

ORIGINAL

No. 23-7458

In The
SUPREME COURT OF THE UNITED STATES

FILED

MAY 10 2024

OFFICE OF THE CLERK
SUPREME COURT, U.S.

In Re:

MICHAEL DAVID HOWER

MOVANT

ON PETITION FOR A WRIT OF MANDAMUS

THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN

ON PETITION FOR A WRIT OF MANDAMUS/

MICHAEL DAVID HOWER

Federal Correctional Institution

P.O. Box 1000

Milan, Michigan 48160

QUESTION(S) PRESENTED

Did the Courts below commit reversible error denying petitioners 2255 motion without conducting an evidentiary hearing to resolve factual disputes?

Did the courts below commit reversible error requiring petitioners 2255 motion conform to 28 USC 2255(h)?

Did the courts below commit reversible error denying review of petitioners sentence when it was based on clearly erroneous and patently false claims and enhancements of an acquitted charge?

Did the courts below violate the petitioners Fifth Amendment Due Process and Sixth Amendment rights to a trial by jury by enhancing his sentence well over 10 years based upon an acquitted charge/false claims of a future conviction?

RELIEF SOUGHT

THE FACTS ON WHICH THIS MOTION IS BASED ARE ESTABLISHED IN THE ATTACHED APPENDIX (4) AND (5)

Petitioner Hower prays for a writ of mandamus or as otherwise appropriate, directed to the United States District Court for the Western District of Michigan and the Honorable Robert J. Jonker, directing and commanding him to grant the Petitioner a full and fair judicial review of his claims as required by 2255(b) and Blackledge v. Allison, 52 LED 2d 136, 431, US 63, that he was coerced by the AUSA and his attorneys to plead guilty to a crime he did not commit and that the AUSA and USPO vindictively added enhancements to his sentence based upon a false claim of a prior conviction in state court, enhancements that the sentencing court relied upon even though they were extensively and materially false.

UNAVAILABILITY OF RELIEF IN OTHER COURTS OR IN OTHER FORM

No other court will grant the relief sought by this petitioner because doing so shows that some defendants slip through the cracks of justice, just because of the nature of their accused crimes. At every step of the original court process, Hower relied upon the advice of his attorneys. When Hower attorneys told him that his innocence did not matter in federal court and told him that if he did not plead guilty his wife was going to be arrested and his children were going to grow up in state foster care and face a similar state charge, or he could take the AUSA "off the record" promise of 15 years. His attorney showed him the charging documents to study and how to answer the judges questions at the plea hearing, to deny that he was coerced or made any promises. He listened. When the AUSA did not adhere to the "off the record" promise, he ordered his attorneys to withdraw his guilty plea, They did not listen.

In Howers 2012 2255, and every other request for federal collateral relief, he told the courts everything that had happened. He told how he was innocent, how he had been coerced and threatened. Hower told the courts what was said, by whom, when and where. He told the judges about how the AUSA and USPO added multiple false double and triple counted enhancements claiming that he had been convicted in the state courts. He did everything required by the law, yet the Honorable Robert J. Jonker, did not do what he was required to by 28 U.S.C. 2255(b) and U.S. Supreme Court precedent in Blackledge. The judge did not hold an evidentiary hearing or otherwise inquire to develop a factual record bearing precisely on the facts alleged by Hower. The judge did not ask Howers attorneys if the claims of ineffective assistance of counsel, off the record promises or coercion were true. Instead the courts claimed that their was no evidence on the record to support Howers claims and that review of his claims, such as the prosecutorial vindictiveness' claim and ineffective assistance of counsel were barred by the plea waiver. However, claims such as these are constitutional claims and are not barred by his plea waiver nor will the details of the conversations between himself and his attorneys appear on the record for review, until ordered to disclose

Exceptional circumstances warrant the exercise of this courts discretionary power to preserve Howers ability to seek review of the lower courts decision in this court, and prevent a total miscarriage of justice when it comes to claims of constitutional error. The lower courts claim that Hower should have had the foresight to see that misapplications of the guidelines are the sort of error envisioned by appeal waivers and are the sort that the defendant should have anticipated when bargained away his appeal rights. Hower did not bargain away his rights, he was threatened and coerced. Nor did Hower expect the AUSA and USPO to knowingly lie and submit false information to the sentencing court. He expected the process to be fair and just, not corrupt and unjust.

