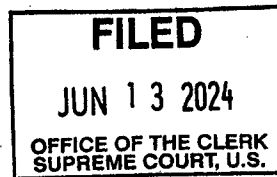


No. 23A973

23-7795

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



MARC PIERRE HALL — PETITIONER *pro-se*
(Your Name)

VS.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

US COURT OF APPEALS (4th Cir. No. 22-6301)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marc Pierre Hall # 11691-038
(Your Name)

POB 2000 USP Hazelton
(Address)

Bruce ton Mills, WV. 26525
(City, State, Zip Code)

c/o: (304) 379-5000
(Phone Number)

QUESTION(S) PRESENTED

- 1). Whether erroneous use of statutes constitutes subject-matter-jurisdictional error and other Constitutional errors under the first step Act that warrants correction.
- 2). Whether 21 USC 860 creates disparity in sentences that requires the lesser offense 841(b) penalty applied in first step Act sentences.
- 3). Whether a sentencing court has discretion to carry forward or perpetuate Constitutional errors of the original sentence pursuant first step Act sentencing.
- 4). Whether a sentencing court has discretion to use a revised (PSR) report without objection by the defendant under first step Act sentencing.
- 5). Whether established S.Ct. laws of sentencing apply under the first step Act.
- 6). Whether a sentencing court exercising discretion under the first step Act sec. 404(b) is then required to apply sections 401, 402, 403 if applicable.
- 7). Whether Apprendi and Alleyne are applicable in first step Act sentencing.

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:

RELATED CASES

- 1). US v. Hall, 3:95-cr-05 (FDW)
- 2). US v. Hall, 129 F.3d 1261, 1997 WL 712885 (4th Cir. 1997);
Cert. denied 534 US 932, 118 S.Ct. 2331, 14 L.Ed.2d 704 (1998).
- 3). US v. Hall, 2021 US Dist. Lexis 170668, 2021 WL 4129619
at *1 (W.D.NC Sept. 9, 2021) (collecting cases). No. 21-
7350, 2021 US App. Lexis 34677, 2021 WL 5445974
(4th Cir. Nov. 22, 2021).

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APPENDIX B - 4th Cir. Appeals Order no. 22-6301 supplement pleadings.

APPENDIX C - District Court opinion, 2022 U.S. Dist. Lexis 34835 First step Act 2/28/22.

APPENDIX D - BOP Agency sentence Computation Data For Ineligible programs and classification errors.

APPENDIX E - 18 USC 3632; 3633; 28 CFR 550.55 Restriction of programs for certain offenses

APPENDIX F - 5th amendment US Constitution

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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 _____; 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 C to the petition and is

☒ reported at 2022 US DIST. LEXIS 34835; 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 3/8/24.

☒ No petition for rehearing was timely filed in my case. See Appendix (A) post mark mailed to petitioner out of time.

☐ 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

- 1). US Constitution 5th amendment (appx. F)
- 2). 18 USC 3632 ; 3633 ; 28 CFR 550.55 (appx. E)
- 3). 18 USC 844(i) (appx. G)
- 4). 18 USC 924(c)(1); (c)(ii) (appx. H)
- 5). 18 USC 3584(e) (appx. I)
- 6). FSA (2018) (appx. J)
- 7). 21 USC 841(b)(1)(c); 860 ; 851 (appx. K)
- 8). USSC amendment 821 (appx. L)
- 9). 18 USC 3553 (appx. M)

Other Constitutional Provision:

- 10). Article 1, Section 1 - All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. (p.8, para. 7).

STATEMENT OF THE CASE

The Courts below in the Fourth Circuit have entered decisions in conflict with laws of several Circuits including the Supreme Court regarding First Step Act (2018) sentencing procedures, in violation of the U.S. Constitution 5th Amendment.

