

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Paul Richardson — 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 Sixth Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Paul Richardson  
(Your Name)

P.O. Box 34550 Memphis  
(Address)

Memphis Tenn, 38134  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

## QUESTION(S) PRESENTED

- (1) Was the Sixth Circuits reading of thier precedents applying relevant conduct, unreasonable simply because petitioner would benifit from this application?

(The Probation Office in this case recommended the application of Relevant Conduct because petitioners crimes are infact relevant.)

- (2) Was it abuse of Discretion for the District and the Appeals court not to adopt the Presentence report recommenting that the relevant conduct be appplied, because the Crimes were infact related, both Stemming from State charges?

(Petitioners charges were charged in State for both crimes and they were later split up).

## TABLE OF AUTHORITIES CITED

### CASES

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## 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:

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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 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 16-5402; 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☐ is unpublished.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☐ is unpublished.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 \_\_\_\_\_ 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 Aug 8, 2017.

☐ 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: Nov 16, 2017, 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

As A Pro-Se petitioner, and Under This courts holding in Haines V.Kerner, 404 U.S. 519 (1972) There are over 15 Statutes and rules applicable thats protected under the Due Process Equal protection rights associated with petitioners case that they would run the risk of misinterpretation to one individuals ideas about their application. Thus defendant/Petitioner would leave one's own interpretation to settle those applications to indivuduals similarly situated. The Equal Protection of the FIFTH Amendment Protects Simililarly situated defendants accross the spectrum of Federal Review.

## STATEMENT OF THE CASE

Appellant was indicted in August 17, 2004 on one count of being a felon in possession of a firearm under 18 U.S.C. §922(g). Appellant pleaded guilty on the indictment on January 12, 2005. A presentence investigation Report [PSIR] was then prepared. There were no objections by Appellant to the reports conclusion that his criminal history qualified him as an armed career criminal pursuant to U.S.S.G. §4B1.4 (b)(3)(A). Appellants total offense level was 30 and he had 17 criminal history points, placing him in Criminal History Category VI. Appellants advisory guideline range was therefore 168-210 months, with a "Restricted" guideline range of 180-210 months, due to the mandatory Minimum Appellant was sentenced to 196 months incarceration, Supervised release for three years, and a One hundred dollar Special assessment. Appellant then appealed to the Sixth Circuit arguing that the district court failed to properly consider the factors under 18 U.S.C. §3553(a). That appeal was denied. Then, in the wake of Johnson V. United States, 135 S. Ct. 2551(2015) Appellant filed a motion under 28 U.S.C. §2255 for a writ of habeas corpus challenging his sentence as an armed career criminal. The district court granted Appellant's motion and vacated his sentence, scheduling the matter for a new sentencing hearing. A supplemental PSIR [hereinafter SPSR] was prepared prior to Appellant's resentencing hearing. The U.S. Probation Department calculated Appellants new advisory guidelines sentence as follows:

U.S.S.G. §2K2.1(a)(1) assigns a level 24, for felon in possession of a firearm, "if the Defendant committed any part of the instant offense subsequent to sustaining at least two felony convictions of either a crime of violence or controlled substance offense." Specifically, the SPSR cited to Appellants convictions in Paragraphs 44, 47 and 49 of the report as supporting this conclusion. the Probation Department then added for additional four points under U.S.S.G §2K2.1(b)(6)(B) as "the defendant used or possessed any firearm or ammunition in connection with another felony offense. He possessed a firearm during robberies on August 30, 2003, and December 24, 2003." With acceptance of responsibility and a timely notice of intent to plead guilty, the SPSR calculated a Total Offense level of 25.

The SPSR recalculated Appellants criminal history points to be 15, as opposed to the 17 points calculated in the original PSIR. The prior PSIR had added an additional two points, under former U.S.S.G §4A1.1(e), for having committed the instant offense within two years of being released from prison in three state cases. This still resulted in a Criminal History Category of VI. The resulting advisory guideline range was 110-120 months imprisonment, as the Maximum term of imprisonment for the Appellant under 18U.S.C. §924(a)(1)(2) is ten years. The Government offered one objection to the SPSR; the defense offered no objections to the SPSR. The Government's objection was as follows:

Objection1: The government maintains that the offense in paragraphs 51 and 52 should not be considered as relevant conduct to the instant offense because there is no indication that the instant offense is connected to those offenses as part of the same course of conduct or common scheme or plan. The probation offered a very lengthy response to the government's objection. Probation argued that- pursuant to U.S.S.G §2K2.1(b)(6), Application note 14, and U.S.S.G§1B1.3(a)(2), Application note 5 the firearm in the present offense, possessed on October 3, 2003, was related to his two prior State convictions for being a felon in possession of a handgun on August 30, 2003 and December 24, 2003, in the course of committing aggravated robberies and aggravated burglaries. Therefore, his federal possession of the firearm conviction was part of a common purpose or modus operandi, or part of the same course of conduct. Addendum of Feb.24,2016;Pgs.1-4.

