

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BENJAMIN EDWARD HENRY BRADLEY — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Sixth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Benjamin Edward Henry Bradley # 50878-039

(Your Name)
Federal Correctional Institution
P.O. Box 1000

(Address)

Milan, Michigan. 48160

(City, State, Zip Code)

PRISONER-No Phone
(Phone Number)

QUESTION(S) PRESENTED

I. Did the Sixth Circuit Court of Appeals err in affirming the district court's sentencing judgment where the district court adopted the Presentence Report (PSR) drug quantity determinations without making its own required factual findings concerning drug quantities where defense counsel objected to the PSR's drug quantity determinations and Defendant never admitted to any drug quantities ?

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:

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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

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix C to the petition and is

reported at 897 F.3d 779; 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 is unpublished.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 _____; 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 is unpublished.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 _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ 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 is unpublished.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

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 1, 2018.

[] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: October 11, 2018, and a copy of the order denying rehearing appears at Appendix A.

[] 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:

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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 21 U.S.C. §846: Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

Title 21 U.S.C. §841(a): Except as authorized by this subchapter it shall be unlawful for any person knowingly or intentionally-

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance, or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

Title 18 U.S.C. §1956: Laundering of monetary instruments.

STATEMENT OF THE CASE

In March 2015, a Grand Jury in the Middle District of Tennessee returned an Indictment charging Petitioner Benjamin Edward Henry Bradley with conspiracy to possess with intent to distribute Schedule II controlled substances in violation of 21 U.S.C. §§841(a)(1) and 846. He was also charged with conspiracy to engage in money laundering in violation of 18 U.S.C. §1956. In addition, the indictment also contained forfeiture allegations.

Bradley plead guilty to both the drug conspiracy and money laundering counts of the indictment. He firmly contested the forfeiture allegations, and excluded them from his guilty plea.

Before sentencing Bradley filed sentencing objections to the drug quantity/weight presented by the Probation Officer in the Presentence Report (PSR). The Court adopted the drug amount presented in the PSR, and imposed a sentence of 204 months in prison without addressing Bradley's objections to the PSR's drug amount/weight and without articulating factual findings to support the drug quantities attributed to Bradley in the PSR.

Bradley appealed to the Sixth Circuit the district court's forfeiture order and the district court's failure to articulate factual findings for the drug quantities attributed to Bradley. The Sixth affirmed Bradley's conviction but remanded the forfeiture judgment back to the district court based on this court's holdings in *Honeycut v. United States*, 137 S.Ct. 1626 (2017).

In addressing Bradley's claim that the district court did render adequate factual determinations to support the drug quantity determinations used to sentence Mr. Bradley, the Sixth Circuit determined that Bradley's claim was assessed under the plain error standard because he did not object to the adequacy of the court's explanation on drug amounts and affirmed Bradley's sentence.

REASONS FOR GRANTING THE PETITION

- I. The Sixth Circuit's judgment in this case is at odds with the Supreme Court's holding's in Rita v. United States, 551 U.S. 338, 356 (2007) where the Court held "A sentence is procedurally reasonable when the sentencing judge "sets forth enough to satisfy the appellate court that he has considered the parties arguments and has a reasoned basis for exercising his own legal decisionmaking authority". Id.

An appellate court consideres the substantive reasonableness of the sentence under an abuse-of-discretion. Gall v. United States 552 U.S. 38, 49 (2007). Because Bradley objected to the Presentence Report (PSR) drug quantities and objected to the district court's drug quantity calculations during the sentencing hearing, his objections are preserved and the appellate court should have reviewed the district court's sentencing of Bradley under an abuse-of discretion standard insted of the plain-error-standard. United States v. Lalonde, 509 F.3d 562, 570 (6th Cir. 2007). (citing Gall, 552 U.S. at 41).

The Sixth Circuit reviews the district court's drug-quantity determinations for clear error. United States v. Jeross, 521 F.3d 562, 570 (6th Cir. 2008). A district court's decision is clearly erroneous if, after reviewing all the evidence, the court of appeals is left with the firm conviction that a mistake was made in reaching the drug quantity determination. Id.

The district court did not articulate adequate factual findings to support the drug quantity presented in the Presentence Report and the Government's evidence presented at trial concerning drug quantity used to sentence Bradley. Here Bradley firmly objected to the PSR's drug determinations. When a defendant challenges a drug quantity calculation in the presentence Report, the district court must articulate its methodology for reaching the drug quality for which the defendant is held accountable, *United States v. Poulsen*, 566 F.3d 492, 512 (6th Cir. 2011). The district must actually find facts because reliance on the PSR is insufficient when the facts are in dispute". *United States v. White*, 492 F.3d 380, 415-416 (6th Cir. 2007). Once the defendant objects to the drug determinations, the court may not "simply declare that the facts are supported by a preponderance of the evidence". *United States v. Tarwater*, 308 F.3d 494, 518 (6th Cir. 2002). But that's exactly what the district court did in the instant case. The district court simply adopted the quantity established in the presentence Report, with no fact finding discussion of how that drug quantity was calculated. The district court stated:

I believe the quantity reflected in the presentence report is about the best estimate we can get and I hold by a preponderance of the evidence that was the amount of - correct quantity to hold this defendant accountable for. So that objection will be overruled and the drug quantity reflected in the presentence report will govern the guidelines.
(R. 919, Sentencing Tr., PageID# 3387).

