No. 23-7106

IN THE

SUPREME COURT OF THE UNITED STATES

Gemar Morgan (ProSe) — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Gemar Morgan (ProSe)
(Your Name)

F.C.T. Oakdale #40722039
(Address) P.O. Box 5000

Oakdale, LA 71463
(City, State, Zip Code)

N/A or Prison Phone
(Phone Number)

TRULINCS 40722039 - MORGAN, GEMAR - Unit: OAK-A-B

FROM: 40722039
TO: [redacted]
SUBJECT:
DATE: 01/03/2024 03:45:09 PM

Supreme Court Rule 141(a)

Questions Presented for review

1) Do The United States Sentencing Commission have a guideline that bear the construction of the language used in application note 4B1.4 cmt.n,(1) that states: "nor are the time periods for the counting of prior sentences under 4A1.2 (Definition and Instruction for computing criminal history) applicable to the determination of whether a defendant is subject to an enhanced sentence", under 18 U.S.C. 924(e)? See Stinson v. United States, 508 U.S. 36, 40-46, 113 S.Ct.1913(1993)

2) Does the United States Sentencing Commission has the power to allow the language used in application note 4B1.4 cmt.,n. (1) that states: "nor are the time periods for the counting of prior sentences under 4A1.2(Definition and Instruction for computing criminal history) applicable to the determination of whether a defendant is subject to an enhanced sentence under 18 U.S.C. 924(e)s", to serve as an independent legal force standing alone that violates the dictation of U.S.S.G. 4A1.2(e)s'-applicable time period? See Stinson v. United States, 508 U.S. 36,ID at 40-46, 113 S.Ct.1913, 123 L.Ed.2d 598 (1993); and United States v. Havis, 927 F.3d 382,at 386 (6th Cir. 2019).

3) Could the Supreme Court clarify it's position when the supreme court stated: "If for example, commentary and the guideline it reference are inconsistent in following one will result in violating the dictate of the other, the Sentence Reform Act itself commands compliance with the guidelines? See Stinson v. United States, 508 U.S. 36,at 43(1993)

TRULINCS 40722039 - MORGAN, GEMAR - Unit: OAK-A-B

FROM: 40722039
TO: [redacted]
SUBJE[redacted]* MORGAN, GEMAR, Reg# 40722039, OAK-A-B
DATE: [redacted]

To: SUPREME COURT
Inmate Work Assignment: [redacted]

TRULINCS 40722039 - MORGAN, GEMAR - Unit: OAK-A-B

FROM: 40722039
TO: [redacted]
SUBJECT: [redacted] MORGAN, GEMAR, Reg# 40722039, OAK-A-B
DATE: [redacted]

To: SUPREME COURT
Inmate Work Assignment: [redacted]

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TRULINCS 40722039 - MORGAN, GEMAR - Unit: OAK-A-B

FROM: 40722039
TO: [redacted]
SUBJECT: [redacted] * MORGAN, GEMAR, Reg# 40722039, OAK-A-B
DATE: [redacted]

To: SUPREME COURT
Inmate Work Assignment: [redacted]

TABLE OF AUTHORITIES

OVER

TRULINCS 40722039 - MORGAN, GEMAR - Unit: OAK-A-B

FROM: 40722039
TO: [redacted]
SUBJECT: Supreme Court
DATE: 01/03/2024 03:44:26 PM

Citation Of The Official and Unofficial Reports, orders Entered In the case by the courts

United States v. Morgan, Case No. 2:19-cr-20259 ECF No.158 Sentencing Transcript (9/20/2021)

United States v. Morgan, 2022 U.S. App. Lexis 24879 (6th Cir., Sept. 2, 2022)

United States v. Morgan, 2022 U.S. App. Lexis 21272 (6th Cir., Aug. 1, 2022)

Morgan v. United States, 2022 U.S. Lexis 5305 (U.S., Dec. 5th, 2022)

Morgan v. United States, 2023 U.S. App. Lexis 23863 (6th Cir., Sept.7, 2023)

Morgan v. United States, Case No. 21-2628, Docket No. 59 (6th Cir., 2022)

