No. 23 - 6011

IN THE SUPREME COURT OF THE UNITED STATES

JACQUES H. TELCY
Petitioner,

V.

MICHAEL BRECKON,
Respondent,

ON PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Jacques H. Telcy, pro se
Reg# 77775-004
Federal Correctional Institution
P.O. BOX 9000
Berlin, NH. 03570

QUESTION PRESENTED FOR REVIEW

To the exception to the rule termed in 28 U.S.C. §2255(e), the "escape hatch" or "saving clause" - does it permit a federal prisoner to "file a habeas corpus petition to contest the legality of a mandatory sentencing enhancement under the Armed Career Criminal Act (ACCA) where the remedy under 28 U.S.C.S. §2255 is inadequate or ineffective to test the legality of their detention.

In Jones V. Hendrix, 599 U.S. 465 (2023), 28 U.S.C.S. §2255(e) this court ruled that 2255(e) does not permit a prisoner asserting an intervening change in statutory interpretation to circumvent the restrictions on second or successive 28 U.S.C.S. §2255 motion by filing a 28 U.S.C.S. 2241.

However, In Jones, this court explained that the "saving clause" preserves recourse to 28 U.S.C.S. 2241 where unusual circumstances make it impossible or impracticable to seek relief in the sentencing court, as well as for challenges to detention.

THE QUESTION PRESENTED HERE IS WHETHER "LEGAL INNOCENCE" APPLIES TO A SENTENCING ENHANCEMENT UNDER THE ARMED CAREER CRIMINAL ACT IN JONES V. HENDRIX

AND WHETHER DOES JONES V. HENDRIX ABROGATE THE REASONABLE-OPPORTUNITY STANDARD APPEAL COURTS APPLY IN SEEKING TO PROVE 28 U.S.C.S. §2255's INADEQUACY UNDER 28 U.S.C.S. §2255(e).

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PETITION FOR WRIT OF CERTIORARI

Jacques H. Telcy, a federal prisoner[1], respectfully petitions the Supreme Court of the United States for writ of certiorari to review the judgement of the United States Court of Appeals for the Sixth Circuit Court in the matter of Jacques H. Telcy V. Michael Breckon (case# 22-1460, September 27, 2023), which ruled in light of Jones V. Hendrix, Telcy cannot obtain relief under §2241.

OPINION REVIEW

A copy of the decision of the United States Court of Appeals for the Sixth Circuit, which vacated and remanded with instructions for the district court to dismiss for lack of subject-matter jurisdiction, Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this court is invoked under 28 U.S.C.S. §1254(1) and part III of the rules of the Supreme Court of the United States. The decision of the Court of Appeals was entered on September 27, 2023. This petition is timely filed pursuant to Sup. Ct. R.13.2. The district court had jurisdiction because petitioner was charged violating federal laws. The Court of Appeals had jurisdiction pursuant to 28 U.S.C.S. §1291 and 18 U.S.C.S. §3742, which provide that Court of Appeals shall have jurisdiction over all final decisions of the United States District Court.

1/ Telcy, proceeding in pro se capacity.

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS INVOLVED

28 U.S.C.S. §2241

28 U.S.C.S. §2255

Legal Innocence

Actual Innocence

STATEMENT OF THIS CASE

In this case, by contrast, a claim asserting actual innocence based on an intervening change of statutory interpretation, which transformed prior convictions from predicate crimes into non-predicate crimes, disrupts that conviction of use because that conviction can not count as a predicate crime. Thereby, abandoning the three prior conviction needed to enhance a sentence under the Armed Career Criminal Act. An actual innocence claim under the Armed Career Criminal Act can establish §2255's inadequacy to test the legality of that detention. This court has made it clear that the term "actual innocence" means factual, as opposed to legal innocence. Sawyer V. Whitley, 505 U.S. 333, 339, 112 s.ct. 2514, 120 L.Ed 269 (1992).

