

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANDREW CHARLES JACKSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOURTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
USCA4 NO.17-6980
PETITION FOR WRIT OF CERTIORARI

ANDREW CHARLES JACKSON #03634-087
(Your Name)

USP-TUCSON. P.O. BOX #24550
(Address)

TUCSON, ARIZONA. 85734
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

I

WHETHER A CONSTITUTIONAL VIOLATION WAS SHOWN TO HAVE OCCURRED WARRANTING RELIEF DUE DUE PROCESS VIOLATION (5TH AMENDMENT) BY BEING SENTENCED TO HARSHER PENALTIES UNDER THE WRONG GUIDELINE EDITION NOT APPLICABLE TO PETITIONER

II

WHETHER A CONSTITUTIONAL VIOLATION WAS SHOWN TO HAVE OCCURRED WARRANTING RELIEF DUE EIGHTH AMENDMENT VIOLATIONS BY - USING WRONG GUIDE LINE EDITION TO IMPOSE HARSHER PUNISHMENT OF LIFE ON PETITIONER WHEN CORRECT GUIDELINE WAS UTILIZED ON CO-DEFENDANTS RECEIVING 20 AND 25 YEARS FOR SAME CONDUCT.

III

WHETHER A CONSTITUTIONAL VIOLATION WAS SHOWN TO HAVE OCCURRED WARRANTING RELIEF DUE SIXTH AMENDMENT VIOLATION TO EFFECTIVE COUNSEL BY VIRTUE OF COUNSEL ABANDONMENT OF A KNOWN DEFENSE TO PROPER GUIDELINE USE AND WAITING IMPROPER GUIDELINE USE CHALLENGE.

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☒ is unpublished.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 B 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☒ is unpublished.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 November 21, 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: _____, 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. § 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

5th: AMENDMENT 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 a Grand Jury;... nor be deprived of life, liberty, or property without due process of the Law.

6th: AMENDMENT OF THE UNITED STATES CONSTITUTION.

In all criminal prosecutions, the accused shall enjoy the right to ... be informed of the nature and cause of the accusations, and ... to have the Assistance of Counsel for his defense.

8th: AMENDMENT OF THE UNITED STATES CONSTITUTION

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article-1, Section-9, clause [3] U.S. Constitution.

No bill of Attainder or ex post facto Law shall be passed.

I. STATEMENT OF THE CASE.

On January 20th, 2000, a grand Jury sitting for the Northern District of West Virginia, Martinsburg Division, charged that Petitioner, (Jackson) committed violations of 18 USC §§ 2; 18:924(c); 21 USC §§ 841(a)(1); 21:846; 21:848 and 21:848 (e)(1)(A). (21:848 was cross-referenced with 21:848 (e)(1)(A)) (CR. Doc. NO. 3:00-cr-00006-JPB-JES-1). The Indictment however, fails to charge a drug amount. Jacksons Indictment charged Jacksons Co-defendants, Casey M. Holt and, Vernel Michelle Newell, with the same conduct. Id. (Pursuant to Plea.)

Jackson entered a not guilty plea and took the case to trial. On January 23, 2002 The Jury entered a guilty verdict and on January 23rd, 2002, Jackson was sentenced to Life imprisonment for the 1995-1999 crimes, by utilizing the Amended 2001 Guideline Manual then in effect at the time of sentencing. Consequently, however, Co-defendants, HOLT, and NEWELL, were sentenced to 30 years by utilizing the 1987 Guideline Manual in effect at the time of the crimes alleged, which contained less-severe-enhancements for the same conduct and significantly same backgrounds.

Jackson exposed these as constitutional violations, exposing harsh punishment which the district court dissented and the Fourth Circuit declined to issue Certificate of Appealability concurring with the District Court that no Constitutional violations had been shown, contrary to the Supreme Court's law/precedents.

Jackson seeks review and supervisory power to correct these discrepancies infringing his constitutional guarantees. -4-

II.

STATEMENT OF FACTS REASONS FOR GRANTING THE PETITION

THE COURT OF APPEALS HAS DECIDED A SUBSTANTIVE FEDERAL QUESTION OF LAW AND FACT IN DIRECT CONFLICT WITH THE APPLICABLE DECISION OF THIS COURT, AND THE CONSTITUTION