This case begins in (1995) Fourth Circuit (WDNC at Charlotte) for 21 USC 846, 841 drug offense; 18 USC 844(i) and 924(c) 1 Firearm offenses. Originally Hall was sentenced to Count (i) drug offense of Life; Count (10) - 924(c) 1 of 5 yrs. consecutive; Count (11) - 924(c) 1 of Life consecutive; Count (12) - 844(i) of 480 months concurrent and 10 yrs. supervise release concurrent. Numerous appeals were exhausted over nearly 30 yrs. and on February 28th, 2022 U.S. District Judge Frank D. Whitney resentedenced Hall to 1,140 months and 10 yrs. supervised release concurrent pursuant the First Step Act (2018). Both the District and Appellate Courts Failed to correct Constitutional and Jurisdictional errors as carried forward, leaving in place perpetuated violations of Constitutional law.

The Supreme Court is requested to set the criteria for purposes of the First Step Act (2018)

STATEMENT OF THE CASE

sentencing guidelines re: 1). Use of ambiguous statutes under the Act; 2) 21 USC 860 school Zone lesser offense requirement for disparity of sentences under the Act; 3). Carrying forward or perpetuating constitutional violations under the Act; 4). Correction of multiple counts and when applicable under the Act; 5). The correct (PSR) procedures under the Act; 6). The applicable laws at time of resentencing under the Act; 7). Upon First Step ACT 404(b) resentencing for retroactive law of the fair sentencing ACT, are other First Step ACT sections 401, 403 etc. applicable; 8). Apprendi and Alleyne applicability under the Act.

REASONS FOR GRANTING THE PETITION

1) The sentencing court used excessive statutory authority in this case twice. Once in the original sentence in (1996) and again by carrying forward the same error at resentencing on February 28th, 2022 pursuant to the First Step Act.

2) The sentencing court erred in law believing it had statutory authority to sentence petitioner on 18 USC 844(i) arson of a private residence. The court and the government were mistaken. This court in *Jones v. United States* (2000) 529 US 848, 855, 120 S. Ct. 1904, 146 L ed 2d 902 narrowed the statute for arson of a private residence (as charged in this case court (12)), under *Bailey v. United States* (1995) 516 US 137, 116 S. Ct. 501, 133 L ed 2d 472 as an "ambiguous statute." This court further holds that such statutes do not authorize prosecution or penalties. *Bifulco v. United States*, 447 US 381, 387, 100 S. Ct. 2247, 65 L ed 2d 205 (1980). This violated the 5th Amendment.

3) The 4th Circuit Court of Appeals did not correct the excessive statutory authority and constitutional violation upon First Step Act Appeal.

4) In the same vein of excessive statutory authority,

REASON FOR GRANTING THE PETITION

The sentencing court originally sentenced Petitioner in (1996) to concurrent terms of supervise release on 18 USC 924(c)(1) firearm offenses against numerous laws of 924(c)(1)(b)(ii); Lora v. US, 599 US 453 (2023); Abbott v. US, 542 US 8 (2010); Greenlaw v. US, 554 US 237 (2008); Stinson v. US, 508 US 36 (1993); Neal v. US, 516 US 284 (1996); Dean v. US, 197 Fed 2d 490 (2017) and 18 USC 3584 (a),

where 924(c)(1) offenses cannot be ran concurrent.

5). This type of excessive authority was not harmless because it affected numerous collateral conditions of custody and future consequences of recidivist factors e.g.: (1). 18 USC 3632 restrictions (appx. e); (2). 18 USC 3633 restrictions (appx. e); (3). 28 CFR 550.55 eligibility for early release restrictions (appx. e); (4). custody and classification errors (appx. e); (5). recidivist consequences being used as prior convictions; (6). future impeachment; (7). social stigmas; and (8). Denies application of retroactive amendment USSC 821. Again violating the 5th Amendment.

6). The 4th Circuit Court of Appeals did not correct the excessive statutory authority and Constitutional violation upon first step ACT appeal.

REASON FOR GRANTING THE PETITION

7). According to this Court's precedents, subject-matter jurisdiction is affected when a court has no "statutory" or "constitutional" authority to adjudicate a case. See *US v. Cotton*, 535 US 625 (2002); *Steel Co. v. Citizens for a Better Environment*, 523 US 83 (1998). This Court also holds this type of error violates separation of powers of Art. I, Sec. 1 US Constitution. See *Whalen v. US*, 445 US 684.

