

25-6487

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

DERRICK S. LEWIS

— PETITIONER

(Your Name)

FILED

DEC 01 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Eleventh Circuit

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

PETITION FOR WRIT OF CERTIORARI

Derrick S. Lewis- Federal REG#68889-018

(Your Name)

FCC Coleman Low- P.O. Box 1031

(Address)

Coleman, FL 33521

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Fifth and Sixth Amendments are violated when a sentencing judge, rather than a jury, finds facts that otherwise alter the minimum and/or maximum prescribed sentencing range that a defendant is exposed to; where those facts were not submitted nor proven beyond a reasonable doubt by a jury, in light of Apprendi v. New Jersey, 530 U.S. 466 (2000), Alleyne v. United States, 570 U.S. 99 (2013) and this Court's recent decision in Erlinger v. United States, 602 U.S. ____ (2024)?

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

United States v. Derrick S. Lewis, No. 8:17-cr-00195-SCB-AAS-1

United States v. Derrick S. Lewis, No. 22-12938

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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 2024 U.S. App. LEXIS 16803; 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☐ is unpublished.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 _____ 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☒ is unpublished.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☐ is unpublished.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 July 10, 2024.

☐ 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: September 4, 2025, 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 _____.
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

U.S Const. amend. V

U.S. Const. amend. VII

21 U.S.C. §841(a)(1) and (b)

U.S.S.G. §3B1.1(a)

U.S.S.G. §3C1.1

STATEMENT OF THE CASE

Petitioner was indicted on a Superseding three count indictment on June 28, 2017. The indictment charged Petitioner with knowingly and willingly conspiring with co-defendants Flowers and Webb (these were the only two (2) coconspirators named and/or identified in the indictment). The indictment stated that Petitioner had violate 21 U.S.C. §841(b)(1)(A)- possession with the intent to distribute 5kgs or more of a mixture and substance containing a detectable amount of cocaine; and 100kgs or more of a mixture and substance containing a detectable amount of marijuana in violation of 21 U.S.C. §841(b)(1)(B) (count 1). Count 2 charged Petitioner with aiding and abetting the co-defendants to knowingly and intentionally possess with intent to distribute a controlled substance involving 5kgs or more of a mixture and substance containing a detectable amount of cocaine in violation of 21 U.S.C. §841(a)(1); and count 3 charged Petitioner with aiding and abetting Darryll Flowers to knowingly and intentionally posses with intent to distribute a controlled substance containing a detectable amount of marijuana in violation of 21 U.S.C. §841(a)(1).

Petitioner exercised his right to go to trial, which took place on May 23, 2022. The jury found Petitioner guilty on all charged counts on the following day; May 23, 2022.

On August 26, 2022 the Petitioner participated in his sentencing hearing in which the district court sentenced Petitioner to 240 mos. in the custody of the federal bureau of prisons, concurrently.

During the sentencing hearing, (Doc. 255), Petitioner's total offense level was a "38" based on the PSR prepared by the U.S. Probation Officer. This offense level included a 4-level enhancement pursuant to §3B1.1(a)- Leadership Role and a 2-level enhancement pursuant to §3C1.1- Obstruction of Justice; and a criminal history score of "0," which placed Petitioner in a criminal history

category of I. This in turn reflected a Guidelines Sentencing Range (GSR) of 235-293 mos. The district court imposed a term of 240 mos.

At sentencing, the Petitioner's PSR was discussed. (Exhibit "A" - Sentencing Transcripts, p. 12, lines 3-11). The U.S. Probation Officer stated Petitioner's base offense level was a 32. The USPO then suggested a 4-level increase for his role in the offense and that there were 5 or more participants involved in the conspiracy and a 2-level increase for obstruction based on Petitioner's traveling back to Jamaica in the interim between his release from custody following his arrest and proffer and his return by the U.S. Marshalls in 2022. This therefore increased Petitioner's overall exposure to sentencing by 6-levels and as such an overall increase in his GSR. The final result was a level 38 and a GSR of 235-293 mos.

Petitioner objected to these enhancements (both the §3B1.1 and §3C1.1). The §3B1.1- leadership enhancement was objected to based on the facts that; (1) the indictment only named two (2) co-defendants in which Petitioner 'conspired' with Darryll Flowers and Ricardo C. Webb (Doc. 37). However, the USPO added this 4-level enhancement based on proffered testimony by Mr. Flowers who described others involved in the offense- other unknown individuals including one individual who went by the name 'Friday.' (See Ex. A, Sent. Tr. p. 20, lines 9-16). In the final sentence in lines 16-18, the USPO states that they "[T]hink that based on this, it certainly was at least conservatively five participants involved." (Ex. A, Sent Tr. p. 20, lines 16-18).

The USPO goes on to state in the PSR that he "thinks" that in trial testimony of Mr. Flowers, it was established that Petitioner recruited Mr. Flowers into the conspiracy. To further support the USPO's assessment in establishing the role enhancement, he goes on to state that once again, he "thinks" the information goes towards the extensive nature of the drug conspiracy. (Ex. A, Sent. Tr. p. 21, lines 2-5).

After this has been stated by the USPO, the judge proceeds by stating: "Yea, and I do too. I'm going to overrule the objection." (Ex. A. Sent. Tr. p. 21, lines 6-7). In making this decision, the judge acted on his own fact-finding based on evidence and statements provided by the USPO, which were opinions by the USPO, and ultimately overruled the Petitioner's objection to the role enhancement.

