

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN THEODORE HANCOCK — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

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

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

PETITION FOR WRIT OF CERTIORARI

JOHN THEODORE HANCOCK

(Your Name)

14341-078 KA
FEDERAL CORRECTIONAL INSTITUTION

(Address)

POST OFFICE BOX 6001
ASHLAND, KENTUCKY 41105-6001

(City, State, Zip Code)

NONE

(Phone Number)

QUESTION(S) PRESENTED

(1)

Does a jury instruction that submits the question of whether a death was the result of the accused's offense by simply tracking the statutory language without informing the jury the death "results from" the offense only if the death would not have occurred but-for the offense satisfy the standard announced by this Court in Burrage v. United States?

(2)

Can a jury determine that a death resulted from an offense without receiving proof that the offense provided an independent cause of death?

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:

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OTHER

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 _____; 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☒ is unpublished.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 B 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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 _____.

☐ 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: March 16, 2018, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

18 U.S.C. § 1347 provides in part that: "[] if the violation [of the health care fraud prohibition] results in death, such person shall be fined...or imprisoned for any term of years or for life [.]"

21 U.S.C. § 841(b)(1)(A) provides in part that "[Such] person [who has violated 21 U.S.C. § 841(a)] if death or serious bodily injury results from the use of such substance shall be [sentenced to] not less than 20 years [imprisonment.]

STATEMENT OF THE CASE

This petition for a writ of certiorari is related to the denial of a pro se motion to vacate, set aside, or correct the petitioner's sentence under 28 U.S.C. § 2255 ("§ 2255 motion").

During the underlying criminal proceeding the petitioner, Dr. John Theodore Hancock ("Dr. Hancock"), a medical doctor was charged with multiple counts of health care fraud, drug offenses, money laundering, and income tax violations. The Court of Appeals summarized the underlying facts as follows:

Defendant operated a medical business known as "Hancock Family Medicine" in Mooresburg, Tennessee. Defendant prescribed controlled substances, including methadone, morphine, oxycodone (OxyCotin), hydrocodone, and benzodiazepines, for patients without performing physical examinations and without determining whether the drugs were medically necessary. Most of the drugs were paid for through the TennCare program, Tennessee's program for indigent medical care. Several of Defendant's patients died.

United States v. Hancock, 473 Fed. Appx. 424, 425 (6th Cir. 2012), cert. denied, 568 U.S. 899 (2012).

Dr. Hancock was convicted after a 10-day jury trial of multiple counts of defrauding the TennCare program, with two of the counts resulting in death, in violation of 18 U.S.C. § 1347; multiple counts of unlawfully dispensing controlled substances, with three of the counts resulting in death, in violation of 21 U.S.C. § 841; and additional counts related to money laundering and tax violations. Dr. Hancock was sentenced to a total term of imprisonment of 276 months, which he is presently serving.

On direct appeal, Dr. Hancock, through his counsel, argued

that there was insufficient evidence to support his convictions for health care fraud resulting in death and that the District Court did not give a specific instruction about proximate cause as he requested. The Court of Appeals affirmed the convictions. United States v. Hancock, supra.

Dr. Hancock, proceeding on his own behalf, subsequently filed a § 2255 motion on the grounds of ineffective assistance of trial and appellant counsel. While the motion was pending in the District Court this Court announced its decision in Burrage v. United States, 571 U.S. ___, 134 S. Ct. 881, 187 L. Ed. 2d 715 (2014). That decision holds that an accused is not subject for penalty enhancements under § 841(b)(1)(C) when the use of a drug distributed by the accused is not independently sufficient cause of the user's death or serious bodily injury unless it is proven the use was the "but for" cause of injury or death.

Dr. Hancock submitted a motion for judicial notice of the Burrage decision and stating his intention to amend his § 2255 motion to include grounds based on the Burrage decision. Dr. Hancock also moved the Court of Appeals to recall the mandate in his direct appeal because his convictions for dispensing controlled substances resulting in death were invalid in light of the Burrage decision.

The Court of Appeals denied the motion to recall the mandate, instructing that Dr. Hancock should pursue any remedies under Burrage in the § 2255 proceeding that was pending in the

District Court, and that the District Court should decide in the first instance whether the Burrage decision has retroactive application.

