

IN THE  
SUPREME COURT OF THE UNITED STATES

ARCHIE BRADFELD,  
Petitioner,

NO. 17-9569

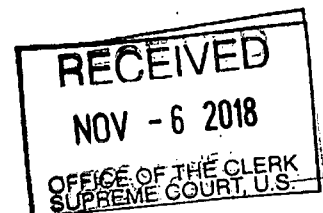
v.

UNITED STATES OF AMERICA,  
Respondent.

MOTION FOR WRIT OF CERTIORARI REHEARING

Archie Bradfield

Archie Bradfield  
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The defendant humbly moves before this Honorable Court pro se in the above captioned matter requesting that this court liberally construe his merits and accept its factual allegations as true while drawing all reasonable inferences in his favor. Additionally, the case at bar has unique facts and circumstances that are fully supported by the record that one might find disturbing if they were to ever inquire them. For example, the defendant asserted an error that occurred at his original sentencing which affected his USSG Range, and the district court's 3582(c)(2) analysis. Respectively, it should be disturbing that the District Court, the Government, and the Appellate Court never denied or disputed the defendant's error contentions. Instead of the district court acknowledging the facts and circumstances that are embedded in the record, it considered the error to be the defendant's attorney fault for not objecting to his erroneous calculation; which seriously undermines Rule 52(b) in the context of an error related to the Guidelines. It also, undermines the Sentencing Commissions intent. Davila, 569 U.S. 133 S.ct. 2139, 2149, 186 L. Ed. 2d 139, 151 ("our essential point is that particular facts and circumstances matter").

a). In *Rosales-Mireles V. United States*, 138 S.ct. 1897, 201 L. Ed. 2d 376 (2018), this court establishes that, "Federal Rule of Criminal Procedure 52(b) provides that a plain error that affects substantial rights may be considered even though it was not brought to the district court's attention." In the case at bar, the record clearly exhibits an error that is clear and obvious which affected the defendant's substantial rights.

b). The United States Supreme Court has power to notice plain or fundamental error "appearing on the record" although no question in that respect is raised or properly raised by parties. *Silber V. United States*, 370 U.S. 717, 82 S.ct. 1287, 8 L. Ed 2d 798 (U.S. 1962).

c). The Appellate Court abused its discretion by failing to correct the defendant's asserted error which is clear and obvious and fully supported by the record. Additionally, the words "the court" in Rule 52(b) providing that plain or prejudicial error may be noticed by the court although not brought to its attention clearly refer to power of court noticing error and such power is not limited to Appellate Courts. *Herzog V. United States* (1955, CA 9 Cal).

In the above captioned case at bar, it is very essential that the defendant bring to this courts attention the merits contained herein support of a rehearing, because the merits illustrates circumstances that are substantial and have a controlling effect as to why this Honorable Court should grant the defendant a rehearing.

First, the Appellate Court for the Seventh Circuit should have exercised its discretion under Rule 52(b) to address and correct the defendant's alleged erroneous drug quantity, because his drug quantity has a direct substantial controlling effect on his sentencing Guideline Range. Second, the defendant's relevant conduct drug quantity is the main predicate necessary in order to determine if the new amended Guideline Range pursuant to Amendment 782 is applicable to the defendant, because his sentencing Judge at his original sentencing used a sentencing scheme to identify his USSG Range that consisted of the defendant's relevant conduct drug quantity, which set his Base Offense Level. Then the Judge combined the defendant's designated Base Offense Level and his Criminal History category to identify his USSG Range. So, in reality the drug quantity and the defendant's USSG Range are two in the same. Moreover, due to the sentencing scheme that was applied to the case at bar, the defendant's miscalculated drug quantity should never be considered harmless, because it has a direct controlling effect on his sentencing Guideline range. Nevertheless, the defendant's drug quantity will always have an affect on a court's eligibility determination during step one of a 3582(c)(2) analysis. Furthermore, the defendant's argument of an erroneous drug quantity calculation is an argument that pertains to an aspect

of his original sentencing which is affected by the new amendment to the Guidelines; therefore, his position is not outside the scope of 3582(c)(2), pursuant to Amendment 782. If the error that the defendant asserts continues to go uncorrected it will seriously affect the fairness, integrity, and public reputation of judicial proceedings. Furthermore, this court stipulated in **Rosales-Mireles V. United States** (2018) that, "an error [138 S.ct. 1902] resulting in a higher range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence greater than necessary to fulfill the purpose of incarceration", 18 U.S.C. §3553(a). See **Molina-Martinez**, 578 U.S., at, 136 S.ct. 1338, 194 L. Ed. 2d 444.