Based on the judge's fact-finding and concession to the USPO's opinions and PSR; the 4-level enhancement imposed via §3B1.1(a), Petitioner's GSR was increased to 188-235 mos. based on an offense level of 36. The judge also overruled Petitioner's objection to the 2-level enhancement for obstruction via §3C1.1 based on USPO's statements and facts surrounding the USPO's claim. Petitioner traveled back to Jamaica after he had given proffered testimony. This was primarily due to Petitioner's fear for his life based on his proffered testimony. However, once again, this enhancement was imposed based on the judge's fact-finding. With this enhancement now added, it increased Petitioner's exposure to punishment to the GSR that was followed by the sentencing court - 235-293 mos. at a level 38.

Both of these enhancements were imposed based solely on the judge's fact-finding and USPO's opinions and never submitted to the trial jury. This has been an ongoing issue within multiple circuits and have been addressed through several precedent cases. Petitioner was exposed to an increase in his minimum and/or maximum range of penalty without the finding of a jury to such increase. This in fact violated both his Fifth and Sixth Amendment rights.

If the enhancements were presented to the trial jury and not found beyond a reasonable doubt, the Petitioner would have been subject to a total offense level of 32 and a GSR of 121-151 mos. (this equates to a disparity approximately between 9 and 10 years). Without the leadership role enhancement, Petitioner would have been exposed to a penalty range of 151-188 mos.; and without the obstruction enhancement (but maintaining the leadership role) a

penalty range of 188-235 mos. All of these reflect a lower prescribed range of minimum and maximum sentences; and therefore the enhancements should have been presented to the trial jury to be proven beyond a reasonable doubt prior to imposition; and not based on the preponderance of the evidence and/or the judge's fact-finding.

At this time, Petitioner has exhausted all filings in the lower courts and is now seeking relief in this Honorable Court.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit's decision conflicts with Apprendi, Alleyne, and Erlinger.

a. In Apprendi, it was stated: "And at all times the "truth of every accusation" against a defendant had to be 'confirmed by the unanimous suffrage of twelve of [his] equal, and neighbours.'" Apprendi, 530 U.S., at 477 (quoting 4 W. Blackstone, Commentaries on the Laws of England 343 (1769); emphasis deleted).

b. In Alleyne, it was stated: "There, we confronted a case in which a jury had convicted the defendant of a crime that usually carried a sentence of between five-years and life in prison. 570 U.S., at 103-104. But a separate statutory "sentencing enhancement" ostensibly allowed the judge to transform that 5-year minimum sentence into a 7-year minimum sentence if he found a certain additional fact by a preponderance of the evidence. Ibid. That innovation, too, the Court held, improperly invaded the jury's province because "[a] fact that increases" a defendant's exposure to punishment, whether triggering a higher maximum or minimum sentence, must be submitted to a jury and found unanimously and beyond a reasonable doubt. Id. at 111-113."

c. The Supreme Court's ruling in Erlinger, the following facts were espoused regarding importance of the jury and their duty of fact finding involving the defendant: "Only a jury may find "'facts that increase the prescribed range of penalties to which a criminal defendant is exposed.'" (quoting Apprendi at 490), "'any fact'" that increase[s] the prescribed range of penalties to which a criminal defendant is exposed'" must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea). Apprendi, 530 U.S., at 490... Judges may not assume the jury's fact finding function for themselves, let alone purport to perform it using a mere preponderance-of-the-evidence standard." Erlinger v. United States, 602 U.S. ____ (2024)

In Petitioner's instance, the district court's judicial fact-finding and reliance on the USPO's opinions to impose the enhancements directly contradicts these holdings.

II. Judicial fact-finding here violated both the Fifth and Sixth Amendments.

a. The Sixth Amendment promises that "[i]n all criminal prosecutions the accused" has "the right to a speedy and public trial, by an impartial jury." Inhering in that guarantee is an assurance that a guilty verdict will issue only from a unanimous jury. Ramos v. Louisiana, 590 U.S., 83, 93 (2020).

b. The Fifth Amendment further promises that the government may not deprive individuals of their liberty without "due process of law." It is a promise that safeguards for criminal defendants those procedural protections well established at common law, including the "ancient rule" that the government must prove to a jury every one of its charges beyond a reasonable doubt. United States v. Haymond, 588 U.S. 634, 641 (2019)(plurality opinion); see Apprendi v. New Jersey, 530 U.S. 466, 477-78 (2000); Sullivan v. Louisiana, 508 U.S. 375, 277-278 (1993); United States v. Gaudin, 515 U.S. 506, 510 (1985).

c. Equally, the Fifth and Sixth Amendments sought to ensure that a judge's power to punish would "deriv[e] wholly" from, and remain always "control[led]" by, the jury and its verdict. Blakely v. Washington, 542 U.S. 296, 306 (2004). As reflected in Shabazz, 887 F.3d at 1222- The government carries the burden to prove (emphasis added) the existence of an aggravating role by a preponderance of the evidence. Based on such, the enhancements would have to been presented to the jury by the government.

Furthermore, it has been found, that: Should an "indictment or 'accusation'... lack any particular fact which the laws ma[d]e essential to the punishment, it was treated as 'no accusation' at all." Haymond, 588 U.S., at 642 (quoting 1 J. Bishop, Criminal Procedure §87, p. 55 (2d Ed. 1872)(some alterations omitted).

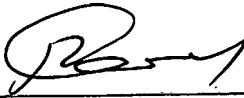
Based on the above, the fact that the Petitioner's indictment only states that he was conspiring with "two individuals" (Mr. Flowers and Mr. Webb); it was further out of the judge's purview and the USPO's to opine that the conspiracy involved 5 or more participants; in which was one of the primary factors used when assessing the enhancement and overruling the Petitioner's objection to such.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Derrick S. Lewis



Date: December 1, 2025