

IN THE
SUPREME COURT OF THE UNITED STATES

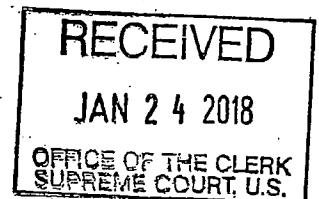
ARCHIE BRADFIELD,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

Petition for a Writ of Certiorari from the
United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI



Archie Bradfield

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QUESTIONS PRESENTED

1) If the district court has subject matter jurisdiction to adjudicate a successive 3582 (c)(2) motion, can it grant a successive motion filed more than 14 days after the court has decided the first motion if the government fails to raise a no-jurisdictional "Claim Processing Rule Defense, under Fed.R.App.P. 4(b) or Fed.R.Cr.P. 35(a)?

2) In relation to question one; Did the United States Court of Appeals for the Seventh Circuit decision conflict with authoritative decisions of the Supreme Court, the Third Circuit, Fourth Circuit, Ninth Circuit, Eleventh Circuit, and its own circuit?

3) Did the Court of Appeals for the Seventh Circuit decision conflict with its own authoritative decisions and its sister circuits decisions when it affirmed on the ground that it believed: defendant was trying to use his 3582 (c)(2) motion to relitigate the weight used to calculate his guideline range at sentencing, because he requested that the court make a new finding of fact on the drug quantity while adjudicating his motion?

4) Amended question in relation to question three: In light of the Supreme Court's decision to grant review to Chavez-Mesa's case, a case that declares a question that is closely parallel and establishes clarity to defendant's summary of his argument; due to defendant's contentions about the district court's quantity finding miscalculation, if its calculation is faulty was a brief explanation necessary from the sentencing Judge explaining why a new finding was not necessary.

LIST OF PARTIES TO PROCEEDING IN UNITED
STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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STATEMENT OF JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered its opinion on October 18, 2017, Affirming the judgment entered by the United States District Court for the Central District of Illinois. See (App. 1A attached to petition)

Jurisdiction of this court is invoked pursuant to
28 U.S.C. § 1254 (1) and Sup. Ct. R. 13.1

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. V:

No person shall be deprived of life, liberty or property without due process of law.

United States V. Tucker, 404 U.S. 443, 92 S. Ct. 589, 30 L. Ed. 2d 592 (1972) and Townsend V. Burk, 334 U.S. 736, 68 S. Ct. 1252, 92 L. Ed. 1690 (1948) mandates: that a defendant have a due process right for his sentence determination to be based on accurate information. The foundation of that right is due process against arbitrary government decisions. Even though a defendant does not have a constitutional right to a particular sentence available within the guidelines, the defendant does have a due process right to a fair "sentencing process."

STATEMENT OF THE CASE

On the 6th day of March 2015, the United States District Court for the Central District of Illinois reduced defendant's sentence by 7 months pursuant to amendment 782. The court based defendant's reduction off the drug quantity (3,024) that was adopted in the psr at defendant's original sentencing hearing October 2, 2009.

Eight months after defendant received a reduction under amendment 782, he noticed that the district court had miscalculated its drug quantity finding during defendant's sentencing hearing in 2009. Thereafter, defendant filed a pro se. 18 U.S.C 3582(c)(2) motion. In that motion he explained to the court that his sentence had been subsequently lowered by the sentencing commission; Which made him eligible for a reduction and gave the court subject matter jurisdiction to reduce his sentence based on the correct calculation of its finding, which was eleven (11) transactions of sixty three (63) grams. Additionally, defendant supported his request with the sentencing transcripts, which undisputably revealed that: (1) The court determined the relevant conduct quantity **due to defendant's objection to the psr quantity (3,024 grams)**; (2) The court made an explicit finding of 11 transactions of 63 grams, then split that in half; (3) The court only denied defendant's objection and adopted the psr because it had believed that the product of 11 multiplied by 63 was 6,900, and half of that was 3,450 grams.

On the 6th day of April 2016, the court denied defendant's successive 3582(c)(2) motion on the basis that it believed defendant was trying to relitigate the drug quantity by requesting the court to make a new quantity finding. The court reached the merits and gave a full detail in its order the factual and legal basis for his ruling, with no objections from the government. See(appx.3A & 3B).

