

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Carl R. Brown, Pro Se

— PETITIONER

(Your Name)

VS.

Rodney Sipple, et al

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Eighth Circuit Court of Appeals

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

PETITION FOR WRIT OF CERTIORARI

Carl R. Brown, Pro Se #39138-044

(Your Name)

FCI Gilmer PO Box 6000

(Address)

Glenville, WV 26351-6000

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- (1) Whether the Government violates the 'Double Jeopardy Clause' by charging Multiple 924(c) offense that are based on the same predicate offense when the law and Department of Justice Policy as to the 924(c) statute says not to?
- (2) Whether the Government violates the 'Double Jeopardy Clause' when it charges in a single indictment, multiple 'Constructive Possessions of Firearms,' under the 924(c)(1)(a)(i) statute, that are based on the same predicate offense, where the government must be able to prove separate 'uses' of the Firearms, when the Government CAN NOT prove use of ANY Firearm?
- (3) When there is a split amongst the Circuits on the issue of 'Double Jeopardy' when it pertains to 'Multiple' 924(c) Firearm Charges, that are based on the same predicate offense, did the Court of Appeals Err when it denied the Petitioner RELIEF, based on a(n) out of date Circuit Prescedent and where the ruling violates Department of Justice Policy which violates the Petitioner Due Process Rights?

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:

Eighth Circuit Court of Appeals Judges:

Wollman

Gruendar

Shepherd

Riley

Arnold

Benton

United States Attorney General(s):

Richard G. Callahan

John T. Davis

TABLE OF CONTENTS

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

INDEX TO APPENDICES

APPENDIX A : Denial of Rehearing - Order - November 15, 2017;

APPENDIX B : Motion For Rehearing EnBanc;

APPENDIX C: Denial of Petitioner's Request for C.O.A.;

APPENDIX D: Response from US Dept of Justice / Office of Professional Responsibility stating that they will NOT assist me in bringing charges against the Atty Generals of the Eighth Circuit for violating Dept Of Justice policy because there are still legal avenues that I can take to address these issues;

APPENDIX E: Appeal from Eighth Circuit District Courts denial of Petitioner's Rule 60(B)(6) to the District Court alleging Due Process claims;

APPENDIX F: Denial of Petitioner's Rule 60(B)(6) by the District Court;

APPENDIX G: Petitioner's 2nd Rule 60(B)(6) to the District Court alleging Due Process claims;

APPENDIX H: Denial of Petitioner's Appeal which was construed as a Second Successive Motion by the Eighth Circuit Court of Appeals;

APPENDIX I: Government's Response to Petitioner's Appeal which was construed by the Eighth Circuit Court of Appeals as a request to file a Successive Motion;

APPENDIX J: Government's ORDER to the District Court for Petitioner's Original file from Petitioner's Pre-Trial & Post Conviction Remedies up to date

APPENDIX K: Notice of Appeal and Court of Appeals ORDER construing Petitioner's Appeal from his (2nd) Rule 60(B)(6) Motion as a request to file a Second or Successive Motion;

APPENDIX L: Notice of Appeal filed by Petitioner;

APPENDIX M: District Courts Denial of Petitioner's 'Federal Question' as to Law of the Circuit when it comes to Double Jeopardy & the 924(c) statute;

APPENDIX N: Petitioner's Denial of his (1st) Rule 60(B)(6) by the District Court;

APPENDIX O: Petitioner's 'Formal Complaint' to the Dept. of Justice alleging violations of Dept. of Justice policy by the Attorney Generals in the 8th Circuit;

APPENDIX P: District Courts Denial of Petitioner's Rule 60(B)(6) motion;

APPENDIX Q: Petitioner's Original Rule 60(B)(6) Motion alleging Due Process and Double Jeopardy Violations;

APPENDIX R: Petitioner's Superseding Indictment;

APPENDIX S: Petitioner's Original Indictment;

APPENDIX T: Eighth Circuit Case United States McArthur, Court of Appeals, vacating one of two 924(c) charges that were based on the same predicate offense rejecting out Circuit precedent

US v Lucas;

APPENDIX U: Fourth Circuit case United States v Guess, (2012) (4th Cir. is sister Cir. of the 8th Cir.) where the Government represented that 'under Dept. of Justice policy, each 924(c) charge must relate to a separate predicate offense. Pg (7).

