

No. 17-8591

IN THE SUPREME COURT OF THE UNITED STATES

TRACEY LAMONT COAD

PETITIONER

v.

UNITED STATES OF AMERICA

RESPONDENT

ON PETITION FOR WRIT CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR REHEARING

APPELLANT PRESENTS ITS PETITION FOR A REHEARING OF THE ABOVE - ENTITLED CAUSE, AND, IN SUPPORT OF IT, RESPECTFULLY SHOWS:

GROUND FOR REHEARING

A REHEARING OF THE DECISION IN THE MATTER IS LIMITED TO INTERVENING CIRCUMSTANCE OF SUBSTANTIAL, IN THIS COURT RECENT DECISION IN ROSALLES - MIRELES V. UNITED STATES, NO: 16-9493 JUNE 18, 2018 "A MISTAKEN CALCULATION UNDER FEDERAL SENTENCING GUIDELINES THAT IS PLAIN AND AFFECTS A DEFENDANT'S RIGHT SHOULD BE CORRECTED."

PETITIONER ASSERTS AT RESENTENCING THE PROBATION OFFICER ERRONEOUSLY ASSESSED (1) ONE CRIMINAL HISTORY POINT, RESULTING IN AN INCREASED CRIMINAL HISTORY CATEGORY AND THE DISTRICT COURT ERRONEOUSLY IMPOSING AN SENTENCE OF 91 MONTHS IMPRISONMENT INSTEAD OF SENTENCING PETITIONER TO 82 MONTHS, AFFECTING HIS SUBSTANTIAL RIGHTS AND THE ERROR IS PLAIN. IN PURSUANT TO 18 U.S.C. § 3742 (g)(1) THE USSC THAT WERE IN EFFECT ON DATE OF PREVIOUS SENTENCING OF DEFENDANT PRIOR TO THE APPEAL, IS REQUIRED TO APPLY.

CERTIFICATE OF GOOD FAITH BY PETITIONER

I, TRACEY LAMONT COAD, CERTIFY THAT THIS PETITION FOR REHEARING IS PRESENTED GOOD FAITH AND NOT FOR DELAY, AND THAT IT IS RESTRICTED TO THE GROUNDS SPECIFIED IN SUPREME COURT RULE 44 OF THE RULES OF THIS COURT.

Tracey L. Coad
TRACEY LAMONT COAD

IN THE SUPREME COURT OF THE UNITED STATES

TRACEY LAMONT COAD

PETITIONER

v.

UNITED STATES OF AMERICA

No: 17-8591

PETITION FOR REHEARING OF THE
ORDER DENYING CERTIORARI

RECEIVED

JUN 27 2018

OFFICE OF THE CLERK
SUPREME COURT, U.S.

PURSUANT TO F.R.A.P. 44

NOTED: JUNE 21, 2018

PETITIONER TRACEY LAMONT COAD, PRO SE, RESPECTFULLY AND
TIMELY MOVES THIS COURT FOR SUSPENSION OF ORDER DENYING
CERTIORARI AND PERMITTING A REHEARING UNDER F.R.A.P. 44 IN
THE RELEVANCE OF HIS CLAIMS INVOLVING PLAIN ERROR AFFECTING
HIS SUBSTANTIAL RIGHTS AND SERIOUSLY AFFECTING THE FAIRNESS,
INTEGRITY, AND PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS.

THIS COURT'S RECENT DECISION IN ROSALES - MIRELES V. UNITED
STATES, 2018 BL 214344, U.S., No: 16-9493 JUNE 18, 2018, HELD "A
MISTAKEN CALCULATION UNDER FEDERAL SENTENCING GUIDELINES
THAT IS PLAIN AND AFFECTS A DEFENDANT'S RIGHT SHOULD BE
CORRECTED."

IN LIGHT OF ROSALES - MIRELES AND ITS PROGENY, PETITIONER
ASSERTS THAT THE PROBATION OFFICER MISCALCULATION OF HIS CRIMINAL
HISTORY POINTS FOR HIS RESENTENCING CAUSED A CRIMINAL HISTORY

CATEGORY INCREASE AND THE DISTRICT COURT USING AN INCORRECT GUIDELINE RANGE TO RESENTENCE PETITIONER TO 97 MONTHS IMPRISONMENT. THE ONE (1) POINT ASSESSED FROM THE MISO LARCENY (13 CR 714149) DATE OF CONVICTION MARCH 19, 2014 IS ERRONEOUS AND IMPERMISSIBLE FACTOR. AT ORIGINAL SENTENCING HEARING, HAD PETITION NOT BEEN AN ARMED CAREER CRIMINAL FEBRUARY 26, 2014, ⁽¹⁾ THE ORIGINAL PSR CRIMINAL HISTORY POINTS IS 3, RESULTING IN A CRIMINAL HISTORY CATEGORY OF II AND GUIDELINE RANGE OF 70 TO 87 MONTHS.