Twenty three days after the court denied defendant's 3582(c)(2) motion he filed a 59(e) motion asking that the court alter or amend its judgement because it was based on an erroneous view of the law and an erroneous finding of fact. The court denied that motion on May 11th, 2016 for the same reasons it denied the prior motion, with no objections again from the government. See (Appx. 4A & 4B attached hereto).

Defendant, timely appealed the district court's denial of his 59(e) motion. The Appellate Court denied defendant's appeal on October 18th, 2017 for reasons that conflict with authoritative decisions of its own circuit and other Appellate Courts. See(Appx. 1A attached hereto). Thereafter, defendant filed a rehearing motion; in that motion defendant demonstrated that the reviewing panel had overlooked his waiver argument that he had brought against the government. But to no avail, the Appellate Court denied that motion as well. See (Appx. 2A attached hereto).

For the sake of preventing the record from being tainted, it should be duly noted as it was to the Appellate Court in defendant's rehearing motion that the appeals court misapp-

rehended and mistated the facts of why the district court denied defendant's second 3582(c)(2) motion, "The judge denied the motion, reasoning that Bradfield was not entitled to a second reduction based on the same amendment". See(Appx. 1A attached hereto). That misunderstanding could cause one to believe that the district court denied the motion because of lack of jurisdiction. However, the district court never expressed or implied a jurisdiction concern in no aspect as a reason for denying defendant's second motion. Please see the district court's order on defendant's in forma pauperis, it clearly reiterates for the third time the district court's factual and legal basis for why it denied defendant's motions(s). See (Appx. 5A & 5B attached hereto).

REASON FOR GRANTING THE WRIT

1) If the district court has subject matter jurisdiction to adjudicate a successive 3582 (c) (2) motion, can it grant a successive motion filed more than 14 days after the court has decided the first motion, if the government fails to raise a non-jurisdictional "claim processing rule defense under Fed. R. APP. P. 4(b) or Fed. R. Cr. P. 35(a)?

2) In relation to question one; Did the United States Court of Appeals for the Seventh Circuit decision conflict with authoritative decisions of the Supreme Court, the Third Circuit, Fourth Circuit, Ninth Circuit, Eleventh Circuit, and its own circuit?

Defendant herein filed a successive 18 U.S.C. 3582 (c)(2) motion in the district court on December 18th 2015. The district court for the Central District of Illinois (Honorable Judge Mihm) entertained defendant's motion with no objections from the government. Additionally, the district court exercised its subject matter jurisdiction and reached the merits of defendant's motion in full detail; Noting in its order the factual and legal sources on which it relied on to deny defendant's motion. See generally *United States V. Cotton*, 535 U.S. 625, 629-31, 122 S.Ct. 1781, 152 L.Ed. 2d 860 (2002) (defining subject matter jurisdiction as the Constitutional or statutory power to adjudicate a matter).

Twenty three after the district court denied defendant's second 3582(c)(2) motion he filed a 59(e) motion (which is the motion the appellate court refers to as defendant's third 3582(c)(2)) demonstrating to the court that it had made a decision based on an error of law and fact when it denied his prior motion. Again, with no objections from the government the district court proceeded to the merits of that motion and reiterated the same factual and legal sources on which it relied on to deny defendant's 3582(c)(2) motion.

Thereafter, defendant filed a timely appeal to the United States Court of Appeals for the Seventh Circuit. Defendant argued in his opening brief that the district court had abused its discretion because it based its ruling on an erroneous view of the law and and erroneous finding of fact. *United States V. Silva*, 140 F.3d 1098, 1101 n.4 (7th cir 1998); also see, *Cooter & Gell V. Hartmarx Corp.*, 496 U.S. 384, 405, 110 L.Ed 2d 359, 110 S.Ct. 2447 (1990). Thereafter, the government responded with a non-jurisdictional claim processing rule defense that was never raised before the district court.

