

No. 17-7121

IN THE UNITED STATES SUPREME COURT

LEWELLYN TERRELL VAUGHT,
PETITIONER.

v.

UNITED STATES OF AMERICA,
RESPONDENT.

ON PETITIONER FOR WRIT OF CERTIORARI TO THE
DENIAL OF SENTENCE REDUCTION BY THE
DISTRICT COURT AND U.S COURTS OF APPEALS

QUESTIONS PRESENTED

I. Whether the Petitioner's Sixth Amendment Rights violated by plain errors were made in calculating Petitioner's sentencing, and the Motion For A Sentence Reduction, and the many ways that his Attorney was ineffective as counsel in which the U.S. Constitution guarantees...

II. Whether Vaught's Eight Amendment Rights violated when the district court denied his two(2) reduction, and left Vaught with a sentence longer than necessary, and violated his right to a sentence that was proportionate with the new sentencing guideline that was lowered by Amendment 782 and changes to 1B1.10, pursuant to 18 U.S.C. §3582(c)(2).

U.S.C. 18 U.S.C. (1)(1)

PARTIES TO THE PROCEEDINGS BELOW

AGEE, UNITED STATES CIRCUIT JUDGE

DIAZ, UNITED STATES CIRCUIT JUDGE

G. ALAN DUBOIS, FIRST ASSISTANT FEDERAL PUBLIC DEFENDER FOR DEFENDANT

JAMES C. DEVER III, UNITED STATES DISTRICT JUDGE

JENIFER P. MAY-PARKER, UNITED STATES ASSISTANT ATTORNEY, APPEALS COURT

JOHN K. WILES, DEFENDANT'S ATTORNEY

JOSHUA BRYAN ROYSTER, UNITED STATES ATTORNEY

KAREN STUMP, DEPUTY CLERK, UNITED STATES COURTS OF APPEALS

KYNA ROBINSON, SENIOR LEGAL ASSISTANT, FOR ATTORNEY DUBIOS

LAURA S. HOWARD, ASSISTANT UNITED STATES ATTORNEY DISTRICT COURT

LEWELLYN TERRELL VAUGHT, DEFENDANT

PATRICIA S. CONNOR, CLERK, UNITED STATES COURTS OF APPEALS

SHEDD, UNITED STATES CIRCUIT JUDGE

SCOTT ANDREW LEMMON, UNITED STATES ATTORNEY, COURTS OF APPEALS

STEPHEN AUBREY WEST, ASSISTANT UNITED STATES ATTORNEY, COURTS OF APPEALS

TIMOTHY SEVERO, ASSISTANT UNITED STATES ATTORNEY, COURTS OF APPEALS

TABLE OF CONTENTS

PAGES

TITLE PAGE.....	
QUESTIONS PRESENTED.....	I
PARTIES TO THE PROCEEDINGS BELOW.....	II
TABLE OF CONTENTS.....	III
TABLE OF CITATIONS.....	IV
OPINIONS BELOW.....	V
JURISDICTION.....	V
CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED.....	V
STATEMENT OF THE CASE AND FACTS.....	1-2
REASONS FOR GRANTING THE WRIT.....	2-5
CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	6
EXHIBIT "A".....	

TABLE OF CITATIONS

PAGES

CASES

CHAVEZ V. UNITED STATES (No.17-17-5639) (S.Ct. Cert. Grant. Jan 12, 2018).....	3
GIDEON V. WAINWRIGHT, 372 U.S. 335, 344, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963).....	3
HOUSTON V. LACK, 101 L.Ed. 2d 245 (1998).....	6
LEWIS V. UNITED STATES, 445, U.S. 55, 66, 100 S.Ct. 915, 63 L.Ed. 2d 198 (1980).....	3
UNITED STATES V. VAUGHT, 503 F.Appx 217-218-21 (4th Cir. 2013)....	1

STATUTES

TITLE 18 U.S.C. §922 (g) (1)	1
TITLE 18 U.S.C. §3553 (a)	2-3, 5
TITLE 18 U.S.C. §3582 (c) (2)	I, V, 1-4
TITLE 21 U.S.C. §841 (a) (1)	1
TITLE 21 U.S.C. §841 (A) (1)	1
TITLE 21 U.S.C. §846	1
TITLE 21 U.S.C. §851	1-4
TITLE 28 U.S.C. §1254	V
TITLE 28 U.S.C. §1746	6

OTHERS

AMENDMENT 782	I, V, 1-4
FED .R.APP. 36	V
RULE 52 (B)	V
UNITED STATES SENTENCING GUIDELINE COMMISSION §4A1.1 (c)	3
UNITED STATES SENTENCING GUIDELINE COMMISSION §4A1.2 (c) (2)	3
UNITED STATES SENTENCING GUIDELINE COMMISSION §4A1.2 (D)	3
UNITED STATES SENTENCING GUIDELINE COMMISSION §1B1.10 I, V, 1, 3-4	

**IN THE SUPREME COURT OF THE
UNITED STATES**

PETITION FOR A WRIT OF CERTIORARI

Petitioner Lewellyn Terrell Vaught respectfully presents to this Honorable Court Petitioner For a Writ of Certiorari.

