

No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

TRACEY LAMONT COAD — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

TRACEY LAMONT COAD 29413-057
(Your Name)

P.O. Box 999
(Address)

BUTNER, NORTH CAROLINA 27509
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. DOES THE U.S. SUPREME COURT RECENT DECISION IN NELSON V. COLORADO EXPAND THE HORIZON PROHIBITING THE USE OF ACQUITTED, REVERSAL, DISMISSED, AND UNCHANGED CONDUCT?
2. DOES 18 U.S.C. § 3261 DEPRIVE DUE PROCESS OF USING CONDUCT NOT FROM A CONVICTION, WHEN DEFENDANT IS INNOCENT?
3. DOES FULL FAITH AND CREDIT CLAUSE IN THE U.S. CONSTITUTION ARTICLE VI § 1 PROHIBIT FEDERAL COURTS USING A STATE COURT ACQUITTED, REVERSED, AND DISMISSED CONDUCT?

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 _____; 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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☐ is unpublished.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 SEPTEMBER 26, 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: NOVEMBER 3, 2017, and a copy of the order denying rehearing appears at Appendix B.

☐ 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

AMENDMENT 5 OF THE UNITED STATES CONSTITUTION

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF GRAND JURY, EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER; NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB; NOR SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

AMENDMENT 6 OF THE UNITED STATES CONSTITUTION

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW, AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION; TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM; TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESS IN HIS FAVOR, AND TO HAVE ASSISTANCE OF COUNSEL FOR HIS DEFENSE.

FULL FAITH AND CREDIT CLAUSE IN THE UNITED STATES CONSTITUTION ARTICLE VI § 1
FULL FAITH AND CREDIT SHALL BE GIVEN IN EACH STATE TO THE PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF EVERY OTHER STATE AND THE CONGRESS MAY BE GENERAL LAWS PRESCRIBE THE MANNER IN WHICH SUCH ACTS, RECORDS AND PROCEEDINGS SHALL BE PROVED, AND THE EFFECT THEREOF.

18 U.S.C. § 3661

NO LIMITATION SHALL BE PLACED ON THE INFORMATION CONCERNING THE BACKGROUND CHARACTER AND CONDUCT OF A PERSON CONVICTED OF AN OFFENSE WHICH A COURT OF

THE UNITED STATES MAY RECEIVE AND CONSIDER FOR THE PURPOSE OF IMPOSING AN APPROPRIATE SENTENCE.

28 U.S.C. § 1738

THE ACTS OF LEGISLATURE OF ANY STATES, TERRITORY, OR POSSESSION OF THE UNITED STATES, OR COPIES THEREOF, SHALL BE AUTHENTICATED BY AFFIXING THE SEAL OF SUCH STATE, TERRITORY OR POSSESSION THERETO.

THE RECORDS AND JUDICIAL PROCEEDING OF ANY COURT OF ANY SUCH STATE, TERRITORY OR POSSESSION, OR COPIES THEREOF, SHALL BE PROVED OR ADMITTED IN OTHER COURTS WITHIN THE UNITED STATES AND ITS TERRITORIES AND POSSESSIONS BY THE ATTESTATION OF THE CLERK AND SEAL OF THE COURT ANNEXED, IF A SEAL EXISTS, TOGETHER WITH A CERTIFICATE OF A JUDGE OF THE COURT THAT THE SAID ATTESTATION IS IN PROPER FORM.

SUCH ACTS, RECORD AND JUDICIAL PROCEEDINGS OR COPIES THEREOF, SO AUTHENTICATED, SHALL HAVE THE SAME FULL FAITH AND CREDIT IN EVERY COURT WITHIN THE UNITED STATES AND ITS TERRITORIES AND POSSESSIONS AS THEY HAVE BY LAW OR USAGE IN THE COURTS OF SUCH STATE, TERRITORIES OR POSSESSION FROM WHICH THEY ARE TAKEN

STATEMENT OF THE CASE

PETITIONER TRACEY LAMONT COAD WAS CHARGED IN A SINGLE COUNT INDICTMENT FOR POSSESSION OF A FIREARM BY A CONVICTED FELON IN VIOLATION OF 18 U.S.C. § 922(g)(1) AND THE ARMED CAREER CRIMINAL ACT, 18 U.S.C. § 924(e), THE DISTRICT COURT'S JUDGMENT IMPOSING A 212 MONTH SENTENCE. THE COURT OF APPEALS AFFIRMED THE DISTRICT COURT JUDGMENT. ON OCTOBER 5, 2015 THIS COURT VACATED THE COURT OF APPEALS JUDGMENT AND REMANDED THE CASE "FOR FURTHER CONSIDERATION IN LIGHT OF JOHNSON V. UNITED STATES, 576 U.S. ___, 135 S. CT. 2551, 192 L. ED. 2D 569 (2015)" COAD V. UNITED STATES, 136 S. CT. 107 (2015). ON AUGUST 10, 2016 THE COURT OF APPEALS VACATED THE DISTRICT COURT'S JUDGMENT AND REMANDED THE CASE "FOR RESENTENCING WITHOUT THE ARMED CAREER CRIMINAL ACT".

