No. 22-6051 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

ARRIBA W. LEWIS- PETITIONER

vs.

UNITED STATES OF AMERICA-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SEVENTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Mr. Arriba W. Lewis #19833-424

FCI-Milan/ P.O. Box 1000

Milan, MI. 48160-0190

QUESTION(S) PRESENTED

QUESTON NUMBER ONE:

Petitioner Lewis' ex-lawyer provided him with ineffective assistance of counsel by a Motion to Quash and Suppress and failing to conduct adequate pre-trial investigations in regard to Illinois State Trooper Sweeney Racial Profiling in light of selective enforcement of the law him in violation of his Fourth and Fifth Amendment Rights, thus, did his ex-lawyer violate his Sixth Amendment Rights of the U.S. Constitution ?

QUESTION NUMBER TWO:

Whether Petitioner Lewis' ex-lawyer provided him with ineffective assistance of counsel by failing to conduct pre-trial investigations and retain an Expert Witness, thus, did his ex-counsel violate his Sixth Amendment Rights of the U.S. Constitution ?

QUESTION NUMBER THREE:

Whether Petitioner Lewis' ex-lawyer provided him with ineffective assistance of counsel by failing to file a Motion to Suppress Evidence due to Racial Profiling based upon selective enforcement of the law, thus, did his ex-attorney violate his Sixth Amendment Rights of the U.S. Constitution ?

QUESTION NUMBER FOUR:

Petitioner Lewis, states that did his ex-lawyer provide him with ineffective assistance of counsel by failing to object to his statutory

enhancement under Section 841 (b) (1) (B); failing to object to his erroneous Career Offender Designation; and failing to object to the PSR sole reliance upon **non-Shepard approved** documents, thus, did his ex-counsel violate his Sixth Amendment Rights during the sentencing phase ?

Question Number Five:

Petitioner Lewis, asserts that did his ex-appellate attorney provide him with ineffective assistance of counsel by omitting several non-frivolous claims during his direct appeal proceedings, thus, did this violate his Sixth Amendment Rights of the U.S. Constitution ?

LIST OF PARTIES

[x] 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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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

[x] 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,

[x] 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,

[x] 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

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was August 9, 2022

[ ] 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:

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) in Application No. ___ A_____.

The jurisdiction of the Court is invoked under 28 U.S.C. 1254 (1).

[ ] For cases from **state courts:**

The date in 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

PAGE NUMBER

STATEMENT OF THE CASE

On March 18, 2020, Petitioner Lewis filed his 2255 Motion to Vacate. The Government filed their Response Brief on January 22, 2021. In mid-February of 2021, Petitioner Lewis filed his Reply Brief to conduct briefing schedule. On November 9, 2021, the district court denied Petitioner Lewis' 2255 Motion to Vacate within a 19-page Opinion and declined to grant a Certificate of Appealability. A timely Notice of Appeal was filed and on August 09, 2022, the Seventh Circuit Court of Appeals denied Petitioner Lewis' request for a Certificate of Appealability without issuing a reason for such denial, thus, rendering it difficult for adequate higher court review by the U.S. Supreme Court in the case at bar.

Petitioner Lewis, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One, Two, Three, Four, and Five or as this Supreme Court deems warranted in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Lewis, acknowledges that a 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 by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Lewis, respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, Three, Four, and Five as relevant to question # 1, Arriba W. Lewis argues that his ex-lawyer omitted a meritorious claim within his Motion to Quash and Suppress as a Fourth Amendment violation that Illinois State Trooper Sweeney was racially profiled him based upon on impermissible factor such as race in violation of the Equal Protection Clause and his Sixth Amendment Rights suffering ineffectiveness. Regarding question # 2, Arriba W. Lewis argues that he suffers from ineffectiveness by failing to conduct adequate pre-trial investigations and retain an Expert Witness in violation of his Sixth Amendment Rights. Regarding question # 3, Arriba W. Lewis argues that his ex-lawyer provided him with ineffectiveness by failing to file a Motion to Suppress Evidence due to Racial Profiling in light of selective enforcement of the law in violation of his Sixth Amendment Rights. Regarding question # 4, Arriba W. Lewis argues that his ex-lawyer provided him with ineffectiveness by failing to object to his statutory enhancement under Section 841 (b) (1) (B); failing to object to his erroneous Career Offender Designation; and failing to object to the PSR sole reliance upon non-Shepard approved documents in violation of his Sixth Amendment Rights. Regarding question # 5, Arriba W. Lewis

argues that his ex-appellate attorney provided him with ineffectiveness by omitting several non-frivolous claims during his direct appeal proceedings in violation of his Sixth Amendment Rights. Consistent with 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in **Slack** and **Miller-El,** thus, Arriba W. Lewis is entitled to issuance of Certificate of Appealability as to Questions 1, 2, 3, 4, and 5, in the matter herein.

