

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRADY LAVICK ADAMS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION(S) PRESENTED

Whether The Eleventh Circuit's Threshold Test Assessing The Petitioner's Sentencing Package Claim Applied An Improper Legal Standard In Violation Of The Due Process Clause of The Fifth Amendment To The United States Constitution.

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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PETITION FOR WRIT OF CERTIORARI

Brady L. Adams, respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered in Case No. 17-12405-K in that court on November 27, 2017, denying his motion for certificate of appealability.

OPINION BELOW

An unpublished opinion of the United States Court of Appeals for the Eleventh Circuit, Brady Lavick Adams v. United States (11th Cir. Nov. 27, 2017), is attached as Appendix A to this Petition.

JURISDICTION

The Court of Appeals filed its Opinion in this matter on November 27, 2017. The petitioner moved for reconsideration on December 7th, 2017. The Court of Appeals denied the motion on January 4, 2018. This Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(c), and Supreme Court Rule 13.1

CONSTITUTIONAL AND GUIDELINE PROVISIONS INVOLVED

This petition involves the Eleventh Circuit's violation of the Due Process Clause where it incorrectly applied the Guidelines in its determination of the applicable Guidelines used by the District Court to calculate the petitioner's criminal history category at the original sentencing proceeding.

The Guidelines incorrectly applied by the Eleventh Circuit involves the following Provisions:

1B1.1(f)- Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Part B of Chapter Four any other applicable adjustments.

1B1.7- Significance of Commentary. The Commentary that accompanies the guideline sections may serve a number of purposes. Failure to follow such commentary could constitute an incorrect application of the guidelines, subjecting the sentence to possible reversal on appeal.

Sentencing Table. Chapter Five, Part A, Commentary, Application, Note 3- The Criminal History Category is determined by the total criminal history points from Chapter 4, Part A, except as provided in 4B1.1 (Career Offender) and 4B1.4 (Armed Career Criminal).

STATEMENT OF THE CASE

On August 10, 1994, a federal grand jury returned an indictment charging the petitioner, Brady L. Adams, with violation of 18 U.S.C. § 1201(a)(1), Kidnapping, as Count 1. Count 2 charged violation of 18 U.S.C. § 924(c), Use of a Firearm during a Crime of Violence; and Count 3 charged violation of 18 U.S.C. § 922(g)(1), Possession of a Firearm by a Convicted Felon. Petitioner was convicted on all charges on January 19, 1995. On April 14, 1995, the petitioner was sentenced to Life as to Count 1, five years on Count 2 to run consecutive to the sentence imposed on Count 1, and thirty 30 as to Count 3 to run concurrent to the sentence imposed on Count 1.

Relative to this petition for writ of certiorari, on June 9th, 2016, the Eleventh Circuit Court of Appeals granted the petitioner leave to file a second or successive § 2255 in light of this Court's decision in *Johnson v. United States*, 576 U.S. ___, 135 S.Ct. 2551 (2015).

On August 3rd, 2016, the petitioner filed an amended § 2255 motion claiming that the 30 year sentence imposed as to Count 3 was unconstitutionally vague consonant with the opinion set forth in *Johnson*. The petitioner also claimed that vacation of this illegal part of his sentence required the District Court to vacate the entire sentence under the sentencing package doctrine. Doc. 226 at 8.

On May 12, 2017, the District Court granted the amended § 2255's *Johnson* claim and vacated the 30 year sentence imposed as to Count 3, but declined to vacate the petitioner's entire sentence under the sentencing package doctrine. Doc. 242. The petitioner filed a timely notice of appeal and certificate of appealability which was denied

by the district court on June 22nd, 2017. Doc. 250.

On July 19, 2017, the petitioner filed an application for certificate of appealability in the Eleventh Circuit Court of Appeals, followed by several amendment thereto, The petitioner's primary assertion was that the District Court assessment of this sentencing package claim was clearly erroneous. See Appendix B (COA).

On 11, 27, 2017, the Eleventh Circuit denied the petitioner's COA applying an improper legal standard in determining which guideline the petitioner's criminal history category VI, was applied. This determination was critical to whether counts 1 and 3 were interdependent enough for the District Court to have been required to vacate count 1, when it vacated count 3, in light of Johnson. See Appendix A.

The petitioner then filed a motion for reconsideration based on the new argument asserting that the law-of-the-case doctrine established that the district court had decided at an earlier stage of the the case that the "Defendant's criminal history category was VI, both because he had 13 criminal history points and because he was an armed career criminal." Docs. 138 and 139. See Appendix C.

