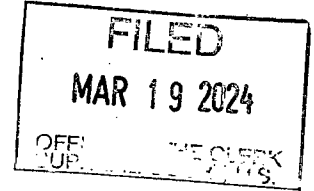


23-7369 ORIGINAL
No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

ROBERT GEORGE JEFFERSON:

— PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA,

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

8th CIRCUIT COURT OF APPEALS

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

PETITION FOR WRIT OF CERTIORARI

ROBERT GEORGE JEFFERSON #08006-041

(Your Name)

P.O BOX 5000

(Address)

GREENVILLE, ILL 62246

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

This case presents important and longstanding issues of both "FIRST STEP ACT" law and Fifth Amendment law.

QUESTION 1) Does "DECLINING TO REVIEW" the merits of a 404(b) petition violate the "Complete Review" Provision of 404(c)?

QUESTION 2) Can a district court "DECLINE TO REVIEW" or "OPT AGAINST ADDRESSING A PETITIONER'S CLAIMS" in a 404(b) motion without violating the defendant's "Fifth Amendment Right" to Due Process of law?

QUESTION 3) Can a district court deny a 404(b) motion Pursuant to the "CONCURRENT SENTENCING DOCTRINE" and NOT violate the "COMPLETE REVIEW" Provision of 404(c)?

QUESTION 4) Can a district court rule contradictory to Congress intent and add a(n) additional Limitation to a Statute?

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

☐ For cases from federal courts:

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

☐ reported at APPEALS COURT No. 23-3629; 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☐ is unpublished.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 B to the petition and is

☐ reported at CASE No. 97-276(2)(MJD/JGL) Doc # 1884; 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☐ is unpublished.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☐ is unpublished.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 DECEMBER 5th, 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 9th, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

- 1) The Fifth Amendment states that No person shall be deprived of "LIFE, LIBERTY, or PROPERTY, without "DUE PROCESS of LAW"... U.S CONSTITUTION AMENDMENT V .

- 2) Section. 404(c). APPLICATION OF FAIR SENTENCING ACT.

PAGE NUMBER

(6, 7, 8, 9, 11)

SEC. 404. APPLICATION OF FAIR SENTENCING ACT.

(a) Definition of Covered Offense.-In this section, the term "covered offense" means a violation of a Federal criminal statute, the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372), that was committed before August 3, 2010.

(b) Defendants Previously Sentenced.-A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of the Bureau of Prisons, the attorney for the Government, or the court, impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

(c) Limitations.-No court shall entertain a motion made under this section to **{2020 U.S. App. LEXIS 7}** reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by sections 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111-220; 124 Stat. 2372) or if a previous motion made under this section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits. Nothing in this section shall be construed to require a court to reduce any sentence pursuant to this section.*Id.*

STATEMENT OF THE CASE

On August 5, 1998, a jury returned guilty verdicts against the defendant on 25 counts involving a drug conspiracy, CCE, Murder, Assault, Possession of A Firearm by A felon, and several drug transactions. At sentencing the Applicable guideline range was determined to be LIFE imprisonment because of the 841(B)(1)(A) drug conviction which carried a 10 years to Life imprisonment and the 2d1.1(d)(1) murder enhancement. The defendants Base Offense Level was determined by the 2d1.1(d)(1) murder enhancement. The petitioner was thereafter sentenced to a term of LIFE imprisonment on the drug conspiracy and murder counts. On May 26, 2021 the defendant filed a "First Step Act" 404(b) motion requesting relief under the Act. (see APPENDIX D) The district court denied the petition Pursuant to the "CONCURRENT SENTENCING DOCTRINE" and "DECLINED TO REVIEW" the arguments in the petition. The defendant filed a timely "NOTICE OF APPEAL" to the district court (see APPENDIX E). The district court failed to forward the defendant's file to the appeals court for review (see APPENDIX E). So the "LIVE CONTRAVERSITY" of whether or NOT the "CONCURRENT SENTENCING DOCTRINE" could be applicable in a 404(b) motion was never decided in the defendants case, and the defendant was denied his 5th Amendment Right to DUE PROCESS to argue his case to the 8th circuit court of appeals. Thereafter the 8th circuit court of appeals was ask this very question and ruled that the "CONCURRENT SENTENCING DOCTRINE" could ONLY be applicable if a ruling in the defendants favor "WOULD NOT REDUCE THE TIME HE IS REQUIRED TO SERVE" or "OTHERWISE PREJUDICE HIM IN ANYWAY". The defendant filed a second 404(b) motion on April 25, 2023 because the district court in its denial of his initial motion violated the defendants Due Process Right and the "COMPLETE REVIEW" provision of 404(c). Also the court never took into consideration factors that include new statutory minimum or maximum penalties, current guidelines, post-sentencing conduct ; and other relevant information about the defendants history and conduct. The court never recalculated the new guideline range based solely on the changes to the crack cocaine sentencing ranges or determined whether the sentence imposed is sufficient, but NOT greater than necessary, to fulfill the

