

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JASON L. BECKHAM — PETITIONER
(Your Name)

vs.

USA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS, FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jason Beckham #28278-171

(Your Name)

LSCI, P.O. Box 999

(Address)

Butner, NC 27509

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

Did Fourth Circuit err in enforcing appellate waiver against appeal of erroneous career offender designation?

Did Fourth Circuit err in declining to reach Ineffective Assistance Claim, on the basis that a conclusive showing on the face of the record was require, despite counsel's admission of inadequate representation?

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:

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4
REASONS FOR GRANTING THE WRIT	7
CONCLUSION.....	10

INDEX TO APPENDICES

APPENDIX A	Opinion of U.S. Court of Appeals
APPENDIX B	Letter from Attorney Mobley
APPENDIX C	
APPENDIX D	
APPENDIX E	
APPENDIX F	

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
-------	-------------

US v. Mathis, 136 S. Ct. 2243	5
Weaver v. Massachusetts, 137 S. Ct. 1899	7
Rose v. Clark, 478 US 570 (1986)	7
Jolon Carthorne v. US, No. 16-6515 (CA4 2017)	8
Hinton v. Alabama, 134 S. Ct. 1081 (2014)	8
Williams v. Taylor, 529 US 362 (2000)	8
Strickland v. Washington, 466 US 668 (1984)	9
US v. Cronin, 466 US 648 (1984)	9
US v. Ragin, 820 F.3d 609 (CA4 2015)	9
Harrington v. Richter, 562 US 86 (2011)	9

STATUTES AND RULES

21 USC §846	4
18 USC §3742	4
28 USC §1291	
FRAP 27	5
28 USC §2255	6

OTHER

6th Amend. U.S. Const.	3, 8
§4B1.1(a)(3)	4
§4B1.1(a)	4
§4B1.2	5

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 _____; 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☒ is unpublished.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 October 6, 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: _____, 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

Sixth Amendment right to counsel.

STATEMENT OF THE CASE

The Fourth Circuit should not have enforced appellate waiver against reviewing the District Court's incorrect career offender designation and erred in declining to reach Ineffective Assistance of Counsel (IAC) Claim.

BACKGROUND

On February 17, 2016, Petitioner agreed to plea guilty pursuant a plea agreement negotiated by former Defense Attorney John T. Mobley and former U.S. Attorney William Nettles.

The agreement stipulate that the Petitioner conspired to distribute a quantity of cocaine or 280 grams of cocaine base, in violation of 21 USC §846.

The agreement further stipulate that Petitioner waives the right to contest his sentence under 18 USC §3742(a), except for Ineffective Assistance of Counsel (IAC) or prosecutorial misconduct claims.

At sentencing, the Senior District Court Judge, Joseph F. Anderson, incorrectly applied §4B1.1(a) of the U.S. Sentencing Guidelines, against Mobley's objection, on the basis that a prior drug conviction and misdemeanor CDVHAN under S.C. State law constitute predicate controlled substance and crime of violence under §4B1.1(a)(3).

Mobley timely appealed, under 28 USC §1291 and 18 USC §3742(a). Appellate Attorney C. Fredric Marcinak, was assigned to represent Petitioner on appeal, argued that Petitioner was

not a career offender and that he received ineffective assistance of counsel during his plea and sentencing, because Mobley failed to consult Petitioner on the applicability of the career offender provision, prior to negotiating and advising his plea.

Appearing for the Government, J.D. Rowell, AUSA, filed a motion to dismiss, pursuant to FRAP 27, asserting the stipulated appeal waiver.

Rowell argued that the knowing and voluntary nature of Petitioner's guilty plea foreclosed the erroneously incorrect application of the career offender provision of the USSG.

During the pendency of his guilty plea, but before sentencing, the U.S. Supreme Court heard arguments in *US v. Mathis*, 136 S. Ct. 2243 (2016) regarding the use of the categorical approach.