On January 4th, 2018, the Eleventh Circuit denied the motion for reconsideration opining that the petitioner "offered no new evidence or argument of merit to warrant relief." Appendix B.

REASONS FOR GRANTING THE PETITION

The Court should grant the petition to exercise it's supervisory power to correct the decision entered by the Eleventh Circuit which "has so far departed from the accepted and usual course of judicial proceedings, [and] has sanctioned such a departure by" the United States District Court for the Northern District of Florida, in violation of Supreme Court Rule 10.

A. The Eleventh Circuit's Departure From Accepted Legal Standards.

In denying the petitioner's certificate of appealability (COA), the Eleventh Circuit applied a threshold test to determine which guideline was his criminal history category VI applied pursuant to. The determination was critical as to whether the petitioner's entire sentence should have been vacated under the sentencing package doctrine. See *Tennard v Dretke*, 159 L.Ed.2d 384, 397, 124 S.Ct. 2562 (2004)(holding, the Court of Appeals, in applying its threshold test, had assessed the defendant's claim under an improper legal standard, in denying his COA); see also *United States v. Klopff*, 423 F.3d 1228, 1246 (11th Cir. 2005)(holding, "vacating the sentence for one count disrupts the sentencing package and requires resentencing for all counts of conviction").

In the present case, the Eleventh Circuit was simply required to determine which guideline was applied when the district court "craft[ed]" the original sentence with regard to criminal history category VI, where the defendant has been designated as both a career offender and an armed career criminal. The Eleventh Circuit precedent set forth the proper legal standard, which comports with Guidelines provisions for making such determinations, but the

precedent was not adhered to in this case. See *United States v. Scroggins*, 880 F.2d 1204, 1210 (11th Cir. 1989)(holding that USSG 1B1.(f), provides the proper "inquiry for determining the defendant's criminal history category).

§ 1B1.(f), required the Eleventh Circuit to "consider" "Part B of Chapter Four" after determining the criminal history category based on the petitioner's criminal history points "as specified in Part A of Chapter Four. [USSG 1B1.1(f)].

Conversely, the Eleventh Circuit applied a "without consideration" of Part B of Chapter Four analysis. See Appendix A, which provides in pertinent part; "Even without consideration of his career-offender or armed-career-criminal status, Mr. Adams had a criminal history category of VI because he had 13 criminal-history points."

Moreover, in the context of the sentencing package doctrine, the Eleventh Circuit was required to consider the record to determine how the sentence with regard to criminal history category VI, was "craft[ed]" under the proper guidelines. Had it simply reviewed the relevant sections of the presentence report (PSR), it would have discovered that the district court, indeed, followed the provisions of §1B1.1(f), as well as Chapter Five, Part A.

PSR ¶52 indicates that the district court, "determined the defendant's criminal history category as specified in Part A of Chapter Four", where it calculated his total criminal history points. Then, applied 1B1.1(f)'s Part B of Chapter Four, provisions determining the petitioner to be a career offender, with a criminal history category of VI, as well. In addition, PSR ¶89-90, further indicates the district court's Part B of Chapter Four

considerations where it designated the petitioner an armed career criminal, also resulting in a criminal history category VI. However, because the district court failed explicitly state which of the three guidelines it was applying category VI pursuant to, it resulted in an ambiguity that the Eleventh Circuit was required to resolve in its' threshold assessment, but failed to do so. Instead, applied an improper legal standard which violates the petitioner's right to due process. See *United States v. Ellisor*, 522 F.3d 1255 n.25 (11th Cir. 2008)(cited for the proposition that where a court fails to apply the Guidelines to facts constitutes an application of an improper legal standard).

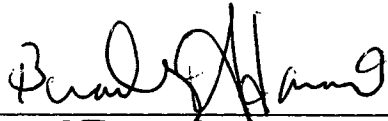
Furthermore, U.S.S.G. Chapter Five, Part A, Commentary, Application note 3, provides an exception to the standard applied by the Eleventh Circuit where the defendant is a career offender or an armed career criminal. Thus, reversal of its' decision is clearly warranted. [USSG Chapter Five, Part A]; U.S.S.G. § 1B1.7.

So, in accordance with the guidelines provisions relied on in this petition, that the Eleventh Circuit ought to have applied in it's threshold assessment, the petitioner contends that reasonable jurists would have found debatable or wrong the District Court's disposition of the petitioner's sentencing package claim. *Tennard*, supra, 159 L.Ed.2d at 397.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



Brady L. Adams
Pro 'se' Litigant
Liberal Construction Required
Haines v Herner, S.Ct.

Date: March 3rd, 2018