

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Frantz Clement — 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 Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

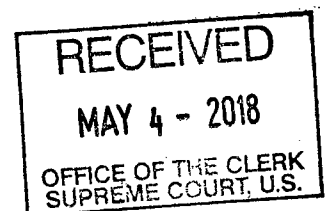
PETITION FOR WRIT OF CERTIORARI

Frantz Clement - 07623-104
(Your Name)

FCC-Coleman-Medium P.O. Box 1032
(Address)

Coleman, Florida 33521-1023
(City, State, Zip Code)

N/A
(Phone Number)



QUESTION(S) PRESENTED

- 1) Whether Petitioner's State priors properly declare him constitutionally as a armed career offender.
- 2) Whether Petitioner's plea was involuntary, unintelligent, and unknowingly.

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 "B" 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☒ is unpublished.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 "A" 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 January 30th, 2018.

☒ 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: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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

Title 21 U.S.C. § 841(a)(c)

Title 21 U.S.C. § 922(g)(1)

Title 21 U.S.C. § 924(c)(1)(A)

Title 21 U.S.C. § 924(e)(1)

Title 21 U.S.C. § 924(e)(2)(B)(ii)

Title 21 U.S.C. § 924(e)(B)(ii)

STATEMENT OF THE CASE

On July 10, 2015, Petitioner involuntarily and unintelligently pled guilty to Counts (1) and (2) of his indictment to Title 21 U.S.C. § 841(a)(c) and 922(g)(1) and 924(e)(1). Petitioner appealed and was affirmed all the way through all of his appeal stages. Petitioner now request with the Honorable Court's permission for a Writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this is in the discretion of the Honorable U.S. Supreme Court as to whether it wants to or not accept a Writ of Certiorari. Petitioner request that this be accepted in the discretion of the court because his case applies to Dimaya v. Sessions, and Class v. United States as well as Lee v. United States; all three (3) cases including Johnson v. United States, 135 S.Ct. 2551/2557, all are of National importance to the country from the Honorable U.S. District Court, as well as the Court of Appeals for the Eleventh Circuit, and as well as cases that apply to the Petitioner's case in point.

Therefore Petitioner request that this case too, be accepted by the Honorable U.S. Supreme Court for a Writ of Certiorari.

ARGUMENT ONE

WHETHER PETITIONER WAS PROPERLY
DECLARED A ARMED CAREER OFFENDER
ACCORDING TO
MATHIS V. U.S., 136 S.Ct. 2243-2253/DIMAYA v. SSESSION

Petitioner was unconstitutionally enhanced to armed career offender status based on four (4) State priors, one (1) State prior as a juvenile. Case J96-5786B, but directly turned over to adult court. This State prior does not meet armed career offender status, because there was no Shepard documentation of this State prior, nor for State prior F96-24259, nor for case docket F96-24139B, nor for F97-8594, which is a misdemeanor offense, used to unconstitutionally enhance the Petitioner to armed career offender status. Nor was there any Mathis requirements for any of these State priors, nor Descamps v. United States, 133 S.Ct. 2276-2283 (2013) divisible, nor indivisible requirements conducted in this case as related to any of the Petitioner's State priors. Petitioner's F97-8594 was also a juvenile case referred to direct filing under docket #J97-2323, still with no Shepard documentation, nor Descamps element approach and indivisible/divisible element approach, nor Mathis ways, means and conduct for which no element approach was ever conducted in this case as is required for such State priors. Petitioner's State prior for 00-33334 is also non-eligible for armed career offender status, plus it does not meet the ten (10) year requirement for 924(e)(B)(ii) as is required for the ten (10) year drug amount. Petitioner's State docket #F02-3664A is also not a legitimate State prior for armed career offender status, because it does not meet the ten (10) year drug requirement for armed career offender status. F02-3666A is also not legally applicable to the requirements for armed career offender status. Because it too, does not meet

the ten (10) year requirement for 924(e)(2)(B)(ii).

All of Petitioner's State priors used for armed career offender status, violate Mathis, Descamps, Shepard and Taylor v. United States, 495 U.S. 575 (1990) requirements. There was no Shepard documentation for any of these State priors, not for the juvenile filings, nor did any of them meet the requirements for armed career offender status. Therefore, Petitioner cites Moncrieffe v. Holder, Jr., 133 S.Ct. 1677-1684 (2013), as the least culpable offense for all of these State priors, and the fact that Petitioner pled to a lesser offense in all of them. See Day v. United States, 465 F.3d at 1265 (11th Cir. 2006). Petitioner also state that according to Dimaya v. Sessions, 137 S.Ct. (April 17, 2018 wh 1800371, his State priors, for 96-24139B/J91-8885/J96-5786B/F96-24259, all violate Dimaya v. Sessions requirements with regards to armed career offender status. Petitioner also state that his U.S.S. Guideline enhancements under 2k2.1(b)(6)(B) violate Nelson v. Colorado, 137 S.Ct. 1249-1259 (2017), based on uncharged conduct. Petitioner further states that his aggravated assault, concerning docket #F97-8594, violate Johnson v. United States, 135 S.Ct. 2551 (2015); and Johnson v. United States, 130 S.Ct. at 1269-70 (2010). None of Petitioner's State priors meet the requirements of Johnson/Johnson, 135 S.Ct. 2551-2257 (2015)/Descamps/Shepard/Taylor nor Dimaya v. Sessions, nor Nelson v. Colorado, supra.