Here, count (4) charges Telcy of being a felon in possession of a firearm, 18 U.S.C.S. §922(g)(1). The statutory maximum penalty for a violation of section §922(g)(1) is 10 years, 18 U.S.C.S. §924(a)(2). However, the Armed Career Criminal Act (ACCA), authorizes an enhanced mandatory minimum sentence of 15-years to a defendant like Telcy who violates §922(g)(1) and who has three previous convictions of "violent felonies" or "serious drug" offenses. 18 U.S.C.S. 924(e)(1)-(e)(2). As to count (4), Telcy's case is truly

"extraordinary" and "unusual"- as Telcy was determined to be an armed career criminal-but he was not a career offender under U.S.S.G. §4B1.1(a). Given this unusual situation, the mandatory minimum sentence for Telcy's drug offense in counts (1) and (2) was 10 years"below the 15-year mandatory minimum under the (ACCA)".

However, because of the drug offenses in counts (1) and (2) was concurrent with the felon-in-possession offense for purposes of the sentencing guidelines, both drug offenses in count (1) and (2) was enhanced by the (ACCA) designation, "such that Telcy suffered adverse collateral consequences" because his (ACCA) sentence turned out to be unlawful.

INDICTMENT, TRIAL, SENTENCE

On October 16, 2008, a federal grand jury in the Southern District of Florida returned a (4)-Count superseding indictment charging Jacques H. Telcy with the following offenses: Count (1) possession w/intent to distribute 50 grams or more of crack cocaine, in violation of 21 U.S.C.S. §841 (a)(1) and (b)(1)(A); Count (2) possession w/intent distribute 500 grams or more of powder cocaine, in violation of 21 U.S.C.S. §841 (a)(1) and (b)(1)(B); Count (3) using and carrying a firearm during and in relation to a drug trafficking crime, in violation of 21 U.S.C. §924(c)(1)(A); and Count (4) possession of a firearm after previously having been convicted of a felony offense, in violation of 18 U.S.C.S. §922(g)(1) and 924(c) (DE-44). The government subsequently filed a notice of intent to seek an enhancement of Telcy's sentence pursuant to 18 U.S.C.S. §851, relying on the fact that Telcy had three prior Florida felony

drug convictions (DE-51).

Telcy went to trial, after which the jury found him guilty of all Counts of the superseding indictment (DE-74).

Prior to sentencing, the probation officer prepared a Presentence investigation report (PSR) revised on Feb. 10, 2009. The base and offense level were calculated to be 30 (PSR-19,30). The PSR determined that Telcy was an armed career criminal pursuant to 18 U.S.C. §924(e).

The PSR identified the following prior convictions for a violent or serious drug offense:

> Conviction on Feb 2, 1996, for possession w/intent to sell/deliver cocaine in Dkt# 95-18480-10A;
> Conviction on Aug 23, 1996, for possession w/intent to sell/deliver cocaine in Dkt# 96-11457-10A;
> Conviction on Feb 17, 2004, for battery on a low enforcement officer in Dkt# 02-7265-10A. (PSR-25).

Accordingly, in light of these enhancement, the PSR calculated the offense level at 33 pursuant to §4B1.4(b)(3)(B).

The PSR also determined that Telcy had nine criminal history points and a criminal history category of IV (PSR-44)(citing §4B1.4(c)(3). Telcy's guideline range was 188 to 235 months imprisonment plus a consecutive term of 60 months for carrying a firearm during and in relation to a drug trafficking crime (PSR-80). However, because of the §851 enhancement, count (1) mandated a term of Life imprisonment pursuant to §5G1.1(b) and §5G1.2(b). On February 17, 2009, the district court sentenced Telcy to a term of Life imprisonment on Count (1), concurrent terms of 235 months as to Counts (2) and (4), and a consecutive term of 60 months as to Count (3) (DE-97,116). On top of the prison sentence, the District Court imposed a total term of 10 years of supervised release and a special assessment of $400.