The courts could easily determine the truth of Howers claims by ordering his attorneys to respond to his allegations. A one or two page document. Allegations that if proven true, would entitle Hower to immediate relief. Instead, they have wasted over 14 years of his life as well as judicial resources answering this and other of his motions for federal collateral relief. Why? The most logical, but uncomfortable answer is that the court is protecting the AUSA and USPO and their many previous court cases.

MICHAEL DAVID HOWER #13630-040
Federal Correctional Institution
P.O. Box 1000
Milan, MI 48160

Pro se representation

Honorable Robert J. Jonker
U.S. District Court
110 Michigan St. NW
Grand Rapids, MI 49502

and

United States Solicitor General
Department of Justice
950 Pennsylvania Ave.
Washington, DC 20503

Respondents

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Petitioner, Michael David Hower, prays that this Honorable Court will issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit, entered on 3-18-2024

..... CITATIONS OF OPINIONS AND ORDERS IN CASE

The original judgment of conviction of Petitioner in the United States Court of Appeals for the Sixth Circuit, which affirmed the conviction and sentence in a published opinion attached hereto as Appendix "1".

The opinion and order of the United States District Court for the Western District of Michigan on petitioners 2255 motion is attached hereto as Appendix "2".

The opinion of the United States Court of Appeals for the Sixth Circuit denying relief for this petition is attached hereto as Appendix "3".

Petitioners sworn, notarized affidavit is attached hereto as Appendix "4".

Motion/Order of Nolle Prosequi from the state court proceeding is attached hereto as Appendix "5".

II. JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on 2024. The jurisdiction of this Court is invoked under U.S.C. 1254(1).

III. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment of the United States Constitution provides:

"No person shall be.... deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation."

2. The Sixth Amendment of the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to... be informed of the nature and cause of the accusation;... and to have the assistance of counsel for his defense."

3. The statutes involved and under review are 28 U.S.C. 2255(b), and 2255(h) which states:

(b) "Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing there on, determine the issue and make finding of fact and conclusion of law with respect thereto."

(h) "A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain...

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court that was previously unavailable.

4. The statute under which Petitioner sought habeas corpus relief was 28 U.S.C. 2255 which states in pertinent part:

2255 Federal custody: remedies on motion attacking sentence

A prisoner in custody under sentence of a court established by an act of congress claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution or laws of the United States, or that the court was without jurisdiction to impose such a sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court to vacate, set aside or correct the sentence.

Unless the motion and the files and records of the case conclusively show, that the prisoner is entitled to no relief, the court shall cause notice to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the courts find that the judgement was endured without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgement vulnerable to collateral attack, the court shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

IV.
STATEMENT OF THE CASE

On March 26th 2008, a federal grand jury for the Western District of Michigan, returned a four count indictment charging the Petitioner with offenses of sexual exploitation of a child [count one], receipt of child pornography [count two], possession of images of a minor engaging in sexually explicit conduct [count three], and possession of child pornography [count four].

On February 8th and 9th, 2009 Howers attorney Nunzio told him that despite of claiming his innocence, if he did not plead guilty, his wife Jodi was going to be arrested absent probable cause, his children were going into state foster care and he would receive the maximum possible federal sentence and face similar state charges. Or he could take the AUSAs "off the record promise" of the mandatory minimum (15 years).

Attorney Nunzio instructed the petitioner to deny being coerced or that any promises were made, then showed Hower the charging documents with uncensored child pornography clearly shown so he could answer the judges questions at the plea hearing.

Within a few days of pleading guilty in federal court, he was arrested on similar state charges. Four years prior to his federal arrest, during a heated divorce, his ex-wife Debbie accused him of sexually assaulting his daughter. Back then, the Michigan State Police investigated the incident and gave Hower a polygraph exam. The results indicated that Hower was being truthful in his denials of the alleged assault. Hower even had multiple sessions with a forensic examiner who claimed the allegations were the result of marital discord, so the M.S.P. refused to pursue any charges. (until 4 years later)

A few months later after receiving the preliminary guideline calculation of 30 years, the defendant ordered his attorney Nunzio to withdrawal his plea, instead, his attorney had a meeting with the AUSA and USPO in a failed attempt to lower his calculation and only succeeded in raising it to about 34 years.