purposes of section 3553(a), (The court has never did a 3553(a) factor on the defendant). The defendant then filed a "NOTICE OF APPEAL" to the district court (see APPENDIX F). The 8th circuit court of appeals denied the appeal (see APPENDIX A). And the defendant filed a timely en banc and rehearing en banc motion to the appeals court which was denied (see APPENDIX C). Despite the contradictory ruling made by the appeals court in U.S v PARKER 993 f.3d 595 (8th cir 2019) & U.S v JEFFERSON 60 f.4th 433 (8th cir 2023) the 6th circuit ruling in U.S v DALE 615 f. SUPP 692 (6th cir 2022) calls into question the 8th circuits ruling and the "CONCURRENT SENTENCING DOCTRINE" being applicable to cases requesting relief from section 404(b) of the "FIRST STEP ACT". And whether it violates the provisions of 404(c) and the defendants Due Process Right.

REASON'S FOR GRANTING PETITION

The petitioner contends that the 8th Circuit Court of Appeals erred in determining that section 404(c) of the "FIRST STEP ACT" bars the petitioner from filing a second motion. Section 404(c) "ONLY" bars a second motion if the sentence was previously imposed or previously reduced in accordance with the Amendment's made by section's 2 & 3 of the "FAIR SENTENCING ACT" of 2010 or, if a previous motion made under this section to reduce the sentence was, after the date of enactment of this ACT, "DENIED AFTER A COMPLETE REVIEW OF THE MOTION ON THE MERITS". The defendant in the instant case never received a reduction and the court declined to review his claims, so he was "DENIED A COMPLETE REVIEW OF THE MOTION ON THE MERITS". Also by the court declining to review the merits of the defendants claims pursuant to the "CONCURRENT SENTENCING DOCTRINE" it declined to consider the Statutory penalties and the new Guideline(s) Range while also accounting for the resulting changes to the sentencing parameters. see 2021 U.S. DIST. LEXIS. 78470 U.S v JACKSON (7th cir 2021)(The petition is "NOT" a second First Step Act motion, because the court did not previously consider the Statutory penalties and New guidelines Range while also accounting for the resulting changes to the sentencing parameter's) . So while Congress made it's Limitation's in 404(c) "Clear and UNAMBIGUIOUS" the district court is attempting to say that it satisfied the "DENIED AFTER A COMPLETE REVIEW OF THE MOTION ON THE MERITS" prong of 404(c) by "DECLINING TO REVIEW" the merits of the petitioner's motion Which is highly hypocritical and the district courts summary procedure violated the "COMPLETE REVIEW" provision in 404(c) of the FIRST STEP ACT of 2018 Pub. L. No 115-391 section 404, 132 stat 5194, 5222.(2018) And deprived the defendant of his Due Process Right to present argument and evidence on the proper extent of "FIRST STEP ACT" reduction. The requirement that a motion under section 404(b) receive a "COMPLETE REVIEW" suggest a baseline process that includes an Accurate comparison of the statutory penalties and any resulting change to the sentencing parameter's as they existed during the original sentencing and as they presently exist. While it is unclear what if any analysis the court did on the petitioner's motion, the court misunderstood the legal requirements governing review of the motion and just said NO. see U.S v WHITE 984