PREVIOUS POST TRIAL LITIGATION

Prior to the filing of the §2255 motion. Telcy sought post-trial relief on several different occasions both in District Court and in Eleventh Circuit. On October 12, 2010, Telcy, filed a pro se §2255 motion accompanied by a memorandum of law in which he challenged both his convictions and sentences. Two days after filing was docketed, the District Court denied the motion and entered a judgement in favor of the government. The district court denied a Certificate of Appealability (COA). (case# 10-cv-61934-WMD).

After timely appealing, Telcy requested the 11th Cir Court to grant a COA, that request was denied by a single judge. Telcy V. United States 11th Cir. case # 11-1037-13 (May 26, 2011).

On September 30, Telcy filed an unsuccessful application in the 11th Cir for leave to file a successive §2255 motion which was denied. In re Telcy, 11th Cir. Case # 13-14460 (Oct 16, 2013).

On April 1, 2016, Telcy filed another application in the 11th cir for leave to file a successive §2255 motion under Johnson V. United States, 135 S. Ct 2551 (2015), which was denied. The 11th Circuit concluded that his reliance on Johnson was unavailing because he had a concurrent Life sentence on Count (1), and his total sentence would, therefor, not be impacted by Johnson. That order did not address the merits of Telcy's claim that his Florida conviction of [battery on a law enforcement officer] no longer qualified as a violent felony. In re Telcy. 11th Cir. Case # 16-11461 (April 27, 2016).

In 2016, Judge Hodge in the middle district of Florida dismissed a habeas petition in case # (5:15-cv-00551-WTH-PRL).

In 2018, Judge Hodge in the middle district of Florida dismissed another habeas petition in case # (5:15-cv-0048-WTH-PRL).

FIRST STEP ACT OF 2018 LITIGATION

In 2019, Telcy through counsel, filed a motion in district court for a sentence reduction pursuant to section §404 of the first step act (ECF.No.135). The district court entered an order granting Telcy's motion in part. (ECF.No. 139). The court reduced his sentence on Count(1) to 235 months, and the term of supervised release to 8 years (ECF.No.139).

On April 29, 2019, Telcy sought to leave to file a second or successive §2255 motion in order to challenge his (ACCA) sentence on Johnson grounds in light of the fact that his Life sentence on count (1) was reduced to 235 months under the first step act which was denied. In Re Telcy (case# 19-11619).

TELCY'S §2255 MOTION

Subsequently, on July 11, 2019, Telcy filed a pro se §2255 motion in the District Court, challenging the constitutionality of the newly imposed sentence he received based on the FSA 2018 asking the District Court to "grant a full resentencing" in accord with the applicable sentencing guidelines provision as neccessary" (DE1,4). The District Court denied the motion the following day.

Tecly, timely appealed the Eleventh Circuit Court of Appeals. The 11th Cicuit affirmed the case on December 10, 2021 (19-13029).

In 2020, the district court in the 6th Circuit dismissed a 2241 (1:20-cv-0028-PLM-PJG).

§2241 MOTION

On January 6, 2022, after the appeal was affirmed Telcy filed a pro se §2241 seeking relief under the "saving clause" of §2255(e) for the issuance

of habeas corpus, vacating and setting aside the (ACCA) portion of his sentence, in light of the United States Supreme Court decision in Mathis/Descamps/and Moncrieffe.

However, the district court dismissed the petition on May 11, 2022.

On May 16, 2022, Telcy filed a notice of appeal the district court granted Telcy's Forma pauperis status on June 6, 2022.

On September 27, 2023 the Sixth Circuit Court of Appeal vacated the district court's judgement, remand with instructions for the district court to dismiss Telcy's §2241 petition for lack of subject-matter jurisdiction. Under the Supreme Court's recent decision in Jones V. Hendrix, 599 U.S. 465 (2023), Telcy cannot obtain relief under §2241.

REASON FOR GRANTING THIS WRIT

In Jones V. Hendrix, the "saving clause" perserves recourse to 28 U.S.C.S. §2241 where unusual circumstances make it impossible or impacticable to seek relief in the sentencing court, as well as for challenges to detention.