More Specifically, the probation department argued:

In United States v. Phillips, 516 F. 3d 479 (6th cir. 2008) the defendant was convicted of violating 18 U.S.C. §922(g). The Sixth Circuit upheld the four-level increase pursuant to §2K2.1(b)(6) based on two additional incidents of illegal possession of firearms that were determined to be relevant conduct to the instant offense, which occurred on May 9, 2004. The Sixth Circuit determined that both incidents, which occurred on August 3, 2002 and March 9, 2006, were

identical to the offense of conviction and that the defendants repeated possessions of firearms were linked to the common purpose of self-defense. Therefore, based on the similarity of the offenses to the instant offense and regularity of the offenses, the Sixth Circuit determined that Phillips's 2002 and 2006 possessions of firearms were part of the same course of conduct as his 2004 felon in possession conviction and upheld the four-level increase pursuant to §2K2.1(b)(6). (id) The probation Department went on to note that because Appellants state cases constituted relevant conduct, he should be credited for the time he served for those state sentences under U.S.S.G. §1.3- Imposition of a Sentence of a Defendant Subject to an Undischarged Term of Imprisonment or Anticipated State Term of Imprisonment, and U.S.S.G. §5K2.23- Discharged terms of Imprisonment.

At the first re-sentencing hearing on February 16, 2016 the district court essentially overruled the governments objection, finding that Appellants advisory guideline range was 110-120 months incarceration. However, the Probation Department brought up the issue of Current verses consecutive sentences, prior to the district court finishing the imposition of a 155 month sentence. The probation Officer reminded the Judge that because the prior state offenses were added as part of Appellants relevant conduct under U.S.S.G. §2K2.1(b)(6), that under U.S.S.G. § 5G1.3 the guidelines recommended running the sentences concurrent to each other. (id at page 1d#365-66\_. The court adjourned so the parties could research the issue and an Addendum could be added to the SPSR regarding the issue of consecutive verses concurrent sentences. The District court ultimately held that the cases were not relevant and refused to grant

petitioners concurrent sentencing argument and ordering the sentences to be ran consecutively to Appellant's states sentences. The Sixth Circuit Court of Appeals Affirmed this decision. This is the Petition as a direct result of that decision.

## REASONS FOR GRANTING THE PETITION

Pursuant to U.S.S.G. §2K2.1(b)(6), application note 14 and U.S.S.G. §1B1.3(a)(2), application note 5 petitioners offenses of August 30, 2003 "Possession of a handgun and December 24, 2003 aggravated robberies and aggravated burglaries was related to the instant offense of October 3, 2003 possession of a firearm. This was part of petitioners modus operandi. Indeed as part of a gang, in the Streets of Memphis Tennessee, one could say that this was a requirement, something like food and water for survival to possess a firearm. Thus petitioners past lifestyle required him to possess at all times, a firearm. Indeed the PRObation office was correct in their assessment instating over the Governments objections that pursuant to the above mentioned guidelines "application notes" petitioners prior and subsequent crimes were related, and thus showed a particular modus operandi. More so, this can be seen that person's similary situated possess firearms. One only has to look at the local Memphis news to see that this "possession of a firearm at all times" was a everyday requirement for survival and the past criminalistic profession that petitioner was in, tho no longer a part of, petitioner use to make his living, in a gang, and a firearm was part of the tools that was used. As harsh as that lifestyle may seam, and as crazy as it may seam that petitioner is arguing for, instead of against the application of relevant conduct, this is the fact's of the case, and the rules of the Guidelines and the inperpretation of current case law dealing with such is clear. because this law would help, instead of hurt petitioner should not be anebasis for the District court, the Governments, and subsequent Appeals court unreasonable application and reading of thier own case law. Equal protection requires protection

and a reasonable application of the relevant case law to all similarly situated petitioners. The probation office, the one's tasked with and trained with applications ~~as such~~ <sup>as such</sup> law argued Specifically:

In United States V. Phillips, 516 F. 3d 479 (6th Cir. 2008), the defendant was convicted of violating 18 U.S.C. § 922(g). The Sixth Circuit court of appeals upheld the four-level increase pursuant to § 2K2.1(b)(6) based on two additional incidents of "illegal possession" of firearms that were determined to be relevant conduct to the instant offense, which occurred on May 9, 2004. The Sixth circuit determined that both incidents, which occurred on August 3, 2002, and March 9, 2006, were identical to the offense of conviction and that the defendants repeated possessions of firearms were linked to the common purpose of "self Defense". Therefore, based on the similarity of the offenses to the instant offense and "regularity" of the offenses, the Sixth circuit determined that Phillips 2002 and 2006 possessions of firearms were part of the same course of conduct as his 2004 felon in possession conviction and upheld the four level increase pursuant to § 2K2.1(b)(6)(id).

