DOCKET NO. [redacted] 03-9474

IN THE SUPREME COURT OF THE UNITED STATES

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| In re DAVID D. SANDOVAL, Petitioner | : | On Petition for Writ of Habeas Corpus |

Supreme Court U.S.
FILED
MAR 16 2004

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

NOW COMES David D. Sandoval, Petitioner, pro-se, and hereby prays this Court to grant him leave to proceed in forma pauperis. In support thereof, Sandoval asserts as follows:

1. In the underlying criminal prosecution counsel was appointed for Sandoval pursuant to 18 U.S.C. §3006A.
2. Sandoval is presently incarcerated and therefore unemployed.
3. Sandoval presently has no assets or income, save for his prison earnings. Nor has he had any in the preceeding 12 months.
4. Sandoval owns no real or personal property of any valuse.

WHEREFORE, Sandoval prays this Court to grant him leave to proceed in forma pauperis.

I do hereby declare under penalty of perjury and pursuant to 28 U.S.C. §1746, that the foregoing is true and correct, to the best of my knowledge and belief.

Respectfully Submitted,

David Sandoval

David D. Sandoval

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## QUESTIONS PRESENTED

1. What relief is available to a federal prisoner where it plainly appears in the record that he is actually innocent of being a career offender, but where AEDPA's limitations on habeas review bar any review in the lower courts?

2. Whether or not the Suspension Clause of the United States Constitution is violated where a petitioner who is actually innocent of being a career offender is left without recourse to challenge his sentence?

## JURISDICTIONAL STATEMENT

This is an origional action in the nature of habeas corpus which seeks relief from an illegal sentence imposed by the United States District Court for the Western District of Arkansas. This Court exercises jurisdiction pursuant to Title 28, United States Code §2241.

Pursuant to Title 28, United States Code §2242, Sandoval makes application to this Court because no other Court has the authority to correct the patently unauthorized sentence imposed, which uncorrected will result in a fundamental miscarriage of justice as Sandoval will serve 17½ years incarceration that he should not.

As interpreted by the Fourth Circuit Court of Appeals, Title 28 United States Code §2244(a) bars application to either the district or circuit court, and §2255 ¶8 to Title 28, United States Code, bars application to the sentencing court.

Should this Court decline to entertain this petition, Sandoval will have no avenue for relief.

## STATEMENT OF THE CASE

This matter is presently before the Court on petition for writ of habeas corpus pursuant to this Court's original jurisdiction. Owing to the long and tortured history of this case in the courts below, no court has ever considered Sandoval's claims on their merits, through no fault of Sandoval's.

This case is about a man's life. In July of 1982, Sandoval was convicted of possession (ex 3 , post at p. 55 ) of marijuana by the district court of Hidalgo County, Texas, and sentenced to five years imprisonment, which was suspended. This conviction was the result of a search warrant executed upon his residence wherefrom a quantity of marijuana was recovered (ex 6 , post at p. 64 ).

In January of 1988, Sandoval was again arrested, this time for aggravated assault. (ex 9 , post at p. 68 ). He was sentenced to five years imprisonment (ex 9 , post at p. 68 ), and his probation was revoked on the earlier possession charge (ex 9 , post at p. 68 ).

Sandoval, after being released from the Texas Department of Corrections was again arrested, this time for possession of cocaine and possession of a firearm by a convicted felon (ex 16 , post at p. 71 ). He entered a guilty plea to the firarms charge and the narcotics charge was dismissed (ex 12 , post at p. 76 ).

In early June 1997, employees of the U.S. Postal Service noticed a number of suspicious packages being delivered to an address (ex 2 , post at p. 40 ). Upon learning that the return address did not exist, subsequent parcels were routed to the Postal Inspection Service (ex 2 , post at p. 40 ). On June 30th, two

packages were screened by narcotics detecting canines, who alerted on the parcels (ex 2, post at p. 41). Pursuant to a federal search warrant, the packages were opened and found to contain approximately 9 oz. of marijuana, and 3 oz. of cocaine (ex 2, post at p. 41).

A controlled delivery of the parcels was made by U.S. Postal Inspectors on July 2, 1997, with the packages being picked up by the addressee, a Patricia Malnory (ex 2, post at p. 41). Ms. Malnory left the post office and returned to her residence (ex 2, post at p. 42).