Petitioner is therefore serving a unconstitutional armed career offender sentence in violation of his Fifth Amendment Right to Due Proccess and his Sixth Amendment Right to the Element Clause based on these above stated State priors. And Petitioner pled to a lesser offense in all of them. Thereby, stating that Moncrieffe v. Holder, Jr., supra, applies to all of his State

priors.

Petitioner request remand of his unconstitutional armed career-offender status, based on all of the above stated reasons, in this Petition to the Honorable U.S. Supreme Court.

ARGUMENT TWO

PETITIONER'S PLEA IS
INVOLUNTARY, UNINTELLIGENT AND UNKNOWINGLY
BASED ON
Class v. United States, 137 S.Ct. 1065/
Lee v. United States, 137 S.Ct. 1958 (2017)

Petitioner's plea is involuntary based on Class v. United States, 137 S.Ct. 1065 (2017). Because he does not meet the armed career offender requirements in regards to his State priors. Petitioner's State priors violate Nelson v. Colorado, 137 S.Ct. 1249-1259 (2017) requirements in regards to uncharged conduct and unconstitutional enhancements. Petitioner's State priors also violate Class in respects to Dimaya v. Sessions requirements concerning crime of violence, and Johnson v. United States, 135 S.Ct. 2551-2557 (2015) State priors in regards to a crime of violence in which violate the Johnson v. United States, 130 S.Ct. 1269-1270 (2010), crime of violence. Thereby stating that Petitioner's plea is involuntary according to both Johnson/Johnson/Descamps indivisible and divisible element requirements, and Mathis requirements. Petitioner's plea is unintelligent for counsel to involuntarily plead the Petitioner out to a unconstitutional statute under the armed career offender statute for which does not apply to the Petitioner's State priors. Petitioner's armed career status is also in violation of Lee v. United States, 137 S.Ct. 1958 (2017), because had he known he was not a armed career offender, he would never have pled guilty. Counsel prejudiced the Petitioner by pleading the Petitioner out into a unconstitutional armed career offender status. But for counsel's prejudice the proceedings would have been so much different, and Petitioner informed counsel to object to his State priors, but counsel refused to do so upon Petitioner's request to do so.

Petitioner also state that the Honorable U.S. Supreme Court that his plea is involuntary based on the fact that his armed career offender status is unconstitutional as applied to the aboved stated U.S. Supreme Court cases. A plea can never be voluntary knowingly, nor intelligent if the statute is declared unconstitutional in regards to Petitioner's case in point, when he states his plea is involuntary based on Nelson v. Colorado, Mathis, Descamps, Johnson, 135 S.Ct. 2551-2557 (2015); Class/Lee/and Dimaya v. Sessions.

Petitioner can never waive his constitutional rights to a involuntary plea. Not only did counsel prejudice the Petitioner in regards to this involuntary plea, but counsel also caused the Petitioner twenty (20) years in a Federal U.S. prison in violation of Quyer v. Sullivan, 446 U.S. 350 (1980); Florida v. Nixon, 543 U.S. 175 (2004); Strickland v. Washington, 466 U.S. 668-687 (1984); Cronic v. United States, 466 U.S. 648 (1984).

Jurist of reason would stipulate that this case should have proceeded further. Buck v. Davis, 137 S.Ct. 759-774 (2017); Slack v. McDaniels, 529 U.S. 364-484 (2000); Barefoot v. Estelle, 467 U.S. 880-890 N.4 (1983).

Petitioner request remand of his unconstitutional plea, based on all of the above stated facts in this Writ of Certorari. And based on the fact that 924(c)(1)(A) applies to Petitioner in regards to his instant offense as a predicate to Dimaya v. Sessions, requirements as a crime of violence in regards to Petitioner's 924(c)(1)(A) charge for which is not a violent offense, yet was declared one in Petitioner's involuntary plea which violates Lee/Class/Dimaya/Johnson and Johnson 135 S.Ct. 2551-2557 (2015); and Nelson v. Colorado, supra.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frantz Clement

Date: 4-20-18