f.3d 76,88 (D.C cir 2020)(District court erred in denying defendants "First Step Act" section 404(b) motion for a sentence reduction because district court misunderstood legal requirements governing review of motions for reduced sentences under 404(b). The district court was under the assumption that it had "UNFETTERED authority when it only had "BROAD" authority because of the Act itself. see U.S v WHITE 984 f.3d 76, 90 (D.C cir 2020) also U.S v LAWRENCE 1 F.4th 40 (D.C cir 2021), U.S v GRAVATT 953 f.3d 262 (4th cir 2020). The 8th circuit precedent on the "COMPLETE REVIEW OF THE MOTION ON THE MERITS" prong would fall short of Congress intent and the Clear instructions Congress gave when it enacted the Act, if appeal courts allow district courts to "Decline to Review" the merits of a petitioner's motion. And it will also call into question the precedent made by the 8th circuit court of appeals in MOORE and HOLDER. see 963 f.3d 725 U.S v MOORE (8th cir 2020), U.S v HOLDER 981 f.3d 647 (8th cir 2020). So since none of the Limitations in 404(c) bar the petitioner from filing a second motion, the petitioners second motion was not and is not an improper second "First Step Act" motion. For the simple fact is the district court never properly assessed his initial motion. (see APPENDIX D) And since the authority invested in the courts are controlled by the statues text "a Complete Review of the Motion " means that a district court "considered (petitioners) arguments" in the motion and "had a reasoned basis for its decision". see 963 f.3d 725 U.S v MOORE (8th cir 2020) . And the district court did neither in the instant case In denying the motion the district court did not discuss the provision's of the "First Step Act" or how the "Fair Sentencing Act" relates to the petitioner's statutory sentencing range. The district court also did not address the petitioner's arguments regarding the availability and scope of resentencing. There is no doubt that the district court did not consider the petitioners arguments because it "Declined To Review" them and the courts reasoned basis is inapplicable because of the "Complete Review" provision of 404(c).

The petitioner also contends that the district court's decision to "Decline To Review" the merits of his "First Step Act" section 404(b) motion , is so far departed from the accepted and usual course of judicial proceedings performed in the analysis of a "First Step Act" motion.

The district court in it's attempt to sidestep the Limitations in 404(c) of the "First Step Act", never took into consideration the fact that a motion could "ONLY" be denied "AFTER A COMPLETE REVIEW OF THE MOTION ON THE MERITS". TO "Decline to review his challenge to his sentence" or for the court to state that it "OPTED AGAINST ADDRESSING THE MERITS OF JEFFERSONS CLAIMS" totally deprives him of any analysis or any DUE PROCESS of his petition. For the court to "Decline to Review" the motion, means that it refused not only to review the motion, but to answer the arguments raised in the petitioner's 404(b) motion. Congress

never gave district courts the authority to "Decline to Review" any "First Step Act" motion. see 404(c) and U.S v MOORE 975 f.3d at 90-91(8th cir 2019). But what Congress did authorize district courts to do is a "Complete Review of The Motion On The Merits"(see 404(c)). The 8th circuit precedent in U.S v McDonald 944 f.3d 769, 772(8th cir 2019)(Instructed district courts that when considering a motion for a reduced sentence under section 404(b) of the F.S.A it proceeds in two steps. First , the court must decide whether the defendant is "ELIGIBLE" for relief under 404. Second, if the defendant is eligible , the court must decide, in it's discretion, whether to grant a reduction.) While a motion to the courts discretion is a motion, not to its inclination, but to its judgement: and its judgement is to be guided by sound legal principles. see MARTIN v FRANKLIN CAPITOL CORP 546 U.S 132, 139, 126 S.CT 704, 163 L.ed .2d 547 (2005) While Congress certainly gave district courts the discretion under 404 not to impose sentence reductions, see CONCEPCION v U.S 142 S.CT 2389, 2402, 213 L.ed .2d 731(2022), That discretion must be reviewed in light of the "First Step Acts" remedial purpose. And that remedial context. The district court in the instant case never made the initial step which was to decide whether the petitioner was "ELIGIBLE" for relief (see APPENDIX D). And second it never conducted the "Discretionary Reduction Analysis" before it denied the motion. Which are "Procedurally and Substantially" unreasonable "First Step Act ERROR's". The question of whether or not to reduce a petitioners sentence, is determined by whether the original sentence remains "APPROPRIATE" in light of the F.S.A reforms. The stated policy governing the "Exercise of the courts discretion" is to bring a sentence that is qualified for reduction in line with a sentence that the court would have imposed under the "FAIR SENTENCING ACT" had it been in effect . (see fact sheet, senate comm on judiciary, the F.S.A of 2018(s.3649) as introduced Nov 15, 2018) The district court denied the petitioner's initial motion by applying the "CONCURRENT SENTENCING DOCTRINE" and refusing to review the claims in his motion. That in itself is a "First Step Act Error" , because the court misapplied the F.S.A law and the district court relied on a "Erroneous Assumption" not to review the motion or apply the Act to the defendant. (Because of the "Complete Review" provision in 404(c)). When Congress wrote the "First Step Act" Congress was Clear and Unambiguous about the Act. And in it's text it never gave court's the option or authority to "Decline to review" any motion. It only authorized that district courts may only deny a motion "AFTER A COMPLETE REVIEW OF THE MOTION ON THE MERITS". If the court "Declined to Review" and as the government states "opted against addressing the merits of the defendants claims", how could that ever amount to a "Complete Review Of The Motion on The Merits" as Congress authorized under 404(b)(c) of the F. S. A ? And therefore the court never considered the defendants argument's because it "Declined to Review" his claims as required by the Act.(see, sec. 404(c) of the F.S.A)