Furthermore, the government knew that they were facing waiver of their defense, because the defense that they were using was not the basis in any aspect of the district court's ruling, and most importantly because it was a non-jurisdictional claim processing rule that they failed to raise in the district court; thats why

in their response they candidly admitted to the appellate court (in hopes that the appellate court would raise their defaulted defense for them) "Although the successive nature of Bradfield's third 3582(c)(2) motion was not the explicit basis for the district court's denial of that motion, the successive nature provides this court with an appropriate ground to affirm the district court's order." Nevertheless, if 3582's Statue was jurisdictional, that may have been a sufficient argument although it had not been raised in the district court. Because as we know, jurisdiction can't be forfeited or waived.

Defendant replied to the government's response and raised a timely waiver argument against the government for failure to raise their argument in the lower court. Furthermore, defendant illustrated to the Appellate Court authoritative decisions from the Supreme Court and at least four other circuits that are in alliance regarding the issue at hand. They all comport that the government cannot raise an argument for the first time on appeal if they never raised it below. To No Avail, the Appeals Court for the Seventh Circuit erred and rendered an erroneous decision that conflicts with authoritative decisions of the Supreme Court, the Ninth Circuit, Third Circuit, Fourth Circuit, Eleventh Circuit, and most importantly their own circuit. Additionally, the Appellate Court affirmed the district court's denial, concluding that Federal Rules of Appellate Procedure's Rule 4(b) dead line precluded the district court from being able to grant defendant's successive motion

because he didn't appeal the district court's first decision.

The problem with the Seventh Circuit's decision is that it clearly undermines and conflicts with the Supreme Court and other circuits jurisprudence regarding non-jurisdiction claim processing rules. Such as Fed.R.Cr.P. 35(a) and Fed.R.APP.P. 4(b), because law of the land holds that: Rule 4(b) does not have a statutory basis; Rule 4(b) was adopted in 1967 and derived from former Federal Rule of Criminal Procedure 37(a)(2). Therefore, since the prescribed deadline to file a notice of appeal in a criminal case promulgated in Rule 4(b) is not a Congressionally created statutory limitation, Court's has found that it is not jurisdictional and is merely a claim processing rule that can be forfeited or waived. See *United States V. Frias*, 521 F. 3d 299, 233 (2d Cir. 2008) (citing *United States V. Garduno*, 506 F. 3d 1288 (10th Cir 2007), *United States V. Martinez*, 496 F. 3d 387, 388 (5th cir 2007)(per curiam), and *United States V. Sadler*, 480 F. 3d 932, 934 (9th cir 2007)). Additionally, *Eberhart V. United States*, 596 U.S. 12, 19 126 S.Ct. 403, 163 L. Ed 2d 14 (2005) is a part of a recent line of cases in which the Supreme Court has distinguished between jurisdictional rules and court created "claim processing rules." See, e.g., *Dolan V. United States*, 130 S.Ct. 2533, 177 L. Ed. 2d 108 (2010) (holding that 90 day deadline for sentencing Court Clerk to set restitution is not jurisdictional); *Bowles V. Russell*, 551 U.S. 205, 127 S.Ct. 2360, 168 L.Ed. 2d 96 (2007) (holding time limit in Federal Rule of Appellate Procedure 4(a) for filing

appeals in civil case is jurisdictional); *Kontrick V. Ryan*, 540 U.S. 443, 124 S. Ct. 906, 157 L. Ed. 2d 867 (2004) (distinguishing rules governing subject-matter jurisdiction from those that are merely claim-processing rules and holding that certain filing deadlines in Bankruptcy Rules are not jurisdictional). In *Eberhart* itself the court held that the 7-day filing deadline applicable to motions for a new trial under Federal Rules of Criminal Procedure 33(a) is a non-jurisdictional claim processing rule and that the government, by failing to raise the issue of untimeliness, forfeits the defense. *Id* at 19.

