

24 - 6341
No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

24-6502, 3:11-cr-00404-FDW

Supreme Court, U.S.

FILED

DEC 20 2024

OFFICE OF THE CLERK

Zonta Tavaras Ellison — 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 Fourth Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Zonta Tavaras Ellison
(Your Name)

FMC Butner P.O. Box 1600
(Address)

Butner, North Carolina 27509
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. The Circuit Court's Three Judge Panel, created a conflict of grave importance warranting this court's Discretionary Judicial power, when it denied petitioner's motion for rehearing en banc, and cited that the petition for rehearing en banc was circulated to the full court, yet never stated why the petition was being denied?
2. Did the circuit court's three judge panel infringe upon the denial of petitioner's sixth amendment right to a trial by jury, creating conflict and further subject petitioner to collateral consequences, in accepting the trial court's use of petitioner's 2010 "Alford Plea conviction," to enhance and sentence petitioner as a "career offender," adverse to this court's ruling in SHEPARD V. UNITED STATES 544 U.S. 13 (2005)?

LIST OF PARTIES

[V] 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

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3,4
STATEMENT OF THE CASE	5,6
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	8

INDEX TO APPENDICES

APPENDIX A Decision of Court of Appeals Fourth Circuit three judge panel denying motion for rehearing en banc on October 22, 2024

APPENDIX B Petition for rehearing en banc

APPENDIX C Decision of Court of Appeals Fourth Circuit three judge panel denying appeal to the District court's denial of motion for compassionate release reduction in sentence dated September 24, 2024

APPENDIX D Informal brief motion appealing denial of motion for compassionate release reduction in sentence dated June 24, 2024 & page 4 Doc#52 of SOR

APPENDIX E Decision of the District court denying the motion for compassionate release reduction in sentence dated April 15, 2024

APPENDIX F Motion for compassionate release reduction of sentence dated June 20, 2023

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
ERLINGER V UNITED STATES 219 LED 2D 451 (2024)	
CONCEPCION V UNITED STATES 597 US 481 (2022)	
SHEPARD V UNITED STATES 544 US 13 (2005)	
NORTH CAROLINA V ALFORD 400 US 25 (1970)	
UNITED STATES V ALSTON 611 F.3d 219 (4th Cir. 2010)	
UNITED STATES V JENKINS 22 F.4th 162, 167 (4th Cir. 2021)	
UNITED STATES V COLLINGTON 995 F.3d 347, 357 (4th Cir. 2021)	

STATUTES AND RULES

TITLE 28 UNITED STATES CODE SECTION	851(b)
TITLE 28 UNITED STATES CODE SECTION	851(c)(1)
TITLE 18 UNITED STATES CODE SECTION	3582(c)(1)(A)
TITLE 18 UNITED STATES CODE SECTION	3582(c)(1)(B)
TITLE 28 UNITED STATES CODE SECTION	2253(c)(2)
FEDERAL RULES OF APPELLATE PROCEDURE	35(b)(1)(A)
FIRST STEP ACT OF 2018	PUB.L. 115-391, 132 STAT. 5194
FAIR SENTENCING ACT	§ 3 124 STAT. AT 2372
TITLE 21 UNITED STATES CODE SECTION	844(a)

OTHER

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 24-6502, 3:11-cr-00404-FDW-DSC-1 10-22-2024; 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 E to the petition and is

[] reported at 3:11-cr-00404-FDW-DSC April 15, 2024; 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 September 24, 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: October 22, 2024, and a copy of the order denying rehearing appears at Appendix A.

[] 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

AMENDMENT 1. POLITICAL FREEDOM

CONGRESS SHALL MAKE NO LAW PROHIBITING THE FREEDOM OF SPEECH THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

AMENDMENT 4. UNREASONABLE SEARCHES AND SEIZURES

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS AND EFFECTS AGAINST UNREASONABLE SEARCHES AND SEIZURES SHALL NOT BE VIOLATED; AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED.

AMENDMENT 5. CRIMINAL ACTIONS - DUE PROCESS OF LAW

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER, NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; 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;

AMENDMENT 6. RIGHTS OF THE ACCUSED

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESS AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

AMENDMENT 13.

SECTION 1 SLAVERY PROHIBITED

NEITHER SLAVERY NOR IN VOLUNTARY SERVITUDE, EXCEPT AS A PUNISHMENT FOR A CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, SHALL EXIST WITHIN THE UNITED STATES, OR ANY PLACE SUBJECT TO THEIR JURISDICTION.

TITLE 21 UNITED STATES CODE SECTION § 851(b):

IF THE UNITED STATES ATTORNEY FILES AN INFORMATION UNDER THIS SECTION THE COURT SHALL AFTER CONVICTION BUT BEFORE PRONOUNCEMENT OF SENTENCE INQUIRE OF THE PERSON WITH RESPECT TO WHOM THE INFORMATION WAS FILED WHETHER HE AFFIRMS OR DENIES THAT HE HAS BEEN PREVIOUSLY CONVICTED AS ALLEGED IN THE INFORMATION.

TITLE 21 UNITED STATES CODE SECTION § 851(c)(1).