FOR RESENTENCING THE PROBATION OFFICER'S ⁽²⁾ RESENTENCING MEMORANDUM ASSESSED ONE (1) POINT INCREASING PETITIONER CRIMINAL HISTORY POINTS TO A 4, RESULTING IN A INCREASE OF PETITIONER'S CRIMINAL HISTORY CATEGORY TO III AND INCREASING THE GUIDELINE RANGE TO 78 TO 97 MONTHS. PURSUANT TO 18 U.S.C. § 3742 (g)(1) "THE GUIDELINES THAT WERE IN EFFECT ON THE DATE OF THE PREVIOUS SENTENCING OF THE DEFENDANT PRIOR TO THE APPEAL" WHICH DID NOT INCLUDE THE MISO. LARCENY (PETITIONER HAD NOT BE CONVICTED AT ORIGINAL SENTENCING) AND THE ASSESSED ONE (1) POINT.

FOR RESENTENCING PETITIONER'S CRIMINAL HISTORY POINTS SHOULD HAVE REMAINED 3, RESULTING IN A CRIMINAL HISTORY CATEGORY OF II AND GUIDELINE RANGE OF 70 TO 87 MONTHS. AT WORST PETITIONER'S PRISON SENTENCE WOULD HAVE BEEN 87 MONTHS. STILL LESSER THAN THE 97 MONTHS IN PRISON SENTENCE THE DISTRICT COURT IMPOSED. HAD THE DISTRICT COURT NOT ERRONEOUSLY ADOPTED THE ONE (1) POINT FOR THE MISO LARCENY, INCREASING PETITIONER CRIMINAL HISTORY CATEGORY WHILE RESENTENCING PETITIONER, HIS SENTENCE WOULD NOT EXCEED 87 MONTHS IMPRISONMENT, 10 MONTHS LESSER THAN 97 MONTHS IMPRISONMENT.

THIS RESENTENCING ERROR WAS OVERLOOKED BY THE DISTRICT COURT, AND BOTH PARTIES. THE PETITIONER NOTICED THE ERROR ON DIRECT APPEAL AND CONSULTED HIS APPELLATE COUNSELOR^{*} (COUNSEL RESPONSE LETTER) AND RAISED THIS ISSUE FOR REVIEW IN A PRO SE SUPPLEMENTAL BRIEF. THE COURT OF APPEALS OF THE FOURTH CIRCUIT DENIED BRIEF No. 16-4852. PETITIONER FILED A TIMELY MOTION FOR REHEARING AND RECALL OF MANDATE RAISING THE ERROR FOR REVIEW. THE COURT OF APPEALS DENIED THE MOTION FOR REHEARING AND FOR RECALL OF MANDATE.

PETITIONER CAN NOW BE GRANTED THE RELIEF WARRANTING IN LIGHT OF THIS COURT'S RECENT DECISION IN ROSALES - MIRELES. THIS PETITION SHOULD BE GRANTED AND PETITIONER JUDGMENT SHOULD BE REVERSED AND HIS SENTENCE CORRECTED IN LIGHT OF ROSALES - MIRELES.

QUESTION: DID THE DISTRICT COURT ERROR ASSESSING ONE (1) POINT CRIMINAL HISTORY SCORE WHEN RESENTENCING PETITIONER, AND DOES IT NOW RESULT IN PLAIN ERROR WARRANTING RELIEF "CORRECTION OF SENTENCE"?

RESPECTFULLY SUBMITTED 21 TH JUNE MONTH 2018

Tracey L. Coad
TRACEY LAMONT COAD
PRO SE

* SEE ATTACHED LETTER SEE ATTACHED;
① SEE ATTACHED PSR ② RESENTENCING MEMO

JAMES B. CRAVEN III

ATTORNEY AT LAW

JANIE K. LATTI
LEGAL ASSISTANT

June 22, 2017

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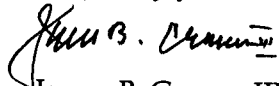
Mr. Tracey Lamont Coad
Reg. No. 29413-057
Box 999 LSCI
Butner, NC 27509

Dear Tracey:

I just read your second supplemental pro se brief filed today in Richmond. Just off the top of my head, I am inclined to agree with you about the one criminal history point added on for your March 29, 2014 misdemeanor larceny conviction in Forsyth County. I will address this in our reply brief in July. The Government brief is due, as you know, June 26, and we will send you a copy. I will be back July 10 and will get our reply brief filed by July 24.