Courts of Appeals through-out the state has adopted a reasonable-opportunity standard for prisoners seeking to prove 28 U.S.C.S. §2255's inadequacy under §2255(e). Under this standard, prisoners must show some greater obstacle left them with no reasonable opportunity to assert their legal claim on the front end, in their initial §2255 motion.

However, it is also a well settled principle that courts

construe (pro se) habeas petitions liberally. Courts do not hold pro se parties to the same or more stringent standards that are imposed on lawyers. Haines V. Kerner, 404 U.S. 519, 520-21 (1972) Courts do not require pro se incarcerated petitioner to figure out new arguments for overturning precedent at an earlier stage before they are later allowed to invoke a newly decided, retroactive case of statutory interpretation showing that what was once permissible under case law is now forbidden.

Habeas (pro se) petition pursuant to §2241 should be brought when a sentence exceeds the maximum prescribed by statute, "to deny relief where a sentence enhancement exceeds the statutory range set by Congress would present seperation-of-powers concerns. Jones V. Thomas, 491 U.S. 376-89 (1989) (applying Mathis V. United States, 136 S.Ct 2243, 195 L. Ed 2d 604 (2016) to a sentence calculated under the mandatory (ACCA) standards where a petitioner's sentence exceeded the ten-year maximum, he would not have faced the (ACCA) enhancement.

In addition to whatever else the reasonable-opportunity standard demands, it requires a decision from this court that adopts a new retroactive intervening statutory interpretation after the completion of the initial 28 U.S.C.S. §2255 proceeding. This requirement follows both from §2255's text and structure from the backdrop against which Congress enacted §2255(h)'s limits in 1996.

Under 28 U.S.C.S. §2255(e), (pro se) prisoners who have had a §2255 motion denied must show that the statute's remedy means for

seeking relief was/is inadequate or ineffective, that is, "insufficient or incapable" to test/try a legal challenge to their detention. Notably, this statutory language does not give courts license to ask whether they consider §2255 to be inadequate or ineffective in the abstract. Rather, the inadequacy or ineffectiveness must relate specifically to a procedural deficiency in testing the legality of a prisoner's detention. So §2255(e) asks only whether §2255's motion is sufficient to assert a claim on the merits.

THIS COURT SHOULD GRANT CERTIORARI TO ANSWER THE IMPORTANT QUESTION OF WHETHER "LEGAL INNOCENCE APPLIES TO A SENTENCING ENHANCEMENT UNDER THE ARMED CAREER CRIMINAL ACT IN JONES V. HENDRIX

The Anti-terrorism and Effective Death Penalty Act's central concern is that the merits of concluded criminal proceeding not be revisited in the absence of a strong showing of actual innocence. Caldervon V. Thompson, 523 U.S. 538, 558, 118 S.Ct. 1489, 140 L Ed 2d 728 (1998).

This court has made clear that the term "actual innocence" means factual, as opposed to legal innocence. Bousley V. United States, U.S. 614, 623, 118 S.Ct. 1604, 140 L.Ed. 2d 828 (1998). Furthermore, the newly discovered evidence exception under §2255 (h) allows evidence of factual, not legal, innocence.Sawyer V. Whitley, 505 U.S. 333, 339-40, 112 S.Ct. 2514, 120 L. Ed. 2d 269 (1992).

On Appeal, the Courts of Appeals for the Sixth Circuit ruled, under the Supreme Court's recent decision in Jones V. Hendrix,

599 U.S. 465 (2023), Telcy cannot obtain relief under §2241. We therefore vacate and remand with instructions for the district court to dismiss his petition for lack of subject-matter jurisdiction.

In 2022, after successfully pursuing post-conviction relief, Telcy filed the present §2241 petition, claiming that his sentence was improperly enhanced under the ACCA because two of his three prior felonies no longer qualify in light of Mathis V. United States, 579 U.S. 500 (2016). Descamps V. United States, 570 U.S. 254 (2013). He asked the court to vacate his ACCA-enhanced sentence on count four, which he claimed would reduce his total imprisonment term to statutory 10 year maximum for that count.

