

IN THE SUPREME COURT
OF THE UNITED STATES

CASE NO. _____

MARCUS CHATMAN,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR ISSUANCE OF A
WRIT OF CERTIORARI
TO THE U.S. COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

By:
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QUESTIONS PRESENTED

1. Whether the Eleventh Circuit Court of Appeals erred by abrogating its statutory obligation to review and rule on Petitioner's prior Petition to the Eleventh Circuit for a Certificate of Appealability under 28 U.S.C. Sec. 2255 when it permitted the Clerk of Courts to return his prior Petition unfiled absent any court action.
2. Whether Petitioner's Prior Florida Offenses Do Not Qualify as Serious Drug Offenses for ACCA Enhancement.

LIST OF PARTIES

All parties to this action are included in the caption of the case as stated on the cover page to this Petition.

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Appendix A: Correspondence of the Clerk of Courts for the Eleventh Circuit Court of Appeals dated June 6, 2018, returning Petitioner's Petition for a Certificate of Appealability as Unfiled

Appendix B: Order and Judgment of the U.S. District Court for the Northern District of Florida dated Feb. 8, 2018

Appendix C: Petitioner's unfiled Petition for a Certificate of Appealability to the Eleventh Circuit Court of Appeals

Appendix D: Eleventh Circuit Court of Appeals' Clerk's Entry of Dismissal of Petitioner's appeal dated April 19, 2018

TABLE OF AUTHORITIES

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OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the actions of the Eleventh Circuit Court of Appeals as demonstrated by the communique from the Clerk of Courts dated June 6, 2018, which appears at Appendix A to the instant Petition.

The Order of the U.S. District Court for the Northern District of Florida, dated February 08, 2018 with its accompanying judgment appears at Appendix B to the instant Petition.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amend. I

28 U.S.C. § 2253

28 U.S.C. § 2255

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit abrogated its statutory obligation in deference to its own Clerk of Courts was June 6, 2018, and the letter of the Clerk of Courts in lieu of the Court's ruling and/or opinion appears at Appendix A to this Petition.

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

STATEMENT OF THE CASE

This Petition arises from Petitioner having sought relief in the U.S. District Court for the Northern District of Florida to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Petitioner was, and still is, in federal custody.

On February 8, 2018, the District Court issued an Order accepting the magistrate judge's report and recommendation with regards to Petitioner's § 2255 motion. [D.E. 136.] Contemporaneously, the Court also issued a judgment denying the § 2255 motion and denying to issue a certificate of appealability. [D.E. 137.] Both of these documents appear at Appendix B to this Petition.

On May 25, 2018, Petitioner filed a Petition for a Certificate of Appealability to the Eleventh Circuit Court of Appeals, which the Clerk of Courts stamped on June 4, 2018. A copy of the Petition to the Eleventh Circuit appears at Appendix C to this Petition; this is the copy that was returned by the Clerk of Courts, as discussed infra.

Prior to his filing the Petition for a Certificate of Appealability, the Eleventh Circuit had dismissed Petitioner's pending appeal, as evidenced by the correspondence and order issued by the appellate court and its Clerk of Courts on

April 19, 2018, approximately five (5) weeks before Petitioner even submitted his Petition for a Certificate of Appealability. This correspondence and order appear at Appendix D to this Petition. Given the timeline, it is obvious the dismissal of the appeal in April 2018 could not have been a dismissal of Petitioner's seeking a certificate of appealability in May 2018.

Despite the oncongruent timeline, the Clerk of Courts for the Eleventh Circuit took it upon himself to return Petitioner's Petition for a Certificate of Appealability unfiled, asserting that Petitioner's "case is closed." (See, Appendix A.) By permitting the Clerk of Courts to act without the Court's direction in light of the statutory obligation imposed under § 2255, the Eleventh Circuit and/or its Clerk of Courts impinged on Petitioner's right to redress in the appellate court and access to the courts. This error can only be addressed by the Honorable U.S. Supreme Court to ensure incarcerated prisoner's rights to court -- not clerk -- oversight.

REASONS FOR GRANTING THE PETITION

Petitioner, MARCUS CHATMAN, pro se, files the instant Petition and respectfully requests this Honorable U.S. Supreme Court issue a writ of certiorari to the Eleventh Circuit Court of Appeals to review the error committed below. Petitioner is a layman of the law, unskilled in the law, and requests this Petition be construed liberally. Haines v. Kerner, 404 U.S. 519 (1972).

