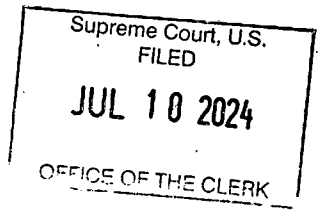
IN IN THE UNITED STATES DISTRICT SUPREME COURT

24-5369 ORIGINAL

Tommy T. Branch

Movant



Vs

United States of America

Respondent

On Petition for a Writ

Of Certirari to

The District of Columbia

Court of Appeals

Petition for a Writ of Certirari

Tommy T. Branch

F.C.I. Beckley

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Beaver, WV 25813

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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 judgement 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[ ] is unpublished.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[ ] is unpublished.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 A to the petition and is

[x] reported at __District of Columbia Court of Appeals, Apr. 23 2024__, or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the __Superior Court of The District of Columbia__court appears at Appendix B to the petition and is

[x] reported at __01/16/2024 Superior Court of D.C.__; or,

[ ] had 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[ ] is unpublished.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 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).

Case of Action

Pursuant to Federal Rules of Pro Se Procedures, Pro Se respectfully submits this application for leave to file Petition for Writ of Certiorari to the U.S. Supreme Court for the District of Columbia Court of Appeals decision to do deny Pro Se Motion for summary reversal under Supreme Court Rule 33.2. For the reasons stated below, the case should be heard again to be vacated and remanded for either new trial, mistrial, resentencing, or allow appellant to plea a new with time served.

Introduction

Pro Se, a layman to the court of law, and a citizen of the District of Columbia also known as the City of Washington, proceeding pro se before this honorable said court in good faith and granted in the above style motion for good cause based on the fore going reasons: Change of the law, sentencing disparity, rehabilitation, and new sentencing guideline range under compassionate release.

Procedural History

On May 1, 2013, before the Honorable Robert Ricter, a jury returned verdicts of guilty for the following counts: conspiracy to commit robbery; two counts of armed robbery; aggravated assault while armed; assault with intent to rob while armed; for counts of possession of a fire arm during a crime of violence (PFCV) and attempted credit card fraud. On July 2, 2013, Judge Ricter sentenced defendant to a period of incarceration of 288 months and 180 days of incarceration. According to the United States Bureau of Prisons, defendants is not eligible for release until December 4, 2035. On February 23, 2015, defendant filed a pro se motion for

reconsideration of sentence pursuant to Rule 59(b), which the Superior Court of the District of Columbia treated as a motion pursuant to 23 D.C. Code §110. On August 20, 2015 defendant sent a letter to chambers which the Superior Court treated as a motion for reduction of sentence pursuant to Rule 35(b). The Superior Court denied both of defendant's motions by written order on August 31, 2015.

On December 15, 2015, the District of Columbia Court of Appeals affirmed defendants convictions in **Branch v. United States**, No.13-cf-740, Mem Op. and J.1 (D.C. Dec. 15,2015). On May 23, 2018, defendant filed a second pro se motion pursuant to 23 D.C. Code §110. The Superior Court amended the judgement and commitment order to vacate as merged counts 3 and 10. Defendant's sentence imposed by Judge Ricter of 288 months and 10 days remanded in effect.

On September 14, 2018, defendant filed a Motion to Alter or Amend Judgement or for reconsideration of the August 28, 2018, order. The Superior Court denied the motion on October 1, 2018.

In defendant's pro se motion it was argued that defendant's sentence should be reduced pursuant to Superior Court Rule of Procedure 35 (b) because of COVID-19 pandemic. Defendant argued that because of the conditions of defendant's confinement he was at greater risk for contracting the virus than if defendant were not confined.

The Superior Court noted that defendant's motion was outside the 120 day limit required by rule 35. However, the Superior Court chose to consider the motion on its merits taking into account the circumstances of the health emergency by the COVID-19 pandemic. Notwithstanding the presence of COVID-19, the Superior Court determined that Rule 35 was not the proper vehicle for seeking release based upon a constitutional violation challenging

conditions of confinement. The Superior Court ruled that challenges to conditions of confinement should be brought pursuant to 42 U.S.C. §1982, citing **Preiser v. Rodriguez**, 411 U.S. 475 499(1973)

Ultimately, the Superior Court concluded that defendant's motion was a plea for leniency and denied the pro se motion of Reduction of Sentence.