Over the course of the next seven months, Hower again ordered Nunzio to move for withdrawal and when he refused a second time, Hower asked and received a new public defender, Scott Graham. Mr. Graham had two more meetings with the AUSA and USPO to reduce the guideline calculation but again, only succeeded in raising from 34 to 40 to life. Both of his attorneys told him that the state charges were only a trick to secure a higher federal sentence. Hower was never going to be allowed a trial where he could prove his innonecnece.

On November 23rd 2009, walking into the courtroom, Hower again ordered his attorney Graham to withdrawal his guilty plea but Graham stated "we dont have a good enough reason".

On December 1st 2009, the petitioner was sentenced to 420 months in prison which consists of 360 months on count one and 240 months on count two to run concurrently except for 60 months running consecutive to count one; a term of life for supervised release and \$10,000 fine which consists of \$5,000 on each count one and two.

On December 9th 2009, the state charges were dropped (see Appx. 5), yet the enhancements accounting for about 10 years related to the "state conviction"remained.

On November 9th 2011, the United States Court of Appeals for the Sixth Circuit affirmed petitioners conviction and sentence in United States v. Hower, 09-2548.

V.

A. COURSE OF PROCEEDINGS IN THE SECTION 2255 CASE BEFORE THIS COURT.

On December 11th 2012, the Petitioner filed a 28 U.S.C. 2255 motion to vacate, set aside or correct sentence challenging the constitutionality of the conviction, which asserted that: (1) The guilty plea was not knowing or voluntary; (2) the AUSA and USPO vindictively recommended improper enhancements to his guideline calculation; (3) counsel was ineffective for coercing him to plead guilty to a crime he did not commit and for refusing to move for withdrawal of his guilty plea as ordered.

On August 30th 2013, the United States District Court for the Western District of Michigan denied the Petitioners 2255 on all issues without an evidentiary hearing to resolve factual disputes.

On May 29th 2014, the United States Court of Appeals for the Sixth Circuit delivered its opinion affirming the district courts denial of the Petitioners 2255 motion without conducting an evidentiary hearing to resolve the factual disputes.

PRIOR COLLATERAL PROOCEEDINGS

The Petitioner has filed over 20 motions for Federal collateral relief to the United States District Court for the Western District of Michigan, United States District Court for the Eastern District of Michigan, United States District Court for the Eastern District of Kentucky, United States District Court for the District of Maryland, The United States Court of Appeals for the Sixth Circuit and to this United States Supreme Court over the past 12 years including a motion to enforce FOIA, motion under rule 60(b), motion to unseal docket #57, motion to withdrawal his guilty plea, motion for a writ of mandamus, 3 motions under 2241 and multiple motions for a second or successive 2255. Hower has even filed an attorney malpractice civil suit against his attorneys to try to get them to answer to the claims he made in the 2012 2255.

In his multiple motions for federal collateral relief he alleged that:

His plea was not knowing or voluntary because he was coerced and threatened by his attorney and the AUSA, despite his claim of actual innocence's.

The AUSA and USPO vindictively recommended illegal enhancements based on clearly patently false information that he had been convicted in the state court for similar crimes, yet there was no state conviction.

Howers attorneys were ineffective for refusing Howers orders to move for withdrawal of his guilty plea at least 3 times before sentencing.

The courts below erred by not holding an evidentiary hearing to allow him to present evidence to support his claims of constitutional error thereby not actually reviewing any of his claims "on the merits".

On November 17th 2023, the petitioner filed an application for a "continuation" of his 2012 2255 on pre printed forms supplied by the United States Court of Appeals for the Sixth Circuit for "leave to file a second or successive motion to vacate, set aside, or correct a sentence under 28 USC 2255 by a person in Federal custody", a court requirement even though by law there is no requirement.

On 3-18-2024, the United States Court of Appeals for the Sixth Circuit delivered its opinion that the petitioner is not entitled to relief.

VI
EXISTENCE OF JURISDICTION BELOW

Petitioner was indicted and convicted in the United States District Court for the Western District of Michigan for sexual exploitation of a child and receipt of child pornography.

A section 2255 motion was appropriately made in the convicting court and subsequently denied. A timely appeal to the United States Court of Appeals for the Sixth Circuit was filed and denied.