ISSUE ONE

The Eleventh Circuit Court of Appeals Erred
by Abrogating Its Statutorily Imposed
Obligation to Review Petitioner's Petition for
a Certificate of Appealability to the Clerk of Courts

Under Federal code, in a habeas corpus proceeding or a proceeding under Section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals in the circuit in which the proceeding is held. 28 U.S.C. § 2253(a) (emphasis added). But, unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ... the final order in a proceeding under Section 2255. 28 U.S.C. § 2253(c)(1)(B). In short, the denial of a motion under Section 2255 is appealable so long as a certificate of appealability is issued.

"In determining whether to grant a certificate of ap-

pealability, an appellate court must see if the prisoner" has met certain criteria. Tigner v. Cockrell, 264 F.3d 521 (5th Cir. 2001). Specifically, a prisoner must demonstrate that jurists of reason could disagree with the district court's resolution, or could conclude the issues presented are adequate to deserve encouragement to proceed further. Miller-El v. Cockrel, 537 U.S. 322 (2003). The appellate court should limit its examination to the threshold question and ask only if the district court decision is debatable without full consideration of the factual or legal bases adduced in support of the claims. Buck v. Davis, 580 U.S. ___, 137 L.Ed.2d 1 (2017).

Both "shall" and "must" carry mandatory connotations. See, e.g., Lexecon, Inc. v. Milberg, et al, 523 U.S. 26 (1998) ("[T]he mandatory 'shall' ... normally creates an obligation impervious to judicial discretion"); Webster's New World College Dictionary, Fourth Edition, copyright 2001 ("must": used to express compulsion, obligation, requirement, or necessity).

In the case at bar, Petitioner's motion brought under 28 U.S.C. § 2255 in the district court was denied. Pursuant to § 2253, Petitioner sought a certificate of appealability in the court of appeals for the circuit in which the motion had

been denied, i.e. the Eleventh Circuit. Rather than accept :
Petition for the Certificate of Appealability, which was filed
in May 2018, the Clerk of Courts for the Eleventh Circuit,
acting unilaterally to Petitioner's knowledge, chose not to
accept the Petition for filing. He hand-wrote an appeal
case number on the submitted Petition, an appeal case number
for Petitioner's appeal which had been closed in April 2018.
A Petition for a Certificate of Appealability is a new pro-
ceeding and should have been assigned a new appellate court
case number. Instead, the Clerk of Courts simply rejected
Petitioner's Petition, thereby foreclosing Petitioner's right
to have the dneial reviewed as enumerated in § 2253. It was
not the Clerk of Court's obligation or function to choose to
reject Petitioner's Petition; the Eleventh Circuit was obli-
gated under § 2253 and court precedent to, at the very least,
consider the Petition in light of the threshold question as
delineated by this Court in Buck. By permitting the Clerk of
Courts to act on its behalf and merely reject Petitioner's
Petition without giving it the consideration that was required
under the "shall" and "must" language utilized -- language
which created a mandatory obligation -- the Eleventh Circuit
Court of Appeals wholly improperly abrogated its duty to
conduct the proper analysis in order to ascertain whether

Petitioner's Petition was meritorious and worthy of a certificate of appealability to issue. By so doing, Petitioner's right to access to the courts was violated. See, generally, Harrison v. Springdale Water and Sewer Com., 782 F.2s 1422 (8th Cir. 1986) (access to courts is a fundamental right under the First Amendment); City of New York v. Baretta U.S.A. Corp., 524 F.3d 384 (2d Cir. 2008) (same).

Under these circumstances, it was the Clerk of Court's obligation to accept and file the Petition for a Certificate of Appealability under a new appellate case number and allow the Eleventh Circuit to perform its mandatory duty to review and rule on the Petition. Not doing so infringed Petitioner's First Amendment Rights and a writ of certiorari issued by this Honorable Supreme Court is the only remedy to ensure no other Petitioner's or prisoner's fundamental rights are violated. Petitioner prays that such a writ will issue.

