

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Mikael B. Donnell #23122-045 — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court Western District of Missouri
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mikael B. Donnell #23122-045
(Your Name)

F.C.I Forrest City, P.O. Box 3000
(Address)

Forrest City, AR 72336
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

- 1) Does the Fifth Circuit Court of Appeals ruling in United States v. Hinkle, 832 F.3d 569 (5th cir. 2016), create a circuit split regarding the impact of Johnson v. United States, 135 S.Ct 2551 (2015), and Mathis v. United States, 136 S.Ct 894 (2016), when it comes to career offender enhancement(s) under § 4B1.1 of the United States Sentencing Guidelines?
- 2) If so, Did District Court and the Circuit Court err in its denial without holding an evidentiary hearing or issuing a Certificate of Appealability?
- 3) Should this court grant Certiorari to resolve the conflict between those circuits?

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	4-5
REASONS FOR GRANTING THE WRIT	6-12
CONCLUSION	13

INDEX TO APPENDICES

APPENDIX A	Petitioner's 28 U.S.C § 2255 motion
APPENDIX B	Government's Reply
APPENDIX C	Court Order
APPENDIX D	Petitioner's Traverse
APPENDIX E	Court's Denial
APPENDIX F	C.O.A Request
APPENDIX G	C.O.A Denial
APPENDIX H	Government's motion to lift stay
APPENDIX I	Rehearing Request
APPENDIX J	Rehearing Denial

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

Beckles v. United States, 137 S.Ct 886 (2017)	4, 5, 9,
Begay v. United States, 128 S.Ct 1581 (2008)	9
Chambers v. United States, 129 S.Ct 687 (2009)	9
Johnson v. United States, 135 S.Ct 2551 (2015)	4, 7-11
Mathis v. United States, 136 S.Ct 894 (2016)	4, 9-11
United States v. Hinkle, 832 F.3d 569 (5th cir.2016)	5, 9-11
Welch v. United States, 136 S.Ct 1257 (2016)	4, 8, 9, 11

STATUTES AND RULES

18 § U.S.C 922 (g)	8
18 U.S.C §§ 924 (e)(1) and (e)(2)(B)(i) & (ii)	8
21 U.S.C § 841 (a)(1), (b)(1)(B)	4, 6, 8
21 U.S.C § 846	4
21 U.S.C § 851	4
28 U.S.C § 2255	4, 5, 7, 11
United States Sentencing Guideline (U.S.S.G) §§ 4B1.1 and 4B1.2	4, 6, 7, 9-11
Rules of the Supreme Court of the United States Part III Jurisdiction on Writ of Certiorari Rule 10 (a) & (c)	12

OTHER

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 _____ 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 E 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 10-16-17.

☐ 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: 12-20-17, and a copy of the order denying rehearing appears at Appendix J.

☐ 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

United States Constitution Fifth Amendment Due Process

United States Constitution Fourteenth Amendment Equal Protection

18 U.S.C § 2924 (e)(2)(B)(i) & (ii)

18 U.S.C § 922 (g)

18 U.S.C § 924 (e)(1)

21 U.S.C § 841(a)(1), (b)(1)(B)

21 U.S.C § 846

21 U.S.C § 851

28 U.S.C § 2255

Missouri Rev. Stat. §§ 569.160, 565.024 and 195.420

United States Sentencing Guidelines (U.S.S.G) §§ 4B1.1 and 4B1.2

STATEMENT OF THE CASE

Petitioner Donnell pleaded guilty to one count of conspiracy to manufacture and distribut 50 grams or more of methamphetamine, in violation of **21 U.S.C §§ 841(a)(1),(b)(1)(B) and 846**, and was sentenced to 210 months imprisonment in the United States District Court for the Western District of Missouri Southern Division. Donnell did not appeal his conviction of sentence.

On July 14,2016, Petitioner files a motion, under **28 U.S.C § 2255**, seeking to vacate his sentence.¹ Petitioner's claim was premised on this courts ruling in **Johnson v. United States, 135 S.Ct 2551(2015)** and **Mathis v. United States, 136 S.Ct 2243 (2016)**. Petitioner's motion came within one (1) year of the ruling in Johnson;(see **Welch v. United States, 136 S.Ct 1257,1268 (2016)**), which made Johnson retroactive on collateral review.

Petitioner argued that his base offense level calculation, based on the career offender provision of **United States Sentencing Guideline (U.S.S.G) §§ 4B1.1 and 4B1.2(a)**, is invalid in light of Johnson, and therefore his sentence is Unconstitutional.

The government in response to Petitioner's motion to vacate, filed a motion to stay proceedings pending this courts decision in **Beckles v. United States, 137 S.Ct 886 (2017)**. (App. B)

The district court ordered that the government's motion be granted and stayed proceeding until this court issued it's ruling in Beckles. (App. C)

¹ Petitioner's case is unpublished.