Jurisdictional Statment

For purpose of determining whether under 28 U.S.C. 1254(1), the united states supreme court has jurisdiction, on certiorari, to review a denial, by a panel of a federal court of appeals, of a certificate of appealability concerning a federal district court's denial of an accused motion under 28 U.S.C. 2255. See Hohn v. United States, 524 U.S. 236, 141 L.Ed.2d 242, 118 S.Ct. 1969 (1998). Petitioner Morgan filed a motion under 2255(ECF. No. 180, case no. 2:19-cr-20259; civil no. 22-13087) to vacate the sentence- due to the probation officer reporting a U.S.S.G., Ch.4 enhancement during the sentencing procedures. Based upon the probation officer recommendation, the district court imposed a sentence that was the result of the incorrect application of the guidelines in pursuant with 18 U.S.C. 3742(a)(2),& (e)(2). See Williams v. United States, 503 U.S. 193, 203, 117 L.Ed.2d. 341, 112 S.Ct. 1112(1992); and Booker v. United States, 543 U.S. 220, 1255 S.Ct. 738(2005). The District Court reasoning for imposing such sentence can be illustrated at (ECF No. 158, Pg.ID. 993, case no. 2:19-cr-20259). The District Court and Circuit Court abuses it's dicretion when it relies on clearly erroneous findings of fact, or when it improperly applies the law or uses an erroneous legal standard. See 2022 U.S. App. Lexis 28539,ID at Lexis 4, Taylor v. United States,(6th Cir. 2022). The District Court (ECF No. 183 & 192 Order denying petitioner 2255) and (the 6th Cir. Case No. 21-2628, Docket No. 59 order denying petitioner direct appeal) continue to ignore and refuse to acknowledge pettitoner (sentencing claims) where as petitioner have illustrated the (erroneous legal standard) that the district court use to impose a sentence that was the result of the incorrect application of the guidelines under 18 U.S.C. 3742(a)(2) &(e)(2)". For example the district court (ECF No. 183; reason for denying the 2255 was:"Petitioner 2255 claims is identical to the claims raised in direct appeal). Note: in the district court (ECF No. 192; reason for denying the reconsideration motion: "Petitioner did not raise the sentencing guidelines issue in direct appeal); Both of those reasonings are contradiction and warrants the supreme court to review these issues! I request that the (COA- denial which was issued on 11/22/2023) be reviewed by the Supreme Court due to the extreme neglect that the lower court has been imposing towards the refusal to acknowledge the sentencing claims that I have raised at (sentencing, direct appeal, and 2255)! Also the supreme court precedent case (Stinson, 508 U.S. 36), I have already been decided in the 6th cir. case law Havis, 927 F.3d 382,386(6th Cir. 2019)- that dealt with the application notes serving as independent legal force used to violate the commands of the original guideline text,

"The Constitutional Provisions, Treaties, Statutes, Ordinancec, and Regulations in the case."

The Sentence Reform Act of 1984, as amended, 18 U.S.C. 3551 et. seq. (1998 ed ans SUPP III, 28 U.S.C. 991-998 ed SUPP III),
created the sentencing commission, 28 U.S.C. 991(a), and charged it with the task of establishing "sentencing guideline, policies, and procedures for the federal criminal justice system". 28 U.S.C. 991(b)(1). See Mistretta v. United States, 488 U.S. 361, 367-370, 102 L.Ed.2d 714, S. Ct. 647(1989). The Sentence Reform Act establishes that the guidelines are "for the use of a sentencing court in determining the sentence to be imposed in a criminal case. 28 U.S.C 994(a)(1). See Stinson v. United State, 508 U.S. 36,at 41, 123 L.Ed.2d 598, 113 S.Ct. 1913(1993).

The United States Sentencing Guidelines that the district court and 6th circuit fail to follow are (4A1.2(a)(2), 4A1.2(d)s', 4A1.2(e)s', 4A1.2 cmt., n.(7) and Amendment 795). Instead the lower courts have used an application note(4B1.4 cmt., n.((1))

as independent legal force to contradict and or violate the commands of (4A1.2(a)2, 4A1.2(d)s', 4A1.2(e)s', 4A1.2 cmt.,n.(7), and Amendment 795) which resulted in a sentence being imposed as of the result of the incorrect application of the guidelines.