On August 18, 2020 defendant filed a pro se motion for compassionate release. On May 26, 2021 defendant filed a pro se motion for relief pursuant to the Incarceration Reduction Act (IRAA). On April 1, 2022 defendant filed motion for Compassionate Release and Motion to Supplement Motion when all medical records are produced. Defendant filed Motion for Compassionate Release on July 17, 2022.

On August 24, 2023 defendant filed a pro se motion for Compassionate Release. The government's opposition to the defendant's motion was filed on August 12, 2022. On January 12, 2024 the Superior Court denied defendants motion for compassionate release arguing that defendant has not demonstrated that at the time defendant is not a danger to the safety of any other person or the community, pursuant to the factors to be considered in 18 U.S.C. §3142(g) and 3553(a) and evidence of the defendant's rehabilitation while incarcerated. D.C. Code §24-403.4

On January 23, 2024 the District of Columbia Court of Appeals filed an order on consideration of the appeal from the denial of a motion for compassionate release. Defendant was order for a summary reversal to be filed within 30 days from date of order.

On April 4, 2024 defendant filed a Motion for Summary Reversal pursuant to Rule 27 of the Rules of the District of Columbia Court of Appeals.

On April 23, 2024 the District of Columbia Court of Appeals ordered that defendant's motion for summary reversal is denied. Arguing that the defendant (1) did not meet the eligibility criteria for compassionate release and (2) failed to show that defendant was not presently dangerous.

Legislative Response to the COVID-19 Pandemic

In response to the pandemic and the especially vulnerable population of incarcerated individuals the D.C. City Council passed the COVID-19 response Supplemental Emergency Act of 2020, codified at D.C. Code §24-403.04 §305(b) of the Act creates a broad mechanism for District of Columbia offenders to seek immediate release during the COVID-19 crisis allowing incarcerated individuals to move for a reduction of sentences without first having to exhaust administrative remedies. See D.C. Code §24-403.04(b). The moving party must show an acute vulnerability to severe medical complications or death as a result of COVID-19 as one of the extraordinary and compelling reasons that warrant compassionate release. *D.* §22.403.04(a)(3)(B)(iii)

In pertinent part the Act provides as follows: (a)Notwithstanding any other provisions of law the court may modify a term of imprisonment imposed upon a defendant if it determines the defendant is not a danger to the safety of any other person or the community pursuant to the factors to be considered in 18 U.S.C. §3142(g) and 3553(a) and evidence of the defendants rehabilitation while incarcerated and: (3) Other extraordinary and compelling reasons warranting such a modification: (A) A debilitating medical condition involving an incurable, progressive illness, or a debilitating injury from which the defendant will not recover.

1B1.13 Reduction in Term of

Imprisonment under 18 U.S.C. 3582(c)(1)(A)

(a) In general upon motion of the Director of the Bureau of Prisons or the defendant under 18 U.S.C. 3582(c)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not received the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. 3553(a) to the extent that they are applicable, the court determines that

(1)(A) extraordinary and compelling reasons warrant the reduction or (B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison to a sentence imposed under 18 U.S.C. 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) the defendant is a danger to the safety of any other person or the community as provided in 18 U.S.C. 3142(g); with this policy statement.

(b) EXTRAODINARY AND COMPELLING REASONS: Extraordinary and compelling reasons exist under any of the following circumstances or a combination of thereof:

(1)MEDICAL CIRCUMSTANCES OF THE DEFENDANT:)(A) The defendant is suffering from a terminal illness(i.e., a serious and advanced illness with an end life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(B) The defendant is (i) suffering from a serious physical or medical condition,(ii)suffering from a serious functional or cognitive impairment, or (iii) experiencing deteriorating physical or mental health because of the aging process that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(C) The defendant is suffering from a medical condition that requires long-term specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

(D) The defendant presents the following circumstances (i) the defendant presents is housed at a correctional facility affected or at imminent risk of being affected by (1) an ongoing outbreak of infectious disease, or (11) an ongoing public health emergency declared by the appropriate federal, state, and or local authority;(ii) due to personal health risk factors and custodial status, the defendant is at risk of exposure the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and (iii) Such risk cannot be adequately mitigated in a timely manner.