The jurisdictional component of Telcy's §924(e) claim should require an opportunity to redress. Telcy's claim, as it was that in light of Mathis/Descamps/Moncrieffe that he no longer qualified as an (ACCA) criminal because battery on law enforcement officer and possession with intent to sell/deliver cocaine were no longer qualifying (ACCA) predicates. Telcy's mandatory life sentence on count one prevented him from challenging his (ACCA) enhancement and foreclosed a "genuine" procedural opportunity to test the (ACCA) enhancement. Telcy's "new facts" occurred when the life sentence was removed and the new Supreme Court interpretation in Mathis came out in 2016. As a result, Telcy's 235-months under the (ACCA) sentence exceeded the applicable statutory maximum penalty of 10-years for the §922(g)(1) count, §924(a)(2). No court under any circumstance has the power to impose a sentence

in relation to a particular count of conviction that exceeds the statutory maximum penalty authorized by Congress. Jones V. Thomas 491 U.S. 376-89 (1989); United States V. DiFrancesco, 449 U.S. 117 139 (1980) ("A defendant may not receive a greater sentence than the legislature has authorized"). A sentence exceeding the authorized statutory maximum is akin to an actual innocence claim because there are serious, constitutional, seperation-of-power concerns that attach to a sentence above the statutory maximum penalty authorized by Congress. Whalen V. United States, 445 U.S. 684, 690 (1980). The remedy required by the Supreme Court for a sentence imposed beyond the court's jurisdiction is for re-sentencing with proper confines of its jurisdiction. Telcy's sentence is "void as to the excess" in count four as it was imposed beyond Congressional intent permitting no more than 120-months imprisonment for his §922 (g)(1) offense, 18 U.S.C.S. §924(A)(2) United States V. Pridgeon, 153 U.S. 48, 62 (1894).

The concern with an sentence above the statutory maximum is that the sentencing court exceeded the punishment authorized by the legislature. Irrefutably then, Mr. Telcy has a bona fide constitutional right not to be deprived of liberty as punishment for criminal conduct only to extent authorized by Congress. If there is ever to be any sentencing claim that is serious enough to warrant a second look when the prisoner's first procedural opportunity for review was inadequate or ineffective, a §924 (e) statutory maximum claim [like Telcy's] should fit the bill.

Section §2255 (e) should permit a court to consider a claim

brought under 28 U.S.C.S. §2241 that shows an actual innocence claim that would ordinarily fall within the purview of section §2255 is inadequate or ineffective to test the legality of the petitioner's detention §2255(e).

THIS COURT SHOULD GRANT CERTIORARI TO RESOLVE WHETHER JONES V. HENDRIX ABROGATE THE REASONABLE-OPPORTUNITY STANDARD APPEAL COURTS APPLY IN SEEKING TO PROVE 28 U.S.C.S. §2255'S INADEQUACY UNDER 28 U.S.C.S. §2255(e)

In 2010, this court decision in Johnson V. United States 559 U.S. 133, 142 (2010) found that Fla. Stat. §784.03(1) is disjunctive, and the prosecution can prove a battery in one of three ways (1) that he intentionally caused bodily harm, (2) that he intentionally struck the victim, or (3) that he merely actually and intentionally touched the victim. After Mathis V. United States, 136 S. Ct. at 2243, Florida battery can be committed by proving either (1) defendant intentionally touched or struck the victim against his/her will, or (2) defendant intentionally caused bodily harm to the victim, [not] the three way standard found in Johnson. Even with Mathis in hand, Telcy could not bring the issue at hand because he had the mandatory life sentence on count one. It wasn't until 2019, that the First Step Act reduced count one to 235 months that Telcy had a reasonable opportunity to raise the ACCA issue.