So while Congress, the Limitations in 404(c) itself and the 8th circuit precedent does not authorize courts to decline to review "First Step Act" motions. The defendant in this case was denied his 5th amendment Right to Due Process pursuant to the "First step Act". And because the district courts "Discretion" is not Unfettered because of the Act itself is to rectify sentencing disparity's this court should grant certary so the defendant may be allowed his "bite at the apple". see U.S v WHITE 984 f.3d 88 (D.C cir 2019), U.S v LAWRENCE 1 F.4th 43 (D.C cir 2019), U.S v GRAVATT 953 f.3d 262 (4th cir 2020).

The defendant also contends there is a circuit split on applying the "CONCURRENT SENTENCING DOCTRINE" to section 404(b) motion's. see 2022 U.S DIST. LEXIS 230563 U.S v GORDON (6th cir 2022), 615 F.SUPP .3d 692 U.S v DALE (6th cir 2022). The appeals court rejected the governments argument that because Gordon is serving a Concurrent Life Sentence on his intentional killing conviction, he should be found ineligible for F.S.A relief under the "Concurrent Sentencing Doctrine". The 6th circuit court of appeals obviously took into consideration 404(c)'s "Complete Review" provision and did not allow the district court to decline to review those defendants claims. The "Concurrent Sentencing Doctrine" can ONLY be applied to cases when a ruling in the defendants favor "Would not reduce the time he is required to serve" or " Otherwise prejudice him in anyway". And the court only has discretion under the doctrine when the challenged sentence runs consecutively to the unchallenged sentences and there is no collateral consequences from invoking the doctrine. Well the court never properly addressed the critical "Concurrent Sentencing Doctrine " question, whether a ruling in the petitioners favor would "Reduce the time he is required to serve" or "Otherwise prejudice him in anyway"? Well to answer those questions the petitioner states that his sentence is derived from the 2d1.1(d)(1) drug murder enhancement, and the drug and murder counts are Interpendent of each other. And the murder enhancement is capped off by the maximum sentence the petitioner can receive for his 841(b) violation. And also the 841(b) drug violation the defendant was found guilty of did NOT have a drug amount because the jury was not ask or required to return a verdict on the drug amount. And the 2d1.1(d)(1) murder enhancement looks to the 841(b) drug violation for its penalties Therefore with no drug amount the First Step Act states that the court must go to the default statutory sentencing for crimes involving an unspecified amount of crack cocaine which is 841(b)(1)(c) and carries a term of imprisonment of 0-20 years maximum. see 2020 U.S DIST LEXIS 246419 QUARLES v U.S (8th cir 2020) 2023 U.S DIST LEXIS 79935 U.S v DESANGES (4th cir 2023). In the instant case the statue the defendant was convicted of exposed him to a MANDATORY LIFE SENTENCE. Accordingly the murder cross-reference