8). The authority of this Court holds that this type of sentencing is 'ultravires'. *Ruhrgas AG v. Marathon Oil Co.*, 526 US 574 (1999).

9). Further, the sentencing court used the statute of 21 USC 860 schoolzone in a way that causes disparity of sentences between defendants of like crimes. The 4th Circuit in this case joined other circuits who are doubling the statutory maximum of 21 USC 841(b) penalties for cocaine offenses, e.g.: *Moody v. US*, US Dist. Lexis 211114 (6th Cir. 2018); *US v. White*, 2001 US App. Lexis 28426 (2nd Cir. 2001); *US v. Vanness*, 2010 US Dist. Lexis 39137 (DC. 2010); while other district courts even within the same circuit are not applying 860 offense

REASON FOR GRANTING THE PETITION

the same way of doubling the statutory maximum of the lesser offense penalty under 841(b), arriving at a substantially lower sentence; e.g.: US v. McLendon, 994 F.3d 255 (DC. 2019); US v. Baucum, 908 F.3d 156 (DC. 1996); US v. Peyton, 680 F.3d 27; US v. Battle, 613 F.3d 258 (DC 2010); US v. Scott, 2018 US Dist. Lexis 104091 (11th Cir. 2018); US v. Swella, Cr. no. 02-2035-LRR-DOC-no. 64 (8th Cir. 2005); US v. Lesure, 1999 US App. Lexis 21072 (7th Cir. 1999); Robertson v. US, 144 F.3d 58 (1st Cir. 2001); US v. Zimmerman, 80 Fed. Appx. 160 (3rd Cir. 2003); US v. Weekly, 2014 US Dist. Lexis 183707 (8th Cir. 2014); US v. Cabos, 92 Fed. Appx. 650 (10th Cir. 2004); US v. Quinn, 2016 US Dist. Lexis 23948 (10th Cir. 2016); Marshal v. US, 2009 US Dist. Lexis 57992 (7th Cir. 2009); US v. Agramante, 276 F.3d 594 (DC. 2001); US v. Pettigrew, 1999 US App. Lexis 25181 (DC. 1999).

the circuit split has caused "disparity in sentences of like crimes", in violation of the 3553(a) Factors sec. 1-6. It also causes erroneous discriminative USSC calculations in violation of Gall v. US, 552 US 38 (2007). I'm suffering a

REASON FOR GRANTING THE PETITION

discriminatively enhanced sentence of 60 yrs. under sec. 860, while other defendants are not exceeding 20 yrs. that have worse criminal histories and more drugs. In violation of the 5th Amendment.

10) Additionally, the courts below did not answer this issue and left the discrimination in place as a perpetuated violation of the US Constitution 5th amendment. My sentence as to court (1) is greater than necessary. This sentence was subject to 841(b)(1)(c) Lesser offense as cure to the 5th amendment violation and equal treatment of the laws.

11) This Court's precedents in *Concepcion v. US*, 142 S. Ct. 2389 (2022) requires the sentencing Court to address the issue.

12) This Court in *Madrigue v. United States*, 581 US 116, 121-22, 137 S. Ct. 1266, 197 L. ed. 599 (2017) emphasized that an "amended criminal judgment" is a separate appealable order. Once the sentencing court perpetuated or reinstated the constitutional errors from the original sentence, the 4th Circuit Court of Appeals had jurisdiction to correct the new violation, as occurring under the First Step Act resentencing.

REASON FOR GRANTING THE PETITION

13). According to the 4th Circuit, sentencing errors are to be corrected upon First Step Act resentencing. *United States v. Black*, 388 Fsupp3d 682, 2019 US Dist. Lexis 98991 (4th Cir. 2019), including the most recent 4th Circuit ruling rejecting "carrying forward" original sentencing errors. See *United States v. Newby*, 91 F.4th 196 (4th Cir. 2024).