On 3-21-17, Petitioner provided a response to the governments reply in which he addressed how and why Johnson, Mathis, & Welch apply to his case and afford him relief. Petitioner also argued and cited a recent Fifth Circuit case, United States v. Hinkle, 832 F.3d 569 (5th cir. 2016) and how that courts ruling directly applied to his situation. (App. D)

On 5-17-17, the district court denied petitioner's § 2255 motion without holding an evidentiary hearing or issuing a Certificate of Appealability. (App. E)

The court ruled in favor of the government and applied this Courts Beckles decision stating that the Sentencing Guidelines are not subject to a void for vagueness challenge under the Due Process Clause.

Thereafter, Petitioner requested a Certificate of Appealability from the Eighth Circuit Court of Appeals. (App. F)

On 11-16-17, the Eighth Circuit Court of Appeals denied Petitioner's request for C.O.A. (App. G)

Now Petitioner is requesting this Courts Supreme authority to settle the conflict that has arisen between the circuits regarding Hinkle and its holdings by the Fifth Circuit.

REASONS FOR GRANTING THE PETITION

Because the petition poses a substantial federal question and because there is confusion in the lower courts, a certiorari should be granted.

Petitioner Donnell pleaded guilty to one count of Conspiracy to manufacture and distribute 50 grams or more of methamphetamine in violation of 21 U.S.C § 841(a)(1),(b)(1)(B) and 846. Petitioner was sentenced to 210 months imprisonment in the United States District Court for the Western District of Missouri Southern Division.

The defendant was given a career offender status based on the career offender provision of U.S.S.G §§ 4B1.1 and 4B1.2(a), due to his prior crime(s) of violence and or controlled substance offense, i.e., burglary, involuntary manslaughter, and attempt possession of a chemical with intent.

[U.S.S.G § 4B1.1 defines a career offender as " A defendant is a career offender if (1) the defendant was at least eighteen years old at the time the defendant committed the instant offense of conviction; (2) the instant offense of conviction is a felony that is either a crime of violence or a controlled substance offense."

§ 4B1.2(a) the term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that (1) has as an element the use,

attempt use, or threatened use of physical force against the person of another, or (2) is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use or unlawful possession of a firearm described in 26 U.S.C § 584(a) or explosive material as defined in 18 U.S.C § 841(c).]

The Petitioner's prior convictions consist of; (1) A 1991 Missouri Burglary; (Mo.Rev.Stat. § 569.160), (2) A 1991 Missouri Involuntary Manslaughter; (Mo.Rev.Stat. § 565.024), and (3) A 2007 Missouri Attempt possession of a chemical with intent to manufacture; (Mo.Rev.Stat. § 195.420).

In order for Petitioner to be classified as a career offender he has to have at least two prior felony convictions involving a crime of violence or a controlled substance offense.(U.S.S.G § 4B1.1--career offender)

On July 14, 2016, Petitioner filed a motion with the United States District Court for the Western District of Missouri Southern Division, under 28 U.S.C § 2255, seeking to vacate his sentence. Petitioner contended he was not a career offender because his state priors no longer qualify as predicates to trigger the career offender enhancement, and pursuant to this Courts ruling in Johnson v. United States, 570 U.S 521, 135 S.Ct 2551, 192 L.Ed 2d 569 (2015), wherein the "residual clause" of the armed career criminal act (ACCA) was found to be unconstitutionally vague. Johnson invalidated the residual clause of

the ACCA, which was the announcement of a "new" rule that is retroactively applicable on collateral review. *Welch v. United States*, 136 S.Ct 1257, 194 L.Ed 2d 387 (2016). At issue in *Johnson* was whether the residual clause of the ACCA, 18 U.S.C § 924(e)(2)(B)(ii), was unconstitutionally vague. The ACCA requires the enhanced statutory range of punishment for anyone convicted of violating § 922(g) if the person has three previous convictions that qualify as either a "violent felony" or as a "serious drug offense." 18 U.S.C § 924(e)(1). A "violent felony" is defined under the ACCA as a crime that (1) "has as an element the use, attempt use, or the threatened use of physical force against the person of another" (the "force clause");

(2) "is burglary, arson, or extortion, [or] involves use of explosives" (the "enumerated clause"); or

(3) "otherwise involves conduct that presents a serious potential risk of physical injury to another" (the "residual clause") *id.* § 924(e)(2)(B)(i),(ii).

The *Johnson* court held that a sentence that was enhanced under the residual clause of the ACCA violated the Constitution's guarantee of due process because it is unconstitutionally vague. *Johnson*, 135 S.Ct at 2563. This court then held that the rule articulated in *Johnson* applied retroactively to cases on collateral review. *Welch*, 136 S.Ct at 1258.