could be applied without "increasing the statutory maximum associated with the crime for which the petitioner was convicted" (see 2d1.1(d)(1) murder cross-reference). And now that the statutory maximum has been "MODIFIED" the petitioner is "Statutorily Ineligible" for a LIFE SENTENCE. see U.S v MALIK AL MUSTAFA EL-ALMIN 2020 U.S DIST LEXIS 79217 (8th cir 2020)(since the petitioners statutory Life sentence was based on a drug quantity that is NO LONGER valid, it would result in a sentence BEYOND the statutory range authorized by the verdict), also U.S v COLLINGTON 995 f.3d 347 (4th cir 2021)(district courts Overall sentencing authority was constrained by the retroactively applicable statutory maximums in 21 U.S.C 841). So not only can the petitioners sentence be reduced but there is a prejudicial Collateral Consequence because the petitioner received a Mandatory Life Sentence for a murder enhancement that relies on the drug violation for its penalties. And now the penalty for that drug violation has been modified. And that's why the "Concurrent Sentencing Doctrine" is inapplicable in this case. see U.S v SPENCER 998 f.3d 843 (8th cir 2021) (Congress used the term Modified, not reduced , lowered or decreased.) And in doing so it changed the sentence the petitioner could receive. So while the 6th circuit court of appeals rejected the governments argument pertaining to applying the "Concurrent Sentencing Doctrine" the district court and the 8th circuit court of appeals is attempting to do the exact same thing but obviously did not realize that it would be violating the provision's of 404(c) and the petitioners Due Process Rights by doing so. The 8th circuit court of appeals erred when it overlooked the fact that a decision to "Decline to Review" the petitioners motion would violate the provisions of 404(c) and create a manifest error of law. Section 404(b) of the "First Step Act" authorizes courts to recalculate the guidelines as if section 2 & 3 of the "Fair Sentencing Act" were in effect at the time of the original sentencing. If the court applies the "First Step Act" law and follow's Congress intent and what the Act instructs the courts to do, the petitioners sentence would change. The modifications in the "FAIR SENTENCING ACT" are tied directly to the petitioners overall sentence. Also the district court has granted 404(b) motions on numerous occasions to defendants with "Concurrent Sentences" So for the court to not grant relief when a petitioner is eligible for relief would violate the principles of "EQUAL PROTECTION AND DUE PROCESS" and would demonstrate preferential treatment to other similarly situated defendants (see U.S v DEAN crim No. 97-276(3)(MJD)(8th cir 2020), U.S v FENNER 2020 U.S DIST LEXIS 99963 crim No. 06-211(MJD)(8th cir 2020), U.S v LARRY DARNELL WILLIAMS 2020 U.S DIST. LEXIS 135739 crim No. 04-313 (MJD/FLN)(8th cir 2020, 998 f.3d 843 U.S v SPENCER (8th cir 2021), 2020 U.S DIST. LEXIS 79217 U.S v MALIK AL MASTAFA EL-ALMIN (8th cir 2020), U.S v MICHAEL GREENLAW 2022 U.S DIST LEXIS 34700 case no. 03-cr-107 (JNE)(4)(8th cir 2022).

So for the fore mentioned the petitioner contends that both the district court and the 8th circuit court of appeals violated the petitioners 5th Amendment Right to Due Process by "Declining to Review" his 404(b) "First Step Act" motion. And the petitioner also contends that the district court and the appeals court violated the provisions of 404(c) by denying his motion without a "COMPLETE REVIEW OF THE MOTION ON THE MERITS". While it violates the principles of "EQUAL PROTECTION and DUE PROCESS" to preserve a sentence given under a scheme that Congress has declared UNJUST and more troubling to leave it in place when Congress has declared the "First Step Act" commands the retroactivity of the "Fair Sentencing Act". And even more so to give relief to some who bore the brunt and not others , even after they meet the "ELIGIBILITY" requirement.

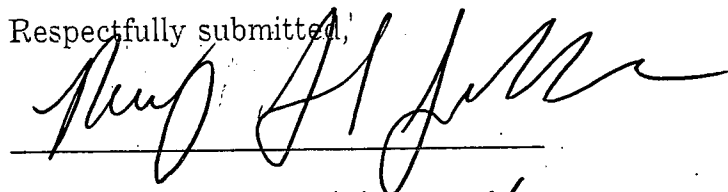
CONCLUSION

The petition for writ of Certiorari should be granted by this court to resolve these issue's.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 3 - 19 - 24
