

25-5857

IN THE SUPREME COURT

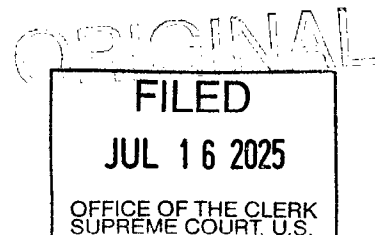
Of The UNITED STATES OF AMERICA

RUSSELL K. JACKSON V

VS.

EIGHTH CIRCUIT

of APPEALS



On petition for Writ of Certiorari to the Eighth Circuit Court of Appeals for review, and Southern District Of Iowa for the 8th Circuit.

PETITION FOR WRIT OF CERTIORARI

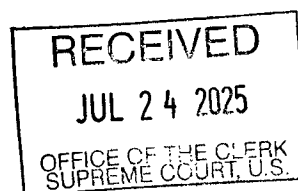
RUSSELL K. JACKSON V

PRO SE PETITIONER

USP - YAZOO CITY

P.O. BOX 5000

YAZOO CITY, MS 39194



QUESTIONS PRESENTED

1. After the First Step Act enactment date of December 21, 2018. Is it true it now takes two or more "serious drug felonies" or two or more prior "serious crime of violence" to enhance a defendant's sentence as a career offender?

2. Did district court and the court of appeals error by overlooking the fact that these prior drug felonies did not count or could not be used for enhancement as I was sentenced after President Trump signed this change into law?

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:

RELATED CASES

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STATUTES

- Section 401 of the First Step Act

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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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 2/5/25.

☐ 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: 4/24/25, 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

- 6th Amendment Ineffective Assistance Of Counsel
- U.S.C. 3553
- Section 401 of the First Step Act
- Plain Error
- Unlawful Career Offender

STATEMENT OF THE CASE

The Constitutional Rights and United States laws violated in this case are very serious issues that lower courts continue to exercise even after major changes to law have occurred. On 2255, the Southern District of Iowa denied the motion on 9/26/24 stating "Jackson claims do not have any arguable merit". However my sentence was imposed in violation of United States laws and my Constitutional Rights were violated. After December 21, 2018 the First Step Act changed the way you sentence a defendant with prior drug felonies. After the enactment of these amendments it now takes a "serious drug offense" to enhance a sentence. Because the amount of drugs associated in this case did not strike a mandatory the district court was motivated to increase my sentence by misrepresentation of the career offender guidelines due to two prior drug felonies. I was sentence after 12/21/18 and do not face retroactivity as this applied to me at sentencing. However never was challenged by in-effective counsel.

Section 401 of the First Step Act now creates a filter if the government intends to enhance a sentence by 851, and career offender by first determining if the defendant has one "serious drug felony" for 851 purposes, and two for career offender purposes. I don't have any "serious drug felonies" or any "serious crimes of violence" to be sentenced as a career offender. This enhancement more than doubled my guidelines. I was given a 19 month downward variance for the reasons the judge took in minimal consideration and concluded she would give the same sentence regardless if I was a career offender or not. Thus created major prejudice as the Eighth Circuit of Appeals denied certificate of appealability citing,

"denied based on the original record". I filed for rehearing also as was denied without explanation 4/24/25. I am now 64 months in on a 132 month sentence which should have never exceeded 51-63 months (actual guideline range) based on unlawful career offender enhancement. This has been expressed numerous of times in the original 2255 and supplement as it has in the 8th Circuit of Appeals. Yet they never said this law change did not apply to me, but won't allow the steps to be taken to correct the miscarriage of justice as these priors do not fit the definition of "serious drug felonies" prescribed in section 401 of the First Step Act.

REASONS FOR GRANTING THE PETITION,

Ground (1) Section 401 of The First Step Act changed the way a defendant is sentenced with prior drug felonies. Before the change in law any prior drug felony exceeding one year of punishment could result in enhanced penalties. After President Trump signed this change of law December 21, 2018 it now require a "serious drug felony" with new requirement of drug felonies; to exceed one year of actual time served and carry ten years or more for the use of enhancement. A NCIS check is done by all prosecutors as a formal background check. It should of been determined at that time I had no "serious drug felonies" and this would keep from filing a 851 enhancement or career offender enhancement. Instead 851 was filed immediately with no challenge from counsel. In my plea agreement it was agreed upon the 851 enhancement would not be seeked at sentencing. However the government was in pursuit to apply the career offender enhancement realizing counsel had not argued controlling law that case number FECR038919 and SRCR201436 are not "serious drug felonies". For the purposes of enhancement transcript suggest I had two prior drug felonies and fit the criteria of 4B.1. Counsel objected at sentencing however he did not take position on the change in law arguing a novel argument instead. The factual basis was falsified to inflate my drug weight to more than three times the amount associated with this crime. The government did numerous unlawful and unconstitutional violations to make it make sense on the amount of time they wanted to sentence me to. When in fact my guidelines should of never exceeded base level 17 with a guideline range of 51 - 63 months.

Ground (2) Ineffective Assistance Of Counsel played a huge part

in how I was sentenced. The 6th Amendment ensures effective assistance of counsel. Here it is obvious Andrew Greave failed to investigate crucial evidence and advise me of important legal options leading to a sentence that would not of occurred with competent representation.