In the Sixth Circuit's opinion, the court recognizes that petitioner was in an unusual position of arguing that the district court should have applied a harsher guidelines range, because he would be eligible

for a downward sentence adjustment under 5G1.3(b), effectively reducing the total time he would spend in prison. But their flaw was in their analysis of the fact that petitioners counsel only argued that he carried a firearm for self defense. Indeed the firearm had multi use properties. Petitioner not only used the firearm for self defense being in Memphis tennessee, and in a gang, but they were also times when that firearm was used to commit those aggravated crimes. Indeed petitioners prior charge was felon in possession of a firearm. The Sixth Circuit states in the conclusion this contradictory statement "the "fact" that Richardson had a firearm for all three offenses is not sufficient to support a finding that he regularly engaged in similiar offenses, because as discussed, the State offenses (aggravated robbery and aggravated burglary) and Federal offenses (being a felon in possession of a firearm are not similar)" must categorically fail. First as a categorical matter, when these crimes were used to enhance his offenses under the ACCA the court "took a peek" at his underlying offenses elements and discovered that the Aggravated nature element was the use of a firearm to commit these offenses. Thus, just becasue the name of the offenses are not the same e.g Agg robbery agg assault compared to felon in possession, they carry the similar elemental properties in order to convict an individual under such provisions. Indeed Tennessee's Aggravated Robbery Statute §39-13-402 (1) States that in order for it to be listed as a Aggravated robbery it has to be accomplished with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon. Thus the hairs that the Sixth Circuit tries to split, are unsplittable, and their reason for trying

to is not an sensible reading of their case law. In Phillips the court came to their "own" conclusion that 516 F. 3d at 483-85 because in all instances the defendant appeared to be carrying a firearm for self-defense. Indeed the court contradicts their self when it cites United States V. Faison, 339 F. 3d 518, 520-21 (6th cir. 2003) where they held that similar offenses (Aggravated robbery and Agg assault) versus (felon in possession ) are not similar, when they held that felon in possession charge was related to his various concaine trafficking charges, because the firearm was related to his cocaine trafficking. These are different charges from Felon in possession of a firearm complained of. The main factor in all cases; is firearm the context of all offenses was the use of a firearm. petitioners modus operandi was to carry a firearm for protection and for use to commit crimes, indeed the August 2003 offense relishes this fact, petitioner was convicted and sentenced to 8 years imprisonment for Agg robbery and Agg burglary, and one impiasonment for for being a felon "inpossession of a firearm". The same firearm used in the August 2003, offense was the same firearm petitioner was found with in October 2003 federal offense. This created a procedural and substantive due process violation when both the district and appellant court failed to find, in this 18 U.S.C. §922(g) prosecution, that prior state convictions for being a felon in possession of a handgun, were not relevant conduct under §1B1.3(a)(1)(3) as related to §2K2.1(b)(6)(B), and therefore not sufficiently related in nature or scope to justify running his federal prison sentence concurent with his state prison sentences

In United States V. Phillips, 516 F. 3d 479, 483-84 (6th cir 2008) in August 2002, Phillips was shot in a road rage incident in the state of Kentucky. His vehicle was searched after the shooting, and two pistols were discovered in a brief case, and a rifle was in the trunk. After, two years later in May 2004 Phillips was arrested on suspicion of driving while intoxicated, after a traffic stop. A search of his vehicle, discovered two hand guns, and military rifle and a shotgun. This led to a conviction of 18 U.S.C. § 922(g) in Federal court. before being prosecuted for the may 2004 matter, Phillips was questioned by ATF and Kentucky state police in connection with his alleged role as an armed body guard. This occurred in March of 2006, near a hotel room associated with mr Phillips. United States V. Phillips, 516 F. 3d at 482 Phillips " a search of the hotel room uncovered a semi-automatic pistol. The District court, when sentencing Phillips on this may 2006 case found that the August 2002 and March 2006 cases were relevant conduct under U.S.S.G. §1B1.3(a)(2). United States V. Phillips, 516 F. 3d at 482. Phillips argued that it was error to count his prior and subsequent possessions as relevant conduct. The Government sucessfully argued that his possession of firearms were connected to a "common purpose", that being his desire to protect himself due to the attempt on his life, and possession of the firearms in 2002 and 2006 were "same course of conduct". as the 2004 offense. The Sixth Circuit agreed with the government. ID.

