

No. 18-5452

IN THE
SUPREME COURT OF THE UNITED STATES

Rehearing

Kenneth Koshawn Reid — PETITIONER
(Your Name)

vs.

Solicitor General — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

4th Circuit Court of Appeals

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

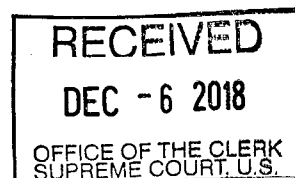
PETITION FOR WRIT OF CERTIORARI *Petition for Rehearing*
Pursuant to Rule 44

Kenneth R. Reid
(Your Name)

USP BIG SANDY
(Address)

Inez Kentucky 41224
(City, State, Zip Code)

NA
(Phone Number)



Kenneth R. Reid respectfully submitted on 11/12/18

(1)

QUESTION(S) PRESENTED

- 1) In Order for the government to establish "Guilt or Criminal Culpability For the Count 1 Conspiracy Crime do the "Jury" and Not "The Court" have to find that 50 grams or more of crack cocaine under 21 USC § 841(b)(1)(A) and 500 grams or more of cocaine under 21 USC § 841(b)(1)(B) are Attributable to, reasonably foreseeable to Kenneth Rushan Reid as a individual in the Conspiracy Count 1 in order for him to be liable? True ☐ or False ☐
They do ☐ or They don't ☐ (mark check)
check Box
- 2) Can the Court set a base offense level for Drugs Without the Jury finding Any quantity of drugs in the Case?
- 3) Can the Court set a Penalty range for a drug crime without the Jury finding any "No" drug quantity at all? (In a Jury trial situation)
- 4) Is the drug Sentence illegal if there was No drug quantity finding at all by the Jury? In a Jury trial situation
- 5) Is it illegal for the USPO United States Probation officer to place an uncharged Crime (21 USC § 841(b)(1)(C)) in Petitioner's PSI and the Court to erroneously adopt the PSI with this crime in it and for the Court to use this same crime as its basis for Sentencing on Count 1.

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:

Kenneth Roshan Reid v. United States

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United States v. Promise	255 F3d 150 (4th Cir 2001)
United States v. Jones	658 Fed Appx, 188-190 (4th Cir 2016)
United States v. Hickman	626 F3d 756, 763-73 (4th Cir 2010)
United States v. Brooks	524 F3d 549, 557-59 (4th Cir 2008)
United States v. Williams	986 F2d 86, 90 (4th Cir 1993)
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STATUTES AND RULES 28

21 USC § 846

21 USC § 841 (b)(1)(A)

21 USC § 841 (b)(1)(B)

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 _____ to the petition and is

☒ reported at 4th Circuit Court of Appeals; 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 _____ to the petition and is

☒ reported at District of South Carolina (Columbia); 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 NA; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the NA 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: _____, 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. § 1254(1).

[] For cases from **state courts**: NA

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).

1 ISSUE

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

District Court imposed a sentence in violation of law on Cant 1, the sentence is illegal on Cant 1. The lower Court clearly abused its discretion in doing so, committed "Plain Error" and clear error in Law, interpreting the law already established.

21 USC § 841(b)(1)(A) AND 21 USC § 841(b)(1)(B) is charged in Cant 1
21 USC § 841(b)(1)(C) is not charged in Cant 1, but the Court sentenced Reid based on the fact that the USPO placed this crime in the PSI.

[ISSUES PRESENTED]

- 1) District Court imposed a 240 month Sentence on Count 1 that is inviolation of Laws of the U.S.
- 2) District Court Abused its discretion when it imposed a sentence inviolation of law on Count 1 and committed Plain Error, Clear Error in Law
- 3) District Court imposed an illegal Sentence on Count 1 that was "Contrary" to already established U.S. Supreme Court law (Pinkerton v. United States) and 4th Circuit Precedent Collins v. United States 415 F3d 312 4th Cir 2005

(Plain Error Correction)
Needed

Fruit of the Poisonous Tree!

USPO ERROR

The USPO at the time I was sentenced was Elizabeth Winham. She illegally placed an uncharged crime of 21 USC § 841(b)(1)(C) in my (PSI) presentence report knowing that I was not charged with this crime at all in Count 1. The Court erroneously adopted the PSI with this crime charged as Count one when it's really not Count 1. There was no lesser-includeds charged in Count 1 at all. No lesser-included offenses were presented to the Jury nor were any lesser-includeds asked for by my Attorneys at all or the Government. My Attorneys objected to this crime being charged in the PSI on my behalf, but were ignored by the District Court Judge. The Judge ignored already established Supreme Court law, rulings and proceeded with the sentencing.

