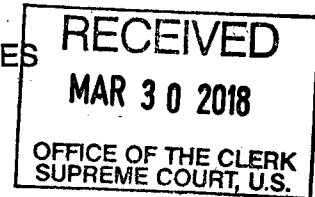


No. _____

IN THE
SUPREME COURT OF THE UNITED STATES



Andrea Joy James — PETITIONER
(Your Name)

vs.

US — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Courts of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Andrea Joy James
(Your Name)

FSL Danbury
(Address)

33 1/2 Pembroke Station
(City, State, Zip Code)

Danbury, CT 06811
(Phone Number)

QUESTION(S) PRESENTED

① Whether Petitioners Due Process rights under the U.S. Constitution fifth Amendment to a fair hearing to grant relief by the Holloway Doctrine was violated by the U.S Court of Appeals for the fourth circuit?

② were the petitioners fourth amendment rights violated by malicious prosecution by the prosecution denying out of hand the facts set forth in the Holloway Doctrine?

③ was the petitioners fifth amendment right that all men should be treated equal violated when she receive a sentence of 324 months a clear case of sentence disparity in violation of 3553a factors and fair sentencing act?

④ were the Petitioners fifth amendment rights to due process violated by the government charging and conviction of her by a calculated "ghost weight" of 80.9 kilos when the Actual Amount in her possession was 550 grams?

TABLE OF AUTHORITIES CITED

CASES

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Alleyne vs United States 131 S.C.T. 186	Pg 7
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STATUTES AND RULES

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USSC 3553(a)	Pg 9, 10, 12
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OTHER

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 _____ 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 December 28, 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

- ① The U.S. Constitution of the Fifth Amendment
- ② The U.S. Constitution of the Fourteenth Amendment
- ③

STATEMENT OF THE CASE

Andrea Jay James was convicted on July 15, 1999 for Conspiracy to Distribute a controlled substance and Controlled substance sell, distribute or Dispense. On December 21, 2017 Petitioner filed a rule 60(b) motion that was ~~den~~ dismissed on December 28, 2017. Petitioner subsequently filed an appeal on that decision which was dismissed December 28, 2017.

REASONS FOR Granting The Petition

Issue 1. Violation of Defendant's Fifth Amendment Rights to Due Process of a Fair hearing, as to the relief granted by the Holloway Doctrine.

Supporting Facts and Argument.

In the district court for the Eastern District of North Carolina, Western Division's Order, the court denied defendant's petition for relief to reduce her current sentence of 330 months to 220 months. The government asserts that defendant's filing under a rule 60(b) motion was misclassified, and reclassified the filing as a second or successive:§12255. The defendant filed an answer in opposition to this re-classification and continues to assert that the filing meets the enumerated circumstances of a Rule 60(b) motion by challenging a defect in the integrity of the federal habeas proceedings in that she is filing under Rule 60(b)(6), "any other reason that justifies relief." Additionally, a defect in the federal habeas proceeding occurred by failing to review the substantive reasonableness of her sentence and sentence disparity.

No matter the final classification of the defendant Andrea Joy James filing, we seek herein a certificate of appealability under the Constitutional denial of her 5th Amendment rights. to due process.

Defendant Andrea Joy James filed for a reduction of sentence under a Rule 60(b) motion pursuant to the jurisdictional findings of the Honorable Judge Gleeson, of the Eastern District of New York, himself a former Federal prosecutor, in the case of United States v. Holloway, 68 F. Supp. 3d 310 (E.D.N.Y 2014).1. The order and finding of the court in the Holloway doctrine although, not binding or precedential is an avenue of relief legally permissible to Ms. James as long as the US Attorney's office is in agreement to such relief. In the case of Ms. James the US Attorney "flatly stated it does not agree the relief provided in Holloway."