1.) The Fourth Circuit Panel opinion ^[Appendix-A] affirming the district Courts denial of Petitioners 28 USC § 2255 Second and Successive motion, ^[Appendix-B] deem that Petitioner did not establish a Constitutional Violation [S]. Contrary to the Fourth Circuits holding, Petitioner received an unusually harsh sentence by breaching the ex post facto clause of the U.S. Constitution by (A) Utilizing the 2001 version of the Guideline Manual when the 1995-1999 Criminal Conduct required the use of the 1987 Guideline Manual, herefore, Petitioners life sentence, vs. 30 Years, made more burdensome the punishment for a crime after the crimes were committed and without the use of the 1987 guide line manual, deprives Petitioner of any defense available to the law at the time the charged acts were committed. Thus, an infraction of due process guarantees to liberty and punishment which contravened the ex post facto clause, inflicting unusually harsh punishment, and

(B) enhancing Petitioners punishment based upon drug quantity without Jurisdiction as drug quantity was not alleged in the Indictment, thus, Violating due process Notice requirements, as well as the sentencing Guideline Manual use in plain error.

2.) The Fourth Circuit Panel Opinion erred in affirming the district Courts denial of petitioners Ineffective assistance of counsel claims because its decision is in direct conflict with this Courts decision in Strickland, Cronic and Evitts, infra. The record reveals

that Counsel for the District and appellate Court, Abandoned the *ex post facto* clause defense (A) to improper use of the guide by lack of Jurisdiction for failure to Indict drug quantity, and (B) to improper use of the Wrong Guideline manual; and thus allowed Petitioner to be enhanced in violation of due process guarantees resulting in prejudice of unusually harsh sentence of life, substantial substantive disparities from his two co-defendants 30-years for the same or less criminal conduct, when hindsight only provided one defense; stated, *Infra*.

3.) The District Court committed plain error in respect to the above as (A) The District Court did not have subject matter / personal Jurisdiction to utilize drug quantity to enhance punishment not charged in the Indictment, and (B) The District / Sentencing Court, is directed by the Guideline Manual [S], to use the guidelines in effect on the date the offense was committed USSC § 1B1.1(b)(2), if the guideline manual in effect at the time of sentencing "would violate the *Ex post facto* clause of the constitution." USSC § 1B1.1(b)(1). Thus, the District Court denial acted inconsistent with the rudimentary demands of fair procedure.

4.) The Fourth Circuit Court erred in affirming the denial of petitioners 28 USC § 2255 / Certificate of appealability, especially under the Haines v. Kerner, *infra*, Liberal analysis, and Slack v. McDaniel, *infra*, requirement, as the Constitutional infractions complained of were apparent for the Court to enforce pursuant to the laws of this Court. Apprendi, Brown, Peugh, all *infra*.

5.) Jackson respectfully urges that all aspects of the Circuit Court decision are erroneous and at a variance with this Court's decisions as explained in the argument below:

III. ARGUMENTS AMPLIFYING REASONS FOR WRIT

(A.) THE FOURTH CIRCUIT COURT OF APPEALS ERRED IN AFFIRMING ON THE GROUND THAT PETITIONER'S 28:2255 RECORD DOES NOT ESTABLISH THE REQUIRED CONSTITUTIONAL VIOLATIONS.

6.) In Slack v. McDaniel, 529 US 473, 484 (2000) the supreme Court instructed that, "to obtain a certificate of appealability, Petitioner must demonstrate that reasonable Jurists would find the district Court's assessment of the Constitutional claims debatable or wrong. *Id.* However, in order to file a second and successive 28 USC § 2255 Motion, as did Jackson in this case, Petitioner must make only a superficial showing that the motion is Meritorious. In re Turner, 267 F.3d 225, 227 (3d. Cir. 2001)

7.) Jackson presented Application for second and successive 28:2255 based on (1) The District Court's Drug Quantity enhancement that was not alleged as element in the indictment, was without Jurisdiction and violated Due Process according to Appendix V. New Jersey, 530 US 466, 475-76 (2000) (requiring any facts increasing penalty beyond the statutory Maximum, must be submitted to the Jury) and Brown v. United States, 531 US 1136 (2002); U.S. v. Brown, (2001 CA4 NO. 99-4943) (holding that an Indictment that fails to charge as an element, the quantity of crack cocaine, deprives the district court of Jurisdiction and otherwise would violate Petitioner's substantial rights; and (3) That Counsel's failure to protect these known vital liberty interests, violated Petitioner's 6th Amendment right to effective Counsel and thus, constitutes abandonment of a known defense and abandoned the adversarial process. U.S. v. Cronin, 466 US 648, 659 (1984). *Id.*

8.) by the showing of these unconstitutional sentencing, and charging infractions Mr. Jackson established his Eighth Amendment (U.S. Const.) infraction of having been sentenced unusually harsh to a life sentence and cruel as to the disparity of his codefendants' 30-year sentences under the appropriate 1987 Guidelines maxing at offense level 38 and no more than 30-years for the same conduct and rolls as his co-defendants. U.S. V. Slatten, (2017, D.C. No. 15-3078); Lookyer V. Andrade, 155 LE12D 114 (2002), prohibiting unconstitutional grossly disproportionate sentences.