FOR RESENTENCING THE PROBATION OFFICE PREPARED A RESENTENCING MEMORANDUM AMENDED A CROSS REFERENCE OF § 2A2.1 ATTEMPTED MURDER. THE OFFENSE THE PROBATION OFFICE USED TO APPLY THE CROSS REFERENCE "13 CR 51196 FELONY ASSAULT WITH A DEADLY WEAPON WITH INTENT TO KILL / INFLICT SERIOUS INJURY" WAS A NORTH CAROLINA OFFENSE THAT WAS DISMISSED IN THE DISTRICT COURT OF FORSYTH COUNTY, NORTH CAROLINA ON MARCH 20, 2014.

ON NOVEMBER 21, 2016 THE U.S. DISTRICT COURT RESENTENCED THE PETITIONER APPLYING THE CROSS REFERENCE OF § 2A2.1 ATTEMPTED MURDER FOR THE NORTH CAROLINA DISMISSED OFFENSE OF 13 CR 51196 FELONY ASSAULT WITH A DEADLY WEAPON WITH INTENT TO KILL / INFLICT SERIOUS INJURY AND IMPOSING A 97 MONTH SENTENCE AS RECOMMENDED BY THE PROBATION OFFICE FROM THE RESENTENCING MEMO.

THE U.S. DISTRICT COURT SKEPTICAL TREATMENT OF THE NORTH CAROLINA
DECISION VIOLATED THE FULL FAITH AND CREDIT CLAUSE OF THE FEDERAL CONSTITUTIONAL
ARTICLE VI § 1, AND THE U.S. DISTRICT COURT WAS PROHIBITED BY RES JUDICATA
(FULL FAITH AND CREDIT UNDER 28 U.S.C. § 1738) OF USING THE NORTH CAROLINA DISMISSED
OFFENSE TO APPLY THE CROSS REFERENCE OF § 2A2.1 ATTEMPTED MURDER TO
SENTENCE PETITIONER.

REASONS FOR GRANTING THE PETITION

THE REASON CERTIORARI SHOULD BE GRANTED IN THIS CASE BECAUSE WITH THIS COURT RECENT DECISION IN NELSON V. COLORADO, 137 S. Ct. 1249 (2017), THERE IS NOW A CONFLICT WITH THIS COURT DECISION IN UNITED STATES V. WATTS, 519 U.S. 148 (1997). THIS COURT HAS NOT HELD A FULL BRIEFING AND CONSIDERATION ON THE ORAL ARGUMENT CALENDAR ON THIS PRECISE ISSUE, INVOLVING CONDUCT UNDERLYING A CHARGE FOR WHICH THE DEFENDANT WAS ACQUITTED. BUT NELSON SEEM TO EXPAND THE HORIZON, WHILE NELSON CERTAINLY EXPLAINS THE CORE OF THIS COURT PRECEDENCE AS IT TO REVERSAL, ACQUITTED, DISMISSED, AND INCLUDING UNCHANGED CONDUCT. IN NELSON THIS COURT HELD "BUT ONCE THOSE CONVICTION HAVE BEEN ERASED, THE PRESUMPTION OF THEIR INNOCENCE WAS RESTORED", JOHNSON V. MISSISSIPPI, 486 U.S. 578, 585, 108 S. Ct. 1981, 100 L. Ed. 2d 575 (1988) (AFTER A "CONVICTION HAS BEEN REVERSED, UNLESS AND UNTIL [THE DEFENDANT] SHOULD BE RETRIED, HE MUST BE PRESUMED INNOCENT OF THAT CHARGE"). PETITIONER CONCERN, CENTER UPON, RATHER THE CRIMINAL CORE CONDUCT OF NELSON'S COURT STANDS EQUALLY WITH OTHER PRECEDENCE OF THIS COURT; SUBSTANTIAL, ITS CONNECTION AND APPLICATION TO FEDERAL CRIMINAL CASES.

NOW TURNING TO THIS COURT PRECEDENT IN WATTS WHERE 20 YEARS AGO THIS COURT STATED IN ITS DECISION "IN FEDERAL CRIMINAL CASE IN WHICH ACCUSED HAVE BEEN CONVICTED ON ONE CHARGE AND ACQUITTED ON ANOTHER CHARGE, JURY'S VERDICT OF ACQUITTED HELD NOT TO PREVENT SENTENCING COURT FROM CONSIDERING CONDUCT OF ACCUSED THAT UNDERLYING ACQUITTED CHARGE". SUBSEQUENT TO THE DECISION CONJOINED IN AN DISSENTING DECISION JUSTICE KENNEDY STATED CITATION OF PART... "THE DISTINCTION OUGHT TO BE CONFRONTED BY A REASON COURSE OF ARGUMENT, NOT BY SHRUGGING IT OFF". UNITED STATES V. WATTS, 519, 148, 170 (1997) (J. KENNEDY, DISSENTING). JUSTICE GORSUCH STATED IN PART "THE PRACTICE IN WATTS ONE COULD

DEBATE WHETHER THE CONSTITUTION PROHIBITS IT, FORBIDDING COURTS (AT LEAST USUALLY) FROM IMPOSING GREATER PUNISHMENTS THAT DEPEND ON FACTS NEITHER ADMITTED BY THE DEFENDANT NOR FOUND BY A JURY." SEE UNITED STATES V. SMITH, 756 F.3d 1179, 1182-83 (10th CIR 2014).

