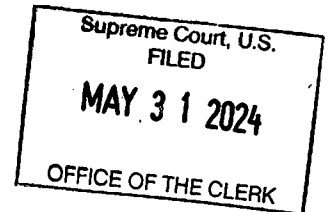


23-7700

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



Deon Anthony Romelle Bailey — PETITIONER
(Your Name)

VS.

THE UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

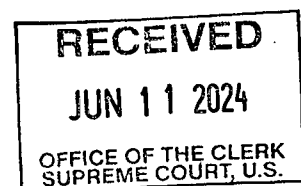
PETITION FOR WRIT OF CERTIORARI

Deon Anthony Romelle Bailey
(Your Name)

P.O. Box 1033
(Address)

Columbus FL 33521
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- ① Did the Eighth Circuit Decision improperly deny defendants Career Offender Challenge by failing to Consider he no longer qualifies for the enhancement?
- ② Did the Eighth Circuit Decision improperly deny Compassionate Release and/or defendant being a victim of sexual abuse or physical abuse resulting in serious bodily injury while in custody, when the records prove rape and sexual assault occurred?
- ③ Did the Eighth Circuit Decision improperly deny Compassionate release disparity claim by not requiring proof of drug quantities used for sentencing by preponderance of evidence when the expert witness Drug Task Force Agent Chad Litzer claimed on the record no evidence of 840 grams of crack cocaine. With the factual basis being 1.06 grams of crack cocaine base?
- ④ Did the Eighth Circuit Decision improperly deny Compassionate Release knowing Lewis Altman Jr claimed responsibility for both counts by email, phone calls, and Affidavit sent directly to the District Court?
Proving Petitioner actually innocent?

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. Benton, Appeals Circuit Judge
2. C.J. Williams, Chief District Judge
3. Daniel C Tvedt, Prosecutor
4. David Alan Cornelik, Defense Attorney
5. Erin R. Eldridge, Prosecutor Assistance
6. Jessica Clark, Probation
7. Kelly, Appeals Circuit Judge
8. Linda E. Reade, District Court Judge
9. Mark A. Roberts, Magistrate District Judge
10. Shepherd, Appeals Circuit Judge
11. Timothy T. Duax, Prosecutor

RELATED CASES

Concepcion vs. United States, 597 U.S. (2022)

Mattis vs. United States, 136 S. Ct. at 2248

U.S. vs Mc.Fee 842 F.3d (8th Cir. 2016).

U.S. vs Jordan, 812 F.3d 1183, 1186 n.1. (8th Cir 2011)

Miller vs. Alabama, 132 S. Ct 2455, 2466 (2012)

Graham vs. Florida, 560 U.S. 48, 76, 130 S. Ct 2011, 2031 (2010).

U.S. vs. Davis, 2019 U.S. D LEXIS 36348, 2019 WL 10545554.

U.S. vs. Colton 742 F.3d (8th Cir 2014)

US. vs Brown, 45 F. Supp. 3d 691, 702, 703 (S.D Iowa 2020).

U.S. vs. Ledezma - Rodriguez, 472 F. Supp 3d 498, 504-05 (S.D. Iowa 2020).

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APPENDIX C *Exhibit 2 injury proof after attack sexual assault*

APPENDIX D *Exhibit 3 Home release plan*

APPENDIX E *Exhibit 4 Rehabilitation Effort*

APPENDIX F *Exhibit A-1 and A-2 Proof of injury after attacks*

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<i>Call v. United States</i> , 552 U.S. 38, 51, 128 S.Ct. 586. 597 (2007).	7.
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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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☒ 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: _____, 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

Due Process Clause AMEND. XIV 18 USC 4241

Under 18 USC 4241, a statutory framework that would not exist but for this constitutional concern, substantial evidence is defined as "reasonable cause" to believe such a defect exists. Lewis Altman's Jr. Affidavits present a reasonable cause to believe petitioner is innocent.

Due Process Clause AMEND. V

Under the due process of the 5th Amendment Petitioner asserts there was no large quantity of crack cocaine on a presentment or indictment of a Grand Jury.

