Supreme Court of The United States

Beverly Allen Baker, petitioner

v.

United States of America,

Case no. 18-5896

Petition for Rehearing for Writ of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

Beverly Allen Baker; comes now before this honorable court in this petition for Rehearing, in good faith and not for delay. Ms. Baker expresses a sincere belief, that the Fourth Circuit has resolved her case in a manner that conflicts with this court's precedent and decisions of other United States Court of Appeals on the same important matter of law. The Fourth Circuit has departed from the usual course of judicial proceedings, as to call for an exercise of this Court's supervisory power.

Ms. Baker is proceeding pro se in this matter, and respectfully ask this court to construe this pleading in the light most favorable to her, as she is not an attorney and is unskilled in drafting motions and procedural rules. Haines v. Kerner 404 U.S. 519, 30 LEd 2d 652, 92 S. Ct. 594 (No. 70-5025) (1972). Ms. Baker states several grounds below, were as it is necessary for this court to intervene. The questions of deviation is of imperative public importance to the Fourth Circuit's petitioners, ensuring these petitioners the same relief others of similar circumstances have received. And to ensure "uniformity" in constitutional interpretation, upon all criminal defendants within the purview of the United States constitution. Ms. Baker's judicial proceedings was frustrated at the appellate stage for lack of following already established law.

Ground one: Did the Fourth Circuit commit a Kotteakos error by allowing evidence of five agreements to support an indictment for a single conspiracy?

In Kotteakos v. United States 328 U.S. 750 (767-77), 66 S. Ct 1239 (1946), this court holds that the government cannot use evidence of multiple conspiracies to support an indictment for a single conspiracy, the ninth circuit follows this precedent in United States v. Lapier 796 F.3d 1090 (2015), the Fourth circuit does not.
Beverly Allen Baker was charged with violation of 21 U.S.C 841, 846. The indictment is broadly worded, charging a single conspiracy lasting eight years. The government adduced evidence of multiple conspiracies, none related. MS. Baker relies upon the government's own recognition of at least five agreements to support her claim of a Kotteakos error. The Fourt Circuit holds that such evidence can support the indictment as charged. In it's closing remarks the government (Mr. Huff) rested his argument stating "And you dont have to rely on just one, you are going to be able to corrobrate it with five".

The Fourth Circuit resolution in Baker's case is in directly conflict with this court's precedent.

Should the Fourth Circuit be allowed to depart from the usual, well-known course of judicial proceedings, and be in conflict with Kotteakos?

Ground Two. Are there any exceptions to this court's precedent in United States v. Kissel 218 U.S. 601, 54 LEd 1168 (1910), that would allow the Fourth Circuit's omnibus indictment to charge a number of different conspiracies committed at different times, under the guise of a single continuing offense?

Trial evidence presented several small, uncorroborated conspiracies, none overlapping in time or participants. The evidence failed to show a "continuando". The government and United State's probation officer's presentencing report failed to prove that Ms. Baker's case was essentially continuous?

Does Kissel allow the Fourth Circuit to ignore the "continuando" factor, and the indictment treated as charging no more than the commission of the offense on the first day?

Nothing supports that Ms. Baker's crime was continuous or a single conspiracy. can the continuando be disregarded, if so Ms. Baker's resolution is in conflict with Kissel?

Ground Three: Did the Fourth Circuit commit a Rutledge error by imposing an aggregated sentence and an additional sentence for the same exact offense?

Ms. Baker's indictment charged eleven counts of distribution crack cocaine in violation of 21 U.S.C. 841 (a) (1) the court grouped all counts together for an aggregated sentence, then imposed a 240 month sentence each count in addition of the 360 month aggregated sentence. Congress never intended for Ms. Baker to be sentenced twice for the same offense: This court holds that congress prohibits cumulative punishment in Rutledge v. United States 517 U.S. 292, 116 S. Ct. 1241. (1996).

