

No: 18-7260

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JUL 06 2018
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN RE: VERNON SHAWN DANIELS JR.
[Incarcerated]

On Petition for a Writ of
HABEAS CORPUS

[From A Manifest Miscarriage of Justice]

PETITION FOR WRIT OF HABEAS CORPUS

Submitted by and for:

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QUESTIONS PRESENTED FOR REVIEW

Mr. Daniels was found guilty, after a Jury Trial, of conspiracy to commit a Hobbs Acts Robbery, two drug trafficking crimes and two firearm charges under 924(c). Mr. Daniels and Geary Lynch were approached at their residence by a Government Confidential informant (CI), Timothy Hylton, that would get them high and try to convince them to do a robbery. Mr. Daniels refused the CI's offers on several occasions. Timothy Hylton, however, persisted in trying to get Mr. Daniels and others to do the robbery. Mr. Daniels continued to refuse Timothy Hylton's offers. But on December 28th, 2007 things changed when Mr. Daniels was arrested with Mr. Hylton's marijuana and ecstasy, and Mr. Hylton gave Geary Lynch \$100.00 to help Mr. Lynch post Mr. Daniels' bond. Timothy Hylton began to harass Mr. Daniels about money owed to him (Mr. Hylton) for drugs he (Mr. Daniels) had gotten arrested with as well as the \$100.00 given to put up for Mr. Daniels' bond. Mr. Hylton's harassment reached the point of forcing Marijuana and ecstasy on Mr. Daniels so he could sell it to clear his debt. Mr. Daniels refused Mr. Hylton's offer to sell drugs and told him to count the bond money as well as the weed and ecstasy lost in his arrest as a loss. Mr. Hylton then threatened Mr. Daniels by brandishing a firearm and stating that he doesn't take losses. After threatening Mr. Daniels, Mr. Hylton than gave Mr. Daniels an ultimatum: Mr. Daniels could sell the drugs or do the robbery he had refused to do on several occasions.

On January 16, 2008 Mr. Daniels was 19 years old and under the drinking age when he was given an alcoholic beverage by the case Agent, Michael Connors, ATF, in his case. After giving Mr. Daniels an alcoholic beverage he proceeded to discuss doing the robbery in this case. After being arrested Mr. Daniels was searched for weapons and later place in the back of a police unit with Geary Lynch. Officers warned Mr. Daniels and Mr. Lynch that the car had been searched

and that any drugs found would belong to them (Daniels & Lynch). After being left in the police car Mr. Daniels discovered that 3 bags of Marijuana laced with ecstasy that he brought with him from the stash Timothy Hylton gave him was still on his person. Mr. Daniels was a drug user who liked to lace his marijuana with ecstasy as opposed to taking the pill and he had brought the three bags of marijuana laced with ecstasy to smoke. Through the help of Geary Lynch Mr. Daniels, with the officers warning in mind, swallowed these drugs so that they would not be later found on his person or in the back of the police car. Mr. Daniels was later taken to ATF headquarters where he gave statements to ATF while under the influence of alcohol given to him by the case agent and drugs he received from the Government's informant.

Mr. Daniels attempted to suppress the statements due to drug intoxication but counsel refused to raise the issue that government agents were responsible for giving a minor alcohol, and that the drugs Daniels had taken in the police car were provided by the Government's CI. Agent Connors testified about Mr. Daniels' demeanor at the time of his Miranda statements. Agent Connors testimony was not inconsistent with someone under the influence of Marijuana or ecstasy. Mr. Connors testified, more in regards to the effects of someone under the influence of alcohol. Mr. Daniels also testified at the suppression hearing and his testimony was more consistent with someone under the influence of ecstasy and marijuana.

The Suppression question was not raised on appeal. Appeal counsel forgot and tried to supplement with an argument that Mr. Daniels had written. The Eleventh Circuit of the Court of appeal denied the motion to supplement and the issue was never heard by The Court of Appeals.

Mr. Daniels filed a timely, pro se motion, under 18 U.S.C. § 2255 which was subsequently denied.

Mr. Daniels also file two 60(b) motions; one was subsequently denied in

the Eleventh Circuit for the Court of Appeals, the other was denied in the district court and no Certificate of Appealability was sought.

Mr. Daniels was deprived of Due Process and post conviction relief, and now as a prisoner in the Eleventh Circuit Mr. Daniels is deprived of the right to file a Writ of Habeas Corpus based on a manifest miscarriage of justice where no crime was ever committed by Mr. Daniels.

On March 14, 2017 the Eleventh Circuit of the United States Court of Appeals decided McCarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017) (en banc), where the Eleventh Circuit effectively suspended the Writ of Habeas Corpus to those with actual innocence claims in three of the fifty United States. Thus, Mr. Daniels presents for resolution, the questions that follow:

- 1) Has the Eleventh Circuit of the United States Court of Appeals effectively suspended the Writ of Habeas Corpus, without authorization, where the Court has overruled its entire line of Saving Clause precedent to narrow the circumstance under which a federal prisoner can proceed under 28 U.S.C. §2241?
- 2) Does the difference between the Fourth and Eleventh Circuit decisions, concerning the Saving Clause interpretations, call for the exercise of this Court's Supervisory power, to the end that it may secure the equal protection of law?
- 3) Has the Eleventh Circuit established a procedural framework, by reason of its design and operation, that made it highly unlikely in a typical case that a prisoner, with an actual innocence claim, would have a meaningful opportunity to challenge his conviction as a manifest miscarriage of justice?