The Administration of Justice

DEUTERONOMY 16, 18-19

⑮

Judges and officers shalt thou make thee in all thy gates, which the Lord God giveth

thee, throughout thy tribes: and they shall judge the people with just judgment.

⑯

Thou shalt not wrest judgment; thou shalt not respect persons, neither take a gift: for a gift doth blind the eyes of the wise, and prevent the words of the righteous.

STATEMENT OF THE CASE

On or about July 16, 2015, the Grand Jury, sitting in the Northern District of Iowa, indicted Petitioner, in Count 1 with Distribution of Cocaine Base within 1,000 feet of Orange Park in Dubuque, Iowa, on March 12, 2015, in violation of 21 U.S.C. 841 (a) (1), 841 (b) (1) (C), and 860 and in Count 2 with the same offense on March 18, 2015. The Indictment did not charge, or hint by statutory citation, any enhancement for being a Second Offender under the 851 Notice for a felony drug offense. Probation found the Petitioner was subject to a imprisonment range of zero and not more than 20 years imprisonment under 841 (b) (1) (C), based upon the Petitioner's status as a Career Offender under 4B1.1 Probation based that conclusion on two convictions that occurred between 2007 and 2008. During negotiations, the Government made three offers, each requiring Petitioner to admit to small quantities. Petitioner's Exhibits during A, B, C, during sentencing at Docket No. 103 On November 21, 2015, the parties reached agreement. Docket No. 59 Petitioner admitted:

1. Harassment in the First Degree 2007
2. Conspiracy to Deliver a Schedule II Controlled Substance to wit Cocaine 2008
3. distributed .74 grams crack cocaine 2015
4. distributed .32 grams crack cocaine 2015

The agreement did not require Petitioner to admit to Illinois aggravated firearm discharge nor any extrapolated drug quantities. 4

STATEMENT OF THE CASE

CONTINUED

On November 12, 2016, the Petitioner pleaded guilty to two lesser included offenses of Distribution of Cocaine Base in violation of 21 U.S.C. 841 (a)(1) and 841 (b)(1)(C).

Docket No. 93 The District Court sentenced Petitioner to 240 months on Counts I and II concurrent to one another, and 55 months in Count II consecutive to Count I, for a total of 295 months in federal prison.

Deon Bailey Elbey
4-21-2024

REASONS FOR GRANTING THE PETITION

Affidavit

- ① I the affiant being of sound mind, body, and spirit swear under penalty of perjury that Lewis Altman Jr sold the drug on 3-12-2015 and 3-18-2015 and I Deon Anthony Romell Bailey flesh and blood man is innocent of the charges in count 1 and 2 in the indictment.
- ② I am also innocent of the 840 gram crack cocaine quantity and I never sold this quantity found by the district court.
- ③ I am not a career offender as defined in the PS12
- ④ I did not plea guilty to 840 grams of crack cocaine base
- ⑤ Lewis Altman Jr already claimed responsibility for both charges I am being held wrongfully imprisoned, false imprisonment.
- ⑥ I was sexually assaulted twice in federal prison causing serious bodily injury with no justice for the men who attacked and assaulted me.
- ⑦ I have been a victim of abuse and dehumanization while in prison and the PS12 doesn't not reflect my proper status as a Nubite not a Black Person.
- ⑧ I have been victimized and I am a flesh and blood man created by God held illegally without Lawful Jurisdiction
- ⑨ My documents were struck from the record and this was the cause and effects of me being illegally Kidnapped. The district court record supports this affidavit. Doc. 31 and 32 filed by Deon Anthony Romelle Bailey

I Deon Bailey flesh and blood man created by God Swear this is the truth, the whole truth, and nothing but the truth So help me God.