TABLE OF AUTHORITIES CITED

PAGE NUMBER

CASES

United States v Lucas, 932 F.2d 1210 (8th Cir. 1991)
United States v McArthur, 2016 US App. LEXIS 16478 (8th Cir. Crt. App 2016)
United States v Guess, 2012 US App. LEXIS 11686 (4th Cir. Crt. of App 2012)

STATUTES AND RULES

924(c)(1)(A)(i)
Rule 60(b)(6)
§2255

OTHER

Double Jeopardy	Dept of Justice - US Dept of Justice /
Due Process	Office of Legal Education
Actual Innocence	Federal Firearms Manual, Section 4.25, at
Ineffective Assistance of Counsel	192-93 (3d ed. 2001)

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 C 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 G 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 ____ 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 August 31, 2017

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 15, 2017, 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

CASES

United States v Lucas, 932 F.2d 1210 (8th Cir. 1991)

United States v McArthur, 2016 US App. LEXIS 16478 (8th Cir. Crt. App 2016)

United States v Guess, 2012 US App LEXIS 11686 (4th Cir. Crt of App 2012)

STATUTES AND RULES

924(c)(1)(A)(i)

Rule 60(b)(6)

§2255

OTHER

Double Jeopardy

Due Process

Actual Innocence

Ineffective Assistance of Counsel

Dept of Justice - US Dept of Justice / Office of Legal Education

Federal Firearms Manual, Section 4.25, at 192-93 (3d ed. 2001)

STATEMENT OF THE CASE

Between the years 2009 and 2011, Petitioner, Carl R. Brown, was being investigated for a RICO Conspiracy and a separate Heroin Conspiracy. During this time, on March 30, 2011, St. Louis City Police Officers were called to a 'peace disturbance' at 3619 Cora Avenue, St. Louis, MO. The police officers recovered [2] two firearms in a trash can, in the backyard of the above and aforementioned address.

Then on April 19, 2011, FBI Agents acted on a search warrant at 4954 Kemper, St. Louis, MO and recovered one [1] firearm in a bedroom, on a shelf, wrapped up in a sheet. Petitioner Brown was NOT at either address at the times when the search warrants were executed. The firearms were NOT on or in Petitioner Brown's actual possession.

On January 19, 2012, Petitioner Brown was indicted for [3] three counts in a [5] five Count Indictment:

Count One - Conspiracy to Distribute and Possess w/the Intent to Distribute Heroin;

Count Three - Possession of a Firearm During A Drug Trafficking Crime;

Count Four - Possession of a Firearm During a Drug Trafficking Crime;

On September 21, 2012, Petitioner Brown pled guilty to, [2] two counts in the Indictment. Counts One and Three, Count Four was dismissed per a plea agreement.

On May 9, 2016, Petitioner Brown filed a Rule 60(B)(6) Motion, alleging [3] three claims:

(1) Actual Innocence;

(2) Double Jeopardy;

(3) Ineffective Assistance of Counsel;

Petitioner stated in the Rule 60(B) Motion, that it was 'Double Jeopardy' for the Government to Indict him for multiple 924(c) charges, that were based on the same predicate offense. This argument was NEVER argued in the Petitioner's Direct Appeal, §2255, Appeal from §2255 or Recall Man-

date Motion. Petitioner argued 'Ineffective Assistance of Counsel,' and 'Actual Innocence' in his §2255 Motion, which was **DENIED** in the District Court.

The District Court **DENIED** the Rule 60(b) Motion, stating that, the Petitioner, Carl R. Brown, had tried to file a Second or Successive Motion without first getting authorization from the 8th Cir. Court of Appeals. The District Court did NOT adjudicate the 'Double Jeopardy' claim at all... US v McArthur, 2016 US App. LEXIS 16478 (8th Cir. Court of App. 2016).²

The Eighth Circuits Controlling Circuit Law, states multiple 924(c) charges that are based on the same predicate offense, does NOT, violate the 'Double Jeopardy Clause,' as long as the Government can prove separate 'uses' of the firearms. United States v Lucas, 932, F.2d 1210 (8th Cir. 1991). Petitioner Brown then appealed the District Courts **DENIAL** of the Rule 60(b) Motion, the Court of Appeals construed the motion as a(n) request to file a Second and Successive Motion. The Court of Appeals **ORDERED** the District Court for the Eighth Circuit, to file a response to the Appeal.

The Court of Appeals ultimately **DENIED** Petitioner Brown the right to file a Second or Successive Motion. Petitioner Brown then filed yet another Rule 60(b) to the Eighth Circuit District Court alleging [2] two grounds: 'Double Jeopardy' in light of US v McArthur, 2016 US App. LEXIS 16478 (8th Cir. Crt of App. 2016); and a Due Process violation claim.

The District Court **DENIED** the Second Rule 60(b)(6) Motion, stating that, 'Petitioner Brown had tried for a Second Time to file a Successive Post Conviction Motion.'

