

No. _____

24-5071

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

MAY 30 2024

**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

GERMAN, DENNIS — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

DENNIS GERMAN

(Your Name)

P.O. BOX 9000

(Address)

Berlin, NH 03570

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

(1). Weather the Government violated the Petitioner's 8th Amendment Constitutional Rights (To be free from infliction of Cruel and Unusual Punishment)[Relevant Part], and The 5th Amendment, [Relevant Part], Due Process By being in Non-Compliance with the U.S.S.G using Cases or Incidents Separated by Intervening Arrest: July 26, 2019, November 26, 2019, and March 20, 2020 a being incidents related to the offense conduct that occurred on June 29, 2020 as Relevant Conduct. When there was different drug types, different users, and different location, along with months, in between the arrest.

(2) Weather the Government violated the Petitioner's 4th Amendment Constitutional Rights (Expectation of Privacy)[Relevant Parts], By Seizing & Forfeiting currency in violation of the 14th Amendment [Due Process Clause][Relevant Part] Equal Protection of the Law. That was seized & forfeited by local law enforcement agencies on July 26, 2019 (\$1,003); November 26, 2019; (\$53,843.66); March 20, 2020(\$2,692) which are not related to the incident and conviction of offense that occurred on June 29, 2020. Also was the

QUESTION(S) PRESENTED

Government further in Non-Compliance with Fed. R. of Crim. P. 32.2(a) and 41(g). In violation of the 7th Amendment Constitutionally Protected Rights.

- (3) Whether Petitioner was denied Effective Assistance of Counsel, When Counsel failed to object to the inclusion of separate arrest, involving separate conduct as relevant conduct of a continued criminal episode, that was objected to in the Plea Agreement and counsel informed Petitioner that he would be able to present any challenges during the sentencing phase. Did the Counsel's advice cause a defect in the proceedings resulting in the Court's 3553(a) sentencing factors denial of acceptance of responsibility, Guideline Adjustments?

The District Court failed to make express findings that certain controlled substances offenses were relevant under U.S. Sentencing Guidelines Manual §1B1.3(a)(2).

When a Court seeks to determine the calculation of a Defendant's base Offense Level under the U.S.S.G Manual, A District Court is required to take into consideration not only the types and quantities of drugs specified in the offense of conviction, but also any drugs that were part of the same course of conduct or common scheme. As Cited in United States v. Acosta, 85 f.3d 275.

When a Defendant in a Drug Distribution Case is sentenced on the basis of uncharged conduct pursuant to §1B1.13(a)(2), the Government's burden of proof is twofold: It must first prove by a preponderance of the evidence. Given the factual nature of this inquiry, a District Court's Determination that uncharged offenses are part of the same course of conduct as the offense conviction is reviewed only for Clear Error. ib.

Moreover, A "Pattern of Activity", finding should not be equated with "Relevant Conduct" under §1B1.13(b) which requires not just that the defendant committed certain types of offenses two times or more, but that the two offenses at issues were part of the same course of conduct, U.S.S.G §1B1.3(a)(2), certainly the facts that a defendant commits a certain type of offense on multiple occasions does not inevitably mean that each separate offense is part of the same course of conduct. As 839 f. 3d 545 United States v. Schrode.

Temporal Gaps as brief as five months cut against a finding that an activity was part of the same course of conduct as the offense of conviction. 431 F.3d at 1041-42 (finding no relevant conduct where the offense were not sufficiently similar because they involved different drugs, smaller scale operations, and significant smaller drug quantities. See United States v. Ortiz, 431 F.3d 1035.

"[t]he mere fact that the Defendant has engaged in other drug transactions is not sufficient to justify treating those transactions as

'relevant conduct' for sentencing purposes"

United States v. Crockett, 82 F.3d 722, 730 (7th. Cir. 1996) See also Bacallao, 149 F.3d at 720-21 (finding link between drug transactions insufficient where defendant worked with different accomplices there was no evidence of a unifying modus operandi, and transaction occurred six, seven months apart). United States v. Crockett 82 F.3d 722.

(Differentiating a large powder cocaine conspiracy from an individual sale of crack) United States v. Johnson, 824 F.3d 875, 879(7th. Cir. 2003).

Lastly, The relevant conduct issue is similar to the issue in calculating criminal history under U.S.S.G §4A1.2 (defining "prior sentence"), where two similar prior convictions separated by an intervening arrest are counted separately. E.g., United States v. Morgan, 354 F.3d 621, 623 (7th. Cir. 2003); United States v. Bradley, 218 F.3d 670, 673 (7th. Cir. 2000). See Attached: Actual Arrest Records. November 26 2019, March 20, 2020.