REASONS FOR GRANTING THE PETITION

Petitioner seeks reduction of sentence based on misapplied career offender enhancement, also the substantive unreasonableness of the sentence. The factual basis for the plea consisted of 1.06 grams of cocaine base. There is no evidence of 840 grams of cocaine base being sold. The erroneous quantity calculation is clear error. The Court erred when it denied sentence reduction. The Court erred because intervening changes in law can be considered in a 3582 (c)(1)(A) motion. From the time of sentencing up until now the Court has erred when it found harassment and firearms discharge were predicate career offenses because the Government failed to meet its burden with non-Shepard documents and neither are "crimes of violence". Miscalculating sentencing guidelines is "significant procedural error." Gall v. United States, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007). Petitioner's sentence reduction motion was denied based on his past criminal history and a large quantity of crack cocaine when the record does not support this contention. The Court did not consider none of the past predicates qualify to enhance the sentence. The Illinois conviction for discharge of firearm is not a "crime of violence" see Mathis v. United States, 136, S. Ct. at 2248. The Iowa Conviction for harassment is not a "crime of violence" see Mathis v. United States, 136, S. Ct. at 2248. In regards to the inaccurate drug quantity. The expert witness Drug Task Force Agent Chad Citizen

claimed no evidence of 840 grams of cocaine base. please request sentence hearing transcript held on May 16th, 2016 pg 18 line 19 states "I have no evidence of those" meaning "large quantity of crack cocaine." A district court's quantity determination cannot stand if it is unsupported by substantial evidence, is based on an erroneous view of the applicable law, or in light of the entire record, this Court is left with a firm and definite conviction that a mistake has been made. United States v. Alcade, 818 F.3d 791, 794 (8th Cir. 2016). Even though a district court has a discretion to consider a wide variety of evidence, exhibits still must be sufficiently reliable. U.S.S.C. 4A1.3(a)(1). United States v. Grant, 663 F.3d 1023, 1030 (8th Cir 2011) (citing U.S.S.C. 4A1.3(a)(1) and United States v. Ortiz, 636 F.3d 389, 393 (8th Cir 2011))

The evidence the PSIR used was not substantial. It was a solitary exhibit without corroboration, a point Petitioners Compassionate Release Motion made well when it noted there was no corroborating financial evidence, laboratories, or similar transactions. see Docket No. 85 on the record (citing United States v Colton, 742 F.3d 345 8th Cir. 2014)

To prove there is a sentencing disparity see United States v. Andrew Sarchett (8th Cir. July 2021) July 14." Petitioner asserts he is actually innocent of the 840 grams not charged by indictment. The factual basis is 1.06 grams. The DOJ stated that the sentencing disparity, established in the 1980's, was based on "misguided

policy" and "misinformation." The DOJ further noted that 87.5% of people in federal prison serving time for crack offenses were black. Petitioner asserts U.S.S.G 1B1.13(b)(5) applies to his circumstance because they are "similar in gravity" to those described in paragraphs (1) through (4) of the amended U.S. Sentencing Guidelines. The Court has a broad discretion to consider any relevant information in reducing Petitioner sentence. see Concepcion vs. U.S., 142 S. Ct 2389 213 Ed. 2d 731 (2022). Petitioner was a victim of assault also sexual assault that caused physical abuse resulting in serious bodily injuries. This was due to a Correctional Officer Bauer and P.A. Schneider employed and contracted by the Bureau of Prisons while I been in custody. please request all PREA records from B.O.P. The Bureau of Prisons violated Petitioner's constitutional rights leaving him injured and with no justice. Also the right to be protected from cruel and unusual punishment was violated. This was a clearly established right. see ^{3:20-cv-00802 - GCS} (Bailey vs. United States et al) (7th Cir 2022) their conduct violated constitutional rights and the B.O.P. policy. Petitioner asserts, "he suffered from an objectively serious medical need", and the jail officials "actually knew of, but deliberately disregarded, that need." Meur v. Greene City Jail Emps., 487 F.3d 1115, 1118 (8th Cir. 2007) citing Farmer v. Brennan, 511 U.S. 825, 837, 114 S.Ct. 1970, 128 L.Ed. 2d 811 (1994); (Estelle v. Gamble, 429, U.S. 97, 105, 97 S.Ct. 285,