Moreover, the Appellate Court's decision conflicts with decisions of at least four other Circuits that has dealt with identical or similar situations mentioned above herein. Every circuit including the Seventh Circuit despite its change of heart in the case at Bar has recognized that Fed.R.APP.P. 4(b) and Fed.R.Cr.P. Rule 35(a) are non-jurisdictional claim processing rules that are subject to waiver if the government fails to raise them in the district court as an affirmative defense. In *United States V. Trujillo*, 713 F. 3d at 1008 (9th cir) the Ninth Circuit held that: "We need not address the validity or applicability of non-jurisdictional restrictions of such motions urged by the government, including law of the case or waiver by Trujillo in not appealing the denial of his first motion." "Those non-jurisdictional challenges were waived by the government's failure to object in the district court." "See *Slaven V. AM. Trading Transp. Co.*, 146 F. 3d 1066, 1069 (9th Cir 1998)"; See also *United states V. David Tobias May*, 855 F. 3d 271 (4th Cir. 2017); *United States V. Weatherspoon*, 696 F. 3d at 422;

United States V. Benton, 523 F.3d 424, 428 (4th Cir 2008); ("Failure to raise an argument before the district court typically results in the waiver of that argument on appeal."); United States V. Anderson, 772 F.3d 662, 666-67 (11th Cir. 2014); United States V. Goodwyn, 596 F. 3d 233, 234 (4th Cir. 2010); United States V Beard, 745 F.3d 288, 291-92 (7th Cir. 2014); United States V. Gregory Brown, 559 Fed. Appx. 580 (7th Cir. 2014) Citing Eberhart V. United States, 546 U.S. 12, 19 126 S.Ct. 403, 163 L.Ed. 2d 14 (2005).

According to the law of the land from the mentioned circuits that are on the non-jurisdictional side of the fence for implied prohibitions on successive 3582(c)(2) motions and Fed.R.APP.P. Rule 4(b). The district court did have subject matter jurisdiction to fully adjudicate and grant defendant's motion more than 14 days after its decision on the first motion, if the government waived its right to object to the district court's failure to deny defendant relief on the grounds that he brought an unauthorized successive 3582(c)(2) motion. Additionally, the government had five months to object to anything it felt was outside the bounds of law, Including invoking defendant's appeal waiver (like in Trujillo (9th Cir) and May (4th Cir)) for not appealing the district court's decision on his first motion. Those non-jurisdictional challenges were waived by the governments failure to object in the district court. Moreover, waiver whether on the part of defendant or the government is an affirmative defense and, as such "can itself be waived by not being raised." See, Garlington V. O'Leary, 879 F. 2d 277, 282 (7th Cir 1989).

3) Did the court of Appeal's for the Seventh Circuit decision conflict with its own decision and its sister circuit's decisions when it affirmed on the ground that it believed : defendant was trying to use his 18 USC 3582(c)(2) motion to relitigate the weight used to calculate his guideline range at sentencing because he requested that the court make a new finding of fact on the drug quantity while adjudicating his motion?

This Honorable Court should grant this writ because the course of action that was taken by the lower court's regarding defendant's 3582(c)(2) motion was arbitrary, unreasonable, fundamentally unfair, and it conflicts with the law of the land that has been established by practically every circuit including its own. The seventh circuit erroneously viewed defendant's position of requesting the court to make a new finding on his drug quantity in his 3582(c)(2) motion as though he was trying to relitigate the quantity, and that that was outside the scope of 3582(c)(2).

Defendant's position of requesting the lower court to make a new finding was the same position that the government takes on a daily basis dealing with 3582(c)(2) motions when the sentencing court may have quantified only part of the amount for which a defendant was responsible without making a specific finding as to the rest, because that partial amount supported the maximum base offense level at the time of sentencing. In those type of cases where a sentencing court's quantity finding is ambiguous, incomplete, or like the case at bar, miscal-

culated, it is essential that the district court identify the quantity attributed to the defendant with more precision to compare it against the revised drug quantity threshold under the relevant guidelines amendment. The Supreme Court also indicated that such finding was permissible in Dillon. See 560 U.S. at 828-29 (stating that "facts found by a judge at a 3582(c)(2) proceeding do not serve to increase the prescribed range of punishment").

