

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RONNALL CLYDE MIXSON — PETITIONER — *PRO-SE*
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES FOURTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RONNALL CLYDE MIXSON
(Your Name)

901 CORRECTIONS WAY
(Address)

JARRATT, VIRGINIA 23870
(City, State, Zip Code)

(Phone Number)

QUESTION PRESENTED

1)The Fourth Circuit Court Of Appeals, And The District Court, erroneously denied resentencing of Mixson, after the District Court Judge acknowledged he used invalid factors in establishing Mixson's criminal history base level points, approximately 8 year after Mixson's sentencing.

Mixson continuously contest he is subject to rule 52(b)"plain error/miscarriage of justice," Federal Practice and Procedure Criminal Rules, because the sentencing Error was of such maganitude that it undermined the integrited of the trial and cause a miscarriage of justice.

Mixson, as a matter of law, is entitled to a corrected PSI Report reflecting the new criminal history base level points, and resentencing.

These errors have resulted in meritious claim of an unconstitutional denial of "Due Process" under the 5th and 14th Amendments, violations of Federal law 18 U.S.C.S. §3553(a)(4)(b), 18 U.S.C.S. §3742(F)(1)(2), 28 U.S.C.S. §9941(a)(b), and Federal Rule of Criminal Procedure, Rule 52(b).

PARTIES

The petitioner is Rondell Clyde Mixson, A prisoner at Greensville Correctional Center in Jarratt, Virginia. The respondent is United States of America, U.S. Attorney Donald Ray Wolthuis, Jennifer R. Bockhorst. Former Defense Council Allegra M.C. Black.

Petitioner, Rondell Clyde Mixson, 1015449, Pro se
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901 Corrections Way
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TABLE OF CONTENTS

Questioned Presented.....	2
Parties	3
Table of Authorities	5
Decision Below	7
Jurisdiction Constitution and Statutory provisions Involved	
Statement of the Case	9
Basis for Federal Jurisdiction	6
Reasons for Granting the Writ	10,11, and 12
(Argument pp. 11)	
a. Denial of Due Process	10
b. Conflicts with decisions of other courts	10
Conclusion	13

APPENDIX

Decision of the United States Court of Appeal (A.1)	
Order of the United States Court of Appeal Denying Appeal (A.3)	
Order of the United States District Court (A.4)	
Memorandum of the United States District Court (A.5)	
Judgment United States Court of Appeals (A.14)	
Mandate United States Court of Appeals (A.17)	
Order of the United States District Court Granting In Forma Pauperis (A.18-19)	

TABLE OF AUTHORITIES

Hill v. United States, 424, 428, 82 S.Ct. 468, 471, 7 L.Ed. 417 (1962)

Isabel v. United States, 980 F.2d. 60 (1st. cir. 1992)

United States v. Denkins, 367 F.3d. 537, 543 (6th. cir. 2004)

United States v. Durrie, 902 F.2d. 1221 (7th cir. 1990)

United States v. Frady, 456 U.S. 152, 71 L.Ed. 2d 816, 102 S.Ct. 1584 (1982)

United States v. Maybeck, 23 F.3d. 888 (4th cir. 1994)

United States v. Padilla, 415 F.3d. 211 (1st cir. 2005)

United States v. Thompson, 82 F.3d. 849 (9th cir. 1996)

BASIS OF JURISDICTION

Seeking United States Supreme Court review of the post-conviction denial of resentencing request, after the District Court Judge acknowledged Mixson's original sentencing was impaired by an erroneous PSI Report. Mixson was denied a new resentencing trial.

Post-Conviction relief was denied by the Fourth Circuit Court of Appeals on December 4, 2017.

This case raises a question of the interpretation of the Due Process Clause of the 5th and 14th Amendments to the United States Constitution. The District Judge had jurisdiction under Rule 52(b) of the Federal Rules of Criminal Procedure, and the general federal question jurisdiction conferred by: 18 U.S.C.S. §3553(a), (4)(b), 18 U.S.C.S. §3742 (f)(1)(2), and 28 U.S.C.S. §994 (1)(a)(b).

CONSTITUTIONAL PROVISIONS AND STATUTES

Federal Rules of Criminal Procedure 52(b)
UNITED STATES CONSTITUTION 5th AMENDMENT
UNITED STATES CONSTITUTION 14th AMENDMENT
18 U.S.C.S. §3553 (a)(4)(b)
18 U.S.C.S. §3742 (f)(1)(2)
28 U.S.C.S. §994 (1)(a)(b)
28 U.S.C.S. §2255

DECISIONS BELOW:

The decision of the United States Court of Appeals for the Fourth Circuit is unreported. It is cited in the table at 7:16-cv-81161-GEC_RSB (4th cir. 2017) and a copy is attached as Appendix A to this petition. The order of the United States District Court for the Western District of Virginia is unpublished and is unreported. A copy is attached as Appendix B to this petition. (A.4)

PRIOR OPINIONS AND ORDER

06/16/2009 Sentenced 32

07/26/2016 Order Granting Authoriztion to file second

Successive § 2255 Motion 94^u

06/23/2017 Order Granting Motion to Dismiss and Dismissing

Motion To Vacate(2255) 95^u

12/04/2017 Petition For Federal Writ Of Habeas Corpus Dismisséd,

FOURTH COURT OF APPEALS, NO:17-6872

STATEMENT OF THE CASE

Mixson was convicted in 2009, under a PSI Report that used invalid and erroneous convictions later confirmed in 2017. This impaired report increased his Criminal History Base Level Points from a lower Base level to a Criminal History Category of V.