On May 12, 2017, The District Court construed Petitioner's second Rule 60(b) as a 'Motion for Reconsideration,' and **DENIED** it with prejudice. Petitioner Brown then filed a(n) appeal to the Eighth Circuit Court of Appeals, from the May 12, 2017. Denial of the Petitioner's second Rule 60(b)(6) Motion.

Then on August 18, 2017, the US Dept of Justice filed a Response to Petitioner Brown's Formal Complaint against the Attorney General and Assistant Attorney General for violating Dept. of Justice Policy and

²On May 15, 2016, Petitioner Carl R. Brown filed a formal complaint to the Dept. of Justice asserting violations of Dept. of Justice Policy by the Atty Generals in the Eighth Cir. District Court in the Eastern Dist. of Missouri. Petitioner asked the DOJ to take action against the Atty Generals.

violating Petitioner's Constitutional Rights, in the process stating: 'it is the policy of this office, to refrain from investigating issues or allegations that could have been or still may be addressed in the course of litigation.' The Dept. of Justice ultimately declined to take any action against the Attorney Generals.

The Court of Appeals for the Eighth Circuit construed Petitioner Brown's latest appeal² to file a C.O.A. On August 31, 2017, the Eighth Circuit Court of Appeals **DENIED** the request for a C.O.A. stating: "The Court has carefully reviewed the original file of the District Court and the application for a C.O.A. is **DENIED**."

Then on October 16, 2017, Petitioner Brown then filed a Motion For Rehearing EnBanc, to the Eighth Circuit Court of Appeals asserting [3] three issues:

(1) Where [2] two separate panels, within the same circuit, presented with the same issue, is at odds with another, with it's decision regarding the legal question of, "what is 'Double Jeopardy,'" in regards to multiple 924(c) charges that are based on the same predicate offense?

(2) FIRST IMPRESSION since EnBanc decision in 1991: Whether the/a defendant was subject to 'Double Jeopardy' when he was charged with multiple Constructive Possessions of Firearms, that were based on the same predicate offense, where the government cannot prove multiple use(s) of the firearms?

(3) Where there is a split amongst the circuits on the issue of Double Jeopardy, when it pertains to multiple firearms [924(c)] that are based on the same predicate offense, did the COURT **err** in **NOT** granting the Petitioner RELIEF, when there is **NO** uniformity amongst the circuits on this issue?

On November 15, 2017, Petitioner's Motion for Rehearing EnBanc, was **DENIED**. Petitioner now files this WRIT of CERTIORARI, to the Supreme Court, in hopes that it will 'clarify' the split amongst the Circuits and within the Circuits.

²as a request

REASONS FOR GRANTING THE PETITION

The reason this Honorable Supreme Court should **GRANT** CERTIORARI, is because there is a split amongst **ALL** the Circuits, that's recognized by **ALL** the Circuits Courts of Appeals, including the DC Court of Appeals. The 8th and 4th Circuits are in [disagreement] with the Ten [10] Courts of Appeals, as to what is considered '**Double Jeopardy**' when it comes too multiple 924(c) charges, that are based on the same predicate offense.

The lower Courts are constantly making erroneous decisions when it comes to this issue. NOT only has the law changed as to the 924(c) statute, it has also been amended and the Dept of Justice has 'revised' their Federal Firearms Manual and made it clear that the Atty Generals are to refrain from persuing indictments that charge multiple 924(c) counts and basing them on the same predicate offense, in a single indictment. See US v McArthur, 2016 US App. LEXIS 16478 (8th Cir. Crt of App. 2016).

This Court desperately needs to give 'clarification' to the lower Courts, because **ALL** the Courts are NOT uniform when it comes to this issue. The Ten [10] Circuit Court of Appeals are uniform on thier understanding of this issue, the 8th and 4th Circuits are the Minority Circuits. It needs to be determined, whether the [10] Ten Circuit Courts of Appeals are correct or whether the Two [2] Minority Circuits are correct.

The Petitioner asserts the Lower Courts decision NOT to **GRANT** him the RELIEF requested, was erroneous, because it violates the Petitioner's Constitutional and Substantial rights. Petitioner's Fifth Amendment Right NOT to be 'subjected' to '**Double Jeopardy**'; 14th Amendment Rights to have '**Due Process**;' of Law; and the 14th Amendment Right to have '**Equal Protection of the Law**'.

NOT only are the [12] Twelve Circuit Courts of Appeals NOT uniform on this issue, the Appellate Judges within the Minority Circuits, are NOT uniform as to this issue. Clarification is desperately needed and I urge the Supreme Court to resolve the Circuits split on this issue, to eliminate the geographic 'crazy quilt' by which many criminal defendants sentenced for similar conduct and crimes, receive dissimilar appellate and District Court treatment pertaining to this issue.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carl R. Brown

Date: December 12, 2017