Petitioner argued that his prior misdemeanor conviction for CDVHAN, under S.C. State law did not constitute a crime of violence under §4B1.2 of the USSG and that his prior conviction under for possession of a controlled substance under S.C. State Controlled Substance Act. is broader than the definition under §4B1.2.

In a letter regarding Judge Anderson's designation that Petitioner qualified as a career offender, Mobley admits that he did not discuss the issue, in his advice to enter guilty plea, but intended to object at sentencing and preserve the issue for appellate review.

The Fourth Circuit impose the waiver against the sentencing error and dismissed the IAC claim with instruction that it be raised on a Motion to Vacate, Set Aside or Correct

under 28 USC §2255.

REASONS FOR GRANTING THE PETITION

During the pendency of the appeal, the U.S. Supreme Court decided *Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017), and examined the doctrines of Structural Error and Ineffective Assistance of Counsel.

Structural errors transcend the criminal process, depriving basic protections that serve the function of insuring fundamentally fair punishment, *Rose v. Clark*, 478 US 570, 577-78 (1986).

In *Weaver*, the Supreme Court said the doctrine of structural error and ineffective assistance intertwined, because the reasons an error is deemed structural may influence the proper standard used to evaluate an ineffective assistance claim premised on deficient performance.

Mobley advised guilty plea on the understanding that Petitioner's priors did not qualify as predicates for the career offender and that his objections at sentencing preserve appellate review by the Federal Circuit.

In this case, the Fourth Circuit separated the error caused by Mobley's inadequate representation during plea and at sentencing, from the claim of ineffective assistance, requiring conclusive evidence on record, of Mobley's deficient performance. However, Mobley admits in a letter to Petitioner, prior to sentencing that his advisement of the direct consequence of his conviction was different than what the court was considering. He assumed responsibility for the error.

In a case of similar circumstance, the Fourth Circuit recently

vacated the sentence of Jolon Carthorne, No. 16-6515 (December 21, 2017) after finding that his lawyer was ineffective at sentencing, for failing to object to the erroneous career offender designation. Like Mobley, Carthorne's lawyer admitted that he was not even aware of the analysis required for the court to apply the enhancement.

Ordinarily, to prevail on a IAC claim, a defendant must demonstrate that counsel's performance was deficient with respect to prevailing professional norms or duties. Ignorance of a point of law that is fundamental to a defendant's case, combined with failure to perform basic duties, is a quintessential example of unreasonable performance, *Hinton v. Alabama*, 134 S. Ct. 1081, 1089 (2014), *Williams v. Taylor*, 529 US 362 (2000).

Like Carthorne's lawyer, as evidenced by the letter, Mobley admitted to being inadequate in his advisement of the plea and at sentencing.

The Fourth Circuit erred in declining to reach the IAC claim, on the basis that there was no conclusive evidence of deficient performance and prejudice, because Mobley's admission precludes the need for the Petitioner to demonstrate or provide conclusive evidence that Mobley's representation was deficient, because prejudice is presumed.

The Sixth Amendment guarantees a criminal defendant the assistance of counsel for his defense. U.S. Const. amend. 6 and a defendant is required to show that his counsel's performance was deficient and prejudicial to prevail on a claim of ineffective assistance

of counsel, see *Strickland v. Washington*, 466 US 668 (1984), but in *US v. Cronin*, 466 US 648 (1984), the Supreme Court held that there are certain situations where the reliability of proceeding becomes so questionable that the defendant need not show that he was actually prejudiced. Instead, prejudice is presumed. Mobley's failure to consult Petitioner of the career offender provision, in advance to advising guilty plea, then advising that objecting to the applicability of the provision would preserve a challenge if the court imposed the career offender enhancement, compromised the reliability of Petitioner's plea and sentencing, see *US v. Ragin*, 820 F.3d 609 (CA4 2015). The claim against Mobley on direct appeal should have excused the rules of waiver, see *Harrington v. Richter*, 562 US 86, 105 (2011), because Petitioner's erroneous career offender designation is intertwined with the IAC claim.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: January 3, 2018