LOOKING AT THE UNDERLYING MATTER AND THE HUNDREDS OF THOUSANDS OF CRIMINAL DEFENDANTS AFFECTED SINCE THE WATTS CASE. SURELY, ACQUITTAL, DISMISSED, REVERSAL, AND UNCHARGED CONDUCT HAS RESTRAINED THE LIBERTY'S WITHIN THE 5TH AND 6TH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PETITIONER WAS SENTENCED FOR A CROSS REFERENCE OF § 2A2.1 ATTEMPTED MURDER FOR AN OFFENSE THAT WAS DISMISSED IN THE STATE OF NORTH CAROLINA. PETITIONER HAD BEEN CLASSIFIED AS AN ARMED CAREER CRIMINAL (ACCA) AND SENTENCED TO 212 MONTHS IMPRISONMENT, WITH THIS COURT DECISION IN JOHNSON V. UNITED STATES, 576 U.S. —, 135 S.Ct. 2551, 192 L.Ed. 2d 569 (2015), PETITIONER WAS REMANDED TO THE DISTRICT COURT TO BE RESENTENCED WITHOUT THE ACCA ENHANCEMENT (DUE TO AN INVALID DEFENSE). THE PROBATION OFFICE PREPARED A RESENTENCING MEMORANDUM APPLYING THE CROSS REFERENCE OF § 2A2.1 ATTEMPTED MURDER FROM THE DISMISSED NORTH CAROLINA DEFENSE. THE DISTRICT COURT ADOPTED THE RESENTENCING MEMO FINDINGS AND RECOMMENDATION, RESULTING IN AN INCREASE OF PETITIONER OFFENSE LEVEL 20 GUIDELINE RANGE OF 30 TO 37 MONTHS TO OFFENSE LEVEL 29 GUIDELINE RANGE OF 78 TO 97 MONTHS MINUS 3 POINT ACCEPTANCE OF RESPONSIBILITY.

PETITIONER WAS SENTENCED TO 97 MONTHS, WHICH IS 60 MONTHS INCREASINGLY MORE THAN HIS APPLICABLE GUIDELINES CALL FOR DEPRIVING PETITIONER OF HIS LIBERTY. PETITIONER HAS SERVED 55 MONTHS SO FAR, 18 MONTHS MORE THAN

37 MONTHS HIGH END OF THE APPLICABLE GUIDELINE. PETITIONER SENTENCE IS SOLE BASED ON THE CROSS REFERENCE OF § 2A2.1 ATTEMPTED MURDER ENHANCEMENT OF DISMISSED CONDUCT OF THE STATE OF NORTH CAROLINA.

"IF THIS COURT HAS HELD IN NELSON "ONCE THOSE CONVICTIONS HAVE BEEN ERASED, THE PRESUMPTION OF THEIR INNOCENCE WAS RESTORED", PETITIONER SENTENCE SHOULD HAVE THE RANGE OF 30 TO 37 MONTHS. THE U.S. DISTRICT COURT SHOULD NOT HAVE BEEN PROHIBITED TO RECEIVE AND CONSIDER THE NORTH CAROLINA DISMISSED OFFENSE CONDUCT FOR PURPOSE OF IMPOSING AN SENTENCE, 18 U.S.C. § 3661 SHOULD HAVE BEEN PROHIBITED BY LAW. ALSO, THE DISTRICT'S COURT SKEPTICAL TREATMENT OF NORTH CAROLINA DECISION VIOLATED THE FULL FAITH AND CREDIT CLAUSE OF THE FEDERAL CONSTITUTION ARTICLE VI § 1 UNDER 28 U.S.C. § 1738.

BECAUSE THIS COURT RECENT DECISION DOES NOT ALLOW PROPERTY TO BE TAKEN DUE TO AN ERASED CONVICTION, PRESUMED INNOCENT AND RESTORED INNOCENCE. SURELY, A PERSON'S LIBERTY CAN NOT BE ALLOWED TO BE TAKEN OF CONDUCT HE OR SHE IS PRESUMED INNOCENT AND INNOCENT OF. THE UNITED STATES DISTRICT COURT DECISION IS NOT IN CONFORMITY WITH THIS COURT DECISION IN NELSON V. COLORADO, 137 S. CT. 1249 (2017) AND THE FULL FAITH AND CREDIT CLAUSE OF THE FEDERAL CONSTITUTION ARTICLE VI § 1, UNDER PROVISION 28 U.S.C. § 1738. THIS COURT DECISION IN NELSON SEEMS TO OVERTURN WATTS AND MAKE 18 U.S.C. § 3661 VIOLATE A CRIMINAL DEFENDANTS DUE PROCESS WHEN CONDUCT USED TO SENTENCE A DEFENDANT HAS NOT ARISED FROM CONDUCT OF AN FINAL CONVICTION.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Yancy L. Good

Date: FEBRUARY 1, 2018