See Williams v. United States, 503 U.S. 193,at 201-203, 117 L.Ed.2d 341, 112 S.Ct. 1112(1992); See Stinson v. United States, 508 U.S. 36, at 36-46(1993).

United States v. Havis, 927 F.3d 382,at 386(6th cir. 2019). NOTE: IN Stinson, Id., at 40-46; and Havis, Id., at 386 both the Supreme Court and Sixth Circuit of Appeals Court stated: that an application note can not serve as an independent legal force

used to violate and or contradict the guidelines provision itself; Also, the guidelines must bear the construction of the

langauge that application note reference. See Stinson, 508 U.S. 36, 36-46(1993); and Havis, 927 F.3d 382, at 386(2019).

Rule 14(g) - A concise Statement of the case

On June 11th 2021 - the Eastern District of Michigan Sentenced me to 180 months for 18 U.S.C 922(g). See Appendix 2 & 3 (judgement in a crminal case). The sentence was based on the probation officer report for a CH.4 adjustment. See appendix 1 (Sentencing transcript ECF NO. 158, page ID 933). On direct appeal case No 21-2628, Docket No. 36 & 38 Appeallant Brief: 2255 Civil No. 22-13087 & Criminal No. 2:19-CR-20259 ECF 180 - 2255 Brief and ECF [redacted] Reconsideration Brief; and COA case No:23-1161 ask the courts to determine:

(1) Do the United States Sentencing Commission have a guideline [redacted] that bear the construction of the language used in Application Note 4b1.4 cmt, N. (1) That states: Nor are the time periods for the counting of prior sentences under 4A1.2 (Definition and instruction for computing criminal history) applicable to the determination of whether a defendant is subject to an enhanced sentence under 18 U.S.C 924(e).

(2) Does the U.S Sentencing Commission have the power to allow The Language used in Application Note 4b1.4 CMT.,n.(1) in the text above to violate and , or contradict the commands of (4A1.2(a)(2) & Amendment 795 Single sentence rule), and (4A1.2(d)s', 4A1.2(e)s' and 4A1.2 CMT.n.(7) - applicable time periods)

(3) The supreme Court stated: If for example, commentary and the guidelines it reference are inconsistent in following one will result in violating the dictate of another. The sentencing reform act itself commands compliance with the guidelines. See (Stinson V. United States 36,36-46, 113 s.ct 1913, 123 L.ed 2d 598 (1993) And United States V.Havis, 927 F.3d 382 at 386 (6th Cir,2019)) Mr Morgan has illustrated to the district Court and appeals court that his sentence was the result of the incorrect application of the sentencing guidelines under 18 U.S.C 3742(a)(2),(e)(2),(F)(1)&(2). See Williams V. United States, 503 U.S 193 At 201-203,117 L.Ed. 2d 341,112 S.CT. 1112(1992). The district court and appellate court never acknowledge, misapprehend, or fully neglect the questions posed in this writ. Due to

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the lower court refusal to acknowledge the claims posed in the question for this writ; 28 U.S.C 1254(1) give's the U.S Supreme Court the jursidiction, on Certiorari to review a denial by a panel of a federal District court denial of an accused motion under 2255. See Hohn v. United States 524 U.S 236, 141 L.ed 2d 242, 118 S.CT.1969 (1998). Note: The claims in this petition that the Eastern District of Michigan and the 6th Circuit refuse to acknowledge regarding the "Application Note inconsistency to a guideline provision itself" have precedent in (Stinson V. United States, 508 U.S 36 (1993) and United States V. Havis, 927 F.3d 382,386 (6th Cir. 2019).