VII.
REASONS FOR GRANTING THE WRIT

B. THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN DIRECT CONFLICT WITH THE APPLICABLE DECISION OF THE COURT.

1. The Sixth Circuit Panel Opinion erred by affirming the District Court was not required to conduct an evidentiary hearing to resolve factual disputes, which if true, warrant habeas relief and the record did not "conclusively show" that he could not establish facts warranting relief under 2255, which entitled Petitioner to relief.
2. The Sixth Circuit Panel Opinion erred affirming the district court did an "on the merits" review of his Prosecutorial Vindictiveness' claim he made in his 2012 2255, and that this petition is a "second or successive as it is in direct conflict with Johnson v. Williams, and Sanders v. United States.
3. The Sixth Circuit Panel Opinion erred by determining that the Petitioners plea waiver bars review of his sentence even though the sentencing court relied on and demonstrably based his sentence on extensively and materially false claims and enhancements as its decision is in direct conflict with Roberts v. United States, United States v. Tucker, and Townsend v. Burke, that states that a criminal defendant possesses a constitutional right not to be sentenced on the basis of misinformation of a constitutional magnitude and the Panel Opinion that the Petitioners sentence does not exceed the statutory maximum is also in conflict with Apprendi/Blakely.

VIII
ARGUMENTS AMPLIFYING REASONS FOR WRIT

THE COURT OF APPEALS ERRED AFFIRMING THE DENIAL OF PETITIONERS 2255 MOTION WHERE THE DISTRICT COURT FAILED TO CONDUCT AN EVIDENTIARY HEARING TO RESOLVE THE FACUAL DISPUTES.

Section 2255 Provides that "unless the motion and the files and records of the case conclusively shows that the petitioner is entitled to no relief, the court shall... grant a prompt hearing thereon determine the issues and make findings of fact and conclusions of law with respect there to". 28 USC 2255. See eg., Fontaine v. United States, 411 U.S. 213, 215 (1973). (reversing summary dismissal and remanding for hearing because "motion and the files and records of the case [did not] conclusively show that the petitioner is entitled to no relief".)

Petitioners 2255 petition alleged facts that if proved, would entitle him to relief, see Hill v. Lockhart, 474, U.S. 52, 60 (1985); and Blackledge v. Allison, 431 U.S. 63 82-83 (1977) and Massaro v. United States, 538 U.S. 500. Petitioner asserted that the AUSA and USPO vindictively pursued a higher sentence than they otherwise would to punish him for asserting his constitutional rights and promises he was made to induce him to plea guilty to a crime he did not commit, by adding multiple double and triple counted enhancements and information claiming that he had been convicted of a similar crime in a states court proceeding. Because his 2012 2255 contained factual allegations, the petitioner was entitled to an evidentiary hearing.

THE COURT OF APPEALS ERRED BY DETERMING THAT THE SENTENCING COURT DID AN "ON THE MERITS" REVIEW OF PETITIONERS PROSECUTORIAL VINDICTIVNESS CLAIM THAT HE MADE IN HIS 2012 2255 AND THAT THIS MOTION IS THEREFORE NOT A "SECOND OR SUCCESSIVE" PETITION.

It is very clear that the courts below erred, as this court in Johnson v. Williams, 185, LED 2d 105, 568, U.S. 299 (2013) explains by stating "a judgment is said to have been rendered "on the merits" ONLY if it was delivered after the court.... heard and evaluated the evidence and the parties substantive arguments". Used in this context, the words "merits" is defined as the intrinsic right and wrong of a matter, as a caseunobscured by procedural details, technicalities, personal feelings etc.. Blacks Law Dictionary, (1199 9th ed. 2009)

In Sanders v. United Sates, Led 2d 148 373 US1, this court states that "no matter how many prior applications for Federal Colleterial relief have been made, if the same ground was earlier presented but not adjudicated "ON THE MERITS" 28 USC 2255(h) DOES NOT APPLY". 28 USC 2255(h) is a rule requiring that second or successive petitions must be certified by a panel of the appropriate court of appeals. Also meaning that no other regulation limiting the time or manner or how such an appeal is taken. As previously discussed, the lower courts never ruled on Howers prosecutorial vindictiveness' claim on the merits. Even though it was filed on a "second or successive", pre printed motion form, this motion must be considered a continuation or amended version of the 2012 2255 until the vindictiveness' claim is reviewed using Johnson v. Williams.