(2) AGE OF THE DEFENDANT: The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (c) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(3) FAMILY CIRCUMSTANCES OF THE DEFENDANT: (A) The death or incapacitation of caregiver to the defendants minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

(D) The defendant establishes that circumstances similar to these listed in paragraph (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member when the defendant would be the only available caregiver for such family member or individual for purposes of this provision "immediate family member" refers to any of the individual listed in paragraphs (3)(A) through (3)(C) as well as a grandchild, grandparent, or sibling of the defendant.

(4) VICTIM OF ABUSE: The defendant, while in custody serving the term of imprisonment sought to be reduced, was a victim of: (A) sexual abuse involving a "sexual act" as defined in 18 U.S.C. 2246(2) (including the conduct described in 18 U.S.C. 2246 (2)(D) regardless of the age of the victim): or (B) physical abuse resulting in "serious bodily injury," as defined in the commentary to 1B1.B (Application Instructions); that was committed by, or at the direction of a correctional officer, and employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant. For the purposes of this provision the misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civilly case, or a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger.

(5) OTHER REASONS: The defendant presents any other circumstance or combination of circumstance that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4) are similar in gravity to those described in paragraph (1) through (4).

(6) UNUSUALLY LONG SENTENCES: If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

(c) LIMITATION ON CHANGE IN LAW: Except as provided in subsection (b)(G), a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) shall not be considered for purposes of determining whether an extraordinary and compelling reasons exists under this policy statement. However, if a defendant otherwise establishes that extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) may be considered for purposes of determining the extent of any such reduction.

(d) REHABILITATION OF EXTRAODINARY AND COMPELLING REASONS: For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the defendant's term of imprisonment.

Statement of Facts and Issues Regarding

(1) Change of Law: In pro se's case there contains multiple complex issues relating to in effectiveness of counsel and the unconstitutional vague language in Aggravated Assault Statue un D.C. Code §22-404.01(a)(2) and "while arm" related offenses that's not listed or defined within the meaning of "crime of violence" under D.C. Code §23-1331(4) and 22-4503. Pro se is challenging the constitutionality of the statute of his offense in light of the U.S. Supreme Court decision in **Sessionv. Dimaya,** 138 sct. 1204(2018) and later followed by **United States v. Davis**, 139 sct. 2319(2019), with both decisions relying on the similarity of the unconstitutional vagueness of the residual clause in **Johnson v. United States,** 135 s.ct 2551(2015).

The U.S. Supreme Court states in **Davis**(supra) that "a vague law is no law at all". And further explained how the vagueness doctrine rest on the twin constitutional aillans of due process and segregation of powers. Justice Kavanaugh's dissenting opinion in **Davis**(supra) is one of the important interest because he explains how the Supreme Court of the United States has recognized "dozens of federal and state criminal laws use terms like "substantial risk, grave risk; and unreasonable risk," and almost all those statutes "require gauging the riskiness of conduct in which and individual defendant engages on a particular occasion." Justice Kavanaugh further explained in his dissent in **Davis**(supra) that the state's criminal codes are similar. Among the court or the crimes that the states define by using qualitative risk standards are Aggravated Assault under D.C. Code §22-404.01(a)(2)(2018 cam. Supp.)("grave

risk of serious bodily injury). However, the U.S. Supreme Court declared this qualitative risk standards or language unconstitutionally vague in light of **Johnson**(supra), **Dimaya**(supra), and **Davis**(supra).