14). Further, the sentencing court exercising its discretion by resentencing petitioner under the First Step Act procedurally erred by ex parte communication or failing to allow petitioner to "object" to the inaccurate factual information contained in the revised (PSR).

15). Under the First Step Act and 3582(c)(1)(A) motions, the 6th, 7th, 9th and 10th Circuits hold that the burden of alleging factual inaccuracies of the (PSR) is on the defendant. See *U.S. v. Schexnayder*, 2022 US Dist. Lexis 133454 (6th Cir. 2022); *US v. Sarden*, 2020 US Dist. Lexis 78868, 2020 WL 2189802 at *2 (E.D. Tenn. May 5, 2020); *US v. Cochran*, 833 Fed. Appx. 5 (7th Cir. 2020); *US v. Lee*, 727 Fed. Appx. 335 at 336 (9th Cir. 2018); *US v. Modin*, 2021 US Dist. Lexis 147212 (4th Cir. 2021);

REASON FOR GRANTING THE PETITION

US v. Solis-Sanchez, 2023 U.S. Dist. Lexis 38827 (9th Cir. 2023); US v. Deninno, 29 Fed 572, 580 (10th Cir. 1994) (as applying to the FSA (2018))

16). By the court failing to afford (PSR) challenges, it violated due process of law 5th amendment and prejudiced petitioner's resulting unreasonable sentence of 60 yrs. on Count (1). The (PSR) contained information regarding a prior New Haven, CT. drug conviction for purposes of 21 USC 851 enhancement. The (PSR) omitted the actual time served of only (18) days. The First Step Act section 401 requires (12) or more months served to now constitute a "serious drug offense" for purposes of 851. The sentencing court relied on this misinformation and "assumed" it qualified. (Appx. C, p.5). This violated this Court's precedents in Townsend v. Burke, 334 US 736 (assumptions concerning a defendant's criminal record that are materially untrue); and U.S. v. Tucker, 404 US 443 (1972) (erroneous (PSR)s per se prejudicial and reversed).

17). The 4th Circuit district court in US v. Williams, 2020 WL 5834673 at 7 (WD. Va. 9/30/20) granted

REASON FOR GRANTING THE PETITION

Williams relief of his Life sentence under sec. 401 because Williams only "served" a combined total of (47) days imprisonment on (2) nonqualifying prior state drug offenses. In opposite, the 4th Circuit did not correct this constitutional error causing discrimination of like offenses within the circuit. This violated the 5th amendment due process and equal protection of law.

18). The (PSR) error prejudiced the 3553(a) factors e.g.: 3553(a)(2)(A) ("the need ... to provide just punishment for the offense"); 3553(a)(3) ("the kinds of sentences available at time of sentence") (Hughey v. US, 495 US 411 (1990) ("the law in effect at the time governs sentencing."); 3553(a)(4)(A)(i) ("... the sentencing range established for the offense committed..."); 3553(a)(6) ("the need to avoid unwarranted sentencing disparities among defendants with similar records and guilty of similar conduct").

19). This Court instructs with clarity that "the law in effect at the time governs sentencing". Hughey, supra. The 4th Circuit Courts below did not apply this mandate upon first step ACT resentencing. The petitioner was denied the retroactive S.Ct.

REASON FOR GRANTING THE PETITION

ruling in *Jones v. US* (2000) 529 US 848 and the rule of lenity for ambiguity of statutes under the S.Ct. holding in *Bifulco v. US*, 447 US 381 (1980), as well denied a plethora of sentencing laws herein.

20). Further the Dean Court permits the district Courts to consider mandatory minimum sentences imposed when considering sentences for other counts under the first step Act. *Dean v. US*, 137 S.Ct. 1170, 197 LEd2d 490 (2017). This means that upon the sentencing court exercising discretion to re-sentence petitioner to the first step Act sec. 404(b) retroactive Fair Sentencing Act, he had the authority and was required to apply the first step Act other sections of 401, 402, 403 if applicable. Those sections became "the law in effect at the time governs sentencing"; *Hughey v. US*, 495 US 411 (1990). The 4th Circuit Court of Appeals failed to correct this due process and equal protection of law error under the 5th Amendment.