Take care and God bless.

Very truly yours,


James B. Craven III

JBCIII/jkl

★ APPELLATE COUNSOLOR LETTER

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

324 W. Market Street
Greensboro, NC 27401
Phone: (336) 291-1348
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MEMORANDUM

October 05, 2016

TO: The Honorable William L. Osteen, Jr., Chief United States District Judge

FROM: Sonya M. Schroeder, U.S. Probation Officer

RE: Tracey Lamont Coad
Docket No. 1:13CR300-1
Resentencing: October 12, 2016

On August 10, 2016, the Fourth Circuit Court of Appeals vacated the defendant's sentence and remanded the defendant's case to the District Court for resentencing in light of Johnson v. United States. The formal mandate was issued on September 1, 2016. Therefore, the defendant is no longer classified as an Armed Career Criminal and is not subject to the enhanced penalties under 18 U.S.C. § 924(e). As the defendant no longer has three predicate felonies to be classified as an Armed Career Criminal, he is subject to the penalties provided for in 18 U.S.C. § 924(a)(2), not more than ten years imprisonment and three years supervised release (Class C Felony).

For purposes of resentencing, the guidelines in effect at the time of the defendant's original sentencing are applicable (pursuant to 18 U.S.C. § 3742(g)(1)); therefore, the 2013 edition of the United States Sentencing Commission Guidelines Manual has been used for guideline computations.

Base Offense Level:	29	The guideline for 18 U.S.C. § 922(g)(1) offenses is found in USSG §2K2.1 of the guidelines. However, the Cross Reference at USSG §2K2.1(c)(1)(A) instructs that if the defendant used or possessed any firearm in connection with the commission or attempted commission of another offense, apply USSG §2X1.1 (Attempt, Solicitation, or Conspiracy) in respect to the other offense if the resulting offense level is greater. Pursuant to USSG §2X1.1(a), the base offense level is determined from the guideline for the substantive offense, plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty. In this case, the guideline for the substantive offense is found in USSG §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) and results in an offense level of 29 {base
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21

RESENTENCING PSR

offense level of 27, USSG §2A2.1(a)(2); plus 2 levels since the victim sustained serious bodily injury, USSG §2A2.1(b)(1)(B). Therefore, the base offense level determined by the cross reference is 29. USSG §§2X1.1 and 2A2.1¹.

Specific Offense Characteristic:	0
Victim-Related Adjustment:	0
Adjustments for Role:	0
Adjustment for Obstruction:	0
Adjusted Offense Level:	29
Chapter Four Enhancements:	0
Acceptance of Responsibility:	-3
Total Offense Level:	26

Criminal History

The defendant no longer qualifies as an Armed Career Criminal and thus a Criminal History Category of VI is not applicable. The defendant was also convicted of Misd. Larceny (13CR 714149) (*paragraph 39 of the presentence report*) in Forsyth County District Court, Winston-Salem, NC, on March 19, 2014. He was sentenced to 10 days imprisonment and this conviction is assessed one (1) point pursuant to USSG §4A1.1(c). The total of the criminal history points is 4, resulting in a Criminal History Category of III. (*The remainder of the charges listed as pending in the presentence report have now been dismissed.*)

TOTAL OFFENSE LEVEL	26
CRIMINAL HISTORY CATEGORY	III

	<u>Statutory Provisions</u>	<u>Guideline Provisions</u>
CUSTODY:	NMT 10 years	78 to 97 months
SUPERVISED RELEASE:	NMT 3 years	1 to 3 years
PROBATION:	1 to 5 years	Ineligible
FINE:	NMT \$250,000	\$12,500 to \$125,000
RESTITUTION:	Not Applicable	Not Applicable
SPECIAL	Ct. 1: \$100	Ct. 1: \$100

¹ Refer to paragraph 14 of the presentence report.

ASSESSMENT:

Recommended Conditions of Supervised Release: Same as previously imposed.

Post-Conviction Conduct

Bureau of Prisons (BOP) records reflect the defendant has completed some courses while incarcerated. He has completed the following: Drug Education Day Class, Sewing, and Men in Transition. Records do not reflect any disciplinary infractions during his term of incarceration.