Dr. Hancock next submitted a motion to amend and supplement his § 2255 motion to include his Burrage claims. The District Court granted the motion to amend but denied the underlying § 2255 motion, holding that neither counsel had failed to provide constitutionally adequate assistance and that Burrage does not apply retroactively to cases on collateral review. The District Court granted a certificate of appealability on the issue of whether Burrage has retroactive application.

On appeal, the government conceded, and the Court of Appeals agreed, that the Burrage decision applies retroactively to cases on collateral review. However, the Court of Appeals held that the jury instructions satisfied the Burrage standard.

The Court of Appeals examined the instructions that the District Court had given the jury. Regarding the counts of health care fraud, the District Court instructed:

The law provides that whenever death results from the violation, that is, health care fraud, a more serious offense is committed.

So, if you find the Defendant guilty of the health care fraud charged in Count 1 of the indictment you must also decide whether the Government has proven beyond a reasonable doubt that the death of Evelyn Lindsey resulted from the violation.

Similar instructions for the counts related to unlawfully dispensing controlled substances resulting in death were provided as follows:

The law provides that whenever death results from the use of controlled substances unlawfully dispensed or caused to be dispensed a more serious offense is committed.

So, if you find the Defendant guilty of unlawfully dispensing or causing to be dispensed controlled substances, as charge[d] in Count 33 of the indictment, you must also decide whether the Government has proven beyond a reasonable doubt that the death of Evelyn Lindsey resulted from the use of the controlled substances.

Hancock v. United States, 6th Cir. No. 16-6504, Slip Op. 4 (copy enclosed at Appendix A to this petition).

The Court of Appeals concluded that the jury's instructions tracked the statutory language and was consistent with this Court's instructions in Burrage in that it allowed the jury to rely on the ordinary meaning of "resulted from." Upon this conclusion the Court of Appeals held that Dr. Hancock is not entitled to § 2255 relief under Burrage and affirmed the District Court's judgment.

REASONS FOR GRANTING THE PETITION

The Court of Appeals' decision permits a jury to find a death "results from" a defendant's underlying offense without requiring proof the offense was more than a nonessential contributing factor in the death. The Court of Appeals ruled that the District Court's jury instructions were consistent with Burrage because this Court gave the phrase "results from" its "ordinary, accepted meaning" of but-for causation. Slip Op. 3. The Court of Appeals determined that the jury instructions tracked the relevant statutory language, consistent with Burrage, and allowed the jury to rely on the ordinary meaning of "resulted from." The Court of Appeals concluded that the evidence presented at Dr. Hancock's trial supported the jury's verdict that the deaths "resulted from" Dr. Hancock's offenses. The Court of Appeals found support for its decision in the Fourth Circuit's decision in United States v. Alvarado, 816 F.3d 242 (4th Cir. 2016).

Alvarado examines a death that was related to the illegal distribution of heroin. The Alvarado court noted that there "was no evidence in [the] case that would allow a jury to find that heroin was only a nonessential contributing cause of...death." 816 F.3d at 248. The absence of a separate, independent cause of death distinguishes Alvarado from the circumstances of Dr. Hancock's case. Most simply: "because there was no evidence in the record that [the decedent] could have died without the

heroin, the jury's verdict was necessarily consistent with the Supreme Court's decision of but-for causation." Id. at 244.

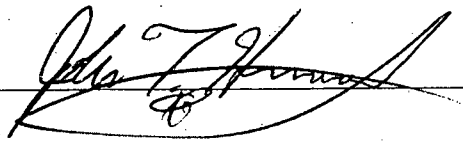
At Dr. Hancock's trial, evidence was presented of polydrug use and multiple sources through which the decedents obtained their drugs. Most of the expert testimony that was presented addressed whether the drugs prescribed by Dr. Hancock were medically appropriate. The jury was never asked to consider whether Dr. Hancock's offenses were an essential factor in any of the deaths, or whether conditions other than those related to Dr. Hancock presented an independent cause of death, even though Dr. Hancock's counsel requested a more specific jury instruction concerning causation.

The Burrage decision makes it clear that the statutory language "results from" imposes a requirement to prove actual causality. In the usual course, this requires proof that the death would not have occurred in the absence of a defendant's conduct. 187 L. Ed. 2d at 723. The jury was never instructed to make any sort of finding whether the decedents' deaths would have occurred in the absence of Dr. Hancock's offenses, and the jury was never instructed to determine whether the offenses were essential factors leading to the deaths.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "John F. Kennedy", is written over a horizontal line.

Date: June 04, 2018