

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOSEPH WILLIAMS,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT(S).

IN THE ELEVENTH CIRCUIT
COURT OF APPEALS DISTRICT

WRIT OF MANDAMUS AND/OR
PROHIBITION AS APPROPRIATE
PURSUANT TO 28 U.S.C. SECTION
1651(A) SUPREME COURT RULE (20)

Joseph Williams
Reg. No. 68334-004
F.C.I. Coleman Medium
P.O. Box 1032
Coleman, Florida 33521

QUESTION PRESENTED

CAN PETITIONER PETITION ANY COURT WITH PROPER JURISDICTION UNDER HIS (1st AMENDMENT RIGHTS) IN LIGHT OF THIS HONORABLE COURT'S PRECEDENT IN MATHIS v. U.S., 136 S.Ct. 2243 (2016); JOHNSON v. U.S., 576 U.S. _____, 135 S.Ct 2551, 192 L.Ed.2d 564 (2015); ALSO SEE LYNCH v. DIMAYA, U.S. NO. 15-1498 (JAN. 17, 2017, CONSISTENT WITH ELEVENTH CIRCUIT COURT OF APPEALS PRECEDENT WHERE PETITIONER IS CLASSIFIED AS A (A.C.C.A.) AND/OR 4B1.1 APPLICANT AND HIS CIRCUIT COURTS FORECLOSE THIS KIND OF MATTER IN A SENTENCING CONTEXT SEE McCARTHAN V. DIR. OF GOODWILL INDUSTRIES SUNOOAST, INC., 2017 U.S.App.LEXIS 154485 (11th cir. 2017) AND McCARTHAN V. COLLINS, 17085 - S.Ct. (2017)?

RELIEF SOUGHT

Petitioner prays for Writ of Mandamus and/or Prohibition pursuant to 28 U.S.C. § 1651(A) and Supreme Court Rule(20) as appropriate before this Honorable Court requesting relief on announcements of this Honorable Court precedent followed by Eleventh Circuit Court of Appeals precedent as discussed further here in.

UNAVAILABILITY OF RELIEF IN OTHER COURTS

No other court can grant the relief sought by the Petitioner but this Court, because: (1) Petitioner (prior convictions) involve "Statutory Interpretation" decisions from this Court not applicable under 28 U.S.C. § 2255(h); (2) Petitioner previously submitted a (Second or Successive) petition before some recent Supreme Court decisions in which was denied. See Appendix (A), and; (3) Petitioner attempted to seek relief in the District Court of his confinement but is foreclosed by Eleventh Circuit Court of Appeals precedent. See McCarthan v. Dir. of Goodwill Industries, Suncoast Inc., 2017 U.S.App.LEXIS 154485 (11th cir. 2017), and McCarthan v. Collins, 17085 S.Ct. (2017). However, the denial is at Appendix (B).

Therefore, this Honorable Court has the only form of relief available.

UNSUITABILITY OF ANY OTHER FORM OF RELIEF

No other form of relief will be sufficient to protect the rights of the Petitioner or preserve the ability to seek review of the lower courts jurisdiction but this Honorable Court's Rule 20 and 28 U.S.C § 1651(A) because: (1) Petitioner is a (Second or Successive Applicant) and Petitioner's prior convictions involve "Statutory Interpretation Precedent" from this Honorable Court, precluded under § 2255(h), and (2) Petitioner's District and Court of Appeals has foreclosed any possible relief reflecting Petitioner's (prior convictions). See McCarthan v. Dir. of Goodwill Industries Suncoast, Inc., 2017 U.S.App.LEXIS 154485 (11th cir. 2017). Therefore, this Honorable Court's (Rule 20) has the only form of relief.