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Rule 14(h) A Direct Argument Amplifying The Reasons Relied On For Allowance of Writ

Reason For Granting Petition For Writ of Certiorari & Conclusion

The Sentencing Reform Act of 1984 (18 U.S.C. §§3551 et seq., 28 U.S.C. §§991-998), created the United States Sentencing Commission to establish sentences for all categories of federal offenses once a defendant has been found guilty of an offense in any federal statute. See 18 U.S.C. §§ 3551(a) and (b); and § 3553(a)(2). A central goal of the Sentencing Guidelines is to eliminate sentencing disparity. The purpose of the Sentencing Commission was to establish guidelines that "avoid [] unwarranted sentencing disparities among defendnats with similar records who have been found guilty of similar criminal conduct". 28 U.S.C. §991(b)(1)(B). See the summary and headnote in Mistretta vs. United States, 488 U.S. 36, 102 L.Ed 2d 714, 109 S. Ct. 647 (1989). According to [18 U.S.C. §3551 - authorized sentence (b) an individual found guilty of an offense shall be sentenced in accordance with the provisions of 18 U.S.C. §3553 - imposition of a sentence]. The judgment in a criminal case cites 18 U.S.C. §922(g)(1) under the title and section / nature of offense and the sentence cites 180 months. See [APPENDIX 2 & 3 [redacted] - Judgement]. Based upon 18 U.S.C. §3553(a)(4)(A), the district court did not impose a setnence that reflect the applicable category of offense committed by the defendant, based upon the Sentence Reform Act of [1984] 18 U.S.C. §3551 and 28 U.S.C. §§991 - 998. See [APPENDIX 1 [redacted] - Sentencing Transcript], [ECF No. 158, Page ID 993 - Lines 1 - 12]. According to the Sentence Reform Act does the United States Sentencing Commission have the power to allow §4B1.4 cmt N.(1) to serve as an independent legal force - that violates the dictate of §4A1.2(a)(2); §4A1.2 cmt. n.(7); §4A1.2(d)(2), (e)(3), (e)(4); amendment 709 and 795; and 2K2.1 cmt. n.10 - that have resulted in an incorrect application of the Sentencing

Guidelines under 18 U.S.C.§3742(a)(2), (e)(2), and (f)(2)].

Due to the probation officer reported a Chapter 4 adjustment cited at [ECF 158, page ID 993, lines 10 - 13], which incorporated the laws 28 U.S.C. §§991 - 998; the United States Sentencing Guidelines Manual along with 18 U.S.C. §3551 and 3553. The government [ECF No. 140, page ID 928] claim for §4B1.4 cmt. n.(1) - justifies the use of a sentence over 15 years old; constitutes the Sentence Reform Act compliance with the Guidelines [18 U.S.C. §§ 3553(a)(2) and (a)(4)(A)] when an application note violates the dictate of the guideline it speaks about. Also the guideline must bear the construction that the application note reference. See Stinson vs. United States, 508 U.S. 36 at 40-46 (1993). Also the Sixth Circuit held that an application note can not serve as an independent legal force standing alone. See Havis vs. United States, 927 F.3d 382 at 386 (6th Cir., 2019).

The panel decision conflicts with the decision in Stinson vs. United States, 113 S. Ct. 1913, 123 L. Ed. 2d 598, 508 U.S. 36 at 43-46 (1993) which states "it does not follow that commentary is binding in all instances". If for example, commentary and the guideline is interprets are inconsistent in that following one will result in violating the dictates of the other, the Sentencing Reform Act itself commands compliance with the guideline. See 18 U.S.C. § 3553(a)(4), (b); Id. at 45, states " An application note has controlling weight unless it is plainly erroneous or inconsistent with the guideline". § 4B1.4 cmt., n.1 violating the dictate of § 4A1.2(d)'s and § 4A1.2(e)(3); whereas failure to follow the guidelines will result in an incorrect application of the sentencing guidelines under 18 U.S.C.§ 3742(a)(2), (e)(2), and (f)(2). See Williams vs. United States, 503 U.S. 193 at 203, 117 L. Ed. 2d 341, 112 S. Ct. 1112 (1992). According to § 4A1.2(e)(3), the guidelines specifically state that sentences imposed more

than 15 years before the instant offense does not enter the criminal history computations. Eve's four excluded convictions were more than 15 years before this offense; therefore the presentence report did not include the convictions in Eve's criminal history. See United States vs. Eve, 984 F.2d 701 at 705 (6th Cir., 1993). For these reasons the 1994 juvenile sentence and 1998 sentence is over 15 years old in pursuant with § 4A1.2(e)(3) and §4A1.2(d)'s guideline provision. The sentences shall be excluded from the criminal history computaiton. See United States vs. Chatman, 565 Fed. Appx. 345 (6th Cir., 2014).