THE COURT OF APPEALS ERRED BY DETERMINING THAT PETITIONERS PLEA WAIVER BARS REVIEW OF HIS SENTENCE EVEN THOUGH THE SENTENCING COURT RELIED ON AND DEMONSTRABLY BASED HIS SENTENCE ON EXTENSIVELY AND MATERIALY FALSE CLAIMS AND ENHANCEMENTS CLAIMING THAT HE HAD BEEN CONVICTED FOR A SIMILAR CRIME IN A STATE PROCEEDING AND THAT HIS SENTENCE DOES NOT EXCEED THE STATUTORY MAXIMUM

A criminal defendant possesses a constitutional right not to be sentenced on the basis of "misinformation of constitutional magnitude". Roberts v. United States, 455 U.S. 552, 556, 100 S. Ct 1358, 63 L.Ed 2d 622 (1980)(quoting United States v. Tucker, 404 U.S. 443, 447, 92 S. Ct. 589, 30 L. ed 2d 592 (1972) see Townsend v. Burke, 334 U.S. 736, 741, 68 S. Ct 1252, 92 L. Ed 1690 (1948) (Stating that reliance on "extensively and materially false" information, which the prisoner had no opportunity to correct, violates due process of law). In order to prevail on a claim that the trial court relied on inaccurate information at sentencing, the habeas petitioner must demonstrate that "the information in question was materially false and that the trial court relied on it" Potter v. Yokin, 6 Fed Appx 295, 296 (6th Cir. 2007) see also United States v. Hitow, 889 F. 2d 1573 1582 (6th Cir. 1989).

Both of the petitioners attorneys told him after his guilty plea that any state charges were a trick to increase his federal guideline sentence and that he was never going to be allowed to go to state trial to prove his innocence. The AUSA and USPO vindictively increased the petitioners guideline calculation by adding extensively and materially false claims and enhancements claiming he had been convicted for a similar crime in a state court proceeding and the sentencing court relied on it to give him the maximum sentence available under the statue defining the crime of conviction.

The petitioners sentence DOES exceed the statutory maximum as explained by this court in *Apprendi v. New Jersey*, 530 U.S. 466, 483 (2000) and *Blakely v. Washington*, 542 U.S. 296 (2004) as this court has previously ruled, "other then the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum, must be submitted to a jury, and proven beyond a reasonable doubt" *Apprendi* at 690. In *Blakely*, this court ruled 'over pointed dissents' the "the statutory maximum for *Apprendi* purposes is the maximum sentence a judge may impose SOLEY on the basis of the facts reflected in the jury verdict or admitted by the defendant, *Blakely*, SUPRA at *4; in other words, the relevant 'statutory maximum' IS NOT the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose without any additional findings.

The *Blakely* court defined what the statutory maximum penalty is as prescribed in *Apprendi*. In *Blakely* defined the statutory maximum penalty as "the statutory standard sentencing guideline BASE offense level", rather than "the maximum sentence available under the statue defining the crime of conviction".

The AUSA and USPO knowingly lied when enhancing Hower guideline calculation adding double and triple counted enhancements over the course of 5 PSI versions claiming that he had been convicted in state court, not only violates his due process rights, rights to a jury trial, but also *Apprendi/Blakely* and raises his sentence above the statutory maximum.

THIS UNITED STATES SUPREME COURT ERRED IN UNITED STATES V. WATT, 519 U.S. 148 151 117 S. CT. 633 (1997) WHEN RULING TO ALLOW JUDGES TO USE ACQUITTED OR UNCHARGED CONDUCT TO IMPOSE A HIGHER SENTENCE THEN THEY OTHERWISE WOULD IMPOSE. THIS RULING IS A DUBIOUS INFRINGEMENT OF THE RIGHTS OF DUEPROCESS AND TO A JURY TRIAL

A few years ago, the petitioner befriended another inmate named Matt who was arrested by the DEA in a big sting operation on multiple counts related to the use, possession, trafficking and distribution of opioids. Fearing he would receive the maximum available penalty of life, he pleads guilty the two less severe charges facing a possible combined total of 40 years. (Despite his claims the pills were for his private consumption.) The government claims it will remain mute at sentencing but requires the defendant signs a blanket plea waiver. The defendants public defender tells him after reviewing the facts of the case, he can expect the mandatory minimum of 5 to 10 years. But the AUSA has a trick up his sleeve, he has been communicating behind the scenes with the USPO, who conducted her own investigation and believed the defendant WAS trafficking and distributing drugs and was responsible for his wife death a few years earlier, though no charges were ever filed. So the AUSA and USPO used the two dismissed charges and the accusation to enhance the defendants sentence to the maximum sentence available under the statue defining the crime of conviction, which was 40 years.