In the case at bar, defendant presented information in his motion(s) that clearly demonstrated to the district court that it had made an explicit drug quantity finding of eleven (11) transactions of sixty three (63) grams. Furthermore, the record clearly demonstrates that the district only denied defendant's objection to the psr and adopted the psr amount because it erroneously believed that its calculation of eleven (11) grams multiplied by sixty three (63) grams was correct at 6,900 grams. The court then split that amount in half and again erroneously calculated that amount to be 3,450 grams instead of $346\frac{1}{2}$ grams, all of which influenced the court to believe that the psr amount of 3,024 grams was a conservative amount, therefore denying defendant's objection to the quantity (3,024 grams) alleged in the psr. Additionally, it was imperative for defendant to bring that to the court's attention in his motion(s), because in order for a sentence to be properly calculated, the guidelines requires that a base offense level be established, and a defendant's base level depends on the type of drug and the amount attributable to a defendant. See Hill, 683 F.3d 867-

869; also See U.S.S.G. §2D1.1(a)(5)(c) 2015. So technically, a defendant's drug quantity is the factual predicate necessary to determine if the new amended drug quantity threshold and new amended guideline range is applicable to a defendant. Moreover, the Seventh Circuit and other circuits have emphasized that the quantity of drugs attributed to a defendant in a drug case is frequently the single most important determinant of the length of a defendant's sentence under the guidelines. See *United States v. Beler* 20 F.3d at 1432; *Duarte*, 950 F.2d at 1262-63; *United States v. Brothers*, 75 F.3d, 845, 849 (3rd cir. 1996); *United States v. Sepulveda*, 15 f.3d 1161, 1196-97, 1198 (1st Cir. 1993); U.S.S.G. § 2D1.1(a)(3). Notwithstanding, due process concerns when a court is making a ;sentencing determination, the court can not consider information that is inaccurate. See *United Stated v. Coonce*, 961 F.2d 1268 1275 (7th Cir. 1992) (citing, *United States v. Tucker*, 404 U.S. 443, 447, 92 S.Ct. 589, 30 L.Ed 2d 592 (1972)); also see *United States v. Musa*, 946 F.2d 1297, 1306 (7rth Cir. 1991); *United States v. Hankton*, 432 F.3d 779, 790 (7th Cir. 2005). Althought the cases mentioned involves original sentencing proceedings, they enunciate the same principles, with the intention of fundamental fairness and protection of a defendant's substantial rights when determining whether to reduce a sentence or imposing an original sentence, because they both deal with information relevant to making a sentencing determination ("due process right to a fair sentencing process").

Nevertheless, defendant's position was not a relitigation or a do-over attempt as the lower court suggest, because the information in the record undisputably exhibits an explicit drug quantity finding by the sentencing court which was erroneously calculated and resulted in an incorrect guideline sentence at defendant's original sentencing. So, it was crucial for defendant to expose the supported facts, and request that the court make a new finding while adjudicating his 3582 motion in order to prevent the lower court from making the same mistake of infringing on his substantial rights "again", by relying on an erroneous quantity and an erroneous guideline.

Furthermore, defendant's position was supported by authoritative decisions from the Seventh circuit and at least seven other circuits that have dealt with either ambiguous or incomplete drug quantities when adjudicating a 3582(c)(2) motion. Nevertheless, when determining drug quantity in a 3582 proceeding, a miscalculated drug quantity is as vital as an ambiguous or incomplete drug quantity; all three could be detrimental to the proceeding and result in an incorrect sentence under the guidelines if relied on.

Additionally, defendant's position did not cross the narrow line of a relitigation or a do-over as established in Dillon, because his request for the court to make a new finding was based on the exact same evidence that was already credited by the district court. Defendant's request was fully supported by the record, it bore sufficient indicia reliability to support its probable accuracy, and it was consistent with the district

court's original finding of eleven (11) transactions of sixty three (63) grams; just calculated correctly. Moreover, the exact same evidence that's erroneously believed to support a finding of 6,900 grams also (undoubtedly) supports a finding of 693 grams is not a relitigation, or a do-over, or an inconsistent finding from the courts original finding. See *United States v. Hall*, 582 F.3d 816, 818-19 (7th Cir. 2009) (the hall court emphasized the logic).