Prejudice happened as soon as the 851 was filed and remained attached to proceedings until sentencing. Counsel fail below a reasonable standard in many ways. I was misadvised on forfeiture and 3rd party property, my criminal history, Plea agreement negotiation and the overall handling of my case. As counsel gained my trust he took everything in my favor and helped the government work around it. Every prong of Stickland v. Washington (1984) was broken. In district court my 2255 motion was denied along with explanation stating "counsel was not ineffective!" However counsel was ineffective numerous times resulting in a unlawful enhanced sentence. Kimmelman v. Morrison (1986) states a lawyer failure to properly advise a defendant about potential consequences of a guilty plea was deemed ineffective assistance. United States v. Cronin (1984): Held that in extreme cases of inadequate representation, prejudice may be presumed without a specific showing of deficient performance. Ineffective trial counsel, ineffective appellate counsel were both claims on 2255 and supplement many claims went without a response as all issues had merit and were overlooked to keep the exposure of the miscarriage of justice.

Ground (3). ABUSE OF DISCRETION

The Honorable Rebecca Goodgame Ebinger abused her discretion when sentencing me to a enhanced sentence as a career offender as my criminal history was overstated. The judge also gave me a fine for \$23,282, the same amount as the money disputed at forfeiture. No nexus from the crime and the money was established and I prevailed at forfeiture hearing. However the judge never ordered to return the money. It was a collective effort between prosecutor, counsel, and the judge as counsel was ineffective not to secure legitamate funds. With the judge overlooking the obvious, and denying my 2255 motion as it had no merit is just ridiculous. The 2255 motion had been pending over a year then a supplement had been submitted with more detail of ineffective assistance, prosecutor misconduct, and 851 issues. Among other issues as serious as never seeing my discovery, never advised about 3rd party property, and not having a formal evidentiary to challenge my non-serious drug priors. A major miscarriage of justice took place at sentencing and no understanding has been accomplished on post conviction as I have filed a formal judicial complaint. Case number 08-25-90041.

Ground (4)) U.S.C. 18 3553 (a) factors are heavily used in handing down a sentence. While sentencing courts have discretion to fashion sentences under 18 U.S.C. 3553 this discretion does not permit the judge to nullify the guidelines by way of a simple assertion that any blatant errors in the guidelines calculation would make no difference to the choice of sentence. Reasoning that sentencing decisions at every level of the judiciary must be made by reference to the appropriate guidelines calculation; a conclusionary comment tossed in for good measure is not enough to make a guidelines error harmless. Otherwise the judge would have no incentive to work through the guideline calculation. A judge just could recite at the outset that they do not find the guidelines helpful and proceed to sentence based exclusively on their own preferences. Seabrook 968 F. 3d 224, 233-34 (2nd cir. 2020), "The district court cannot insulate its sentence from our review by commenting that the guideline range made no difference to the determination" because the guidelines although advisory are not a body of casual advise to be consulted or overlooked at the whim of a sentencing judge. While the basis for sentencing rely on a sentence that is sufficient but not greater than necessary. Also the court should point to evidence in the record that convincingly demonstrates the district court would impose the same sentence for the same reasons. The evidence here was falsified to make the conclusionary statement make sense of the judges sentencing decisions.

The Honorable Rebecca Goodgame Ebinger admitted on the record she may be wrong about me being a career offender. However after review of the Court Of Appeals for the 8th Circuit the miscarriage was overlooked. United States v. Wright, 642 F. 3d 148, 154 n. 6 (3rd cir. 2011), "A statement by a sentencing court that it would impose the same sentence

even absent some procedural error does not render the error harmless" because it must still begin by determining the correct alternative guidelines range and properly justify the chosen sentence in relation to it. *United States v. Smally*, 517 F. 3d 208, 212 (3rd cir. 2008) states a sentencing error was not harmless despite district courts statement that "it would have given the same sentence. Lastly in *United States v. Williams* 5 F. 4th 973, 978 (9th cir. 2021) "Reversing because of district court's guideline miscalculation!" "Court must remand for a new sentencing hearing. To keep the disparity of similar cases.

Ground (5) "Plain Error"

On Plain Error reviews the error should be corrected given trial counsel established ineffective. Under the fourth prong of plain error review, the court should exercise its discretion to correct a plain error if the error seriously affects the fairness , integrity, or public reputation of judicial proceedings. This case has ineffective all over it. Counsel was dishonest about several issues including my "non-serious drug priors". I was completely caught off guard as the case proceeded as counsel assisted the government with getting everything they wanted. The plea agreement process was out right a swindle as revealed by the time of the end of sentencing. *Rosales-Mireles v. United States* 585 U.S. 129, 145 (2018). ("In the ordinary case... the failure to correct a plain guidelines error that affects a defendants substantial rights will seriously affect the fairness, integrity, and public reputation of judicial proceedings". "Because of the role district court plays in calculating the range and the relative ease of correcting the error. The potential deprivation of liberty from a guidelines error undermines the fairness,

integrity, or public reputation of judicial proceedings. Nothing in my case is anything other than an "ordinary case" and thus the prejudicial guidelines calculation error warrants exercise of the courts discretion to correct the error. Additionally, the drastic variance in the incorrect guideline versus the correct guideline range used by the court creates a huge disparity.

CONCULSION

Numerous errors took place throughout this case. Ineffective assistance of counsel, Prosecutor misconduct, and judicial misconduct. I was sentenced to more than double the applicable guidelines due to unlawful career offender enhancement and other plain errors. I am now being deprived of my liberty as I have exceeded the amount of incarceration time for the crime at hand. I'm asking for fairness, and integrity to protect the public reputation of judicial proceedings. This court should grant this Writ Of Certirari based upon Wiggins vs. Smith (2002) when the Supreme Court found ineffective assistance where a lawyer failed to adequately investigate.

Respectfully Submitted,

Date:

7/15/2025

A handwritten signature in black ink, appearing to read "G. H. Smith IV". The signature is stylized with large, flowing loops and a prominent "IV" at the end.