those individuals, like Mr. Taylor, that exercise their right to trial have been afforded those constitutional protections of due process and right to have a jury find material facts beyond a reasonable doubt as guaranteed by the Fifth and Sixth Amendments.

Further, this Court should accept Mr. Taylor's writ based off of the following questions now being presented to this Court:

1. THE DISTRICT COURT VIOLATED TAYLOR'S RIGHT TO FAIR TRIAL BY VIOLATING THE CONFRONTATION CLAUSE WHEN IT ADMITTED HEAR-SAY EVIDENCE FROM A WITNESS' OUT-OF-COURT STATEMENTS -

The Confrontation Clause guarantees a criminal defendant "the right to physically face those who testify against him, and the right to conduct cross-examination." Pennsylvania v. Ritchie, 480 U.S. 39, 51, 94 L.Ed.2d 40, 107 S.Ct. 989 (1987)(citing Delaware v. Fensterer, 474 U.S. 15, 18-19, 88 L.Ed.2d 15, 106 S.Ct. 292 (1985); Kemp, 212 S.W.3d at 147 (quoting U.S. Const. Amend VI)

The Supreme Court held in Crawford that an out-of-court testimonial statement admitted into evidence, under the hearsay exception for statements, that would satisfy constitutional standard is confrontation. Crawford v. Washington, 541 U.S. 36, 158 L.Ed.2d 177, 124 S.Ct. 1354 (2004).

During Taylor's Bench Trial, the Informant was never present and the court relied on the Informant's out-of-court statements to convict Taylor. However, the Court found Taylor not guilty under Count I of the Indictment (Conspiracy), for insufficient evidence, making one question

that same evidence used to convict Taylor for the remaining counts (Distribution). If the government could not introduce specific evidence from the informant's out-of-court statements, and allowing those statements to be admitted where Taylor could not confront his alleged accuser, then there had to be no inferences sufficient enough to support a rational juror enough to convict Taylor beyond a reasonable doubt.

Counts 2, 3, and 4 of Taylor's Indictment consisted of no drug quantity for Possessing With Intent To Distribute Crack Cocaine/Cocaine Base. It is well known that "while quantities of controlled substances in a drug conspiracy prosecution may be determined through extrapolation, approximation, or deduction, there ordinarily must be evidence of known quantities, which are sufficiently representative of the unknown quantities and from which an approximation of the unknown quantities can logically be derived." See U.S. v. Archer, 671 F.3d 149, 163 (2d Cir. 2011) ("requiring specific evidence" of quantity to sustain quantity based enhancement). In the absence of such evidence, a jury's finding as to drug quantity is nothing but "surmise and conjecture.")

The bench trial found Taylor innocent of Count I for the conspiracy. With the absence of a witness to testify "calls into question the ultimate integrity of the fact-finding process." Ohio v. Roberts, 448 U.S. 56, 63-64, 65 L.Ed.2d 597, 100 S.Ct. 2531 (1980). In Roberts, the Supreme Court held by clarifying that an "out-of-court statement" is admissible "only if it bears adequate 'indicia of reliability.'" There was no indicia of reliability in Taylor's case because the Informant's out-of-court statement connected Taylor directly to the crime constituting inadmissible hearsay, requiring a new trial. After all, it is not the abstract dignity of the Confrontation Clause that is at stake in the Supreme Court's Sixth Amendment jurisprudence, but the integrity of the jury right itself,

the cornerstone of our criminal justice system.

Accordingly, this Court must provide guidance and find that an out-of-court statement inherently requires a judgment of credibility and weight in the absence of a witness to testify and cross-exam as to the integrity of the fact-finding process and without that is a violation of the confrontation clause occurs and the right to a fair trial.

2. IT IS THE OFFENSE OF CONVICTION THAT THE TRIAL FOUND TAYLOR GUILTY BEYOND A REASONABLE DOUBT, NOT JUDGE FOUND FACTS WHEN DETERMINING DRUG QUANTITY -

At trial, Taylor was found guilty of his Indictment [the offense of conviction] that carried a minimum/maximum of 0 - 20 years in prison. However, at sentencing the court determined that Taylor was responsible for an amount that increased his minimum/maximum from 0 - 20 years to 5 + 40 years in prison. 21 U.S.C. § 841(b)(1)(C) and § 841(b)(1)(B). That determination was also based on the court's preponderance of the evidence standard which would not hold true under the reasonable doubt standard that Taylor was found guilty of at trial.

Under the First Step Act, the drug amount applies to offenses, not conduct, meaning that Taylor's statutory sentencing range under the First Step Act is dictated by Taylor's offense of conviction, not his underlying relevant conduct. Therefore, Taylor's offense of conviction of 0 - 20 years, not the underlying drug quantity determines his applicable statutory sentencing range. See U.S. v. Robinson, Case No. 20-1947, 2021 U.S.App LEXIS 24603 (8th Cir. 8/18/2021). Taylor was found with approximately 17 Grams of Cocaine Base, but the amount determined at sentencing by the court was over 32 Grams, resulting in a higher mandatory/minimum and higher Base Offense Level. Taylor's conspiracy count carried no weight determination in the conspiracy which also carried a minimum/maximum 0 - 20 years. Taylor was acquitted of the conspiracy but found guilty of the dis-

tribution counts. Because Taylor's minimum/maximum he was convicted of carried a 0 to 20-year sentence, the court erred as a matter of law when it relied on the sentencing court's drug quantity finding of over 32 Grams of crack cocaine to determine Taylor's applicable statutory sentencing range under the First Step Act and the Fair Sentencing Act. Id; see also Alleyne v. U.S., 133 S.Ct. 2151 (2013)(where the practice of finding sentencing enhancements as to drug quantities during sentencing is a violation of [Taylor's] Sixth Amendment right to trial.)

The mind set of sentencing judges have always been in the "preponderance of the evidence" realm, Taylor now asks this Court to ensure that he, and others like him who exercise their right to trial, are afforded a fair and constitutional sentence based on facts found beyond a reasonable doubt and the true application of those factors delineated for consideration at sentencing by federal statute and the First Step Act.<sup>1</sup>

#### CONCLUSION

For the foregoing reasons, this Court should grant certiorari, vacate the judgment of the Eighth Circuit and District Court of Western Missouri, and remand for resentencing.

#### — TAYLOR'S CASE —

<u>— TAYLOR'S CASE —</u>			
<u>TRIAL FINDINGS</u>		<u>COURT FINDINGS</u>	
①	BASE OFFENSE LEVEL 20	BASE OFFENSE LEVEL 24	
	CRIMINAL HISTORY CATEGORY VI	CATEGORY VI	
G.J. S.S. G.J. S.S. G.J. S.S. G.J. S.S.	GUIDELINE RANGE 70 - 87 MONTHS	GUIDELINE RANGE 100 - 125 MONTHS	
COMPARISON	MIN/MAXIMUM 0 - 20 Years 21 U.S.C. § 841(b)(1)(c)	MIN/MAX 5 - 40 Years 21 U.S.C. § 841(b)(1)(B)	
	NO ENHANCEMENTS	TRIAL PERIOD ENHANCEMENTS	
	SENTENCE 70 MONTHS	SENTENCE 240 MONTHS	

## **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeffery W. Taylor  
Jeffery Wayne Taylor/Pro Se  
Petitioner/Affiant  
Date: October 28, 2023