As this court learned late January 2023 when the Department Of Justice convinced this court to place a hold on the 5 petitions you had in front of you related to the use of acquitted conduct, assuring you that the USSCS Guideline Amendments would include a proposal to ban acquitted conduct at sentencing, claiming they "were going to fix the problem", and this courts intervention was not necessary to address the wide spread problem of acquitted conduct sentencing because the Sentencing Commission could promulgate guidelines to preclude such reliance.

Then a few weeks later, the DOJ filed comments with the sentencing commission arguing that they lacked the authority to place restrictions on acquitted conduct sentencing.

Late December 2023 the Sentencing Commission announced it purposed amendments and outlined 3 possible fixes to remedy the acquitted conduct problem. Option one would amend 1b1.2, the relevant conduct guideline, to provide that acquitted conduct is not relevant conduct for determining the guideline range. This appears on its face to be the one option that will come closest to fixing the problem, yet it makes no mention of retroactivity, so some prisoners might be left out. Nor does it address the DOJs comments claiming that the Commission lacks authority to change the use of acquitted conduct at sentencing. It is safe to say that the DOJ will fight to prevent any changes to the system, a fight that could take years. This court needs to remedy this problem itself and not wait one day longer as every day this court waits to put a complete end to the use of acquitted conduct at sentencing is another day that defendants like Hower and "Matt" spend in prison past what they would have if their was a constitutional prohibition on this type of sentencing, made retroactive by a decision by this court.

CONCLUSION

The Petitioner understands this courts hesitation in doing a full review of the facts alleged in this motion because it "implicates the important judicial interests of finality of convictions and efficient administration of claim processing". But Hower asserts that in reviewing his 2012 2255, the sentencing court denied him the statutory process guaranteed to him under 28 USC 2255(b), an act created by congress and guaranteed by the U.S.Constitution. It was fundamentally unfair and a miscarriage of justice that the sentencing court refused to grant him a full and fair opportunity to prove the facts alleged in the motion, the same process set by the Sixth Circuit Court of Appeals in U.S. v. Yisrael, 355 FED Appx. 933 (6th Cir. 1999) this Court in MASSRRO, 538 U.S. at 506 and Blackledge v. Allison, 52 LED 2d 136, 531 US 63. The evidence to support one of Howers claims of constitutional error is attached to this document and should not be overlooked or dismissed because the sentencing court refused to allow him what he was entitled to as a matter of law in 2012.

The Petitioners sentence was enhanced well over 10 years, exceeding the statutory maximum as defined by this court in Apprendi/Blakely, because the AUSA and USPO intentionally lied to the sentencing court and vindictively pursued a higher sentence by adding double and triple counted enhancements claiming that he was convicted in the state court for a similar crime. Is it not illegal for the AUSA and USPO to lie to the sentencing court to increase a defendants sentence? Is it not a miscarriage of justice to require Hower to suffer any extra time in prison for crime he did not commit?

The false claim of another similar conviction has been used against him multiple times over the past 11 years when dealing with his rehabilitation/ pre release needs through the BOP. The false claim has severely limited his ability to participate in the sex offender treatment non residential programs and will have a monumental detrimental effect once he is released and on parole. And thanks to the press release made by the United States Attorney shortly after his federal sentence, pandering the false claim he was convicted for an assaulting his daughter when she was four, all of the petitioners family and friends and possible employers can read this false information on the internet. Because his children were so young with little memories of the petitioner, they have believed for the past 14 years that he was convicted for assaulting her. The petitioner wonders how that has affected the children's lives believing something so horrendous has happened to them. How much anger and hate they must feel toward him.

Petitioner Michael Hower, has been deprived of his basic fundamental rights guaranteed by the Fifth and Sixth Amendments of the United States Constitution seeks relief in this court to restore those rights that he was deprived in the district court and appellate court. Petitioner prays this Court will issue a writ of mandamus reverse the judgment of the Sixth Circuit Court of Appeals.

Respectfully submitted on this

March 18th 2024

Michael Hower