Petitioner German was sentenced based off of the findings in the U.S.S.G that uncharged and dismissed charges qualified as relevant conduct should be used to seek enhancements based on arrest that never resulted in any adjudication of guilt. The State authorities nor the Federal Authorities ever decided to proceed with a criminal prosecution, instead the Government decided to use the uncharged conduct to tack on the additional enhancements in order to sentence the Petitioner for crimes that were not properly prosecuted.

The question being presented is whether the actions taken by the government was proper in light of the Constitutional protections afforded to Petitioner. The (V) Fifth Amendment, explicitly states in relevant part; "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of Grand Jury, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

The Deprivation of Due Process in regards to criminal charges that were never properly charged in compliance with the procedural that has been enacted in order to protect the rights of all citizens. Did the Court violate the Rights of the Petitioner when it allowed the uncharged, dismissed and therefore the enhancement was not properly addressed on the record. Were these actions proper under the Clear View Standard.

The District Court failed to make the Government establish jurisdiction under the proper forfeiture clause. Without properly establishing that the revenue in the possession of the Government had properly seized the proceeds. The 14th Amendment [Due Process Clause][Relevant Part] Equal Protection of the Law, was openly violated in regards to the Petitioner. When the revenue obtained through other means and from other sources is seized by the Government the process and procedure used by the Government must comport with and be in compliance with Fed. R. of Crim. P. 32.2(a) and 41(g). The Court failed to uphold the Constitutionally protected rights when they did not hold the Government to the standard and procedure required by the Federal Rules of Criminal Procedure.

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:

TABLE OF CONTENTS

OPINIONS BELOW.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	8
CONCLUSION.....	9

INDEX TO APPENDICES

APPENDIX A The Opinion of the United States Court of Appeals

APPENDIX B The Opinion of the United States District Court

APPENDIX C The Opinion of the U.S Court of Appeals En Banc

APPENDIX D Judicial Notice Request

APPENDIX E Exhibit #2, IR Number, 19 - M29204 (Intervening Arrest)

APPENDIX F Exhibit #3, IR Number, 20 - M08291 (Intervening Arrest)

APPENDIX G Forfeiture Papers

APPENDIX H Letter from Trial Counsel

TABLE OF AUTHORITIES CITED

CASES: United States v. Acosta, 85 F.3d 275, 281 PAGE NUMBER

United States v. Schrode, 839 F.3d at 552

United States v. Ortiz, 431 F.3d 1035, 1040

United States v. Purham, **754** F.3d 411, 415

United States v. Crockett, 82 F.3d 722, 730

United States v. Johnson, 324 F.3d 875, 879

United States v. Morgan, 354 F.3d 621, 623

United States v. Bradley, 218 F.3d 670, 673

United States v. \$84,940 in United States Currency
86 Fed. App'x. 978

United States v. \$79,123.49 in United States
Currency & Cash, 830 F.3d 94, 96

STATUTES AND RULES: U.S.S.G §1B1.3(a)(2), App. Note 9

U.S.S.G §2D1.1(a)(5), & (C)(8)

U.S.S.G §2K2.1(a)(3)

U.S.S.G §3C1.2

U.S.S.G §4A1.2

U.S.S.G §3C1.1

U.S.S.G §3E1.1 & (b)

U.S.S.G §983(1)(A)(4)

Fed. R. Crim. P. 41(b)(2)

Fed. R. Crim. P. 41(d)

Fed. R. Crim. P. 4

OTHER

Fed. R. Crim. P. 52(b)

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 No. 22-2016; 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 No. 1:20-CR-00330-1; 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 FEBRUARY 20, 2024.

☐ 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: MARCH 05, 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

4th Amendment [Relevant Part] Probable Cause
Warrant Clause

5th Amendment [Relevant Part] Due Process

(Deprivation of liberty/property)

7th Amendment [Relevant To All Parts]

8th Amendment [Relevant Part] To Be Free From
Infliction of Cruel and Unusual Punishment. &

14th Amendment [Relevant Part] Due Process
Clause (Equal Protection of Law).