IV. CONSTITUTIONAL VIOLATIONS

(B) IMPROPER GUIDELINE USE.

9.) The District Court erred in upholding Jackson's sentence as to the 2001 Amended Guidelines.

10.) For the District Courts convenience, The Guidelines direct a sentencing court to "use the guideline manual in effect on the date the defendant is sentenced". Unless the court determines that to do so "would violate the Ex Post Facto Clause" of the U.S. Constitution. USSC. § 1B1.11(b)(1). Further, in that event, the court is to use the guidelines Manual in effect on the date that the offense of conviction was committed. U.S.S.C. § 1B1.11(b)(2). See, U.S. V. Lewis, 606 F.3d 193 198-99 (4th Cir. 2010) (holding that the retroactive application of severity-enhancing Guideline Amendments contravenes the Ex post Facto clause. Ibid., 606 F.3d @199[7-2].

11.) The Constitution; U.S. Const. Art. 1, §9, Clause 3, provides that "no . . . ex post facto [L]aw shall be passed. . .". A law violates this clause, if (1) it punishes as a crime

an act previously committed which was not a crime when done; 2) Makes more burdensome the punishment for a crime after it has been committed; 3) or deprives a defendant of any defense available according to the law at the time the charged act was committed. Peugh v. U.S., 186 LED2D 84, 93(2013)

12.) Jackson Demonstrated that his sentence was erroneously based upon the 2001 Guideline Manual [Appendix-C, @ C.2, 9-61]. (under this guideline table, the offense level sprouts to Level 43, Life.). Previous to Jackson's sentencing on the same day, was the sentencing of his co defendant, Newell, [Appendix-d, underlined] who was sentenced to 30-years under the 1987 guidelines, edition; and co-defendant, Holt, [Appendix-e, as indicated] who was sentenced to 18-years under the 1987 Guidelines edition. [under the 1987 guideline table, the offense level sprouts to level 38, under which Jackson would have received 20-30 years;

13.) The body of the claims and exhibits, to support the "guideline infraction" was clear and obvious both for the District and Appellate Courts to see that the 2001 guidelines worked substantially detrimental to Jackson's due process rights. Haines v. Kerner, 404 US 517, 520 (1973), and protections of the Ex Post Facto Clause. Thus, considering the result of using the 2001 guideline Edition warranted a mandatory life sentence over the appropriate 1987 Guideline edition, mandatory 30-years, the Fourth Circuit ignored their own instructive Precedent in Lewis, supra, as well as this court's precedent in Peugh, supra, holding this instant case Circumstance, plain error by the District

Court's use of the 2001 Guideline Edition, Hours after his use of the 1987 Guideline Edition on his Co-Defendants. Thus a Known Constitutional Violation of Due Process and EX post facto clauses.

(K) DRUG QUANTITY ENHANCEMENTS:

14.) Incorporating the aforementioned as if fully set out herein, Brown v. United States, 531 US 1136 (2002), from the fourth circuit, (US v. Brown, 2001 CA4, NO. 99-4943) The Supreme Court ruled in favor of Brown that (1) Drug quantity could not be found by a Judge, and must be facts found by a Jury; and (2) that an Indictment that fails to charge as an element, the Drug Quantity, deprives the Court of Jurisdiction and otherwise Violates Petitioners Substantial Rights. Citing Appendix V. New Jersey 530 US. 466 (2000). Established by Jackson, (Appendix-f) Jackson's Indictment does not List-as the required element-the drug quantity, yet the Sentencing Court utilized USSC § _____ to enhance sentence on drug quantity by 4 levels, and by thus, cross referenced 21 USC § 848 (e)(1)(A) with 21:848 which required a drug amount, not alleged in the indictment to reach the 2001 Guideline Table Edition of level 43. [Appendix-C.2, @64], thus, Substantially increasing Jackson's sentence Without Jurisdiction to do so, and Violating Jackson's Substantial due process Procedural, Notice, and liberty guarantees, as Brown, prohibits the crossreferencing in this manner. Supra. See also, Peugh, supra, prohibiting the government from so enhancing the measure of punishment formula by altering the substantive formula to erroneously calculate the applicable Sentencing range. Peugh, Id., 186 LED2D 84, 104

@ 9-2, Supra, as done in this case, thus violating the Ex post Facto Clause purpose, designed to serve fundamental justice. Peugh, Ibid. and depriving Jackson of fair notice and warning. Peugh, Id @ 111. 6th. Amend. U.S. Const.