OPINIONS BELOW

The opinion of the Courts of Appeals for the Fourth Circuit was submitted on December 19, 2017. The Appeal Number 17-7121 was decided on December 22, 2017, in accordance with Fed.R. App.P.36., for the last appeal on his 8 U.S.C. 3582(c)(2), Motion For a Sentence Reduction pursuant to Amendment 782, and changes to 1B1.10.

The District Court Case Number is(7:10-CR-00075-D-2), the District COURT ORDERED AND ADJUDGE Petitioner's Motion For a Sentence Reduction was DENIED on August 16, 2017.

The Court of Appeals Affirmed the District Courts denial on December 22, 2017 without any reasons other than we affirm for the reasons stated by the district court.

JURISDICTION

The judgement of the Court of Appeals was entered on December 22, 2017. This court has the jurisdiction pursuant to 28 U.S.C. §1254 .

CONSTITUTIONAL AND OTHER PROVISIONS INVOLVED

This petition is premised on the Sixth and Eight Amendments of The United States Constitution and Rule 52(B) of Federal Rule of Criminal Procedures:

STATEMENT OF THE CASE

Jurisdiction vested in the United States District Court, for the Eastern District of North Carolina, Raleigh-Division, pursuant to 18 U.S.C. §922(g)(1), for Possession of a Firearm by a Convicted Felon, 21 U.S.C. §841(a)(1) & 851, for Distribute a Quantity of Cocaine, , and 21 U.S.C. §841(A)(1), and 846, for Conspiracy To Possess and Distribute More Than 500 Grams of Cocaine. And an 851 enhancement.

Vaught was convicted by a plea of guilty on the said violations and was sentenced on February 16, 2012, for a sentence of 168 Months imprisonment and five(5) years of supervised release after his release from prison.

Vaught was sentenced at a Base Level of 33 and his Criminal History Points was III, his Sentencing Guideline Range was 168-210 months. Vaught was sentenced at the low end of the guideline range.

On January 7, 2013, Vaught appealed to the Court of Appeals for the Fourth Circuit and they affirmed Vaught's conviction and sentence. See United States v. Vaught, 503 F.App'x 217-218-21 (4th Cir. 2013(per curiam) (unpublished)).

On July 18, 2014, The United States Sentencing Guideline Commission voted in favor of making **Amendment 782** retroactive for Federal Prisoners that were sentenced prior to that date eligible for a two point reduction in their sentences based on the said amendment and changes to **1B1.10**.

On September 30, 2015, Vaught filed a Motion For A Sentence Reduction pursuant to U.S.C. §3582(c)(2). The District Court DENIED Vaught's Motion on August 16, 2017. Vaught filed a timely Notice of Appeals, and Appealed to the Appeals Court for the Fourth Circuit; the Appeal was DENIED on December 19, 2017 and entered on

December 22, 2017, stating that they affirmed the District Courts decision for the stated reasons by the District Court, and that they find no reversible error. They also stated to be timely, a petition for certiorari must be filed in the United States Supreme Court with 90 days of this court's entry of judgement. The Writ Of Certiorari to The Supreme Court is timely.

With the Sentencing Guidelines Range pursuant to Amendment 782, Vaught's new Sentencing Range would be **135 Months -168 Months;** since Vaught was sentenced at the lower end of the guideline Vaught would have to be sentenced at the low end of his new range of 31, and at Criminal History of III, Vaught's new sentence would be **135 Months.**

REASONS FOR GRANTING THE WRIT

THE COURT SHOULD GRANT REVIEW TO PROVIDE FURTHER GUIDEDENCE TO THE LOWER COURTS AS TO WHETHER PETITIONER'S SIXTH AMENDMENT RIGHTS WERE VIOLATED AND IF THAT SHOULD LIMIT A DISTRICT COURT WHEN IMPOSING A GUIDELINE SENTENCE

A Writ of Certiorari should be granted on the issues of plain error and Ineffective Assistance of Counsel because it's a violation of petitioner's Constitutional Rights and had an adverse effect on the petitioner and prejudice Vaught, leaving him with a longer sentence than necessary for the purpose of the law, with 851 enhancement.

