

18-8355

No. 18:4239

ORIGINAL

Supreme Court, U.S.  
FILED

FEB 25 2019

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Mario Chester Tabron — PETITIONER  
(Your Name)

vs.

United States of America RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fourth Circuit En banc

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mario Chester Tabron

(Your Name)

P.O. Box 300 Waymart, PA 18472

(Address)

Waymart, PA 18472

(City, State, Zip Code)

(Phone Number)

### QUESTION(S) PRESENTED

1. Did the Fourth Circuit and the Middle district Of North Carolina (Greensboro) err in affirming the USSG 2K2.1(b)(6)(B) 4-Level enhancement without proving generic burglary as an "element" of the offense?

## 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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## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

1. United States v Pierce (CA4,2002) 278 F.3d 282;2002 USAApp. LEXIS 447 No. 00-4701 (2002)
2. Sessions v Dimaya 138 S Ct 1204 (2018)
3. United States v Custis 988 F.2d 1355 (1992)
4. Johnson v United States 135 S Ct 2551 (2015)
5. United States v Lane (CA6,1990) 909 F.2d
6. United States v Moffit (4thCir.2008) 271 Fed.Appx.
7. United States v Foster (3d.Cir.2018) LEXIS 14177
8. United States v Krumwiede (7th.Cir.2009) 599 F.3d
9. United States v Bates 561 F.3d 754 (8thCir.2008)
10. Taylor v United States 110 S Ct 2143 (1990)

### STATUTES AND RULES

1. 18 USC 922(g)(1) & 924(a)(2)
2. USSG 2K2.1(b)(6)(B)
3. N.C.Gen.Stat. 14-54(a)(1)(2017)
4. N.C.Gen.Stat. 14-2.5(2017)
5. N.C.Gen.Stat. 15A-1340.7(2017)
6. N.C.Gen.Stat. 14-51(a)(1)
7. 18 USC 924(e)(2)(B)(ii)
8. USSG 2K2.1(b)(6)
9. Fed.R.App.Pr. 35(a)(1)(2) and (b)(1)(A)

### 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 4th Cir. No. 18-4239 Dec.11,2018; 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☐ is unpublished.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 N/A to the petition and is

☐ reported at N/A; 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 N/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 N/A 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 11, 2018.

☐ 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: January 28, 2019, and a copy of the order denying rehearing appears at Appendix B.

☐ 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 N/A.  
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 Fourth Circuit Court Of Appeals decision dated ~~June~~ December 11, 2018 conflicts with a decision December 11, 2018 conflicts with a decision of the United States Supreme Court and The Fourth Circuit and other Circuits including the 3rd, 7th and 8th.
2. Sessions v Dimaya 138 S Ct 1204 (2018).



## STATEMENT OF THE CASE

The Government presented evidence that Petitioner Mario Chester Tabron drove his car into the yard of a residence and parked it straddled across the walkway only steps from the front door of a woman's house who called 911 and reported that Petitioner Tabron was banging on the door and the caller expressed fear that he would kick in the door and stated to 911, "Oh my God." "He's now gone to the car and getting a gun. When the Officers arrived on the scene, the 911 caller explained that Petitioner Tabron showed up at the residence angry and caused a commotion banging on the door demanding his wallet. Furthermore, when the Officer's arrived on the scene, Tabron was near his car and had a gun on his person. There were no marks or damage to the door. Petitioner Tabron was charged and convicted of Possessing a Firearm In Connection With Another Felony Offense and given a 4-level enhancement for this at his Sentencing when no other felony offense was ever committed. He was charged under N.C. Gen.Stat. 14-54(a)(1)(2017) North Carolina Attempted Breaking and Entering which reads:--Any person who breaks or enters any building with intent to terrorize or injure an occupant of the building is Guilty of a Class H felony. This is also a Class I felony. N.C.Gen.Stat. 14-2.5(2017). The breaking "[element]" of a breaking or entering offense may be actual or constructive. Petitioner Tabron never accomplished the generic element of "breaking or entering" during this Offense.

## REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10 Considerations Governing Review on Certiorari states review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers: (a) A U.S. Court of Appeals has entered a decision in conflict with the decision of another U.S. Court of Appeals on the same important matter; (b) Has decided an important federal question in a way that conflicts with a decision by a state court of last resort.

Petitioner Tabron states that the Fourth Circuit Enbanc decision concurring with the 4th Circuit conflicts with a decision of another court of appeals on the same important matter.

In United States v Foster 2018 US App. LEXIS 14177 (3d.Cir.2018) the Court held---Section 2K2.1(b)(6)(B) provides in relevant part, for an enhancement "[i]f the defendant used or possessed any firearm in connection with another felony offense. A sentencing court can apply the 2K2.1(b)(6)(B) enhancement only if it determines that a defendant "[u]sed or possessed any firearm or ammunition in connection with another felony offense. In United States v Bates 561 F.3d 754 (8thCir.2008) the court held--Section 2K2.1(b)(6) provides--if the defendant used or

possessed any firearm or ammunition in connection with another felony, or possessed or transferred any firearm or ammunition with knowledge, intent or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4-levels. The district court found that Bates firearm possession was connected to another felony offense, Bates possession of cocaine.

The Fourth Circuit never found that Tabron committed another felony offense, only attempted burglary which is not defined in the US Sentencing Guidelines, nor does it meet the generic definition of burglary in Taylor v US (1990) 495 US 575, 109.

**CONCLUSION**

The Fourth Circuit's En banc made an erroneous decision that conflicts with the decision by this Court in Taylor and is a circuit split of other cases cited herein and Certiorari must be granted.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mario C. Tabron

Date: February 25 2019

No. 18:4239

IN THE  
SUPREME COURT OF THE UNITED STATES

Mario Chester Tabron — PETITIONER  
(Your Name)

VS.

United States — RESPONDENT(S)

**PROOF OF SERVICE**

I, Mario Chester Tabron, do swear or declare that on this date, February 25, 2019, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Matthew G.T. Martin, United States Attorney  
101 S. Edgeworth St., 4th Floor  
Greensboro, NC 27401

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 25, 2019

Mario Tabron  
(Signature)