Also, §4B1.4 cmt, n.(1) is in violation of §4A1.2(a)(2), (d), and (e)(3) and § 4A1.2 cmt, n.(7) which states "Section 4A1.2(d) covers offenses commited prior to age 18. Attempting to count every juvenile adjudication would have the potential for creating large disparities due to the differential availability of records. Therefore, for offenses commited prior to age 18, only those that resulted in adult sentneces of imprisonment exceeding one year and one month or resulted in imposition of an adult or juvenile sentnece or release from confinement on that sentence within five years of the defendant's commencement of the instant offense are counted. To avoid disparities from jurisdiction to jurisdiction in the age at which a defenndant is condisered a "juvenile", this provision applies to all offenses committed prior to age 18. See United States v.s Nash, 558 Fed. Appx 599 at 604 (6th Cir., 2014).

Upon the contents in this petition, the Supreme Court opinion in Stinson, 508 U.S. 36 at 43-46 (1993); Havis, 927 F. 382 at 386 (6th Cir., 2019); Miller, 34 F.4th 500, 2022 U.S. App. LEXIS 3-4 (6th Cir., 2022) asserting the role in which the "commentary / application note constitute according to the

sentnece reform act and sentencing commission purpose and intent. The § 4B1.4 cmt., n.(1) violates § 4A1.2 cmt., n.(7), § 4A1.2(a)(2), (d)(2), (e)(3); amendments 709 & 795, and § 2K2.1 cmt., n.(10), which the judgment never addressed, which results to a "failure to follow the guideline will result in an incorrect application of the sentencing guidelines under 18 U.S.C. § 3742(a)(2), (e)(2), and (f)(1)." See Williams vs. United States, 503 U.S. 193 at 203. For these reasons the 1994 juvenile adjudication was not an adult sentence of imprisonment exceeding one (1) year and one (1) month as constituted in § 4A1.2 cmt., n.(7); also the sentence in 1994 and 1998 is over 15 years old, which never should have been included in the "Criminal History Computation" constituted by §4A1.2 cmt. n.(7), § 4A1.2(e)(4), (d)(2), (e)(3); amendments 709 & 795, and § 2K2.1 cmt., n.(10). For these reasons these reasons the sentence for 180 months shall be vacated to reflect base offense level 14, Criminal History Category II, which constitutes "18 months - 24 months.". Apdendix 15 (ECF 190) page ID 1199 - illustrate the District Court clear error for refusing to acknowledge the claims in the writ. SEE APPENDIX 5

ALSO, THE APPENDIX 15 HIGHLIGHT THE DISTRICT COURT INCONSISTENT REASONING'S FOR DENYING THE 2255 - WHICH RESULT TO CLEAR ERRORS.

CONCLUSION

Based on the lower court refusal to acknowledge the claims raised in this petition, regarding the relationship of the U.S. Sentencing Guidelines and the application note, petitioner request that the sentence be vacated. ALSO, THE REASON FOR GRANTING THIS PETITION, AND THE APPENDIXS WILL ILLUSTRATE THE ERRORS THAT WAS PRATICED BY THE DISTRICT COURT AND APPEAL COURT. I ASK THAT THIS PETITION BE GRANTED. NOTE: APPENDIX 16 IS THE 2255 COVER PAGE CLARIFYING THE ACTUAL CLAIMS VERIFYING THAT THE OPINION FROM APPENDIX 14 AND 15 NEVER EVEN ACKNOWLEDGE THE CLAIMS IN THE 2255.