Appellate Courts, such as the Sixth Circuit allows a successive challenge to a sentence enhancement under the ACCA because the sentence exceeds the maximum prescribed by statute. A petitioner may test the legality of his detention under §2241 through the §2255(e) saving clause by showing that he is actually innocent. Where a petitioner asserts factual innocence based on a change in law, he may show that §2255 provides an

inadequate or ineffective remedy by proving (1) the existence of a new interpretation of statutory law (2) issued after the petitioner had a meaningful time to incorporate the new interpretation into his direct appeal or subsequent motions (3) that is retroactive, and (4) applies to the petition's merits such that it is more likely than not that no reasonable juror would have convicted the petitioner.

APPEAL COURTS:
McCormick V. Butler, 977 F.3d 521, 525 (6th Cir 2020)
Hueso V. Barnhart, 948 F.3d 324, 332-33 (6th Cir 2020)
United States V. Wheeler, 886 F.3d 415 (4th Cir 2018)
Trenkler V. United States, 536 F.3d 85, 99 (1st Cir 2008)
Cephas V. Nash, 328 F.3d 98, 104 (2nd Cir 2003)
Brown V. Caraway, 719 F.3d 583, 586 (7th Cir 2013)
Bruce V. Warden Lewisburg USP, 868, F.3d 170, 179 (3d Cir 2017)
Stephens V. Herrera, 464, F.3d 895, 897 (9th Cir 2006)

Under Mathis, This court ruled that courts must rely solely on the text of a state statute to determine whether past convictions qualify as ACCA predicates where the state statute is divisible, where the statute defines only one crime, with one set of elements, but lists alternative factual means by which a defendant can satisfy those elements.

Mathis (2016) now makes clear without any room for doubt that Telcy's battery on a law enforcement officer conviction under Fla. stat §784.07 is not a "violent felony" under the ACCA enhancement. Mathis is indubitably a new rule of statutory interpretation because the Supreme Court narrowed the scope of a criminal statute by interpreting its terms and placed particular conduct or persons covered by a criminal statute beyond the state's power to punish. Schriro V. Summerlin, 542 U.S. 348, 351-52 (2004) Thus, Mathis is an interpretation of the ACCA statute that limits the definition of a violent felony in determining whether a person is "guilty" of violating §924(e), and alters the range of conduct or class of

persons the law can punish. Schriro, 542 U.S. at 352-353. In doing so, Mathis made certain persons, like Mr. Telcy, no longer armed career criminal offenders who cannot be punished under the ACCA. Mathis prohibits a certain category of punishment for a class of defendants because of their status of offense Saffle V. Parks, 494 U.S. 484, 494 (1990). Because Mathis' new rule of statutory interpretation narrows the scope of people who are legally eligible for the ACCA enhancement, it is substantive, and necessarily applies retro-activity on collateral review.

Imposing an increased sentence under the Armed Career Criminal Act violates the Constitution's guarantee of due process by allowing an illegal enhancement to stand. The "saving clause" in §2255(e) should reach Telcy's §924(e) claim of an illegal sentence above the statutory maximum penalty in §924(a)(2) for his §922 (g)(1) offense McCormick V. Butler, 977 F.3d 521 525 (6th Cir 2020)

CONCLUSION

Based upon the foregoing petition, this Honorable Court should grant a writ of certiorari to the Court of Appeals for the Sixth Circuit.

Date: 10-16-2023

Respectfully Submitted,

Jacques H. Telcy #77775-004

PROOF OF SERVICE

I Jacques H. Telcy, declare that on this date 2023, as required by Supreme Court Rule 29. I have served the enclosed motion for leave to proceed in forma pauperis and petition for writ of Certiorari on each party to the above proceeding, 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 by first-class postage mail to delivery within 3 calendar days. The names and addresses of those served:

Supreme Court of the United States
Washington, DC 20543-001

Solicitor General of the United States, room 5614
Department of Justice, 950 Pennsylvania Ave,
N.W. Washington, DC. 20530-001

I Jacques H. Telcy, hereby declare under the penalty of perjury, pursuant to 28 U.S.C. §1746, that the foregoing is both true and correct.

Date: 10-16-2023

Respectfully Submitted,

Jacques H. Telcy
Reg# 77775-004
Federal Correctional Institution
Berlin, NH. 03570