(2) Sentencing Disparity: The government argues without basis the void of vagueness language in **Session v. Dimaya**(supra) did not apply to pro se's conviction. Where it already conceded that "armed robbery" is not listed in the definition for crime of violence offenses under §23-1331(4), if it's not listed as a crime of violence, then pro se is "actually innocent" of committing a crime of violence and possession of fire arm during a crime of violence. (Govt. Br. P.42, Ft. N. 31). As the government points out (at 42, Ft. N. 31, "robbery is specifically defined as a "crime of violence" under D.C. Code §23-1331(4), however, "while arm" language is not listed as a "crime of violence" and pro se wasn't indicated, nor convicted for "robbery" which is a lesser included offense then "arm robbery" containing its own sentence range. This court addressed a similar issue in **Colter v. United States,** 37A. 3d 282 (D.C. 1/12/12.), by vacating a violent offense or conviction not define it the list for a crime of violence under D.C. Code §23-1331(4). Defendants conviction for aggravated assault while armed under D.C. Code §22-404.01 statutes in section (2) "creates a grave risk" language is too vague to pass constitutional scrutiny and is identical or similar to the residual clause languages as defined in 18 U.S.C. §924©(B)(3), and 18 U.S.C. §16, which was declared unconstitutionally vague in the wake **of Johnson v. United States,** 135 s.ct 2551 (2015)(supra) and **Session v. Dimaya,** 138 s.ct. 1204 (2018) and in light of the U.S. Supreme Court decision in **United States v. Davis.** No.18-431(2019)(supra).

A crime of violence while one is armed , however, this explanation of "while are" is not clearly defined as an element in D.C. Code §22-404.01, and wasn't in effect at the time of pro se's arrest, nor explained in pro se's indictment or to the jury, where pro se could understand what is prohibited. **Hawkins v. United States,** 119A. 3d 687,702 (D.C. 2015) was quoted by the government in number 31 of the government's brief on page 42 and 43, but cannot apply to pro se, because he was sentenced on July 2, 2013, two years before this court decided "**Hawkings**"(supra) in 2015 the "expost facto clause" constitutionality protect pro se from laws that would adversely affect his case, but wasn't in effect at the time of his arrest or indictment.

In **Johnson**(supra), "while arm" would be placed in the residual clause category because it's not a part of the enumerated offense and too vague for a layman to understand its state or purpose. See **Lemon v. United States,** 564A 2d 1368 (D.C. 6/07/89). This court can plainly see that pro se right to due process was violated by this unconstitutionally vague and overbroad statutes. Where the statute or law is too vague or unclear the "rule of leniency " should be applied in pro se's favor to avoid a continuous "miscarriage of justice". Pro se is "actually innocent" of possession of a firearm during a "crime of violence", if "arm robbery" and "AAWA" and other "while arm offenses" not mention herein are not defined in the list of crime of violence, then reversal of pro se's conviction and sentence on those offenses are warranted. Pursuant to the U.S. Court of Appeals for the District of Columbia circuit held in **United States v Eshetu,** 2018 BLX1F 2571 BG000N D.C. Cir., 15-3020, on August 3, 2018, that a fire arm during a "crime of violence" can be reversed now that the U.S. Supreme Court has struck down a similar provision for being unconstitutionally vague

The due process clause of the Fifth and Fourteenth Amendments of the Constitution have been construed as requiring that notice be given of the conduct proscribed by criminal statutes, in the instant case, no notice was given to pro se prior to trial, in the indictment nor in the statutes, because "AAWA" statute is unconstitutionally vague and cannot be classified as a "crime of violence" as defined in D.C. Code §23-1331(4) and 22-4503. "AAWA" is 5 years over the maximum sentence. If pro se's "AAWA" conviction is vacated as unconstitutionally vague the pro se's conviction for PFCV should also be vacated see **United States v. Eshetu,** 2018 BLX1F2571 BG000N, D.C. Cir. 15-3020 (8/3/2018) (held that a firearm during a "crime of violence" can be reversed now that the U.S. Supreme Court has struck down a similar provision for being unconstitutionally vague.)(supra). **Colter v. U.S.**, 37A 3d 282 (D.C. 1/12/12) and see also **United States v. Barahoa, 2014 D.C. Supior, Lexis 19 (D.C. 12/12/14).**