ISSUE TWO

Petitioner's Prior Florida Offenses Do Not Qualify as Serious Drug Offenses for ACCA Enhancement

To the extent this Honorable Court may choose to review the denial of the § 2255 motion by the district court (or ascertain if Petitioner's seeking a certificate of appealability was meritorious), Petitioner asserts that the prior Florida offenses which had been used at sentencing to designate him

under the Armed Career Criminal Act ("ACCA") could not properly qualify as serious drug offenses, which is why Petitioner was seeking relief under § 2255. For sentencing, the district court relied upon Florida offenses set forth in the indictment to establish Petitioner's ACCA predicate offenses, listing the following "prior felony convictions under Florida Statutes § 893.13 for

(1) possession of cocaine with intent to sell or deliver within 1,000 feet of a school, park, or daycare (emphasis added);

(2) possession of cocaine with intent to sell or deliver within 1,000 feet of a church (emphasis added); and,

(3) possession with intent to sell cocaine within 1,000 feet of a place of worship, and possession of cocaine.

[D.E. 134, at p. 2.] The magistrate court further said that, upon direct appeal of his conviction/sentence, the Eleventh Circuit found Petitioner's appeal had been foreclosed because "convictions for possession with intent to sell a controlled substance in violation of § 893.13(1) qualify as 'serious drug offense[s]' under § 924(e)(2)(A)(ii)." [Id., at p. 4/] (emphasis added).

First, as set forth herein and in the indictment, the sentencing court never had before it the exact prior convictions, i.e. the indictment and the court only reference

§ 893.13 generally, while the Eleventh Circuit specifically identified § 893.13(1), which the magistrate (and ultimately the district) judge relied upon. Nowhere had it ever been established that Petitioner's predicate offenses occurred under § 893.13(1). Clearly, the sentencing court never bothered to analyze the statute and Petitioner's prior conviction records to ascertain under which statute his convictions occurred because possession with intent to sell or deliver a controlled substance in Florida can occur under either § 893.13 or § 893.135. § 893.135 also happens to criminalize simple possession which would be broader than the generic 'controlled substance offense' required under the U.S.S. Guidelines. Even moreso, the guidelines generic offense, as delineated by the Eleventh Circuit, makes convictions for intent to sell a controlled substance offense; it does not, nor can it, establish that possession with intent to deliver a controlled substance qualifies because it is not included in the generic language of a controlled substance offense. Given that two of the three predicate offenses are specifically listed as possession "with intent to sell or deliver," Florida's statute is unconstitutionally overbroad with respect to meeting the U.S.S. Guidelines definition of a controlled substance offense. The issue raised could have

been resolved if the sentencing court had reviewed appropriate documentation as outlined by this Court in Shepard v. U.S., 544 U.S. 13 (2005), yet it never did. It was required to conduct proper analyses pursuant to this Court's holdings in Descamps v. U.S., 570 U.S. 254 (2013), and Mathis v. U.S., 136 S.Ct. 2243 (2016), yet it never did. Petitioner has tried to get the courts to understand that the offense of "delivery" does not qualify under § 924(A)(2)(ii) which includes, for controlled substance offenses, the prohibited conduct of manufacture, import, export, distribute, or dispense; "deliver" is not included.

As a result of the sentencing court's complete lack of analysis or review of documentation, it was required to apply the least culpible conduct to Petitioner's prior convictions in § 893.13. Moncrieffe v. Holder, 130 S.Ct. 1678 (2010). Again, it never did.

When Petitioner tried to bring this information back to the district court and the Eleventh Circuit Court of Appeals, his motion to correct his unconstitutional sentence under § 2255 was, initially, denied and, then, disregarded by the appellate court's Clerk of Courts. It is clear when the proper analysis of the prior convictions is performed in light of this Court's precedents, Petitioner should never have been

deemed to qualify under the ACCA based upon the Florida predicate offenses. It was incumbent upon the Eleventh Circuit to review the district court's denial of Petitioner's § 2255 motion and Petition for a certificate of appealability, which may be rectified by this Honorable Court issuing a writ of certiorari and reivew the matter.

CONCLUSION

The First Amendment guarantees a fundamental right of access to the courts which, in this case, was impaired and infringed upon by the Eleventh Circuit Court of Appeals and/or its Clerk of Courts in the action undertaken by simply refusing to accept Petitioner's Petition for a Certificate of Appealability with regards to his § 2255 motion. The appellate courts have a mandatory obligation to review a request for such a certificate rather than abrogating that requirement to its Clerk of Courts who can choose to reject allowing a prisoner to even file such a Petition. In this case, this Honorable Court should issue a writ of certiorari to review the Eleventh Circuit's actions and/or inactions in this matter to ensure Petitioner's and every other prisoner's fundamental constitutional right is respected.

DATED: 5/25/18

Respectfully Submitted,
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