LIST OF PARTIES

All parties appear to the case on the cover page. Mr. Daniels is the petitioner filing in pro se.

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Supreme Court Rule 29.6, Vernon Shawn Daniels, makes the following disclosure:

- 1) Mr. Daniels is not a subsidiary or affiliate of a publicly owned corporation.
- 2) Mr. Daniels declares that there is not a publicly owned corporation, nor a party to the proceeding that has a financial interest in the outcome.

Vernon Daniels

Vernon Shawn Daniels, Jr.

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PETITION FOR A WRIT OF HABEAS CORPUS

Vernon Shawn Daniels Jr. respectfully petitions for a Writ of Habeas Corpus so that he may be relieved of a sentence the likes of which stems from a fundamental miscarriage of justice.

JURISDICTION

The Supreme Court of the United States has exclusive jurisdiction over this case for two reasons: One) only this court has the authority to resolve a conflict in Circuit Court interpretation, of the Saving Clause, which has effectively suspended the Writ of Habeas Corpus; and Two) The Eleventh Circuit of the United States Court of Appeals has determined that 28 U.S.C. § 2241 is unavailable to prisoners except upon very narrow grounds not present in petitioner's case. "A motion to vacate is inadequate or ineffective to test the legality of a prisoner's detention only when it cannot remedy a particular kind of claim..." "When a prisoner attacks aspects of his detention in ways that do not challenge the validity of his sentence, then the Saving Clause may provide him access to a different remedy." McCarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017) (en banc). Thus, the Supreme Court is the only Court in which a prisoner in the petitioner's situation may seek relief. This Court's jurisdiction is established in the Rules of the Supreme Court of the United States, Rule 20; 28 U.S.C. §1651, §2241(c)(3), and §2242.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Mr. Daniels Constitutional challenges are premised upon violations of the Fifth and Sixth Amendments to the Constitution of the United States. The Fifth Amendment provides that no criminal defendant may be "deprived of life, liberty, or property, without due process of law." The Sixth Amendment provides that "in all criminal prosecutions, the accused shall enjoy the right... to... trial... by an impartial jury..."

Mr. Daniels seeks relief from his confinement because his conviction represents a manifest miscarriage of justice, that is not cognizable under 28 U.S.C. § 2255. Mr. Daniels shows that he is challenging the Eleventh Circuit McCarthan, Id. decision, under 28 U.S.C. § 2241, as an unauthorized suspension of the Writ. See U.S. Constitution Article One, Section Nine, Clause Two. "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the Public safety may require it."

STATEMENT OF THE CASE

On January 29, 2008, a federal grand jury in the Southern District of Florida, returned a six count indictment in criminal case No. 08-cr-60024-WPD. The indictment charged petitioner Vernon Shawn Daniels and two co-defendants with conspiracy to obstruct, delay and affect interstate commerce by means of a robbery of cocaine by actual and threatened force, violence, and fear of injury, in violation of 18 U.S.C. §1951 (a) (Hobbs Act)(Count 1); Conspiracy to possess with intent to distribute five or more kilograms of cocaine, in violation of 21 U.S.C. §§841(b)(1)(A) and 846 (Count 2); Attempting to possess with intent to distribute five or more kilograms of cocaine, in violation of 21 U.S.C. §§841(a)(1) and 846 and 18 U.S.C. §2 (Count 3); Conspiracy to use and carry a firearm during and in relation to a crime of violence and drug trafficking crime as set forth in Counts 1 through 3, in violation of 18 U.S.C. §924(c)(1)(A) and (o) (Count 4); and Knowingly using and carrying a firearm during and in relation to a crime of violence and drug trafficking crime as set forth in Count 1 through 3, in violation of 18 U.S.C. §§924(c)(1)(A) and (2) (Count 5). Geary Lynch was also charged individually with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §922(g)(1) (Count 6).

On May 23, 2008, a hearing on a Motion to Suppress Daniels' illegally obtained statements was held in the District Court. That Court denied said motion on the same date of the hearing.

Mr. Daniels proceeded to trial on May 27, 2008, and on May 30, 2008 the jury convicted him of all counts.

August 7, 2008 Mr. Daniels was sentenced to a concurrent 108 month sentence as to Counts 1 and 4; and 120 month concurrent sentence as to count 2 and 3; and a 60 month consecutive sentence as to count 5 for a total sentence of 180 months or 15 years followed by 5 years supervised release.

Mr. Daniels filed a timely Notice of Appeal which was subsequently affirmed by the Eleventh Circuit under case number 08-14801. Petitioner sought certiorari in the United State Supreme Court and was denied on November 29, 2010 under case number.: 09-9574.