The District Court should have taken all considerations of §3553(a) factors into full account when sentencing Vaught. The Certiorari should be granted because Vaught's Sixth Amendment Rights were violated when Counsel failed to argue the priors that was used to calculate Vaught's sentence. The prior conviction of discharging a weapon within the city limits was a BB Gun, and was a misdemeanor, and injury to real property were juvenile charges that enhanced sentence and in the 18 U.S.C. §3582(c)(2) Motion that they also DENIED stating "Vaught engaged in serious criminal behavior. Vaught's Counsel

was ineffective for not having those charges suppressed prior to sentencing, and should have argued during sentence that discharging a BB Gun was not serious criminal behavior; and that the enhancement should not have been allowed. This decision by Counsel prejudice Vaught, and left him with a longer than necessary and also violated his Sixth Amendment Rights to a competent Counsel. He allowed the 851.

Under the Sixth Amendment Rights, an uncounsel felony conviction cannot be used for certain purposed-namely, it cannot be used for a subsequent conviction or sentence because such a sentence enhancement depends upon the "reliability of a past uncounseled conviction", Lewis v. United States, 445, U.S. 55,66 100 S.Ct. 915,63 L.Ed.2d 198(1980), also Gideon v. Wainwright, 372 U.S. 335, 344,83 S.Ct. 792, 9 L.Ed. 2d 799(1963). Those charges are excluded under the sentencing guidelines section 4A1.(c), 4A1.2(c)(2), and 4A1.2(D).

In light of a resently argued case by The U.S. Supreme Court, Chavez v. United States, (No.17-5639) (S. Ct.Cert.Grant Jan.12, 2018), "Whether, when a district court decides not to grant a proportional sentence reduction under 18 U.S.C.§3582(c)(2), it must provide some explanation for its decision when the reasons are not otherwise apparent from the record, as the U.S. Courts of Appeals for the 6th, 8th,9th and 11th Circuits have held, or whether it can issue its decision without any explanation so long as it is issued on a preprinted form order containing the boilerplate language providing that the court has taken into account the policy statement set forth in 18 U.S.C. §1B1.10 and the sentencing factors set forth in 18 U.S.C. §3553(a), to the extent that they are applicable," as the U.S.Courts of Appeals for the 4th, 5th and 10th Circuits have held.

Vaught asserts that of all the rights that an accused person has is the right to be represented by competent Counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have.

Vaught asserts that his Eight Amendment Rights were violated when he was left with a sentence longer than he should have received had it not been for the enhancement for the misdemeanor juvenile charges. Vaught also asserts that both the district court and the Courts of Appeals violated his Eight Amendment Rights, by not granting a reduction in sentence pursuant to Amendment 782.

The Government enhanced Vaught for those said prior convictions, Vaught did not receive a sentence or any probation and only paid a twenty(20) restitution.

The District Court DENIED Vaught's §3882(c)(2) Motion For A Sentence Reduction based upon what they considered serious criminal behavior. The Courts of Appeals, affirmed the the district courts decision and stated that it agreed with the district court.

With Amendment 782, In general in a case in which a defendant is serving a term of imprisonment, and the guidelines range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in sub-section(d), the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. §3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement. 1B1.10., (a)(1)pg 2. Vaught was sentenced prior to the Amendment took effect, and therefore Vault believes that he is entitled the a reduction in his sentence. Vaught's sentence was at the low end of the guideline, and therefore his new sentence should at the low end of the range of 135 Months.

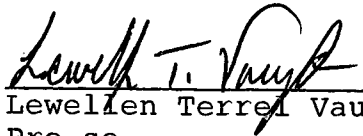
Furthermore, in the Government's response to Vaught's Reduction Motion(\$3582(c)(2),"the Government agrees with the United States Probation Office's conclusion, as stated in the Resentencing Report, that the defendant is eligible for a reduction in sentence pursuant to United States Sentencing guideline Amendment 782."

In Vaught's Plea Agreement, the Government agreed to no enhancements pursuant to U.S.C.§851, and then enhanced Vaught at sentencing. The records state that.

The courts should consider the post conviction conduct of Vaught, he was earned his G.E.D., has taken several educational courses. He also has an excellent work ethic. Vaught is housed at the loweset level of custody in The Federal Prison System, by maintaining clear conduct. This Camp does not have a security fence around the Camp, and there are only approximately 150 Federal Inmates that can be here. They are out custody level, and are not a danger to society,if so Vaught would not be here.

CONCLUSION

Therefore, because of the foregoing reasons Vaught has showed in this motion, and his conduct that he should be granted a reduction in sentence. Vaught prays that this Honorable Court grant his motion, and take into full consideration that he is a pro se litigant. Respectfully submitted on this 7th day OF February, 2018.


Lewellen Terrell Vaught
Pro se