

NO: 15-5756

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2015

DANA E. TUOMI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

SUPPLEMENTAL BRIEF OF PETITIONER TUOMI

MICHAEL CARUSO
Federal Public Defender

Timothy Cone
Peter Birch
Assistant Federal Public Defenders

Counsel for Petitioner Tuomi
450 Australian Avenue South, Suite 500
West Palm Beach, Florida 33401
Tel. (561) 833-6288
Fax: (561) 833-0368

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SUPPLEMENTAL BRIEF OF PETITIONER TUOMI

This Supplemental Brief is filed pursuant to Supreme Court Rule 15.8, to call this Court's attention to Denson v. United States, ___ F.3d ___, 2015 WL 5719466 (11th Cir. Sept. 30, 2015), a case decided after Tuomi filed his Reply Brief in support of his petition for a writ of certiorari.

In response to Tuomi's certiorari petition, the government took the position that Tuomi's vagueness challenge to the residual clause of the career offender guideline should be remanded to the Eleventh Circuit for further consideration in light of Johnson v. United States, 135 S.Ct. 2551 (2015). In his Reply, Tuomi noted that, after the government filed its response, the Eleventh Circuit decided United States v. Matchett, ___ F.3d ___, 2015 WL 5515439 (11th Cir. Sept. 21, 2015). Because Matchett held that Johnson does not apply to the Guidelines, Tuomi urged this Court to grant his certiorari petition, as Matchett indicated that the Eleventh Circuit was now unreceptive to his argument. After Tuomi filed this Reply Brief, the Eleventh decided Denson. Denson rejected a defendant's reliance on Johnson, citing Matchett for the proposition that "the vagueness doctrine in Johnson does not apply [to] the advisory sentencing guidelines." Denson, 2015 WL 5719466, at * 4. Denson's reliance on Matchett indicates that the Eleventh Circuit is now treating Matchett's limitation on Johnson as binding law in the Circuit, and, consequently, that the Eleventh Circuit is not the tribunal to which Tuomi should now address his argument that Johnson should apply to the residual clause of the career offender guideline.

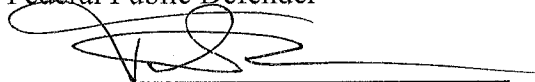
Matchett ruled against the defendant notwithstanding the government's concession that the career offender residual clause is unconstitutionally vague. 2015 WL 5515439 at * 6. The Eleventh Circuit's rejection of the government's concession starkly contrasts with recent rulings in other Courts of Appeals. These courts are accepting the government's concession that Johnson applies

to the residual clause of the career offender guideline, and, therefore, vacating sentences, and remanding cases for resentencing – to date, in unpublished decisions. See, e.g., United States v. Smith, __Fed. Appx. __, 2015 WL 5796942, at * 2 (10th Cir. Oct. 5, 2015) (unpublished) (remanding for resentencing in light of the government’s concession that Johnson applies to the Guidelines); United States v. Benavides, __Fed. Appx. __, 2015 WL 5574264, at * 1 (9th Cir. Sept. 23, 2015) (unpublished) (same); United States v. Grayer, __Fed. Appx. __, 2015 WL 5472743, at * 3 (6th Cir. Sept. 17, 2015) (unpublished) (same);.

Tuomi respectfully requests that this Court grant certiorari to resolve this matter.

Respectfully submitted,

MICHAEL CARUSO
Federal Public Defender



Timothy Cone
Peter Birch
Assistant Federal Public Defenders
Counsel for Petitioner Tuomi

West Palm, Florida
October 7th, 2015

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CERTIFICATE OF SERVICE

I certify that on this 7th day of October 2015, in accordance with SUP. CT. R. 29, copies of the foregoing Supplemental Brief of Petitioner were served via FEDEX overnight delivery upon the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

MICHAEL CARUSO
~~Federal Public Defender~~



West Palm FL
October 7th, 2015

Timothy Cone
Peter Birch
Assistant Federal Public Defenders
Counsel for Petitioner