

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Xavier Cardona;Michael Cardona,-PETITIONER'S

VS.

UNITED STATES-RESPONDENT

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

Xavier Cardona #36123380
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1900 Simler Ave.
Big Spring,TX. 79720

QUESTION PRESENTED

1. Was it admissable for the court of appeals to affirm the district court's conversion of petitioner's seized cash into cocaine, when there was no evidence that the currency was the proceeds of or otherwise linked to a drug transaction.

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

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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 at Appendix A to the petition and is reported at United States v. Xavier Cardona; Michael Cardona, 2017 U.S. App. LEXIS 19437.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my was October 5, 2017.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment:

"...shall not be deprive of liberty or due process of law. "

STATEMENT OF THE CASE

On 10-23-2015, Jury Verdict in a cause then pending in the United States District Court Western District of Texas (Del Rio), entitled United States v. Xavier Cardona, Et Al, Criminal No. 2:14-cr-00461-AM-1, petitioner was found guilty by a jury on an indictment of three counts, to count one charging violations of 21 U.S.C. §§ 841(a)(1)&(b)(1)(B) and 846 for the year 2014. (Appendix

On 9-26-2016, the district court entered judgment and commitment and petitioner was sentenced to 216 months imprisonment on one count and fined \$100⁰⁰. The judgment and sentence was affirmed by the United States Court of Appeals for the Fifth Circuit, United States v. Xavier Cardona; Michael Cardona, No. 16-51113.

ARGUMENT AMPLIFYING THE REASONS FOR THE PETITION

THE COURT OF APPEALS HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF OTHER CIRCUIT COURTS.

This is a conversion of money into drug equivalent case. At the time of petitioner's criminal trial, the Sixth and Ninth Circuits had previously held that there was no finding that the currency seized was the proceeds of or otherwise linked to a drug transaction and there was no proof of the origins of the money, it could have come from any source, legal or illegal. See *United States v. Ray*, 1995 U.S. App. LEXIS 15763 and *United States v. Gonzalez-Sanchez*, 953 F.2d 1184.

THE COURT OF APPEALS ERRED IN AFFIRMING XAVIER'S OBJECTION TO THE CASH CONVERSION AT THE DISTRICT COURT

On 10/5/2017, The court of appeals affirmed petitioner's objection to the cash conversion at the district court. See Appendix A. at page 7 that reads as:

"Furthermore, the evidence tending to show the cash was from drug sales was substantial. Both the testimony presented at trial and the information in the PSR establish that Xavier and Michael sold large quantities of cocaine for over a decade. The district court analyzed Xavier's tax records and found no indication of significant cash savings. Noting also the lack of legitimate business records at the auto detailing shop, the drugs ledger, and the cellophane wrapping on the stacks of cash, the district court reasonably concluded that Xavier's alternative explanation were not credible."

In *United States v. Gonzalez-Sanchez*, 953 F.2d 1184, 1186-87, the court said:

"A. Conversion of \$1541 into 14 Grams of Heroin
The government argued to the district court, and argues on appeal that the district court could adopt the probation officer's recommendation that the currency be converted into its heroin equivalent under Application Note 2 to Sentencing Guidelines section 2d1.4, ... Three other circuits have relied on that Application Note to approve the conversion of seized currency into its equivalent in drugs, *United States v. Hicks*,

No. 90-5627, 948 F.2d 877, 1991 U.S. App. LEXIS 25074, at *10-*12(4th Cir. October 23, 1991, as amended November 21, 1991); United States v. Stephenson, 924 F.2d 753, 764-65(8th Cir. 1991); United States v. Gerante, 891 F.2d 364, 368-70(1st Cir. 1989).