50 C. Ed. 2d 251 (1976). Petitioner asserts Compassionate release should be granted due to Petitioner being actually innocent of both counts. see Exhibit 1 Affidavit by Lewis Altman Jr. received Jan 8, 2016 way before petitioner was sentenced. The district court had favorable evidence to accused petitioner and failed to investigate. The Fifth and Fourteenth Amendments require the government to disclose specific types of evidence to defendants. For example, in Brady v Maryland, the Supreme Court held that due process requires the prosecution to disclose, upon request, evidence favorable to an accused person when such evidence is material to guilt or punishment. In Petitioner's case the Judge, Prosecutor, and Defense attorney all failed to investigate Lewis Altman Jr., after he sent emails, phone calls, and Affidavit. the Sentencing Judge denied me the right to review the phone calls before the plea and sentencing. Linda R. Reade marked them as exhibit A for informational purposes. Still, to this day this evidence has been hid from Petitioner and Motions denied when I request the material evidence. Evidence "favorable to an accused" includes exculpatory evidence and evidence that impeaches a government witness. see U.S. v. Bagley, 473 U.S. 667, 676 (1985) quoting Brady, 373 U.S. at 87) Petitioner asserts this was the cause and effects of him being sexually assaulted, attacked, detained with no justice from his

attackers or the Justice system that wrongfully, illegally, irresponsibly, inaccurately, unlawfully, arrested, indicted, charged, convicted, and sentenced to fight for his life and freedom as an actual, factual and legal innocent flesh and blood man created by God. please see Reyes Reguena v. United States 243 F. 3d. 893, 904 (5th Cir 2001) recognizing a defendants, claim that he had been imprisoned for non-criminal conduct" counts as a claim of actual innocence. Petitioner respectfully points out the "trespass on the case", it is the duty of the courts to be watchful for the Constitutional rights of the citizen and against any stealthy encroachments thereon". [Boyd v. United States, 116 U.S. 616, 635] [1885] "It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgment in our constitutional jurisprudence. No higher duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution." [Downs v. Bidwell, 182 U.S. 244 (1901)] "res ipsa loquitur", the thing speaks for itself, meaning: the wrongful imprisonment which caused Petitioner to be injured. Subsection (b)(3) of the amended guideline applies when new circumstances develop to mean that the inmate is the only available caregiver for an immediate family member. see Home Release Plan letter from father and mother. In regards to Petitioner's rehabilitation, he is incident

report free for 3 years. Petitioner continues to be a part of the Unit Pride and Inspiration Committee and facilitates a unit based class "Healthy Resolve" to assist his peers with their process of change. see Challenge Program Exhibit pg 1-4 (4). Petitioner would like this Court to consider the 3553 (a) (6) factors have been met in this case, also consider Lewis Altman Jr claimed responsibility for both counts which proves Petitioner's innocence. Petitioner is classified as a non-violent offender no longer career offender. The History and Characteristics as of today pose any risk of the Petitioner committing any crime. Being sexually assaulted and attacked twice is more than enough to provide just punishment and Deterrence and Protection of the Public. 13 more years is "greater than necessary" to reflect that fact he is innocent. His only wish [is] to be released to start a new and better life." "We (judges) have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution. "[Cohen v. Virginia, (1821), 6 Wheat. 264 and U.S. v. Will, 449 U.S. 200]" "It may be that it is the obnoxious thing in its mildest form; but illegitimate and unconstitutional practices get their first footing in that way; namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of persons and

property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the Courts to be watchful for the Constitutional Rights of the Citizens, and against any stealthy encroachments thereon. Their motto should be *Obsta Principiis*. see Exodus 22:9 Laws concerning Restitution and also Exodus 23:7 Laws of Human Relations. King James Version. Petitioner asserts there is no evidence of a large quantity of crack and no longer a Career Offender, and Lewis Altman Jr sold those drug's. I swear to God.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Deon Bailey

Date: 4 - 21 - 2024