Additionally, defendant's position should not have been viewed as a relitigation in light of the 7th Circuit and its sister circuits who all recognize and comport that 3582(c)(2)'s eligibility inquiry may require a district court to supplement the original sentencing court's drug quantity findings to "determine the (correct) amended guideline range that would have been applicable" to the defendant in light of a retroactive guidelines amendment. USSG § 1B1.10(b)(1), 2014. The seventh circuit, for example, held that nothing prevents the court from making new findings that are supported by the record and not inconsistent with the findings made in the original sentencing determination. Indeed; new findings may be necessary where, as here, the retroactive amendment to the guidelines altered the relevant drug-quantity thresholds for determining the defendant's base offense level; See *United States v. Hall*, 600 F. 3d 872, 876 (7th Cir. 2010).

Other courts of appeals have supported defendant's position by reaching the same conclusion as the Hall court. See, e.g., *United States v. Peters*, 843 F.3d 572, 577 (4th Cir. 2016)

("District courts may make additional findings on the drug quantities attributable to defendants in § 3582(c)(2) proceedings. Such findings must be supported by the record and not inconsistent with earlier findings") *United States v. Wyche*, 741 F.3d 1284, 1293, 408 U.S. App. D.C. 229 (D.C. Cir. 2014) (if the original sentencing court failed to make a specific drug quantity calculation, the resentencing court may have to make its own quantity finding in order to determine the defendant's guideline range"); *United States v. Rios*, 765 F.3d 133, 138 (2d Cir. 2014) (observing that district courts may make "new findings of fact when ruling on a 3582(c)(2) motion" because "new findings are often necessary where ... retroactive amendments have altered the relevant drug-quantity thresholds for determining a defendant's base offense level"); *United States v. Battle*, 706 F.3d 1313, 1319 (10th Cir. 2013) ("A district court may look to its previous findings, including portions of a psr adopted by the sentencing court, to make supplemental calculations of drug quantity if such calculations are necessary to determine the amended guideline range that would have been applicable in light of a retroactive guideline amendment"); *United States v. Moore*, 706 F.3d 926, 929 98th Cir. 2013) ("Section 1B1.10(b)(1) not only permits, but may often require, the district courts to make findings necessary to resolve §3582(c)(2) motions."); *United States v. Moore*, 582 F.3d 641, 646 (6th Cir. 2009) (holding that, where the original drug quantity determination is not specific

enough for the district court to determine whether a defendant is eligible for a sentence reduction under 3582(c)(2), the court may make new findings of fact that are supported by the record and consistent with the findings made in the original sentencing proceeding. The Ninth circuit also comport with its sister circuits.

Despite the seventh circuit's precedent and its sister circuits authoritative decisions supporting defendant's position, the lower court has turned a blind eye to an essential issue. Defendant's position should not be viewed as a relitigation just because he recapped in his 3582(c)(2) motion(s) the events that transpired at his original sentencing in an attempt to cast doubt on the relied upon quantity that were adopted in the psr. Additionally, in a case closely parallel to the case at bar the seventh circuit established that "there are certainly some circumstances in which ambiguities in the original psr may be sufficient enough that the district court should not rely on it to deny a 3582(c)(2) motion"; Nevertheless, a miscalculated drug quantity finding adopted in the psr fit that bill as well. See *United States v. Hall*, 600 F.3d 872, 876 (7th Cir. 2010). Furthermore, in support of defendant's position the seventh circuit has established in *Hall* and *United States v. Davis* 682 F.3d 596 (7th Cir. 2012) that on a 3582 (c)(2) motion a defendant can call into question information relied on in a psr. The defendant has the burden of doing so by producing evidence that clearly demonstrates that the facts alleged in the psr lacks sufficient indicia of relia-

bility to support its probable accuracy, which is exactly what defendant did. *United States v. Davis* 682 F.3d 596 (7th Cir. 2012); Quoting *United States v. Artley* 489 F.3d 813, 821 (7th Cir. 2007); also see *United States v. Heckel* 570 F.3d 791, 795-96 (7th Cir. 2009); *Salinas* 365 F.3d at 587; *Turner* 604 F.3d at 385.

