

CASE No. _____

IN THE SUPREME COURT
FOR THE UNITED STATES COURT OF AMERICA

UNITED STATES OF AMERICA

Respondent,

v.

CHAD ALLEN DORTON

Petitioner.

**PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT
FROM THE OPINION OF THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

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QUESTION PRESENTED

Did the district court err in applying the sentencing guidelines offense enhancement for obstruction of justice?

LIST OF PARTIES

The parties are listed in the caption.

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OPINIONS BELOW

1. Opinion, United States Court of Appeals for the Sixth Circuit, *United States of America v. Chad Allen Dorton*, C.A. No. 17-6462, July 2, 2018 (unpublished slip opinion).
2. Judgment in a Criminal Case, United States Court for the Eastern District of Tennessee at Greeneville, *United States of America v. Chad Allen Dorton*, District Court No. 2:16-CR-096, December 7, 2017.

STATEMENT OF JURISDICTION

The United States Court of Appeals for the Sixth Circuit entered its opinion in this case on July 2, 2018. This Court's jurisdiction is invoked under Title 28, United States Code § 1254(1). Rule 13 of the Supreme Court allows for ninety days within which to file a Petition for a Writ of Certiorari after entry of Judgment by the appellate court or the denial of the Petition for Rehearing, whichever is later. This Petition is, therefore, timely filed within the period allotted by the rules.

Petitioner, Chad Allen Dorton, respectfully prays that a Writ of Certiorari issue to review the Opinion of the United States Court of Appeals for the Sixth Circuit. In that Opinion, the Sixth Circuit affirmed the District Court.

CONSTITUTIONAL PROVISION INVOLVED

5th Amendment to the U.S. Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On November 9, 2016, a federal grand jury, returned a superseding indictment against Defendant for possession with intent to distribute 1,000 kilograms of marijuana.

On September 14, 2017, the Defendant proceeded to trial. The jury found him guilty as charged.

A Presentence Investigation Report was prepared by the U.S. Probation Office. The report disclosed a total offense level 32 and a criminal history category of IV (guideline range 168-210).

On October 24, 2017 the government filed a Notice of No Objection to Presentence Investigation Report.

On October 27, 2017, the defendant filed a Notice of Objections to the Presentence Investigation Report.

On December 4, 2017, the District Court conducted a sentencing hearing and sentenced the Defendant to 168 months of imprisonment concurrent to several state court proceedings, a term of supervised release of five (5) years, and a special assessment of One Hundred Dollars (\$100.00).

The Judgment encompassing the court's decision was entered on December 7, 2017.

On December 4, 2017, the Defendant filed his Notice of Appeal.

On July 2, 2018, the Court of Appeals for the Sixth Circuit affirmed the District Court's Judgment.

ARGUMENT

The district court erred in its application of the two level increase of the sentencing enhancement for obstruction of justice under U.S.S.G. § 3C1.1.

U.S.S.G. § 3C1.1 reads as follows:

Obstructing or Impeding the Administration of Justice

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a closely related offense, increase the offense level by **2** levels.

The Presentence Investigation Report contains the following information relevant to the ultimate question in this case of whether the Defendant, Chad Allen Dorton, obstructed justice and was thereby subject to the two level adjustment pursuant to U.S.S.G. § 3C1.1. Paragraphs 4 and 6 of the Presentence Report read as follows:

4. The following represents a summary of the evidence presented at trial. Christopher Burchett testified to the following. November 2014, Burchett began traveling to Oregon to obtain marijuana to bring back to Tennessee for distribution. Over time, he employed several people to assist him. He explained how the overall conspiracy worked and stated that from November 2014 to November 2016, a total of approximately 2,000 to 2,500 pounds (907 to 1,133 kilograms) of marijuana was obtained in Oregon and brought back to Tennessee and sold. Burchett testified the defendant joined the conspiracy in June 2015, when he made his

first trip to Oregon with co-defendant Carter to retrieve marijuana to bring back to Tennessee, for Burchett. Burchett paid defendant Dorton to obtain marijuana for him from his sources in Oregon. The defendant's trips to Oregon continued through February 2016. Burchett testified the defendant traveled to Oregon for him on six or seven occasions and brought back a total of 700 to 800 pounds of marijuana, valued at approximately \$3,000,000. Burchett testified that defendant also purchased "shatter," finished Butane Honey Oil product (hashish oil), for him while in Oregon, on a few occasions.

6. Co-defendant Marshall testified that after law enforcement officers had impounded one of Burchett's trucks in March 2016, but failed to find marijuana hidden in a spare tire, the defendant used wire cutters to unlawfully enter the impound lot to retrieve the hidden marijuana. He sold the 15 to 17 pounds of marijuana to co-defendant Marshall for \$28,000.
16. **Adjustment for Obstruction of Justice:** The defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and the obstructive conduct related to the defendant's offense of conviction and any relevant conduct; or a closely related offense; therefore, two levels are added. USSG §3C1.1.

The defendant received a two (2) level adjustment for obstruction of justice. Page ID# 1997 as the probation office writes: "the defendant used wire cutters to unlawfully enter an impound lot to retrieve marijuana that had not been located by law enforcement officers."

To this finding the defendant objected only the grounds that even if true, the

defendant did not impede the investigation, prosecution or sentencing of the defendant or another individual. Further, because the defendant was not indicted until November 2016 the alleged incident occurred before he was investigated or prosecuted.

It is fair to say that the conduct did not obstruct or impede the administration of justice and at most was an attempt as was conceded by the government.

The theft of the drugs was not an attempt to destroy evidence to hide the defendant's involvement in the conspiracy. This is unlike the case of *United States v. Van Shutters* 163 F3d 331m (6th Cir. 1998) where after his own arrest, the defendant sought out a third party to destroy evidence of the offense.

Nor is it clear from the record that the defendant knew he was under investigation and was attempting to evidence. See *United States v. Jamieson* 427 F3d 394 (6th Cir. 2005).

The record is clear, the defendant was seeking money not destruction of evidence. In fact, the government's own proof was that the defendant was not the courier for the marijuana at issue.

For the foregoing reasons, the obstruction of justice does not apply to Mr. Dorton; and he was denied due process of law.

CONCLUSION

For the reasons stated above, this Petition should be granted.

Respectfully submitted,

CHAD ALLEN DORTON

By: */s/ Douglas L. Payne*
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APPENDIX A - OPINION

APPENDIX B - JUDGMENT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Petition for a Writ of Certiorari has been served upon the Solicitor General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530-0001 and David L. Gunn, Assistant United States Attorney, 220 West Depot Street, Suite 423, Greeneville, Tennessee 37743 by placing a true and exact copy of said Petition in the United States Mail, with sufficient postage thereon to carry the same to its destination.

This 1st day of August, 2018.

/s/ Douglas L. Payne
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