United States v. Collins 415 F3d 304

Stated As previously outlined, § 841(b) has various subsections that prescribe gradation of minimum and maximum sentences dependent on the quantity of narcotics involved in the violation.

Following Irvin, the subsection of § 841(b) applicable to an individual defendant is determined by a consideration of the amount of narcotics attributable to that defendant.

Irvin was decided, however, prior to *Apprendi v. New Jersey* 530 US 466, 147 LEd 2d 435, 120 S Ct 2348 2000 and *United States v. Promise* 255 F3d 150 (4th Cir 2001).

At the time that Irvin was decided, it was the District Court that determined, under a preponderance of the evidence standard, the quantity of narcotics attributable to a defendant for the purposes of setting the specific threshold drug quantity under § 841(b).

See Irvin 2 F3d at 76 (the statute require a district court to determine (415 F3d 314) the accountability of each co-conspirator for each object offense and the quantity of narcotics involved in each object offense using the principles of Pinkerton).

Apprendi and *Promise* altered Irvin's holding by effectively replacing the word "A District Court" with "The Jury" and requiring proof beyond a reasonable doubt,

The Drug quantity attributable to a defendant charged with Conspiracy is the amount he agreed to distribute or possess with intent to distribute as well as the amount agreed to be distributed or possessed with intent to distribute by Co-conspirator in furtherance of the Conspiracy, that were known to him or reasonably foreseeable to him.

United States v. Jones 658 Fed Appx 188, 190 (4th Cir 2016)

United States v. Hickman 626 F3d 756, 763-73 (4th Cir 2019)

United States v. Brooks 524 F3d 549, 557-59 (4th Cir 2008)

A trial court is therefore obligated to instruct a jury to use "Pinkerton" principles to determine the quantity of drugs attributable to each individual defendant involved in a drug conspiracy. Brooks, 524 F3d 558 that is, a defendant convicted of conspiracy should be sentenced not only on the basis of his conduct, but also on the basis of conduct of Co-conspirators in furtherance of the conspiracy that was known to the defendant or reasonably foreseeable to him.

United States v. Williams 986 F2d 86, 90 (4th Cir 1993)

4th Circuit Precedent

Collins held that a jury must determine "the quantity of narcotics attributable to each co-conspirator by relying on the principles set forth in Pinkerton. United States v. Collins 415 F3d 304, 312 therefore, by its plain terms, our precedent requires nothing more than a jury determination that a given quantity of drugs was reasonably foreseeable to a defendant.

To decide otherwise would be to turn notion of conspiracy, which entails coconspirator liability, foreseeable for reasonably foreseeable acts, on its head. See Pinkerton v. United States 328 US 640 647-48 66 S Ct 1180 90 L Ed 1489 (1946) noting the principles that "the overt act of one partner in crime is attributable to all where it is within the scope of the unlawful project. The notion of Attribution in Collins does not require greater proof of individual responsibility for a substantive crime, including an amount of drugs distributed than does our jurisprudence following Pinkerton. The drugs attributable to a defendant are those reasonably foreseeable to him based on, upon his participation in the conspiracy. See Collins 415 F3d 312 finding it is the amount of narcotics attributable to an individual, and not the amount of narcotics distributed by the entire conspiracy that is determinant under § 841(b). Thus, any narcotics that were distributed by the conspiracy, but not reasonably foreseeable to an individual defendant --- and therefore not, under Pinkerton properly attributable to him --- may not be considered in determining his sentence.

COUNT 1 Charged

That Kenneth R. Reid, Patrick Simpson, Samuel Anderson Knowingly
Conspired to possess with intent to distribute and to distribute
50 grams or more of crack cocaine and 500 grams or more of cocaine
all in violation of 21 USC § 846, 21 USC § 841(a)(1),
21 USC § 841(b)(1)(A), 21 USC § 841(b)(1)(B)

The Jury were given "Pinkerton instructions" prior to deliberations on
the Verdict Form. The Jury partially answered the Verdict Form.
The Defense Attorneys, AUSA, Court erroneously decided to assume
that the Jury had reached a Guilty Verdict based on the way
that the Verdict had been partially answered. This assumption
of guilt was "Plain Error" because the Jury did not find any
Drug Quantity Attributable to, reasonably foreseeable to Kenneth R.
Reid therefore the government had not established lawful
Guilt or Criminal Culpability on Count 1 as charged.