QUESTION NUMBER ONE:

Petitioner Lewis' ex-lawyer provided him with ineffective assistance of counsel by a Motion to Quash and Suppress and failing to conduct adequate pre-trial investigations in regard to Illinois State Trooper Sweeney Racial Profiling in light of selective enforcement of the law him in violation of his Fourth and Fifth Amendment Rights, thus, did his ex-lawyer violate his Sixth Amendment Rights of the U.S. Constitution ?

In the instant case, Petitioner Lewis, asserts that the district court abused its discretion by failing to conduct an Evidentiary Hearing as to Arriba W. Lewis potentially colorable claim of a failure to conduct adequate pre-trial investigations and filing Motion for Discovery to obtain evidence of Officer Sweeney's discriminatory impact and intent as the Government failed to secure an Affidavit from Mr. Lewis' former attorney. It follows that consistent with the U.S. Supreme Court's Ruling in **Harris v. Nelson,** 394 U.S. 286, 300 (1969) (the petitioner must show reason to believe that he "may, if the

facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief.); and **Schriro v. Landrigan,** 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief."). It is well established that under **Strickland** counsel has a duty to conduct a reasonable investigation into the facts of a defendant's case, or to make a reasonable determination that an investigation is unnecessary. See **Wiggins v. Smith,** 539 U.S. 510, 522-23 (2003).

A COA should issue as to Question Number One as it is debatable amongst jurists of reasons whether the district court abused its discretion by failing to conduct a prompt evidentiary hearing in the case herein. See **Slack,** 529 U.S. ____, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

Question Number Two:

Whether Petitioner Lewis' ex-lawyer provided him with ineffective assistance of counsel by failing to conduct adequate pre-trial investigations and retain an Expert Witness, thus, did his ex-counsel violate his Sixth Amendment Rights of the U.S. Constitution ?

In the instant case, Petitioner Lewis, states that the district court

abused its discretion by failing to conduct an Evidentiary Hearing as the Government did not secure an Affidavit from his former attorney, thus, consistent with the U.S. Supreme Court's Ruling in **Harris v. Nelson,** 394 U.S. 286, 300 (1969) (the petitioner must show reason to believe that he "may, if the facts are fully developed, be able to demonstrate that he is confined illegally and is therefore entitled to relief."); and **Schriro v. Landrigan,** 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief.").

A COA should issue as to Question Number Two, as taken as true the factual allegations of Mr. Lewis a prompt Evidentiary Hearing should have been conducted, thus, such claim is debatable amongst jurists, see **Slack,** 529 U.S. ___, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

QUESTION NUMBER THREE:

Whether Petitioner Lewis' ex-lawyer provided him with ineffective assistance of counsel by failing to file a Motion to Suppress Evidence due to Racial Profiling based upon selective enforcement of the law, thus, did his ex-attorney violate his Sixth Amendment Rights of the U.S. Constitution ?

In the instant case, Petitioner Lewis, asserts that the district court failed to take Arriba W. Lewis' factual allegations as true and due to the fact that the Government did not secure an Affidavit from former counsel, thus, consistent with the U.S. Supreme Court's Ruling in **Schriro v. Landrigan,** 550 U.S. 465, 474 (2007), the district court abused its discretion by failing to conduct an Evidentiary Hearing as to Question Number Three. It follows that a COA should issue as Question Number Three is that the question are adequate to deserve encouragement to proceed further. See **Slack,** 529 U.S. ___, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

Question Number Four:

Petitioner Lewis, states that did his ex-lawyer provide him with ineffective assistance of counsel by failing to object to his statutory enhancement under Section 841 (b) (1) (B); failing to object to his erroneous Career Offender Designation; and failing to object to the PSR sole reliance upon **non-Shepard approved** documents, thus, did his ex-counsel violate his Sixth Amendment Rights during the sentencing phase ?

