

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DeJuan Frazier — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit of Appeal Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

De Juan Frazier *DeJuan Frazier*
(Your Name)

FCI Butner II, PO Box 1500
(Address)

Butner, NC 27509
(City, State, Zip Code)

NA
(Phone Number)

QUESTION(S) PRESENTED

1. If the Sentencing Commission did not list the qualifying priors in the enumerated offenses, and the priors do not meet the force clause and only qualified under the Residual Clause in light of the James and Sykes rulings, [should the petitioners priors continue to qualify when their reliance rulings have been also overturned] and Beckles rulings was based upon a "listed crime" found in the residual clause?

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	3-4
STATEMENT OF THE CASE.....	5-6
REASONS FOR GRANTING THE WRIT	7-10
CONCLUSION.....	11

INDEX TO APPENDICES

APPENDIX A - Fourth Circuit of Appeal COA Denial (10/24/17)
APPENDIX B - E.D.N.C Denial Order of 2255 (5/23/2017)
APPENDIX C - Petitioner's 2255 Filings & Response (2016-2017)
APPENDIX D - Correspondence of Appointed Counsel & Petitioner
APPENDIX E - Supporting Opinions of Fourth Circuit
APPENDIX F - NA

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
-------	-------------

Beckles v US , 15-8544 (Sp. Ct. 2017).....	Passim
Descamps v US , 133 S.Ct 2276 (Sp. Ct 2012).....	Passim
Dimaya v Sessions , 15-1498 (Sp. Ct Pending 2018)....	Passim
Esquivel-Quintana v Sessions , 16-54 (Sp. Ct 2017)...	Passim
James v US , 550 US 192 (Sp. Ct 2007 Overturned).....	Passim
Johnson v US , 135 S.Ct 2551 (Sp. Ct 2015).....	Passim
Mathis v US , 136 S.Ct 2243 (Sp. Ct 2016).....	Passim
Sykes v US , 564 US 1 (Sp. Ct. 2011 Overturned).....	Passim
Barlow v US , 15-4114 (4th Cir. of Appeals 2015).....	Passim
Billings v US , 2016 US Dist. Lexis 62318 (WDNC 2916)	Passim

STATUTES AND RULES

U.S.S.G § 4b1.2(a).....	Passim
U.S.S.G § 4b1.1.....	Passim
N.C.G.S § 14-34.2	Passim
N.C.G.S § 20-141.5.....	Passim

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 A to the petition and is

☒ reported at 17-6697 (Frazier v US) 4th 2017, 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 4:16-cv-00034-FL/; 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 Oct 24, 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

AMENDMENT V OF THE US CONSTITUTION (DUE PROCESS OF LAW)

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in 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 compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

CAREER OFFENDER (U.S.S.G § 4b1.2(a) and App. N 1)

(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 an element the use, attempted use, or threatened use of physical force against the person of another, or

(2) is [burglary of a dwelling, arson, or extortion, involves use of explosives, or [otherwise] involves conduct that presents a serious potential risk of physical injury to another

Commentary, Application Notes: For purposes of [this guideline]-

"Crime of violence and controlled substance offense includes" the offenses of aiding and abetting, conspiring, and attempting to commit

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED CONTINUED:

such offenses.

"Crime of violence" [includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling.] Other offenses are included as "crimes of violence" if (A) that offense has as an element the use, attempted use, or threatened use of physical force against the person of another, or (B) the conduct set forth (i.e expressly charged) in the count of which the defendant was convicted involved the use of explosives (including any explosive material or destructive device) or [by its nature, presented a serious potential risk of physical injury to another].

STATEMENT OF THE CASE

On December 10, 2013, the petitioner (Frazier hereafter) plead guilty to : Distribution of 28 grams or more of cocaine base(crack) in violation of 21 USC § 841(a)(1) and (b)(1)(b). Afterwards, the Presentence Report was returned and reflected that the petitioner was determined to be a career offender based upon the following:

N.C.G.S § 14-34.2 - Assault on a Law Enforcement Officer, which no qualifies Post Johnson v US 135 S Ct 2551 (2015) and Billings v US 2016 US District Lexis 62318 WDNC 2016)

N.C.G.S § 20-141.5- Fleeding to Elude, which no longer qualifies Post Johnson overturning James and Sykes.(See App'x E and case of US v Barlow 15-4114 (4th Cir. 2015-16)

At sentencing, on August 8, 2014, the court imposed a sentence of [132 months] based upon the career offender finding. (See App'x B) The petitioner filed a 2255 in light of the Johnson v US ,supra ruling and subsequent 4th Circuit rulings that had found that the priors no longer qualified. The Court assigned counsel under the CJA provision. The petitioner was placed in abeyance pending the outcome of the In Re Hubbard decision of the 4th Cir. of Appeal (15-276) which was Granted. However, instead of proceeding, the Court then placed the petitioner again in abeyance pending the outcome of the Supreme Court decision on Beckles v US, 15-8544, that was later denied. At that time, the petitioner chose to proceed pro se with his issues because this court conceded that the Beckles issue was factual based and did not cover all challenges to the guidelines & career challeges.

On May 23, 2017, the Eastern District Court denied the 2255 in light of the Beckles ruling (See App'x B and App'x D) and also denied a COA. The petitioner filed for a COA in the 4th Circuit of Appeal, which was also denied on Oct. 24, 2017. (See App'x A).