Does this violate the double jeopardy clause? Has the Fourth Circuit violated the double jeopardy clause?

Ground Four: Did the Fourth Circuit decide Ms. Baker's case in conflict with Apprendi v. New Jersey 530 U.S, 466 (2013); does Alleyne v. United States 133 S.Ct. 2151, 2162 (2013) extends Apprendi making it necessary for the jury to find drug quantity that trigger the mandatory minimum of 21 U.S.C. 841 (b).

Ms. Baker's indictment charged a drug quantity of 280 grams of cocaine base crack (count one), but there's was no specific unanimous verdict as to which, if either agreement involved 280 grams. Without the jury finding beyond a reasonable doubt that at least one of the agreements adduced involved 280 grams alone. The

Fourth circuit departed from the usual judical proceeding as announced in Apprend and Alleyne. Will this court intervene, exercising it's supervisory power, so that Ms. Baker and other Fourth Circuit defendants will share the equal opportunity other federal circuit's defendants have enjoyed?

Ground Five: Did the Fourth Circuit violate Ms. Baker's Sixth Amendment right to effective assistance of counsel?

a) Under Roe v. Flores Ortega 528 U.S. 470 (478-80), 120 S. Ct. 1029 (2000), Ms. Baker's appellate counsel failed to respect her appellate wishes, counsel was not at liberty to disregard her appellate wishes.

The district court acknowledges Ms. Bakers wishes to challenge her conviction while ripe for appellate review, but has failed to say counsel was ineffective. Counsel's decision not to support Ms. Baker's requested appeal is prohibited by this court's precedent. Appellate counsel had a duty to prepare appellate brief and support Ms. Baker's appeal, his failure to do so violated Ms. Baker's right to effective assistance of counsel under Anders v. California 386 U.S. 738 (744), 87 S. Ct. 1396 (1967).

b) Does appellate counsel's failure to honor and prepare a brief supporting Ms. Baker's challenge render ineffective counsel and deny her a right to a meaningful direct appeal under. Coppedge v. United States 369 U.S. 438, 441 (1962).

Should the Fourth Circuit reenter Ms Baker's criminal judgement to permit Fed. R App 4 (b) appeal period to run anew allowing Ms. Baker's resolution to be in uniformity of other federal circuits. The record is clear that the Fourth Circuit acknowledges Ms. Baker's arguments was ripe for appellate review, but declines to find counsel ineffective. This resolution is in conflict with this court. The Fourt Circuit does not follow the usual course of judical proceedings and it's necessary for this court to intervene.

Ground Six: Does the remedy in Martinez v. Ryan 566 U.S. 1 132 S. Ct. 1309 (2012) extended in Trevino v. Thaler. 133 S. Ct. 1911, 1921 (2013), excuse any procedural defaults barring Ms Baker from challenging her conviction and ineffective assistance of counsel claim in a 28 U.S.C. 2255 motion?

The Fourth Circuit set a procedural default to Ms. Baker's challenge of the sufficiency of the evidence claim, Whereas she should of never been force to challenge her conviction in a 2255 motion, rather than on appeal. Ms. Baker lost her chance to challenge her conviction without having to clear additional hurdles to no fault of hers. What has happened to Ms Baker is a clear example of what this court remedy as ineffective assistance of counsel under the Sixth Amendment. The Fourth Circuit has departed from the accepted and usual course of judical proceedings, your supervisory power is necessary to execute uniformity amongst the federal circuits.

Does counsel's failure to challenge the sufficiency of the evidence inherently waive Ms. Baker's right to challenge the constitutionality of her conspiracy conviction?

Ms. Baker sincerely believes in good faith, that her case involves intervening circumstances, and it's necessary for this court to exercise it's supervisory power of such matters, for: 1) Support of uniformity of the federal courts;

2) integrity of the justice system; fairness and equality of all defendants, no matter the circuit

3) protection of her substantial rights

Respectfully Submitted,

Beverly Allen Baker