In each case, however, there was evidence of a connection between the money seized and a drug transaction. See Hicks, 948 F.2d 877, 1991 U.S. App. LEXIS 25074, at *12&n.4 (defendant admitted a "majority" of the money converted came from drug sales; court determined there was "ample evidence on which the district court could have found that all of the money was the proceeds of drug transactions"); Stephenson, 924 F.2d at 756 (members of defendants' drug distribution ring habitually arranged their proceeds in a particular and readily identifiable manner); Gerante, 891 F.2d at 365--66, 368 (defendant contended money seized and converted was prepayment for cocaine he possessed when arrested, which had already been counted against him; court found sufficient indicia of reliability to support district court's conclusion money came from prior drug transaction). Here there was no evidence at all connecting the \$5141 to any drug-related activities. Without a finding, based on the record and made by a preponderance of the evidence, United States v. Restrepo, 946 F.2d 654, 656(9th Cir. 1991)(en banc), that the currency seized was the proceeds of or otherwise linked to a drug transaction, the conversion of the cash into its drug equivalent is improper."

And in United States v. William L. Ray, 1995 U.S. App. LEXIS 15763, No. 94-3862, the court said:

On July 1, 1993, ATF agents and state police officers executed a federal search warrant at Ray's residence in Lima, Ohio. After an alert by a police dog near the fireplace, they found a shoe box containing two pieces of crack cocaine and \$20,030 cash hidden behind a panel.

The amount of cocaine a defendant will be held accountable for during sentencing is a finding of fact which we review for "clear error." United States v. Jackson, 990 F.2d 251, 253 (6th Cir. 1993); United States v. Walton, 908 F.2d 1289, 1301 (6th Cir.), cert. denied, 498 U.S. 989 (1990). "where there is no drug seizure or the amount seized does not reflect the scale of the offense, the court shall approximate the quantity of the controlled substance." U.S.S.G. § 2D1.1, comment.(n.12). In making this approximation, we have specifically approved converting seized cash into an equivalent amount of drugs so long as the conversion ratio used is supported by a preponderance of the evidence. United States v. Samour, 9 F.3d 531, 537 (6th Cir. 1993); Jackson, 990 F.2d at 253. In this case, however, there is little if any proof as to the origins of the money could have come from almost any source, legal or illegal. there was no proof of any other drug activities engaged in by

Ray. The conversion of the cash to drugs is authorized only after a preponderance of the evidence establishes that the money came from the sale of the drug to which the conversion was applied.

HOW GONZALEZ-SANCHEZ AND RAY REFLECT ALL ASPECTS OF PETITIONER'S SEIZED CASH CONVERSION INTO COCAINE

At trial the U.S. Attorney did not prove that the money seized from petitioner's house was connected with the cocaine, because the money was in a safe and never contaminated with any drugs.

Before trial, petitioner had ask his attorney. that they could prove with records that the money he had was from legal proceeds and not from drugs sales. Petitioner ask his attorney to bring his W2 papers to court, so it could be shown to the jury at trial and the attorney told petitioner that they did not need the W2 forms to prove that the money was from legal proceeds. Petitioner told his attorney that they would use the money and the attorney told petitioner that all they have to prove is that petitioner was not selling drugs.

At trial the prosecutor told petitioner that he had no evidence of ever working and the only place he ever worked was at Burger King. Petitioner then told the prosecutor that he told his attorney to use the W2 forms and the attorney did not provide it to the jury.

Petitioner's attorney then showed the W2 forms to the judge at sentencing and the judge told the attorney it was not good enough and for that reason the judge used the money as drugs.

As you can see petitioner would had proved that the money was legally his and the prosecutor never proved that the money was connected with the drugs by saying that the money was with the drugs in the safe with the money.

Petitioner's case should had been remanded to the district court for the U.S. Attorney not proving that the money was with the drugs at the time the agents searched petitioner's safe.

Petitioner has demonstrated that the money could not be used as a conversion into drugs.

This case should be granted to halp other inmates that have same convictions and that is why this case is importanted.

CONCLUSION

For the reason this case should be granted.

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December 27, 2017