In the instant case, Petitioner Lewis, asserts that the district court abused its discretion by misunderstanding his claim, thus, Mr. Lewis will clarify this claim for the Supreme Court as follows:

(1) counsel's decision not to raise a particular point of error was

objectively unreasonable;

Petitioner Lewis, contends that he was designated as a Chapter Four Career Offender in light of the Presentence Investigation Report relying upon a 1995 Murder and 2008 Federal Distribution of Crack Cocaine, however, the **sole evidence relied upon by the PSR as to the 1995 Illinois Murder derives from an Arrest Warrant Report/ Police Report in which is a non-Shepard document in which is prohibited consistent with U.S. Supreme Court precedents in Shepard v. United States, 544 U.S. 13, 26 (2005); and United States v. Bartee, 529 F.3d 357, 361 (6th Cir. 2008) (The Sixth Circuit held that police reports and criminal complaint applications in a federal PSR are non-Shepard documents, thus, prohibited; and cannot be used to justify a sentencing enhancement. In vacating the defendant's sentence, the panel concluded that the factual descriptions concluded in a PSR are "the sort of information that one might expect to find in a police report and criminal application for criminal complaint."). (emphasis added).**

Petitioner Lewis, asserts that that as to the 1995 Illinois Murder the Presentence Investigation Report derives from an Arrest Warrant Report/ Police Report in which violates the U.S. Supreme Court's Ruling in **Shepard,** 544 U.S. 13, 26 (2005); and the Sixth Circuit Circuit's Ruling in **Bartee,** 529 F.3d at 361 (6th Cir. 2008).

Thus, Petitioner Lewis, argues firmly that there is **'no evidence'** in the existing record to support Chapter Four Career Offender enhancement, and Illinois Murder is a **'divisible'** statute in which charges within Illinois charging instrument First Degree Murder; Second Degree Murder; Third Degree Murder (Involuntary Manslaughter); and Reckless Homicide, see People v. Turner, 385 Ill. 344, 52 N.E.2d 712 (1944), therefore, the Seventh Circuit Court of Appeals has held that Illinois Involuntary Manslaughter is not a crime of violence under U.S.S.G. Section 4B1.2 (a) (2), see United States v. Woods, 576 F.3d 400, 418 (7th Cir. 2009) (emphasis added).

It follows that consistent with U.S. Supreme Court precedents in **Descamps** and **Mathis** as the result of Illinois Murder being **'divisible'** state statute the Court may employ the modified categorical approach permits sentencing courts to consult a limited class of documents, such as indictments and jury instructions, to determine which alternative formed the basis of the defendant's prior conviction." **Descamps v. United States,**133 S. Ct. at 2281. Such documents are known as Shepard documents, see United States v. Kirkland, 687 F.3d 878, 886-87 (7th Cir. 2012); and United States v. Williams, 627 F.3d 324, 328 (8th Cir. 2010).

Petitioner Lewis, argues firmly that because Illinois Murder offense lacks a factual evidentiary basis within the existing

sentencing record no Shepard-approved documents that the U.S. Supreme Court precedents in **Taylor** and **Shepard** requires such federal sentence to be VACATED and REMANDED for resentencing hearing, see United States v. Ngo, 406 F.3d 839, 2005 WL 1023034 (7th Cir. 2005) (ordering a resentencing hearing where district court considered sources that were not authorized under **Shepard** in finding that defendant was a career offender).

(2) Actual prejudice exist as the result of absent his ex-lawyer's objectively unreasonable performance there is a reasonable probability that his 240-month federal sentence would have been lower, see **Glover,** 531 U.S. 198 (2001);

Petitioner Lewis, states that actual prejudice exist as the result of there is a reasonable probability that absent counsel's failure to object to the PSR's lack of factual basis and use of non-Shepard documents as evidence to support Career Offender status his 240-month federal sentence would have been lesser, see **Glover,** 531 U.S. 198, 201-03 (2001). Therefore, Petitioner Lewis' Sixth Amendment Rights of the U.S. Constitution were violated in the matter herein.

ACTUAL INNOCENCE CLAIM WERE RAISED IN REPLY BRIEF IN DISTRICT COURT BUT NOT ADDRESSED ON THE MERITS THERETO

Petitioner Lewis, contends that consistent with the U.S. Supreme

Court's Ruling in **Dretke v. Haley,** 541 U.S. 386 (2004), this Honorable U.S. Supreme Court should not turn a blind eye as to Arriba W. Lewis' meritorious actual-innocence claim as to the Chapter Four Career Offender.