LIST OF PARTIES

PETITIONER:

JOSEPH WILLIAMS

DISTRICT COURT JUDGES:

KENELL HODGAN
(ORIGINAL JUDGE):
ALTONAGA;
CAROL E. HERMAN;
JEFFREY S. DOWNING;
JEANNE MACIE MULLENHOFF;
ANNE R. SCHULTZ;

A.U.S.A.'s

ALL PARTIES IN CASE NUMBERS:

-
- (1) 5:15-cv-547-Oc-10PRL;
 - (2) 07-20280-cn-ALTONAGA;
 - (3) U.S. v. Joseph Williams,
146 Fed.Appx.425
(11th cir. 2005)
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TABLE OF CONTENTS

PAGE(S)

QUESTION PRESENTED.....	i
RELIEF SOUGHT.....	ii
UNAVAILABILITY OF RELIEF IN OTHER COURTS.....	ii
UNSUITABILITY OF ANY OTHER FORM OF RELIEF.....	iii
LIST OF PARTIES.....	iv
TABLE OF CONTENTS.....	v
TABLE OF AUTHORITIES.....	vi
JURISDICTION STATEMENT.....	vii
CITATION OF LOWER COURT DECISIONS.....	vii
CONTROLLING PROVISIONS STATUTES AND REGULATIONS.....	viii
STATEMENT OF THE GOVERNING FACTS	viii
ARGUMENT/QUESTION REASONS FOR GRANTING THIS PETITION.....	1
CONCLUSION	6
CERTIFICATE OF SERVICE	6

TABLE OF AUTHORITIES

PAGE(S)

<u>Dijon Renand Jasmin v. U.S.,</u> <u>2016 U.S. Dist. LEXIS 143047 (M.D. of Fla. 2016)</u>	4
<u>Johnson v. U.S.,</u> <u>135 S.Ct. 2551, 192 L.Ed.2d 569 (2015)</u>	3, 4, 5
<u>Lynch v. Dimaya,</u> <u>U.S. No. 15-1498 (Jan. 17, 2017)</u>	5
<u>Mathis v. U.S.,</u> <u>136 S.Ct. 2243 (2016)</u>	1, 2
<u>Mackle Vincent v. Sec. Dept. of Corr.,</u> <u>691 F.3d 1348 (11th cir. 2012)</u>	3
<u>McCarthan v. Collins,</u> <u>17085 - S.Ct. (2017)</u>	1, 5
<u>McCarthan v. Dir. of Goodwill Industries Suncoast, Inc.,</u> <u>2017 U.S.App. LEXIS 154485 (11th cir. 2017)</u>	1, 5
<u>U.S. v. Hinkle,</u> <u>No. 15-10067 (5th cir. Aug. 11, 2016)</u>	2
<u>U.S. v. Hill,</u> <u>799 F.3d 1318 (11th cir. 2015)</u>	4
<u>U.S. v. Madkins,</u> <u>No. 15-3299 (10th cir. 2017)</u>	3
<u>U.S. Tanksley,</u> <u>848 F.3d 417 (5th cir. 2017)</u>	3

JURISDICTION STATEMENT

This Honorable Court has Jurisdiction of and to issue the requested Writ under 28 U.S.C. Section 1651(A) and Supreme Court's Rule 20

CITATION OF LOWER COURT DECISIONS

The decisions of the lower courts are marked as Appendix (A) and (B).

CONTROLLING PROVISIONS/STATUTES

The (1st Amendent) to the U.S. Constitution provides:
"Congress shall make no law respecting an establishment of...the right of the people peaceably to assemble and to petition the Government for a redress of grievance".

The (Fifth Amendent) to the U.S. Constitution Due Process
Clause:

STATEMENT OF THE CASE AND GOVERNING FACTS

On November 21, 2002, Joseph Williams was charged in an eight count superseding indictment in the Southern District of Florida with possession with intent to distribute 5 grams or more of cocaine base in violation of 21 U.S.C. §§ 841(A)(1) and 841(b)(1)(B) (Count One), two counts of possession with intent to distribute cocaine in violation of 21 U.S.C. 841(A)(I) and 841(b)(1)(C) (Counts Two and Seven), three counts of possession with intent to distribute marijuana in violation of 21 U.S.C. §§841(A)(1) and 841(b)(1)(D) (Counts Three, Four and Eight), possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(C) (Count Five), and being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) (Count Six). See United States v. Williams, case no. 02-20786-cr-Lenard(s) (S.D.Fla.) at Cr.Doc#28.