IF THE PERSON DENIES AN ALLEGATION OF THE INFORMATION OF PRIOR CONVICTION OR CLAIMS THAT ANY CONVICTION ALLEGED IS INVALID, HE SHALL FILE A WRITTEN RESPONSE TO THE INFORMATION. THE HEARING SHALL BE BEFORE THE COURT WITHOUT A JURY AND EITHER PARTY MAY INTRODUCE EVIDENCE. THE UNITED STATES ATTORNEY SHALL HAVE THE BURDEN OF PROOF BEYOND A REASONABLE DOUBT ON ANY ISSUE OF FACT.

STATEMENT OF THE CASE

The facts presented to this honorable court have before been presented and continues to be presented due to the fact that the trial court "DID NOT" allow petitioner to present any of the evidence of his innocence to the jury of his peers. The courts continue to turn a blind eye to the injustices, prosecutorial misconduct, police misconduct, fabricated statements and constitutional violations resulting in petitioner being wrongfully convicted and sentenced for crimes that he "did not" commit. On December 13, 2011 petitioner was indicted for three (3) counts of possession with intent to distribute cocaine base, alleging that on three different dates in June 2011, petitioner sold crack cocaine to an undercover officer. According to defendant's exhibit one (1), from March 16, 2011 up until June 14, 2011 the United States omitted from the jury that it used female informant "Felecia Starr" to entrap petitioner by inducement for federal prosecution. On January 11, 2012 petitioner turned himself in to the Mecklenburg County Sheriff's Office at Mecklenburg County Jail Central. On January 12, 2012 petitioner entered a plea of "NOT GUILTY" in US District Court Charlotte. On February 2, 2012 the United States filed a bill of information seeking an enhanced penalty using petitioner's June 11, 2010 "Alford plea conviction," for the January 27, 2007 simple possession of cocaine case and April 25, 2008 sell cocaine case that were consolidated together. Challenging both cases citing that the resulting conviction pursuant to "Alford decision" was not only "invalid" it was unlawful, due to the circumstances of the officers conduct in violating petitioner's constitutional rights leading up to his arrest, rendered the acceptance of such plea by the Mecklenburg County Superior Court "unconstitutional. From August 2012 to November 2012 petitioner wrote several letters to the trial court, referencing the denial of defense counsel refusing to advocate his lawful objectives, rendering the effective assistance of counsel as guaranteed by the US constitution and, contest the United States case raising the defense of entrapment and challenge the "career offender" application" and United States use of the "invalid" "Alford plea conviction" to enhance petitioner's sentence. On November 28, 2012 defense counsel was ordered by the district court to remain as defense counsel to petitioner. On January 9, 2013 petitioner's trial by jury commenced and before the selection of petitioner's jury, defense counsel was allowed to withdraw after, placing the court on notice of the fact that, defense counsel refused to show petitioner the discovery evidence, for petitioner to inform his counsel as to what defenses he wanted to raise.

STATEMENT OF THE CASE

Petitioner was then forced to proceed pro se, with defense counsel being appointed as "standby counsel" and, the trial court alleging that petitioner had elected to represent himself. On January 10, 2013 after the trial court denied petitioner of every right he had to present the evidence of his innocence to the jury, petitioner was unlawfully convicted for the alleged crimes. On June 26, 2023, petitioner filed a motion for compassionate release reduction of sentence, pursuant to 18 U.S.C. § 3582(c)(1)(A), (c)(1)(B), the First Step Act of 2018 and the Fair Sentencing Act of 2010, citing that, he was his daughter's primary caretaker who has lupus and medical records were submitted, his catching co-vid after being in the cell with an inmate who tested positive for co-vid, then was placed in quarantine yet, was denied of vaccine treatment and, lastly that he was not a "career offender" and that his sentence should be reduced pursuant to United States v Alston 611 F.3d 219 (4th Cir. 2010). On June 26, 2023 petitioner medical records was ordered. On July 13, 2023 order for the United States Attorney to respond was set. On July 26, 2023 US Attorney appeared before the District Court. On August 1, 2023 the United States Attorney filed a response in opposition to the motion for compassionate release, stating that the trial court had stated "even if the "career offender" enhancement did not apply, the court would grant a variance and impose the same sentence." On April 15, 2024 the trial court denied the motion for compassionate release reduction of sentence, addressing only the issue of petitioner's risk of catching co-vid and that petitioner had failed to show that he was his daughter's only caretaker but refused to address the "career offender enhancement." [REDACTED] Concepcion v United States 597 US 481 (2022). Petitioner filed a Notice of Appeal and Petition for rehearing en banc to the US court of appeals 4th circuit. On September 24, 2024 the US court of Appeals 4th circuit affirmed the District court's ruling denying the motion for compassionate release reduction of sentence. On October 22, 2024 the USCA4 denied petitioner's motion for rehearing en banc with [REDACTED] out giving a lawful reason why.

REASONS FOR GRANTING THE PETITION

NORTHCAROLINA V ALFORD 400 US 25 (1970)

SHEPARD V UNITED STATES 544 US 13 (2005)

UNITED STATES V ALSTON 611 F.3d 219 (4th Cir. 2010)

FIRST STEP ACT OF 2018 PUB. L. 115-391, 132 STAT. 5194

18 USC § 3582 (c)(1)(A)

18 USC § 3582 (c)(1)(B)

28 USC § 2253 (c)(2)

ERLINGER V UNITED STATES 219 L ED 2D 451 (2024)

SEE TABLE OF AUTHORITIES CITED

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Zonta Ellison

Date: December 19, 2024