Mixson now finds that the sentencing judge has no mechanism in place to allow Mixson to be resentenced under what would be his new Base Level Points. The Federal Sentencing Guidelines determine the actual time he will serve in prison, and as a matter of law, based on the erroneous PSI Mixson is entitled to a new sentencing hearing.

Mixson has continuously asserted his PSI report was invalid, and that entitles him to relief under Rule 52(b), Frady Rule. This would allow Mixson to be resentenced under the corrected Criminal History Category based on a new PSI Report.

REASON FOR GRANTING THE WRIT

This is a constitutional question of great importance for not just Mixson, but any person subjected to such a judicial error. A "Due Process" error of this level has never been completely adjudicated, but case similar in context are in conflict the Fourth Circuits prior decisions: United States v. Maybeck, 23 F.3d. 888(4thcir. 1994), and is direct conflict conflict and contrary to the holdings of several Federal Cir Circuits and the United States Supreme Court: United States v. Durrie, 902 F.2d 1221 (7th cir. 1990): Isabel v. United States 980 F.2d 60 (1st cir. 1992): United States v. Frady, 102 S.Ct. 1584 (1982): Hill v. United States, 82 S.Ct. 468,471 (1962): Jones v. State of Ark., 929 F.2d. 381 (8th cir. 1991).

For the foregoing reasons, and case law, this Writ should be Granted.

See ARGUMENT on next page to support REASON FOR GRANTING WRIT.

ARGUMENT

Petitioner Rondall Clyde Mixson has attempted at every stage, to raise the claim he was sentenced outside of his applicable guidelines.

Mixson's claim has never been fairly adjudicated on its merit.

The district court and the fourth circuit court denial of Mixson resentencing request, presents a paramount fundamental question of the interpretation of how to adjudicate a prisoners criminal history base level points, years after sentencing, when the original PSI Report was impaired by erroneous information.

This is a question of "Due Process" and fundamental fairness.

The question presented is of great public importance because it affects the ability to insure Due Process to prisoners in all 50 states, district of columbia, and hundreds of city and county jails. Guidance on this question is also of great importance to all prisoners, because it affects their ability to receive fair decision in their sentencing that may result in months or years of added incarceration.

The issue's importance is enhanced by the fact that a lower court ruled Mixson's PSI Report contain invalid convictions.

SEE: MEMORANDUM OPINION Issue 23rd of JUNE 2017 by Chief United States District Court Judge HON. Glen E. CONRAD (civil action NO. 7:16 cv81161) (page 6 line 1).

Mixson's nine convictions of statutory burglary, under the Virginia Code §18.2-91 since 1970 statutory burglary are not violent crimes.

The Fourth Circuit Court of Appeals, held in *United States v. Maybeck*, 23 F3d 888 (4th cir 1994), "as the 8th cir. said in *Jones*, 929 F2d at 381, "it would be difficult to think of one who is more

"innocent" of a sentence than a defendant sentenced under a statute to

that by its very own term does not ever apply to the defendant".

Mixson asserts, that is exactly what is happening to him. The lower courts are denying Mixson a new sentencing hearing, That would reflect the invalid convictions being removed from his Criminal History Base Level Points. Mixson asserts he has a meritorious claim based upon the lower court decision of 06/23/2017. Thus, under the "frady Rule" or Rule 52(b), the lower courts seriously misinterpreted Mixson's "Due Process". The court should correct that misinterpretation and make clear, that at any point a prisoner can demonstrate a "plain error/miscarriage of justice", they are constitutionally guaranteed a new resentencing.

CONCLUSION

For the foregoing reasons, certiorari should be granted
in this case.


Respectfully Submitted,

Rondall Clyde Mixson
Greensville Correctional Center
901 Corrections Way
Jarratt, Va.
23870-9614

February , 2018

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-6872

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONDALL CLYDE MIXSON,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Glen E. Conrad, District Judge. (7:08-cr-00043-GEC-RSB-1; 7:16-cv-81161-GEC-RSB)

Submitted: November 14, 2017

Decided: December 4, 2017

Before NIEMEYER, AGEE, and KEENAN, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Rondall Clyde Mixson, Appellant Pro Se. Jennifer R. Bockhorst, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Abingdon, Virginia; Donald Ray Wolthuis, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Rondall Clyde Mixson seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2255 (2012) motion. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2012).

A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2012). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85.

We have independently reviewed the record and conclude that Mixson has not made the requisite showing. Accordingly, we deny his motions to appoint counsel and place this case in abeyance, deny a certificate of appealability, and dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

A. 2

DISMISSED