On November 25, 2002, the Government filed an Information and Notice that it intended to rely on Williams prior felony drug convictions to seek enhanced penalties pursuant to 21 U.S.C. § 851 (Cr.Doc#30). On July 24, 2003, a jury returned a verdict of guilty on counts one through Four and Six through

Eight. The Jury returned a verdict of not guilty as to Count Five. Cr.Doc#158.

On March 2, 2000, the district court sentenced Williams to concurrent terms of 360 months imprisonment on Counts One, Two, Six and Seven and concurrent terms of 120 months imprisonment on Counts Three, Four and Eight. Cr.Doc#212.⁽¹⁾

Cr.Doc#15, & 16. Williams appealed and the Eleventh Circuit affirmed his convictions. Cr.Doc#215, & 261. On February 5, 2007, Williams filed a § 2255 motion, which was denied. Williams v. United States, case no. 07-20280-civ-ALTONAGA (S.D.FLA.), Cv.Doc#1, & 23. The district court denied a certificate of appealability. Cv.Doc#28. On appeal to the Eleventh Circuit, the court affirmed the judgment of the district court. Cv.Doc#41. There after, Williams filed two more § 2255 motions in separate cases, both of which wee denied. See Williams v. United States, case no. 13-21170-civ-ALTONAGA (S.D.FLA.) Cv.Doc#1, & 8.

Williams then filed 28 U.S.C. § 2241 petitions without success, this petition follows:

(1) The Presentence Investigation Report determined that Williams was an armed career criminal based upon five prior violent felony and controlled substance convictions, which included two convictions for sale of cocaine and two convictions for resisting arrest with violence. PSR, 34.

ARGUMENT/QUESTION
REASONS FOR GRANTING THIS PETITION

CAN PETITIONER PETITION ANY COURT WITH PROPER JURISDICTION UNDER HIS (1st AMENDMENT RIGHTS) IN LIGHT OF THIS HONORABLE COURT'S PRECEDENT IN MATHIS V. U.S., 136 S.Ct. 2243 (2016); JOHNSON V. U.S., 576 U.S. ___, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015); ALSO SEE LYNCH V. DIMAYA, U.S. NO. 15-1498 (JAN. 17, 2017), CONSISTENT WITH ELEVENTH CIRCUIT COURT OF APPEALS PRECEDENT WHERE PETITIONER IS CLASSIFIED AS A (A.C.C.A) AND/OR § 4B1.1 APPLICANT AND HIS CIRCUIT COURT'S FORECLOSE THIS KIND OF MATTER IN A SENTENCING CONTEXT, SEE MCCARTHAN V. DIR. OF GOODWILL INDUSTRIES SUNCOAST, INC., 2017 U.S.APP.LEXIS 154485 (11th cir. 2017) AND MCCARTHAN V. COLLINS, 17085-S.Ct. (2017)?

This case represents Petitioner's(A.C.C.A) and/or § 4B1.1 classification reflecting his (prior convictions) that are seriously questioned now based on this Honorable Courts precedent directly impacting such (A.C.C.A) clarifications, however, Petitioner's district and circuit court has foreclosed these type of claims from being adjudicated in a Habeas context, after this Honorable Court announcements of its precedent in a sentencing context under the "Saving Clause Test" of 28 U.S.C. § 2255(e), however, these are the reasons this writ should be granted:

First: In Mathis v. United States, 136 S.Ct. 894, 193 L.Ed.2d 788 (Jan. 19, 2016), this Honorable Court held:

Only a jury, and not Judge, may find facts that increase a maximum penalty, except for the simple

fact of prior conviction...That means a judge cannot go beyond identifying the crime of conviction to explore the manner in which the defendant committed that offense. See Shepard, 544 U.S. at 25...He is prohibited from conducting such an inquiry himself; and so too he is barred from making a disputed determination about "what the defendant and State Judge must have understood as the factual basis of the prior plea" or "what the jury in a prior trial must have accepted as the theory of the crime. he can do no more, consistent with the Sixth Amendment, than determine what crime, with what elements, the defendant was convicted o...An elements focus avoids unfairness to defendants who otherwise might be sentenced based on statements of "non-elemental fact(s) that are prone to error because their proof is unnecessary to a conviction... An elements-focus avoids unfairness to defendants. Statements of "non-elemental fact" in the records of prior convictions are prone to error precisely because their proof is unnecessary...At trial, and still more at plea hearings a defendant may have no incentive to contest what does not matter under the law; to the contrary, he may have good reason not to or even to precluded from doing so by the court. Ibid. When that is true, a prosecutor's or judge's mistake as to means, reflected in the record, is likely to go uncorrected. Such inaccuracies should not come back to haunt the defendant many years down the road by triggering a lengthy mandatory sentence. See Mathis.

However, Mathis has great impact on Petitioner's two prior convictions for serious drug offenses in Florida: (Sale of cocaine in June 1993)(PSR Para. 56), and (Sale of cocaine near a college or public park in July 1998)(PSR Para. 60), also see Appendix (C). Thus, lower courts have been extending the Mathis holding to there State Statutes and giving defendants relief. See United States v. Hinkle, No. 15-1006)(5th cir. Aug. 11, 2016)(Texas Statutes at issue were divisible that a court may use the modified categorical approach to determine whether a defendant convicted under Texas law of knowingly delivering a controlled substance was convicted of delivery by one of the

particular means proscribed under Texas law. In light of the Supreme Court's recent decision in Mathis v. United States, the court concludes that Hinkles' conviction for delivery of a controlled substance is not a "controlled substance offense." Hinkles' sentence is vacated and remanded for resentencing). Also see, United States v. Tanksley, 848 F.3d 347 (5th cir. 2017)(same), and, United States v. Malkins, No. 15-3299 (10th cir. 2017)(Kansas Law defines sale as "offer to sell," in which is broader than a generic federal controlled substance offense, inconsistent to Mathis). However, see Eleventh Circuit previous precedent on (Fla.Stat. § 893.13) now inconsistent with the Mathis holding reflecting "elements focus". Mackle Vincent v. Sec. Dept. of Corr, 691 F.3d 1348 (11th cir. 2012); United States v. Agulins-Ortiz, 450 F.3d 1271 (11th cir. 2006); Donawa v. United States AG, 735 F.3d 1275 (11th cir. 2013); United States v. Shannon, 631 F.3d 1187 (11th cir. 2011), also recently in Gordon v. United States A.G., 861 F.3d 1314 (11th cir. 2017)(§ 893.13(1)(A) is divisible Statute reversed and remanded).

Therefore, Mathis calls into serious questions of Petitioner's A.C.C.A.) Arm Career Criminal Act enhancement for his prior drug convictions as "serious drug offenses".

Second, In Johnson v. United States, 526, 135 S.Ct. 2251, 2556, 192 L.Ed.2d 569 (2015) this court held that the residual clause of the A.C.C.A. is unconstitutionally vague because it creates uncertainty about how to evaluate the risks posed by a crime and how much risk it takes to qualify as violent felony. Johnson, 576 U.S. at ____ 135 S.Ct. 2557-58, 2563.