15.) The Fourth Circuit's denial of Certificate of appealability -again, circumvents this Supreme Court's authority in Brown, and ignores their own precedent set in Brown, Supra; thus, the Fourth Circuit's denial of COA is in error, and the District Court drug quantity use is plain error. Brown, Supra. Peugh, supra.

(D.) EIGHTH AMENDMENT VIOLATION

16.) The District Court erred in not finding Jackson subject to harsh, cruel and unusual punishment, by its use of unindicted drug quantity, and by use of the 2001 Sentencing Guideline Edition, 10-

17.) The Supreme Court in Lookyer v. Andrade, 135 L.Ed.2d 114 (2003) deemed to prohibit unconstitutional, grossly disproportionate sentences. See also, U.S. v. Slatten, (2017, D.C. No. 15-3078). (Same). To prevail on an Eighth Amendment claim, "the...unreasonable application clause requires the [state] court decision to be more than incorrect or erroneous. Lookyer, Supra, Id., 538 U.S. 63, 75 (2003). In Slatten, and Lookyer, proportionality of the sentence's issued for the same crime is an issue of concern under the Eighth Amendment.

18.) Specifically, Jackson was the youngest of his co-defendants by at least eight years (@ 20), all of whom, were sentenced under the appropriate 1987 Guidelines. To use the wrong Guideline manual, is a plain error rather than harmless.

Peugh, supra. However, for the court to deliberately utilize the wrong Guidelines [2001, ed] shortly after it utilized the correct Guideline [1987, ed.] on the same day, is more severe than erroneous at any level, and specifically, an Abuse of Discretionary power. Appendi, supra, Violating Jacksons Due process guarantees, and the Ex Post facto clause of the U.S. Constitution. Peugh, supra, and an earmark in preponderant to inflict harsher punishment upon Jackson, than his elder co-defendants.

19.) The Courts obligation pursuant to 18 USC § 3553 (a), in as to the need to avoid sentencing disparities between the defendants convicted of similar (same ad hoc) conduct § 3553(a)(6), and the Policy statements of the Sentencing Commission, § 3553(a)(5) was ignored deliberately - when it chose to ignore the USSC § 1B1.1(b)(1) & (2) authority to use the 1987 Guidelines, thus, beyond discretionary measures, infringing Jacksons Constitutional Rights, supra, Lookyer, supra.

(E) INEFFECTIVE ASSISTANCE OF COUNSEL

20.) Incorporating the Aforementioned paragraphs as if fully set out herein, Jackson established that his counsels failure to protect these vital liberty interests, constitutes Counsels abandonment of the adversarial process, as Counsel was aware of the 1B1.1(b)(1) & (2); and 18:3553 Guide line usage and disparity prohibitions, considering Counsel was a licensed practicing Attorney, learned in the field and Science of Law, and the rules governing these laws; Thus

21.) Petitioners sentence was the product of a Sixth Amendment Violation by virtue of Ineffective Counsel Abandoning the ex post facto clause defense to

improper use of the guideline, thus abandoning petitioners Due process guarantees, and forfeiting Petitioners rights to challenge the improper use of the Guideline, *Id.* The Supreme Court declared in U.S. v. Cronix, 466 US 648, 659 (1984) that prejudice is presumed where "counsel entirely fails to subject the prosecutions case to a meaningful adversarial testing," and in Strickland v. Washington, 466 US 668, 698 (1984) the the test is obvious that the ex post facto clause constitutionally demanded the use of the 1987 guidelines instead of 2001 version thus (1) changing the result of the sentencing (2) counsels failure to defend thus, by ex post facto, prejudices petitioner with Excessive punishment, in violation of Due process guarantees which (3) was the only defense well known in that time frame, of 2001. Ineffective counsel cannot be waived in this light, and correction is necessary to cure a manifest injustice of harsh punishment. Strickland, Cronix, et al, all supra

CONCLUSION - COA.

In accordance with the authorities cited herein, as to, improper use of the guide lines; cruel and unusual punishment /disparity; use of drug quantity without Jurisdiction; and ineffective assistance of Counsel, *supra*, The Justices of this Court and the Fourth Circuit, have found Jacksons District Court *afordemonstrated* violations debatable and palpably wrong, infringing the constitutional guarantees and prohibitions, which counsels did not defend in the district court or on appeal. *Slack v. McDaniel, supra.*

RELIEF

Based upon these premises, Mr. Jackson believes this Court should exercise its authority to grant this writ and cause correction hereof.


February 5th 2018.