21). Finally, the sentencing court erred in law in misuse of the statute first step Act sec. 403 stacking provision as affirmed by the 4th Circuit

REASON FOR GRANTING THE PETITION

Court of Appeals in violation of the 5th amendment and equal protection of law.

22). In accord with the laws of this Court and 4th Circuit law, the holdings in *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *Alleyne v. US*, 570 U.S. 99 (2013) were applicable under First Step Act sentencing. see *US v. Smith*, 379 F.supp.3d 543, 546 (W.D. Va. 2019) ("although *Apprendi* and *Alleyne* are not retroactively applicable on collateral review, this Court joins other courts in finding that their holdings are applicable in the context of the First Step Act"); *U.S. v. Jones*, 2019 US Dist. Lexis 117206, 2019 WL 3074075 at 3 (W.D. Va. 7/15/19).

23). Under *Apprendi* and *Alleyne*, the jury was required to find the "type of weapon" of count (1)'s 924(c)(1) offense of firearm or destructive device, due to the Life enhancement of the destructive device. The S.Ct. in two earlier rulings also required jury determination for "type of weapon". see *Castillo v. US*, 530 U.S. 120 (2000) and *US v. O'Brien*, 560 U.S. 218 (2010) for the sentencing enhancement to apply. During the trial (1995), the jury only returned a general verdict of guilty as to both

REASON FOR GRANTING THE PETITION

"Firearm" and "destructive device". (Tr. Trns. p. 435).
 The district Court sentenced Petitioner to the
 "destructive device" and a Life sentence on April 23,
 1996.

24). Upon the sentencing Court resentencing Petitioner
 on February 28th, 2022 under the First Step Act, the
 Court ignored the Appendi and Alleyne requirements
 as well Castillo and O'Brien and merely reduced
 Court (II)'s Life sentence to a consecutive 30 yr.
 minimum sentence for a "destructive device".

25). By the sentencing Court failing to adhere to
 established laws of this Court, it prejudiced the
 resulting sentence. The laws would not permit
 the Court to "re-stack" the second 924(c)(1)
 Court (II) due to no Jury determination made as
 to the destructive device. Alternatively, the Court
 could have used the Jury determination of guilt
 regarding the "Firearm" and if the 403 stacking
 provision authorized such, sentenced Petitioner to
 a consecutive 5 yr. term of Imprisonment on Court
 (II), opposed to 30 yrs. for the unfounded destructive
 device. see US v. Hardnett, 2019 US Dist. Lexis
 185067 (4th Cir. 2019) "Appendi and Alleyne" applied.

REASON FOR GRANTING THE PETITION

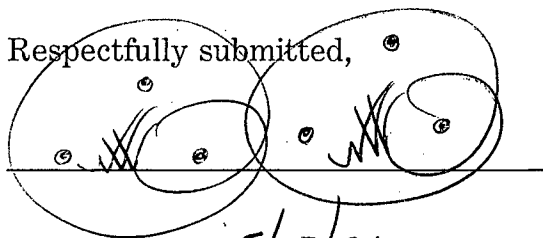
26) The sentencing court did not address this Apprendi and Alleyne issue(s) and simply denied the motions (Appx C, p 7-9). Because these issues were not adequately addressed nor corrected by the 4th Circuit Court of Appeals, the Courts below violated this Court's rulings in *Concepcion v. US*, 142 S.Ct. 2389 (2022) in violation of the 5th amendment.

27) For these Reasons, the Petitioner's sentence of 1,140 months is unreasonable, unjustifiable and unconstitutional in violation of the 5th amendment U.S. Constitution.

subject-matter jurisdiction on counts (10, 11, 12) and further violated substantial constitutional rights under the 5th amendment pursuant to the FSA (2018) sentencing proceedings. Hall is entitled to be resentenced on Count (1) lesser included offense of 841(b)(1)(c) only, and any other relief this Court deems necessary.

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date:

6/13/24