However, the Eleventh Circuit Court of Appeals has clarified that Johnson extends to Florida Drug Statute under a (A.C.C.A.) enhancement. See United States v. Hill, 799 F.3d 1318 (11th cir. 2015) where the Eleventh Circuit held:

"On remand and prior to resentencing Hill, the district court must also determine whether any of Hill's previous drug convictions constitute "serious drug offense" under the (A.C.C.A). See 18 U.S.C. § 924(e)(2)(A)(ii). In Hill's objections to the presentence investigation report, the government contended that Hill's 1999 cocaine sale/delivery conviction, in violation of Florida Statutes Section 893.13(1)(A)(1), and his 2008 cocaine trafficking conviction, in violation of Florida Statutes Section 893.135(1)(b)(1), were A.C.C.A qualifying "serious drug offenses". At sentencing the district court did not address whether Hill's prior drug convictions were serious drug offenses. As such, the government's brief declined to address Hill's drug convictions "in the first instance on appeal and relied primarily on Hill's other convictions and the residual clause,". Given the intervening decision of the Supreme Court in Johnson that overrules the Supreme Court's prior decisions about the same residual clause, we direct the district court to allow the parties on remand to raise and brief whether any of Hill's prior convictions nevertheless support the A.C.C.A. enhancements under the two other provisions of the A.C.C.A....Vacated and Remanded. Hill, 799 F.3d 1318, 1320.

Moreover, See Dijon Renand Jasmin v. United States, 2016 U.S.Dist.LEXIS 143047 (M.D. of Fla. Oct. 17, 2016), where the court relied on Johnson v. U.S., 135 S.Ct. 2551, 92 L.Ed.2d 569 2015, and held:

Nothing in the Florida Statute criminalizing the mere possession of

cocaine suggests that it involves manufacturing, distributing, or possessing with intent to manufacture or distribute, as is required to qualify it as a "serious drug offense" under the ACCA. See Fla.Stat. § 893.13(6)(A). Accordingly, Petitioner's conviction for possession of cocaine while armed does not qualify as a ACCA "serious drug offense". Dijon Renard Jasmin.

Therefore, Johnson v. United States, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015) further impacts Petitioner's (A.C.C.A.) enhancement reflecting his prior drug offense used as "serious drug offense". Therefore, Johnson further calls into serious questions of Petitioner's (A.C.C.A.) enhancement for his prior drug convictions classified as "Serious Drug Offense".

And Third, Lynch v. Dimaya, U.S. No: 15-1498 (Jan. 17, 2017) is pending before this Honorable Court, a case of many dealing with fallout from 2015 vagueness case (Johnson). However, this case may turn on whether courts applies different standard to criminal provisions than immigration ones. The measure is substantially similar to a criminal provision struck down by the court as too vague in 2017. (Johnson). This case presents the same protections that apply to criminal provisions should also protect Dimaya. Notably, the federal government argued in Johnson that if the criminal provision in that case were struck down the immigration provision in this case, too.

WHEREFORE, as shown above, this Honorable Court should find that Petitioner's (1st Amendment Rights) are affected by McCarthan v. Dir. of Goodwill Industries Suncoast, Inc., 2017 U.S.App.LEXIS 154485 (11th cir. 2017) also see McCarthan v Collins, 17085 S.Ct. (2017), in light of this Honorable

Court's precedent in Mathis; Johnson; also see Lynch v. Dimaya, U.S. No: 15-1498 (Jan. 17, 2017), consistent with Eleventh Circuit Court of Appeals precedent where Petitioner's (A.C.C.A.) and/or § 4B1.1 enhancement is seriously questioned according this Honorable Court's precedent.

CONCLUSION

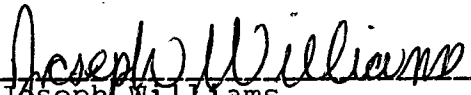
For the foregoing reasons stated herein, Petitioner prays that this Honorable Court grant the requested Writ of Mandamus or appropriate before this Honorable Court and allow Petitioner to proceed in any appropriate court.

CERTIFICATE OF SERVICE

I, Joseph Williams, certify I served (1) copy of the foregoing upon the Solicitor General at:

Room 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

On this 15th day of November, 2017.


Joseph Williams
Reg. No. 68334-004
E.C.I. Coleman Medium
P.O. Box 1032
Coleman, Florida 33521