Moreover, the seventh circuit's precedent supports defendant's position because it also established that, in adjudicating a 3582(c)(2) motion a district court may consider the record as a whole, including the defendant's motion; the government's response, and any addenda to the psr explaining the scope of a drug trafficking conspiracy before reaching a conclusion on the drug quantity attributable to a defendant, *Woods*, 581 F.3d at 539; *Dewayne Hall*, 600 F.3d.

In sum, defendant's position is straight forward and was necessary because his base offense level and relevant conduct drug quantity was affected by amendment 782, therefor, making him eligible for a reduction pursuant to amendment 782, so defendant's position of requesting the court to make a new drug quantity finding was not outside the scope of 3582(c)(2) as the lower court concluded. Furthermore, there is ample evidence on the record to support a new finding, and a new finding would not be inconsistent with the courts original finding. Most importantly, to avoid a misapplication of the guidelines and infringement on defendant's substantial rights, it was incumbent on the district court to address defendant's contentions and to support its conclusion with a sufficient

factual determination, instead of "this issue has been fully resolved at trial and on appeal", then pointing to an act of ineffective assistance by defendant's attorney for failing to correct the judge on his mathematical error. For all the reasons mentioned herein question three, this Honorable court should grant this writ because the lower court's decision clearly conflicts with its own authoritative decision as well as authoritative decisions of other appellate courts. Additionally, a grant of this writ would definitely promote uniformity throughout the lower courts if ever confronted with a situation like the case at bar, where a defendant has good reason and is permitted by law to request that the court make a new finding in adjudicating his 18 U.S.C. 3582(c)(2) motion; instead on the government for once.

Enclosing, is what's good for the goose good for the gander? Practically that's what this situation bails down to. Additionally, was the law established by the Hall court and its sister circuits ("nothing prevents ad district court from making new findings of fact when ruling on a 3582(c)(2)motion") only established for the government's benefit to demonstrate a new drug quantity finding in order to prevent a defendant from being eligible for reduction? Meaning that, if the government frequently requests that the court make new findings on drug quantity in 3582(c)(2) proceedings, and their justification that their position is not a relitigation is that the same exact evidence that supports the original quantity finding also supports the new requested finding is not a relitigation

or an inconsistent request, the same rules should apply for a defendant when the shoe is on the other foot under the exact same circumstances as the government. If not, then it would be safe to say with respect to the Hall court and its sister circuits, that their 3582(c)(2) jurisprudence is arbitrary, fundamentally unfair, and unreasonable to a defendant who takes the same position as the government is permitted, in the exact same manner. What is good for the goose should be good for the gander; the law should apply equally to a defendant as it do to the government.

Moreover, it should be disturbing for a United States Judge to know that it made a mathematical error and relied on it during the most important time of a defendant's sentencing process, one in which determined the severity of a defendant's sentence. One would think in such a situation that a judge would exhibit true judiciary integrity if a vehicle like mentioned herein ever became available permitting him to right his wrong without stepping outside the bounds of law, for the sake of a defendant's right to due process and for the best interest of justice..

For all the reasons mentioned above herein regarding questions one, two, and three, this honorable court should exercise its discretionary authority and grant this writ for the sake of promoting uniformity throughout the lower courts.

CONCLUSION

The foregoing reasons justify a writ certiorari to review the decision of the Honorable Court of Appeals for the Seventh Circuit.

PROOF OF SERVICE

I, Archie Bradfield, do hereby certify that a true and correct copy of defendant's writ of certiorari were deposited into the institution mail-box (F.C.I. El Reno) for mailing via U.S.P.S. with first class postage prepaid to the address below on this 16th day of January, 2018.

I, Archie Bradfield, hereby certify under penalty of perjury that the foregoing is true, correct, and complete pursuant to Title 28 U.S.C. Sec. 1746. Executed on January 16th, 2018. Archie Bradfield

The original was mailed to the clerk of the court for the United States Supreme Court at: 1 First Street, N.E. Washington, D.C. 20543.

(1) copy was mailed to the United States Solicitor General at: Rm 5614, Department of Justice, 950 Pennsylvania Ave. NW Washington, D.C. 20530-001.

(1) copy was mailed to AUSA, Gregory R. Walters at: 211 Fulton St., Suite 400, Peoria, Illinois 61602.