§ 841(b) statutes are the "Drug Quantity" gradations
and are the penalties for a § 846 violators. Without a drug quantity
finding, the Courts have no way to establish or determine a
base offense level, Penalty range, Setting of a Penalty range

The Jury did Not find any smaller drug quantities
in this case at all. NONE WERE FOUND AT ALL

In Kenneth R. Reid's case the jury was given "Pinkerton" instructions to use the principles set out in Pinkerton to determine the quantities of drugs attributable to each individual defendant involved in the drug conspiracy. This fact alone confirms that the "Jury" did not believe that Reid was involved in the 50 grams of crack cocaine and 500 grams of cocaine conspiracy charged in Count 1. The Jury knew what they had to find in order to find Reid guilty of Count 1, but chose not to find that he was involved in this degree of conspiracy. Therefore the conspiracy as charged with the gradations, quantities was not proven and the government did not sustain its burden of proof nor did it establish "Guilt or Criminal Culpability, liability for the specific conspiracy that was charged in Count 1. The Jury also did not convict on Count 3 for the same reason, because it did not find that Reid was guilty of a conspiracy involving 50 grams of crack cocaine and 500 grams of cocaine so the jury acquitted Reid of Count 3. The Jury Foreperson stood in open court and stated "We the jury do not see any evidence of a conspiracy". But this statement has been erased from the Transcript record by someone. But is on Audio record.

The Collins decision ruled that a jury must utilize the principles outlined in Pinkerton v. United States, 328 US 640 66 S.Ct 1180 90 LEd 1449 (1946), to determine the specific quantity of drugs attributable to each individual defendant for the purpose of setting a threshold drug quantity under § 841(b) Collins 415 F.3d at 314

STATEMENT OF THE CASE

Petitioner Kenneth Roshawn Reid was illegally Sentenced to an uncharged crime of 21 USC §841 (b)(1)(C) that was not charged in Count 1. A crime which was placed in his PSI illegally by the USPO Elizabeth Windham. Kenneth R. Reid was not found guilty of any drug quantity by the "Jury" and the Jury did not find that any of the drug quantities charged in Count 1 were attributable to, reasonably foreseeable to Kenneth R. Reid as a individual. The Lower Courts decisions and interpretation of the laws were "Contrary" to the U.S. Supreme Court rulings and Law that were already established at the time of Reid's Sentence in 2006. The government did not establish Guilt or Criminal Culpability against Kenneth R. Reid as a individual on Count 1. and ruled against clearly established Supreme Court law.

Affidavit of Truth

I swear under the Penalty of Perjury that all is true within this petition under the laws of the US, 28 USC §1746 Kenneth R. Reid
pages 1-19

(16)

REASONS FOR GRANTING THE PETITION

Because the District Court imposed a 240 month Sentence against Kenneth R. Reid on Count 1 that was, is in violation of Law.

The Sentence was based on a invalid conviction, assumption that was erroneously determined by the Defense Attorneys, AUSA, The Court. The 240 month Sentence on Count 1 is illegal, unlawful and Contrary to already establish Supreme Court Law.

The Contrary Standard applies "Williams v. Taylor" 529 US 362 "Held that a lower Court cannot make decisions Contrary to already established federal law, Here in Reid's case the District Court and the Appeals Court made an erroneous assumption that the Jury had somehow reached a finding of guilt or Lawful Guilt on Count 1 when the Jury Clearly did not establish Guilt or Criminal Culpability as to Reid the Petitioner. The Appeals Court Applied the wrong standard of Law and made a Contrary decision to "Apprendi v. New Jersey" and "Pinkerton v. United States"

#1 Reason

Petitioner is Actually, factually, Legally innocent of Count 1's Drug Conspiracy involving 50 grams or more of crack cocaine and 500 grams or more of cocaine under 21 USC § 841 (b)(1)(A), 21 USC § 841 (b)(1)(B)

The Case law in support of my argument is
U.S. Supreme Court Case law already established by
your Court, The Law of the Land which all lower
Courts have to follow

Relief Sought

For the U.S. Supreme Court to grant writ of certiorari
in light of already established Supreme Court Law
To Order the Appeals Court in the 4th Circuit and on District Court
to dismiss Case 1, as a matter of law, immediately release inmate
Reg no # 11485-171 Kenneth Roshawn Reid from his illegal incarceration,
For the Supreme Court to no longer allow the Government not to respond
to the illegal imprisonment of Kenneth R. Reid, for this matter to be addressed
on the record and corrected.

CONCLUSION

By Law writ of certiorari should be granted as a
matter of law, to correct a clear error in Law, "Plain Error"
under Rule 52(b) "Plain Error" to prevent a manifest injustice
The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth R. Reid

Date: 11/22/18
Huston v. Lack (deemed ^{motion} timely filed on 11/13/18
11/12/18)

I swear under the Penalty of Perjury that the foregoing is true
and correct to the best of my knowledge under the Laws of the
U.S. and title 28 USC §1746 Kenneth R. Reid's signature
Kenneth R. Reid 11/12/18