That same day, a state search warrant was served on Ms. Malnory's residence (ex 2, post at p. 42). Inside, petitioner Sandoval was located, concealing himself along with the narcotics (ex 2, post at p. 42). After being advised of his Miranda rights, Sandoval acknowledged sole responsibility for the packages and their contents (ex 2, post at p. 42).

Sandoval entered a plea of guilty and the district court held a sentencing hearing. Prior to the entry of the plea, the Government filed a notice of enhanced sentence pursuant to 21 U.S.C. §851 (ex 1, post at p. 36). Therein, the Government alleged three prior convictions as the basis for the enhanced sentence: the 1982 possession charge; a 1988 possession charge,[1] and the 1991 possession charge which was dismissed by the court (ex 1, post at p. 36). A pre-sentence investigation report was completed by the U.S. Probation Office which correctly identified Sandoval's criminal history. Therein, the Probation Officer reported a single conviction

[1] No such charge exists.

for a violent felony, that of aggravated assault in 1988 (ex 2, post at p. 46), and a single conviction for a narcotics offense, that of possession of marijuana in 1982 (ex 2, post p. 45).

The probation officer found, based on the above, that Sandoval was a career offender as defined in U.S.S.G. §4B1.1 (ex 2, post at p. 47). At sentencing, counsel did not object, and Sandoval was sentenced to 262 months imprisonment (ex 2, post at p. 54). Sandoval requested counsel to appeal, but no appeal was noticed and Sandoval's conviction became final on June 25, 1998.

Five months later, Sandoval filed a pro-se pleading in the district court, raising a challenge to the effectiveness of counsel's representation. The district court interpreted his filing as a motion pursuant to Fed.R.App.P. 4 and denied it without addressing the issue of counsel's performance. The Eighth Circuit affirmed without opinion. Sandoval continued challenging his sentence through numerous filings in numerous courts, not one of which was ever addressed on it's merits.

The current round of challenges began over a year ago when Sandoval sought leave in the Eighth Circuit to file a successive §2255 motion.[2] Leave was denied. Notwithstanding the Eighth Circuit's denial, Sandoval asked the district court to reopen the 1998 pleading. The court denied his request, the Circuit Court affirmed without opinion and this Court denied certiorari. At the same time, Sandoval sought a traditional writ of habeas corpus

[2] This is in keeping with this Court's precedent which holds that a motion pursuant to Fed.R.Civ.P. 60 is the equivillent of a second motion. See, Calderon v. Thompson, 523 U.S. 538; 118 S.Ct. 1489 (1998).

in the district of confinement which was dismissed pursuant to the Fourth Circuit's[3] precedent, holding the district court to be without jurisdiction to entertain Sandoval's claims.

Sandoval now asks this Court to fashion some remedy.

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[3] Sandoval is presently confined in the district of Maryland.

## SUMMARY OF ARGUMENT

This case asks this Court to fashion a remedy for a petitioner who is serving a recidivist sentence despite plainly not being a recidivist. Petitioner Sandoval is presently serving approximately 15 unearned and undeserved years of imprisonment, despite it plainly appearing in the record before the trial court that Sandoval was not a recidivist. This case has a long and tortured history, which leaves Sandoval without recourse to the lower courts, despite first raising his claims in a timely and proper manner.

Because this matter is before the court under this Court's original habeas jurisdiction, Sandoval raises his claim as one of ineffective assistance of counsel at sentencing. He asserts that had counsel either knew the law, or even read the relevant sentencing guideline, Sandoval would likely have been sentenced to approximately 180 fewer months imprisonment.

No court has ever heard Sandoval's claim on it's merits. Counsel did not appeal, despite the erroneous classification and Sandoval's wishes. The district court interpreted his pro-se request for relief as a motion for leave to file a belated appeal, and denied it without addressing Sandoval's claim of ineffective assistance. All Sandoval asks is that some court hear his claim on it's merits.

While this Court sparingly exercises it's discretion to grant the extraordinary relief sought, as Chief Justice Rehnquist commented in Felker v. Turpin, 518 U.S. 651; 116 S.Ct. 2333 (1996), this Court continues to have the authority to do so. The availability of such relief in this Court saved portions of the AEDPA from constitutional scrutiny in that case.