Pro se would have received a reduced sentence for accepting responsibility if pro se's defense counsel did not badly advise pro se concerning accepting plea of failed to the indictment without government cooperation. Pro se would have took a1n optional or open plea to the indictment for a reduced sentence and to avoid trial, if pro se was aware of such plea. The Superior Court did so in three respects (1) Pro se, in fact, content that pro se was not free to "accept or reject" the governments initial and subsequent plea offers, unlike the Superior Courts judgement suggesting that pro se did not, (2) it was the government, "not pro se who rejected the second unwired plea deal and any subsequent plea deals thereafter, "unlike the Superior Courts suggestion in its judgement: and (3) the parties were "willing" to make a plea deal and the Superior

Court was "ready" to accept the deal, but the governments subsequent "take-it-or-leave-it" hardball negotiation tactics in bad faith. These are pertinent facts, which had not been overlooked, would have apparently made a difference in the Superior Court's over-all judgement.

(3) Rehabilitation: At the age of 34 serving a 27 year and 6 month sentence since 2012. In 2012 pro se was 22 years-old, under the age of "25". Which is scientifically proven that "25" and under the brain is not yet fully developed. Pro se has strong ties to Washington D.C. metropolitan area. If released, pro se will reside with mother and father at 7265 Wood Hollow Terrance, Fort Washington, Maryland residence with their 29 year-old son and have a separate bedroom for pro se's mother DeShone Branch, has resided at the Fort Washington address for decades and is prepared to answer any further inquiry from the Court. She is willingly happy for pro se to reside in her home if released. Pro se's father, Tommy Pleasant, is a retired D.C. firefighter and has also resided at the Fort Washington, Maryland address for decades. He will answer any additional inquiry the Court may have. Barber Parker, 202-396-1597, a language arts teacher at the H.D. Woodson High School know pro se fpr several years as a student. Mrs. Parker recalls pro se as a pleasant and polite young man who performed well as a student when she was pro se's teacher in the 11th grade.

Ty Juan Smith, 2032 Flora Spring St. Waldorf, Maryland is a lifelong resident of Maryland and is a family friend and has worked for the state department and now works for the Pentagon, has known pro se since childhood and can speak of pro se' up bringing as a positive respectful person. Francesca Morris, 3668 Hayes Street, N.E. Washington, D.C. Apartment 203, a lifelong resident of the District of Columbia is the mother of pro

se's children. She can attest to pro se's caring for children and pro se's frequent telephone contacts with the children, Arie Branch born on July 31, 2011. Francesca Morris is the custodian of Arie Branch, and Sereniti Branch's grandmother, pro se's mother, is her custodian. Every family member involved in the lives of the children are available to address the qualities that pro se has as a parent and pro se's desire to be active in the in lives of pro se's children.

Before incarceration pro se's received High School Diploma in 2008. During incarceration pro se has completed numerous academic courses, such as, Employment/Re-entry Preparation. Religious programs, multiple ACE Educational Programs, K-2 Awareness, Psychology programs, for redemption and mental rehabilitation, Mercer Community County College, OSHA, Cook Apprenticeship, Unicor, ect.(see Attachment on program review). Pro se was vaccinated on April 6, 2021 and April 27, 2021 with the Pfizer vaccine. Also, if released Pro se will be acquiring a job for FREE MIND in Washington D.C. which is a writing workshop for gifted writers and will be participating with the National Re-Entry Network for Returning Citizens. Pro se will be returning to barbering school to achieve barbering license. Once barbering license is achieved, pro se will return to college as a Liberal Arts Major and receive Associates Degree and in time PHD under a Psychology Major.

This motion was put together without the aid of counsel and not on the level of a professional lawyer. See **Haines v. Kerner**, 404 U.S. 519 (1972).

Conclusion

Pro se, Tommy T. Branch, pray that this honorable said court hear this case for merit to try again, and grant in "Good Faith" this above-styled titled motion.

Respectfully Submitted

/s/ [signature]

Tommy T. Branch

Certificate of Service

I, Tommy T. Branch declare under the penalty of perjury that the above mentioned facts herein are true and correct to the best of my knowledge and ability. Executed on this 15 day of August, 2024.

Respectfully Submitted

/s/ [signature]

From: Tommy T. Branch, pro se

Reg. #49644-007

F.C.I. Beckley

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