Mr. Daniels pursued collateral relief in a 28 U.S.C. §2255 filed on November 23, 2011. An evidentiary hearing was held in the district court by Mr. Daniels trial judge on March 20 and 26 of 2012. At the evidentiary hearing the government conceded that Mr. Daniels ingested drugs before being questioned. The government did this when they conceded to the accuracy of transcripts from an enhanced version of the tape recording from the police car where Mr. Daniels ingested drugs. Mr. Daniels Motion for relief and Certificate for appealability (COA) was denied on March 30, 2012 under Civil Case No.: 0:11-cv-62563-WPD. (see appendix attached) Mr. Daniels Sought a COA from the Eleventh Circuit of the Court of Appeals and was subsequently denied. Mr. Daniels also sought Certiorari review from the Eleventh Circuit's denial of a COA and was subsequently denied by this court.

REASON FOR FILING IN THE SUPREME COURT

Mr. Daniels is detained in violation of the Fifth, Sixth, and Thirteenth Amendments of the United States Constitution. This Court determined that "a prisoner otherwise subject to defenses of abusive or successive use of the Writ [of habeas corpus] may have his federal constitutional claim considered on the merits if he makes a proper showing of actual innocence." McQuiggen v. Perkins, 569 U.S. ___, (2013).

Mr. Daniels' sentence stems from a conviction that resulted from a miscarriage of justice that is not cognizable under 28 U.S.C. §2255. The government through its informant threatened, coerced, intoxicated Mr. Daniels in order to get him to join into a conspiracy he refused to join on several occasions. The conduct of the government informant was never presented to the jury who convicted Mr. Daniels. Mr. Daniels is actually innocent and actual innocence is not cognizable under 28 U.S.C. §2255. Therefore, Mr. Daniels' only opportunity for relief was 28 U.S.C. §2241 via the saving Saving Clause of §2255(e).

Under the Saving Clause of §2255(e), a prisoner may bring a habeas petition under §2241 if "the remedy by [§2255] motion is inadequate or ineffective to test the legality of his detention." 28 U.S.C. §2255(e). In McCarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017) (en banc), the Eleventh Circuit of the United States Court of Appeals overruled its entire line of Saving Clause precedent to hold that federal prisoners can proceed under §2241 only when:

- (1) "challenging the execution of his sentence, such as deprivation of good time credits or parole determinations";
- (2) "the sentencing court was unavailable"; or

(3) practical considerations (such as multiple sentencing courts) might prevent a petitioner from filing a Motion to Vacate." Id. 1092-93.

The Fourth Circuit; in United States v. Wheeler, 2018 BL 107086, 4th Cir. 16-6073, 3/38/2018, held that a change in law that lowered a prisoners potential minimum sentence allows him to seek relief under a provision that applies when normal habeas law is "inadequate or ineffective to test the legality" of a conviction or a sentence.

Notwithstanding, this Court's authority over matters of law that put the Fourth Circuit at odds with the Eleventh Circuit, the decision to narrow the reach of the federal Habeas Statute in the Eleventh Circuit leaves this court as the only court which Mr. Daniels may seek relief from his unconstitutional sentence.

REASONS FOR GRANTING THE WRIT

This Court should exercise its supervisory authority in Mr. Daniels' case to establish a National Standard concerning Saving Clause interpretation. Mr. Daniels is currently serving a sentence for conduct he did not commit, in violation of the Thirteenth Amendment.

Mr. Daniels previously filed for relief under 28 U.S.C. § 2255. This claim is not cognizable in 28 U.S.C. §2255, thus left unresolved he is barred from filing for Habeas relief in Florida because of recent changes in the Eleventh Circuit's Saving Clause interpretation. This Court has previously stressed, "judges must be vigilant and independent in reviewing petitions for the Writ, a commitment that entails substantial judicial resources." Harrington v. Richter, 562 U.S. 86, 91 (2011). Reviewing capital cases which are a matter of life and death, this court has repeatedly demonstrated what a vigilant and independent review entails. See, e.g., Buck v. Davis, 137 S.Ct. 759 (2017), quoting Trevino v. Thaler, 569 U.S. ___, 133 S.Ct. 1911.

This Court should grant the Writ for two reasons: One) It would set a National Standard for Saving Clause interpretation. Thus, settling the Circuit Court split between the Eleventh and Fourth Circuits; and Two) Correct the manifest miscarriage of justice that imprisons an innocent man in violation of the Thirteenth Amendment.

CONCLUSION

Mr. Daniels moves this Honorable Court to issue the Writ in the interest of justice. This courts decision in this case will provide all courts around the nation a uniform standard by which the Saving Clause should be interpreted. It is because Mr. Daniels is a first time offender serving a sentence for a crime for which he is actually innocent that he is due relief. Had the Federal Bureau of Prisons designated Mr. Daniels to a prison in the Fourth Circuit, rather than

in the Eleventh, he would be eligible for relief under 28 U.S.C. §2241. This is a Circuit split that this Court should resolve.

Respectfully Submitted by and for:

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