At Bradley's sentencing hearing several co-defendant's and a government agent testified regarding drug quantities involved in the conspiracy. They provided inconsistant testimony about drug quantities they thought Bradley was responsible for. The district court never explained how it turned the witnessse's testimony into a final figure on drug quantity and as a results the Appellate Court did not have enough sufficient facts to facilitate appellate review. Both the Probation Officer and the district court relied upon the co-defendant's proffers and testimony to determine the drug quantity attributed to Bradley but neither the PSR or the district court made their own factual findings sufficient to withstand specific objections to the PSR's method of estimating drug quantities. When the district court adopted the PSR's findings as to drug quantity the court did not explain why it did so in the face of Bradley's objections to the PSR's findings on drug quantities. "While a district court may adopt a presentence investigation report's findings, it must explain why it does so when defendant raises specific objections to the report's method of estimating drug quantities". United States v. Holloway, 1998 U.S. App. Lexis 30022 (6th Cir. 1998).

The Sixth Circuit erred when it found that Bradley did not object to the "adequacy of the court's explination". The appellate court states:

"In this instance, we assess Bradley's complaint for plain error because he did not object to

the adequacy of the court's explanation, even after the court gave him a chance to do so. See United States v. Vonner, 516 F.3d 383, 385 (6th Cir. 2008)(en banc)".

(See Appendix C, Page 6).

The Sixth Circuit admits that Bradley did in fact raise specific objections to the Probation Officer's drug calculation in the PSR, The appellate court states:

"After considering Bradley's objections to this calculation, the court found that the evidence supported the report, noting it was "about the best estimate we can get" and "a very conservative estimate". R. 919 at 235".

(See Appendix C, Page 6).

The appellate court goes on to say:

"Even if we assume error - that this explanation did not satisfy our requirements - no plain error occurred. The record amply supports this conservative estimate".

(See Appendix C, Page 6).

By erroneously finding that Bradley did not object to the "adequacy of the court's explanation, even after the court gave him a chance to do so", the Sixth Circuit erroneously invoked the "plain error" standard of review and resorted to the records and made the same error(that affected Bradley's substantial rights) that the district court made by finding that "The record

amply supports this conservative estimate". All the appellate court did was to make an "estimate" of drug quantity based on co-defendants Buchanan and O'Neal's admissions of drugs they personally were accountable for and had plead guilty to. There is no evidence that the drugs attributed to Bradley's co-defendant's can be attributed to Bradley under United States Sentencing Guidelines §1B1.3, "reasonable foreseeable" test. Neither the district court or the appellate court made the required findings to attribute all the drugs in the conspiracy to Bradley. Neither the district court or the appellate court made factual determinations concerning the Scope of the alleged conspiracy, or the In Furtherance requirement, or the Reasonable Foreseeable requirements in estimating the drug quantity attributed to Bradley. Both the district court and the appellate court admit that their drug quantity they attribute to Bradley is based on no more than a "conservative estimate" and not the requirements of the Sentencing Guidelines. Most important is the fact that the Government's evidence shows no agreement between Bradley and any of the co-defendants to further the distribution of any specific amount of drugs they allegedly obtained from Bradley.

In this case the Sixth Circuit panel's decision conflicts with Sixth Circuit precedent in **United States v. Campbell**, 279 F.3d 392, 400 (6th Cir. 2002), which holds that a district court must make particularized findings as to the amount of drugs for which a defendant is responsible in a conspiracy. *Id.* at 400. Ignoring this requirement, the panel upheld Bradley's sentence

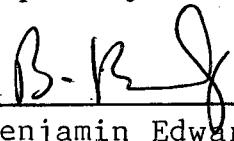
based on inadequately explained factual findings concerning drug quantities attributed to Bradley. **United States v. Campbell**, requires the district court to make particularized findings with respect to both the scope of the defendant's agreement to the conspiracy and the foreseeability of his co-conspirators' conduct. The **Campbell** rule has been affirmed and applied consistently in the Sixth Circuit. See **United States v. Merriweather**, 728 F. Appx 498 (6th Cir. 2018) also **United States v. Woodside**, 642 F. App'x 490, 496 (6th Cir. 2016). The particularized findings that **Campbell** requires were not made here: the district court's brief statement entirely fails to make clear what evidence it relied upon in determining the drug quantity attributed to Bradley.

The Sixth Circuit panel here excused the lack of specific findings after finding "the record amply suggests this conservative estimate". (Appendix C, Panel Opinion at pg. 6). The panel concluded "on this record, no violation of Mr. Bradley's substantive rights occurred". (Appendix C, Panel Opinion at pg. 7). The panel's application of plain error review conflicts with Sixth Circuit precedent. The panel cannot avoid the conflict that its opinion creates with existing Circuit precedent by applying the plain error. When drug quantities are disputed, the district court may impose a sentence only after making the specific findings required by **Campbell**. The Supreme Court should grant review and resolve this conflict of authority that exists in this case.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Benjamin Edward Henry Bradley

Date: 11-28-18