Ms. James is more deserving of the relief granted to Holloway than Mr. Holloway himself. As opposed to Mr. Holloway:

- 1) Ms. James was not convicted of a crime of violence, Mr. Holloway was convicted of not one, but three car jackings;
- 2) Ms. James has no criminal history, Mr. Holloway has an extensive and violent criminal history;
- 3) Ms. James, after TWENTY YEARS of incarceration has incurred ZERO disciplinary infractions, an almost miraculous feat, Mr. Holloway incurred several (5) disciplinary infractions;
- 4) Ms. James' post conviction conduct has been extraordinarily progressive, positive and exemplary, so much so in fact that a staff member submitted a letter on her behalf in support of

post conviction actions. See Alleyne v. United States, 133 S. Ct, 186 LED2d 314. Pursuant to Alleyne, District courts are now allowed to consider post-conviction factors and accomplishments in determining a sentence on remand. In the words of the Supreme Court justices in Alleyne Court, Held at 14., "Judges may exercise sentencing discretion through an inquiry board in scope, largely unlimited either as to the kind of information they may consider, or the source from which it came. In Alleyne court, Justice Kennedy gave a clear example. He stated, "it would violate due process to be able to increase a defendant's sentence if he did something wrong in prison without also being able to decrease a defendant's sentence for accomplishments after sentencing. He stated, "justice is not a one-way ratchet, and what can go up must also be able to come down."

Issue 2. Violation of defendant's Fourth Amendment Right.

Supporting Facts and Argument.

In denying "out of hand" without apparent consideration of the facts set forth in the Holloway doctrine the defendant's Fourth Amendment rights were violated by malicious prosecution.

Some court's require a showing of malice as a fifth element. The fourth circuit has reflected malice as an element to a fourth Amendment "malicious prosecution claim." see Brooks v. Cit of Winston-Salem 85 F.3d 178, 184 N.5 (4th Cir. 1996).

her release.

The defendant Andrea Joy James by filing relief under the Holloway doctrine was asserting the fact that the Holloway doctrine recognized that district courts have the discretion, inherent in our American system of justice, to subsequently reduce a defendants sentence in the interest of fairness, "even after all appeals and collateral attacks have been exhausted and there is neither a claim of innocence nor any defect in the conviction or sentence," when it has clearly revealed to be disproportionately severe. As herein in Ms. James' case if she were sentenced today her guideline range would be 235-293 months. The maximum of the new guideline range is 37 months less than the sentence imposed on Ms. James, who, we note was not sentenced to the maximum of her guideline range, rather was sentence to a "mid level" guideline sentence at the time.

The Prosecutor's out of hand denial of agreeing to give the district court the authority to consider defendant's relief, was not supported by any meritorious facts or reasoning. It is a violation of the defendant's Fifth amendment right to due process. Resulting in the finding of the district court that it was not a "posture" open to the court to exercise its discretion to consider the factual, legal and judicious reasoning as set forth in the Holloway doctrine.

Further violation of the defendant's Fifth Amendment Right to Due process occurred by denial of a fair hearing as to her

Issue 3. Violation of Defendant's First Amendment Right that all men should be treated equal.

Defendant Andrea Joy James' sentence of 324 months is a clear case of sentence disparity in violation of 3553a factors, the Fair Sentencing Act and additionally as set forth below.

Supporting Facts and Argument.

According USSG 3553(a) in imposition of sentencing, the court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to imposed shall consider - (1) the nature and circumstances of the offense and the history and characteristics of the defendant - Ms. James had no prior criminal history, and had suffered severe trauma diminishing her capacity to make proper and rational decisions in the furthering of her ability to care for herself and her daughter.

(2) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense - in the revised sentencing guidelines Ms. James' offense level of 38, Criminal history category I the range has been amended from 292-365 months to 235-293 months. In vacating and resentencing Ms. James to a mid range sentence of 264 months, (as done in initial sentencing), the court remains in compliance with the aforementioned consideration.

Further violation of the defendant's Constitutional Rights of due process and equal treatment was committed by an outrageously disparate sentence between Ms. James, her co-conspirators and other defendants with similar records who have been found guilty of similar conduct.

In addressing the disparity between Ms. James' sentence and those of her co-conspirators the facts expose the truth in that;

Co-conspirator #1, received 48 months, a TWO HUNDRED and EIGHTY TWO MONTHS / 23.5 YEARS sentence disparity.

Co-conspirator #2, received 12 months, a THREE HUNDRED and EIGHTEEN MONTHS / 26.6 YEARS sentence disparity.

Co-conspirator #3, received 120 months, a TWO HUNDRED and TEN MONTHS / 17.6 YEARS sentence disparity.