Count - 7 21 U.S.C §856(a)(1)

Count - 10 18 U.S.C §922(g)(1)

Count - 11 21 U.S.C §841(a)(1)

Count - 12 18 U.S.C §924(c)(1)(a)

STATEMENT OF THE CASE

On or about the Special November 2019 Grand Jury did return an indictment charging Mr. Dennis German with a Twelve Count indictment charged in Ten Counts and pleading Guilty to four Counts. Count Seven - Did knowingly use a place, namely, a residence located at 13632 South Kedvale Avenue, Robbins, Illinois, Permanent Index Number#28-03-206-054-0000, for the purpose of manufacturing and distributing a controlled substance... Count Ten Knowingly that he has previously been convicted of a crime punishable by term of imprisonment exceeding one year, did knowingly possess, in and affecting interstate commerce, a firearm, namely, a Beretta Model 950 BS .25 ACP caliber pistol...18 U.S.C.S 922(g)(1). Count Eleven did knowingly and intentionally possess with intent to distribute a controlled substance, namely, a quantity of a mixture and substance containing a detectable amount of heroin, a Schedule I Controlled Substance, and Fentanyl, a Schedule II Controlled Substance; 21 U.S.C.S 841(a)(1). and Count Twelve did knowingly possess a firearm, in furtherance of a drug trafficking crime for which defendant may be prosecuted in a court of the United States. These Counts amounted to a 96 Month on Counts Seven, Ten, and Eleven, with 60 additional Months Consecutive to those Counts for Count 12.

Where federally protected rights have been invaded, the Supreme Court will be altered to adjust their remedies, so as to grant the necessary relief by discretionary power that the (Petitioner), adequate relief cannot be

obtained in any other form or from any other courts.....

The District Courts, and Appeal Courts et. al., overlook the law of the land.....

"Petitioner", Fifth Amendment Entitlement:
In part "Nor (Shell any Person), be deprived of life, liberty, or property, without due process of law.....

The respondent United States Government, has decided an important question of Federal Law by depriving the Petitioner of his 4th and 5th Amendment Rights Violation Claims, which shows the multiple intervening arrest prejudice the Petitioner Due Process Rights when their decision to combine multiple offenses interrupted by intervening arrest conflict with Circuit Court precedent that the current sentence was enhanced in direct opposition to the commentary to 4A1.2

Application Note: 3, which defines the procedure pursuant to the sentencing guidelines. Left unchecked this action would result in a Direct constitutional violation of Petitioner's 8th Amendment Rights to be free from cruel and unusual punishment.

Where Petitioner was denied acceptance of responsibility points for following the advice given to him by Counsel, "On the

other hand, if we were to enter a plea of guilty, while you would be subject to the advisory guideline range, it is not mandatory." "I am certain that that we could put together a compelling case for why you should receive a sentence of 10 years or less." See here to attached in support evidence Exhibit 1, November 09, 2021, letter from Attorney Steven A. Greenberg, to Petitioner, Dennis German, expressing the need to no longer object to the Plea as presented. Petitioner Dennis German expressed his objection to the intervening arrest during the pre-plea stage, did the Petitioner receive deficient assistance when Counsel directed Petitioner to redress his objections during sentencing resulting in the denial of Acceptance of responsibility points. The initial arrest occurred by Midlothian Police Department, on or about July 26, 2019. Petitioner respectfully ask this Honorable Court to take Judicial Notice of the Public Record, Midlothian Police Department Arrest Report of Petitioner Dennis German on or about July 26, 2019 pursuant to Fed. R. of Evid. 201(a), (b)(2), (c)(2). Which will definitively show that the Criminal Episode Stopped. A separate

arrest for separate conduct, occurred on November 26, 2019, by Midlothian Police Department, See Hereto attached in support evidence Exhibit #2, Arrest Report IR Number 19 - M29204, which will definitively show that the criminal episode stopped. A Third Separate Arrest for a separate conduct occurred on March 20, 2020, by Midlothian Police Department, See Hereto attached in support evidence Exhibit #3, Arrest Report IR Number 20 - M08291, which will definitively show that the criminal episode was stopped. These are not a continuation of one criminal episode but separate episodes clearly separated by intervening arrest. The Petitioner seeks redress of these following issues raised and presented as Federal Questions.

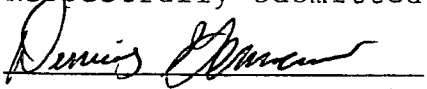
REASON FOR GRANTING THE WRIT

Petitioner Dennis German ask this Honorable Court to Grant this Writ of Certiorari in order to bring about the proper respect for the Constitution and for the Authority of the Courts and the Power and authority under which they operate. The Court is being asked to address the issue of whether the dismissed criminal charges are to be considered as related to the convicted offenses for Relevant Conduct purposes, when there were multiple intervening arrests between offenses. Also Whether the Court should prevent the Government from exercising authority over charges not properly before the Court under the jurisdiction of indictment. For these reasons stated herein the Writ should be granted.

CONCLUSION

The Petition for a Writ of Certiorari should be
Granted.

Respectfully Submitted,



Date: MAY 21, 2024