Petitioner Lewis, states that he stands **"actually innocent"** of his Chapter Four Career Offender Designation in light of the Supreme Court's Ruling in **Mathis v. United States,** 136 S. Ct. 2243, 195 L. Ed. 2d 604 (2016), as under Illinois law-**Mitigating Factors controls whether the defendant is convicted of Illinois First Degree Murder, Second Degree Murder; or Manslaughter,** see People v. Guidry, 220 Ill. App. 3d 406 (1991). The Illinois Murder statute requires the State to prove the essential elements of First-Degree under the law. The **mitigating factors, which reduce the crime from murder to manslaughter, are not elements of the offense, but are affirmative defenses that do not bear upon the ultimate burden of proof,** see People v. Reddick, 23 Ill. 2d 184, 526 N.E.2d 144, 122 Ill. Dec. 1; and People v. Golden, 244 Ill. App. 3d 908 (1993) (emphasis added).

Furthermore, under Illinois law even if the gun went off accidentally it would still constitute **Felony Murder** under Illinois law, see People v. McEwen, 157 Ill. App. 3d 222, 510 N.E.2d 74 (1987). It follows that as the result of Illinois law permits **mitigating**

factors to control whether a crime is 1st Degree Murder; 2nd Degree Murder or Manslaughter, therefore, Petitioner Lewis, argues firmly that the Illinois Murder statute defines a single offense with alternative "means" of satisfying a particular element, therefore, rendering the Illinois Murder statute "indivisible" and not subject to the modified categorical approach, see Mathis, 136 S. Ct. at 2251.

Because the least culpable conduct of Illinois Felony Murder is not a "crime of violence," see United States v. Woods, 576 F.3d 400, 418 (7th Cir. 2009) (Illinois Involuntary Manslaughter is not a crime of violence under Section 4B1.2 (a) (2)); and Amendment 798, eliminated the "residual clause," thus, he stands actually innocent of being a Chapter Four Career Offender in the matter herein. See **Moncrieffe v. Holder,** 569 U.S. 184, 190-91 (2013) (employing the categorical approach, we do not consider the actual conduct that led to conviction under state statute at issue; instead, we look to the least of the acts criminalized by the elements of that statute.). In light of the U.S. Supreme Court's Ruling in **Mathis v. United States,** 136 S. Ct. 2243 (2016), he stands "actually innocent" of his erroneous Chapter Four Career Offender Designation, thus, Mr. Lewis, argues that under the U.S. Supreme Court's Ruling in **Dretke v. Haley,** 541 U.S. 386,

397 (2004) (Because, as all parties agree, there is no factual basis for respondent's conviction as a habitual offender, it follows inexorably that respondent has been denied due process of law. Thompson v. Louisville, 362 U.S. 199 (1960); Jackson v. Virginia, 443 U.S. 307 (1979). And because that constitutional error clearly and concededly resulted in the imposition of an unauthorized sentence, it follows that respondent is a "victim of miscarriage of justice," Wainwright v. Sykes, 433 U.S. 72 (1977), entitled to immediate and unconstitutional release), therefore, it follows that he is in fact entitled to relief under the "actual-innocence" exception to his noncapital 240-month federal sentence in the matter herein. (emphasis added).

Petitioner Lewis, argues firmly that a COA should issue as it is debatable amongst jurists of reason that he suffers from sentencing phase ineffectiveness in violation of his Sixth Amendment Rights and/ or actual innocence of Chapter Four Career Offender the question are adequate deserve encouragement to proceed further, see **Slack,** 529 U.S. ____, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

Question Number Five:

Petitioner Lewis, asserts that did his ex-appellate attorney provide him with ineffective assistance of counsel by omitting several non-frivolous claims during his direct appeal proceedings,

thus, did this violate his Sixth Amendment Rights of the U.S. Constitution ?

In the instant case, Petitioner Lewis, asserts that he has presented several nonfrivolous claims within his 2255 Motion to Vacate in which should have been raised on his direct appeal, however, were omitted by his ex-appellate counsel, thus, consistent with the U.S. Supreme Court's Ruling in **Smith v. Robbins,** 528 U.S. 259, 288 (2000) (generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome), as the result of there being a reasonable probability that the outcome of the appeal would have been different abuse his ex-appellate attorney's 'deficient performance,' therefore, Arriba W. Lewis suffered ineffective assistance of counsel in violation of his Sixth Amendment Rights of the U.S. Constitution.

A COA should issue as to Question Number Five as it is debatable amongst jurists of reason that his Sixth Amendment Rights were violated in the case herein. See **Slack,** 529 U.S. ___, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Anitra M. Lewis

Date: 11/06/2022