Historically, and unjustly (in the eyes of numerous courts, judges, attorney's and other judicially interested partys), defendants have been barred from 3553(a) challenges on the basis of co-conspirator sentence disparity, However, in United States v. Rolbes-Alvarez (No.16-1222) (1st Cir. Oct. 18, 2017), the court vacated and remanded for further proceedings on the opinion that the court committed procedural error by not addressing the potentially persuasive forceful disparity argument of Robles-Alvarez's sentence and that of his co-conspirator. The same error has occurred in the

Federal Prison, again (12½ years less than Ms. James' 27½ year sentence).

These cases are just a small sample, but they have clearly proven that Ms. Andrea Joy James' sentence was disproportionately severe when compared with the sentence received by these notorious and violent drug kingpins.

Issue 4. Drug amount calculation in violation of defendant's Fifth Amendment Right to Due Process.

Supporting Facts and Argument:

Defendant Andrea Joy James was arrested in possession of 550 grams of cocaine base, the Government's finding attributing Ms. James with 80.9 Kilograms of cocaine base is based entirely on the statements of co-conspirators. These "attributed" 80.9 Kilograms of cocaine base were the basis for the Government's calculation using the USSG Drug Quantity Table.

It has been established post sentencing of Ms. James that the District Courts commit reversible error when it did not consider the 100:1 ratio for crack cocaine in Sentencing Guidelines in sentencing defendant for possession with intent to distribute crack in violation of 21 USCS § 841; district courts have authority to consider inequity of 100:1 crack-to-powder cocaine sentencing differential arguments, and sentences imposed absent recognition of that authority are

instant case of Andrea Joy James.

To address the well heeled consideration to be met pursuant to 3553(a) of, "other defendants with similar records who have been found guilty of similar conduct", there are such numberable instances of such disparity that it would be impossible to list them all; however, we set forth the most notable/notorious of them here:

1) The Arellano-Felix Drug Organization ("AFO"), was once among the world's most violent and powerful multi-national drug trafficking organizations. The AFO was responsible for moving hundreds of TONS of cocaine and marijuana from Mexico and Colombia into the United States. The organization terrorized the southwest United States border with executions, torture beheadings, kidnappings, and bribes to law enforcement. In 2013, Eduardo Arellano-Felix, who acted as the chief financial officer of the organization, was sentenced to only 15 years, (12½ years less than Ms. James' 27½ year sentence).

2) Griselda Blanco, known as the "Cocaine Godmother", and the "Queen of Cocaine", was a drug lord of the Medellin Cartel, and a pioneer in the Miami-based cocaine drug trade and underworld during the 1970's and early 1980's. In addition to moving TONS of cocaine into the United States, Blanco was responsible for ordering several drug-related murders. Noting that Blanco was named suspect in more than 200 - TWO HUNDRED MURDERS! In 1988, she was sentenced to just 15 years in

invalid under Booker; post-Booker sentencing court errs when it believes that it has no discretion to consider crack-to-powder disparity incorporated in Sentencing Guidelines-but not demanded by 21 USCS § 841 (b)-as simply advisory at step three of post-Booker sentencing process (imposing actual sentence after considering 18 USCS § 3553(a) factors), but while district court may not categorically reject 100:1 ratio and substitute its own, once district court has properly calculated defendant's sentence under guideline (using 100:1 ratio adopted by Congress), it may consider possible inequity of that 100:1 ratio in the third step of sentencing. United States v Williams (2006, CA3 Del) 201 Fed Appx 125, as needs to be done in Ms. James' case.

5. Relief Requested.

A granting of a COA - by the findings of Justice Roberts of the Supreme Court of the United States who stated that a COA inquiry was not coextensive with a merits analysis, and that the only question is whether the applicant has shown that, (the violation of defendant's First, Fifth and Fourth Amendment rights as set forth above), jurists of reason could disagree with the district court's resolution of her constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement or proceed further; we submit we have done so fully, powerfully and coherently herein.

Further we request the relief that the defendant's sentence be reduced to a term of 220 months, (15 months below the current maximum of Ms. James' guidelines), on the basis that her original sentence was a mid-range guideline sentence. The reduction should be granted by the further showing that all of her co-conspirators received sentences of 120 months or less, thereby showing that her sentence of 330 months is unarguably and egregiously disproportionate.

Respectfully Submitted,

Andrea Joy James

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Andrea Sames

Date: 3-19-2018