Therefore, the petitioner now files the timely Writ of Certiorari and prays that the Court Grants the Writ and hears the case on the merits to resolve the ongoing conflict that all circuits [are still] trying to figure out "what will qualify in the career offender's residual clause when it is not listed as Beckles was listed?"

REASONS FOR GRANTING THE PETITION

The Beckles ruling was deemed to be factually based and tailored to the prior that was listed, thus leaving the guidelines as not being unconstitutional vague in his situation. In essence, the ruling of Beckles has left numerous courts still in confusion and has caused thousands of pre-mature denials and left numerous people like the petitioner languishing in the prisons.

Since the court has waded this far in the definition of a crime of violence/violent felony by way of the Beckles, Johnson, Descamps, Mathis, and Esquivel-Quaintana rulings, the court is now required to finish the interpretations of what actual should be in the residual clause for those sentenced prior to the Amendment changes on August 1, 2016, when the residual clause was removed from the career offender findings.

In Beckles, the Government and Court agreed that.."in view of the commentary here that [specified the sawed off shotgun], that the residual clause is not vague as to [that particular offense]"(p. oral arg. p. 6 lines 10-21; p 21 lines 9-25; p. 22 lines 1-7; p. 23 lines 1-3; p. 42 lines 1-3 and p. 45 lines 7-10). This ruling is correct but does little to resolve the remaining situations were the prior was not listed as Fraziers Eluding offense and Assault on a officer offense.

In Beckles, the court and government also agreed that the US Sentencing Commission originally defined "crime of violence by [borrowing] the Section § 16(b) definition of crime of violence". This is also before the court as being unconstitutionally vague in the Dimaya v

Sessions case .(15-1498, see Jan. 17,2017 oral arg. p. 20 lines 6-25 and also rehearing Oct. 2, 2017 p. 35 lines 23-25 , p. 36 lines 1-6 and p. 22 lines 3-25)

The issue for this court to resolve is...: since the Descamps, Mathis,Johnson, Beckles, and now Esquivel and Dimaya arguments have taken place and the governments concessions along with the rulings, should [a] petitioner,such as Frazier,continue to languish in the federal prisons when their crimes no longer qualify in wake of the James and Sykes rulings being overturned.

By the Court looking at the district Court's denial (App'x B) , it will be able to see that , the "only reason that the petitioner was denied was not because the priors no longer qualifying, but instead because he was placed under the Beckles abeyance ruling. (See p. 3 of Court Order parag 1). The district courts ruling did not consider James and Sykes also being overturned. The district court did not address the overturned cases that were relied on, it only relied on the Beckles ruling, which was fact specific and when the crime was listed not when it was not listed as Frazier's case is and thousands others. Therefore, leaving it to this court to now Grant the Writ and Vacate the Orders of the lower courts and Remand for the hearing on the merits of those whose crimes are not listed, or for this Court to Grant the Oral Arguments and to appoint counselors to argue the herein issue for those thousands like Frazier whose crimes are not listed as Beckles was.

In the Dimaya rehearing, the justices asked the government.."how is anyone suppose to determine what a ordinary case is?" (see Dimaya p. 22 lines 16-25). This [same/similiar question] should also be answered for the career offender definition, seeing that this Court has removed the ACCA's residual clause that was determined to be identical to the 4b1.1 and 4b1.2 residual clause. This court was abundantly clear that if it was listed it may [possibly qualify]. But then came Mathis, which has been applied to all statues and guideline definitions. In the Mathis ruling, the court found that the overly broad statues only qualified if the statue was divisible. Well, in this case, the courts after Beckles, Johnson.. and Mathis also should be required to revisit the prior decisions, especially since no one knows what a ordinary case is and now the James and Sykes have also been overturned so therefore, the courts are back to the arbitrary guessing applications.

To prove this point, the Court recently took up the Esquivel-Quintana v Sessions 16-54 case and ruled that the least acts of the California statue did not, qualified and then reversed. In doing so, this court held that .."because the statue, read in context, unambiguously forecloses the Boards interpretation , neither the rule of lenity nor the Chevron deference applies . In making this determination, the court applied the Johnson I standards (559 US 133,137 (2010) But more importantly, this crime was also listed like Beckles, but this time it didn't qualify and the court reversed.

The petitioner's case is not fact specific and the crimes used are not listed. Therefore, in the interest of justice to both the thousands of defendants and the courts alike, it would behoove the court either hear this case and provide further guidance on "how to determine what a ordinary case is or how to determine what will now qualify as a crime of violence for those sentenced prior to Aug. 1, 2016 ,seeing that those who are sentenced today are not suffering from these arbitrary actions because all the crimes are now listed".

Therefore, the petitioner prays that the court Grants the Writ of Certiorari and provides the appropriate relief and orders that the oral arguments take place to resolve the ongoing conflicts and misunderstandings. (See Justice Ginsburg concurring opinion of Beckles stating..Beckles ,therefore cannot and indeed does not claim that 4b1.2(a) was vague [as applied to him] and because [his conduct] was clearly proscribed,he also cannot complain of the vagueness of the guideline [as applied to the conduct of others]...and I would accordingly defer any more encompassing ruling until a [case we have agreed to take up requires one]. The petitioner believes that this is the case that should be able to resolve the remaining part of what to do when the crimes are not listed.

Therefore, the petitioner prays that the Court Grants the Writ.

CONCLUSION

The petition for a writ of certiorari should be granted.

DeJuan Frazier
Respectfully submitted,

DeJuan Frazier, 57292-056

Date: January 9, 2018