Third, although no question of plain error was directly raised to this court for review, the core of the defendant's argument in his writ of certiorari and his appellate court brief clearly illustrate plain error committed by the district court. The district court committed a clear and obvious error by failing to calculate the defendant's new Amended Guideline Range during step one of its 3582(c)(2) eligibility analysis. Moreover, if this error continues to go uncorrected the district court will never be able to successfully complete a 3582(c)(2) analysis, and the defendant will never be able to prevail to his benefit on any Guideline Amendments the Sentencing Commission may make. See **Gall V. United States**, 552 U.S. 38, 51, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007) (identifying as procedural error the failure to calculate, [\*9] or the miscalculation of, the Guidelines range at initial sentencing).

This court has established that, "the risk of necessary deprivation of liberty particularly undermines the fairness, integrity, or

public reputation of judicial proceedings (Rosales-Mireles 201, L. Ed. 2d 381) in the context of a plain Guidelines error because Guidelines miscalculations ultimately result from judicial error, as the district court is charged if the first instance with ensuring the Guideline Range it considers is correct.

Nevertheless, to a prisoner, this prospect of additional "time behind bars is not some theoretical of mathematical concept." Barber V. Thomas, 560 U.S. 474, 504, 130 S. Ct. 2499, 177 L. Ed. 2d (2010). "Any amount of actual jail time" is significant, Glover V. United States, 531 U.S. 198, 203, 121 S. Ct. 696, 148 L. Ed. 2d 604 (2001), and "has exceptionally serve consequences for the incarcerated individual and for society which bears the direct and indirect cost of incarceration," United States V. Jenkins, 854 F. 3d 181, 192 (CA2 2017). The possibility of additional time thus warrants serious consideration in a determination whether to exercise discretion under Rule 52(b). It is crucial in maintaining public perception of fairness and integrity in the justice system that courts exhibit regard for fundamental rights and respect for prisoners "as people."

Moreover, ensuring accuracy of "Guideline Determinations" also serves the purpose of "providing certainty and fairness in sentencing on a greater scale." 28 U.S.C. §994(F); See also §991(b)(1)(B); Booker, 543 U.S., at 264, 125 S. ct. 738, 160 L. Ed. 2d 621. The Guidelines assist federal courts across the country in achieving uniformity and proportionality in sentencing. See Rita, 551 U.S., at 349, 127 S. ct. 2456, 168 L. Ed. 2d 203. To realize those goals it is important that sentencing proceedings actually reflect the nature of the offense and criminal history of the defendant, because the

United States Sentencing Commission relies on data developed during sentencing proceedings, including information in the Presentence Investigation Report to determine whether revisions to the Guidelines are necessary. When sentences based on incorrect Guidelines Ranges go uncorrected, the Commission's ability to make appropriate amendments is undermined.

Moreover, Congress intent, was to make the Sentencing Commission's policy statements set forth in 1B1.10 the applicable law for determining whether a district court has the authority to look to its previous findings to make supplemental calculations of drug quantity if such calculations are necessary to determine the correct Amended Guideline Range that would have been applicable in light of a retroactive Guideline Amendment. Additionally, Section 1B1.10 not only permits, but may often require the district courts to make findings necessary to resolve §3582(c)(2) motions when the original quantity is incomplete, ambiguous, or miscalculated like herein.

The public legitimacy of our justice system relies on procedures that are "neutral, accurate, consistent, trustworthy, and fair," and that "provide opportunities for error correction," **Rosales-Mireles v. United States**, 138 S.Ct. 1897; 201 L. Ed. 2d 276 (2018). In **Rosales-Mireles's** case, this court also stipulated that, "in considering claims like **Rosales-Mireles**" then "what reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own device that threaten to require individuals to linger longer in federal prison than the law demands?" **United States v. Sabillon-Umana**, 772 F. 2d. 1328, 1333-1334 (CA 10 2014)(Gorsuch, J.).

### CONCLUSION

There is a reasonable probability that without correction of the defendant's asserted error(s) he will spend more time in prison than necessary to fulfill the purpose of his incarceration, 18 U.S.C. §3553(a). For the reasons mentioned herein, the defendant pray that this Honorable Court will grant a rehearing on the defendant's writ of certiorari.