Petitioner argued that none of his Missouri priors qualified as crimes of violence or drug trafficking crimes and that he was improperly sentenced as a career offender under the sentencing guidelines. Petitioner argued & showed how under *Begay v. United States*, 553 U.S. 137 (2008) and *Chambers v. United States*, 555 U.S. 122 (2009), that his Missouri Involuntary manslaughter conviction did not qualify as a crime of violence.

And, how pursuant to this courts ruling in *Johnson*, his Missouri burglary & attempt possession of a chemical with intent, no longer qualify as crimes of violence or drug trafficking crimes, Therefore, he was not a career criminal.

The district court stayed petitioner's motion pending this courts ruling in *Beckles v. United States*, 137 S.Ct 886, 197 L.Ed 2d 145 (2017), because it directly related to petitioner's claim. (App. C)

Petitioner responded to the governments reply in which he disagreed with the government and contended that this courts ruling in *Johnson*, *Welch*, & *Mathis*; all apply to him. As well as a recent Fifth Circuit case in *United States v. Hinkle*, 832 F.3d 569 (5th cir. 8-11-16).(App. D)

Before *Beckles* was decided, the Fifth Circuit ruled in *Hinkle* that the district court erred in determining that he was a career offender within the meaning of § 4B1.1 of the U.S.S.G,

and the holding in Johnson can be applied to § 4B1.1 of the U.S.S.G. (U.S v. Hinkle, 832 F.3d 569 (5th cir.)

After this courts ruling in Beckles, the government filed a motion to lift stay and requested the district court to deny the motion filed by Mr.Donnell seeking to vacate his sentence. (App.H) This court held in Beckles, that the advisory Sentencing Guidelines are not subject to a vagueness challenge under the Due Process Clause and the [U.S.S.G] § 4B1.2(a)'s residual clause is not void for vagueness." id., 2017 WL 855781.

On 5-17-17, the district court issued its order granting the governments motion to lift stay and denying petitioners motion to vacate and denied a Certificate of Appealability. (App.E) The district courts denial was premised on this courts ruling in Beckles.

Now petitioner contends that the Fifth Circuit Court of Appeals ruling in Hinkle, created a conflict and circuit split regarding the impact of " Johnson & Mathis, when it comes to career offender enhancement(s) under § 4B1.1 of the advisory Sentencing Guidelines.

Petitioner seeks this courts supreme guidance and clarity to resolve this conflict. For the reasons stated a Certiorari should be granted.

Petitioner next ask that if there is conflict and or a circuit split, did the district court err in its denial of petitioner's motion to vacate, without holding an evidentiary hearing or in issuing a certificate of appealability?

Rules governing § 2255 proceedings state that where there is conflict and there is factual disput, the court is required to hold an evidentiary hearing. (Rules Governing § 2255 proceedings Rule 4(b),6(a),8(a)).

Petitioner demonstrated in his response to the governments reply, that the Fifth circuit made a ruling in Hinkle that opened the door for petitioner's to challenge their career offender status of § 4B1.1 of the U.S.S.G. This ruling [Hinkle] is where the split/conflict arise amongst the Federal Circuits.

Petitioner contend that the District court erred without holding an evidentiary hearing or issuing a C.O.A, because a conflict arose when its sister circuit issued its ruling in Hinkle, extending this courts rulings in Johnson, Mathis, & Welch, to U.S.S.G §§4B1.1 and 4B1.2(a), career offender provisions.

Therefore, Petitioner ask; has a circuit split occurred from the Fifth Circuits Hinkle ruling, and should the district court have held a hearing or issued a C.O.A.

Petitioner believes this Honorable Court should resolve the conflict that has arisen between circuits to ensure that federal prisoners are treated fairly and not endure longer sentences based on when & where they were sentenced. Given the totality of the circumstances, including the difference in treatment that would occur if this court allow this circuit conflict to linger and the significant disparity between the imposed sentences and sentences that should be.

Lastly, Petitioner believes that the Rules of the Supreme Court of the United States, Part III-Jurisdiction on Writ of Certiorari, Rule 10(a) & (c), govern this situation, because there is conflict and this Court should resolve such conflict.

Petitioner humbly prays that this Honorable Court grant Certiorari to; 1) resolve the conflict & circuit split that has occurred among the district & circuit courts, in regards to Johnson, its holdings, and § 4B1.1 career offender of the U.S.S.G. 2) Assure that equal protection of the law is administered and that certain prisoners are not treated different based on when & where they were sentenced. 3) Assure that defendants are not being labeled career offenders when they are not. I SO PRAY.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

M. KARL DONNELL - 23122-045

Date: 3-16-18