The court reasoned that the 2002 and 2006 convictions could be added as relevant conduct, if the district court found that the offenses were part of the "same

course of conduct or common scheme or plan" under U.S.S.G§1B1.3(a)(2). In quoting the guideline, the Sixth Circuit reasoned:

"For two or more offenses constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar modus operandi". Application note 9(a).

If this criteria is not met, Phillip's prior possessions may nevertheless be counted as relevant conduct if they were part of the same course of conduct. "Offenses that do not qualify as part of a common scheme or plan may non the less qualify as part of the same course of conduct if they are sufficiently connected or related to other as to warrant the conclusion that they are a part of a single episode, spree, or ongoing series of offenses". U.S.S.G§1B1.3 application note 9

(B). We (Meaning the Sixth Circuit) consider the degree of similarity of the offenses, the regularity of the offenses,, and the time interval between the offenses to assist us in determining whether offenses are sufficiently connected to be considered part of the same course of conduct. Id. The Guidelines counsel a "sliding scale approach to these factors, explaining that "[w]hen one of the above factors is absent a stronger presence of at least one of the other factors is required. Id; See also Hill, 479 F. 3d at 1482 (describing Guidelines commentary as requiring "a sliding scale approach").

The Sixth Circuit in Phillips, went on to note that sister circuits have held that "contemporaneous or nearly contemporaneous possession of uncharged firearm is... relevant conduct." Indeed the court,

even cited a Ninth Circuit case where a defendant has possessed a gun contemporaneous with his offense of conviction and admitted that he regularly possessed stolen guns. United States V. Phillips, 516 F. 3d at 483 (internal citations omitted). In the instant case, appellant was caught possessing three hand guns within a three month period of time, and signed an affidavit attesting that he possessed the same handgun in two of the offenses. (R. 83, position of Paul Richardson; page ID # 199; corrected page ID #94([sic])). Like Phillips, appellant had a state case, then an intervening Federal case, followed by another State case. The Phillips court found this pattern particularly important in concluding the State matter on either side of the Federal case were relevant conduct. The court Applying these Authorities, and the factors identified in application note 9 to U.S.S.G. §1B1.3, we hold that the district court properly attributed Phillip's possession of firearms in 2002 and 2006 as relevant conduct. Phillips argues that this case is analogous to Hill, but there are two significant differences present here that apply to the §1B1.3 factors and distinguish this case from Hill. First, the degree of regularity is stronger here than in Hill, where the sole other offense considered "relevant conduct" was an isolated drug transaction nineteen months prior to the offense of conviction. In the present case, there are two incidents- in addition to the charged conduct- that are identical to the offenses of conviction. Moreover, one of these incidents occurred after Phillips was arrested and indicted in connection with the offense of conviction, which suggests that

suggest that his arrest for being a felon in possession did not deter him from possession firearms and that he may have carried firearms regularly. Id. at 485.

In the instant matter as bar, Appellant's prior and subsequent offenses qualify as relevant conduct under both criteria of U.S.S.G. §1B1.3- Application Notes 9(A) and 9(B). Under the first test, as they were part of a common purpose, or modus operandi (regularly carrying a gun as a matter of course or for self-defense). Under the second test, they were part of the same course of conduct, as they were part of an ongoing series of offenses. Those offenses were: similar in nature (illegally possessing a firearm), occurred regularly (each time he was caught, he had a firearm), and there was a short time interval between offenses (essentially once every other month for five months). The degree of similarity of the offenses, the regularity of the offenses, and the time interval between the offenses far exceeds the circumstances found in Phillips.

Two of the prior cases, where there was an illegal possession, Phillips was not even charged. Here, Appellant was charged and convicted of being a felon in possession of a handgun, so there is no doubt about his continuing course of conduct in carrying a handgun. (R. N/A, SPSR, pgs. 13-14 ¶¶51 & 52). For some reason, defense counsel at the district court argued that the third gun possession was not relevant conduct. This was clearly an error on defense counsel's part. However, the district court Judge should have found that the third possession was also relevant conduct, Sua sponte. Therefore, Plain error standard of review should be found in this case as well as A Substantial Due process violation

For the reasons above, it is respectfully requested that petitioners case be remanded to the Sixth Circuit for further consideration in light of the facts of the case and the law that is applicable to petitioners case, as petitioners two prior state court convictions for being a felon in possession of a firearm are similar in nature in degree to petitioners Instant federal Offense of Conviction

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

\_\_\_\_\_

Date: \_\_\_\_\_