

12-7638

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Jeriton Lavar Curry — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeriton Lavar Curry
(Your Name)

P.O. Box 3000
(Address)

Pine Knot, Ky, 42635
(City, State, Zip Code)

(704) 922-4191
(Phone Number)

QUESTION(S) PRESENTED

1. Did the Appeals Court err by granting the Government's motion to enforce an invalid appeal waiver, after determining that Currys' issue was non-frivolous, and ordering the parties to brief on the issue?
2. Does a valid appeal waiver bar a Court of Appeals from correcting an unconstitutional sentence were the defendant's argument, if true, would mean the District Court lacked jurisdiction to sentence defendant under 18 U.S.C. sub-section 924(c)?
3. Does the Court of Appeals lack jurisdiction to correct plain error, due to invalid appeal waiver?

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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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 A 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 is unpublished.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 United States district court appears at Appendix B 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 is unpublished.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 is unpublished.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 is unpublished.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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was July 31, 2018.

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: September 7, 2018, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including February 7, 2019 (date) on December 7, 2018 (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

U.S. Const. Am 5, 6, 14; My conviction was obtained in violation of due process of law, as well as other provisions of the United States and North Carolina Constitutions. G.S. 15A-1415(b)(3)

U.S. Const. Am. 5, 6, 14; N.C. Const. Art I, Sec. 19, 23.

Conviction obtained by plea of guilty which was unlawfully induced and not made voluntarily with an understanding of the nature of the charges and consequences of the plea.

U.S. Const. Am 5, 6, 15; N.C. Const. Art I, Sec 19, 23.

conviction obtained by use of coerced and illegally obtained confession.

U.S. Const. Am. 5, 14, Conviction obtained by action of the Grand Jury that issued the indictment, which was unconstitutionally selected, impaneled and constituted.

U.S. Const. Am 5, 6, 14; N.C. Const. Art I, Sec 19, 23

Conviction obtained by denial of counsel at a critical stage of the proceedings, without knowing, voluntary and valid waiver by Defendant.

U.S. Const. Am 5, 6, 14; N.C. Const. Art I, Sec. 18, 19, 21, 23.

Conviction obtained by denial of defendant's right to appeal, without knowing, voluntary and valid waiver by defendant of his right to appeal.

U.S. Const. Am. 5, 6, 14; N.C. Const. Art I, Sec. 19, 23.

Conviction obtained due to the ineffectiveness of trial and appellate defense counsel.

STATEMENT OF THE CASE

This is a criminal matter brought by indictment in the Western District of North Carolina. The defendant was originally charged with Conspiracy to commit Hobbs Act Robbery 18 U.S.C. 1951(count one); Hobbs Act Robbery (count two); Use and/or carry a firearm during a crime of violence and possession of a firearm in furtherance of a crime of violence, 18 U.S.C. sub-section 924(c)(count 3). (JA). The defendant entered a not guilty plea as to all counts on May 26, 2016. On August 4th, 2016, the defendant appeared before the Court while he was on (Zoloft), a heavy antidepressant medication, and (5) other medications for depression and high blood pressure, and pursuant to a written plea agreement entered a guilty plea to count (1) of the indictment.

Curry appeared for a "Inquiry of Counsel" hearing on September 7th, 2016 which he attempted to make objections through his then Counsel, regarding the "terms" in the plea agreement. Currys' Counsel withdrew as his attorney; Curry was denied his Sixth Amendment right to Counsel, and wasn't afforded the opportunity to object to the guilty plea. Curry was forced to proceed to sentencing, after several attempts, and motions to withdraw his guilty pleas.

August 24th, 2017, Curry appeared for sentencing, before Judge Max O. Cogburn, Jr.. After a lengthy sentencing hearing, the factual basis as contained in the written factual basis with the Court was accepted by the Court, Curry never signed the factual basis, nor had any meeting of the minds regarding the factual basis. Furthermore, the parties stipulated the correct U.S.S.G. to use was the 2016 manual. The objections to the pre-sentence report were heard and overruled. The Court determined that Conspiracy to Commit Hobbs Act Robbery was a crime of violence using both the categorical and modified categorical method. The Court granted a variance and the defendant was sentenced to a term of imprisonment of (151) one hundred and fifty-one months, (3) years of supervised release, and a \$100.00 assessment. Defendant filed a timely pro se notice of appeal on September 5th, 2017 according to Rule 4(c) Appellate Procedure.

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STATEMENT OF THE CASE

On appeal, Counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738(1967), stating that there were no meritorious issues for appeal, but questioning the application of the Career Offender enhancement, whether Curry received selective prosecution from the Government.

Curry filed several pro se briefs and raised a number of issues, which were construed against him, and consolidated into five claims: (1) vindictive prosecution; (2) abuse of discretion in the denial of Currys' motion to withdraw his guilty plea; (3) erroneous application of the Career Offender enhancement to Currys' sentencing guidelines calculation; (4) lack of subject matter jurisdiction over the Hobbs Act Robbery charge; and (5) that Currys' sentence is procedurally and substantively unreasonable.

The Fourth Circuit ordered supplemental briefing on one issue: whether conspiracy to commit Hobbs Act Robbery is a crime of violence under U.S. Sentencing Guidelines manual sub-section 4B1.2(a)(2016) for purposes of Career Offender sentencing under USSG sub-section 4B1.1(a). Currys' attorney filed a supplemental brief, and the Government then filed a motion to dismiss the appeal on the basis of Currys' invalid appeal waiver. The Fourth Circuit granted the Government's motion in part, and dismissed the appeal in part, and affirmed in part.

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REASONS FOR GRANTING THE PETITION

The Government contends that Curry waived his right to appeal his constitutional claims, and sentence, by relying on the fact that during the Rule 11 plea colloquy, the Magistrate Judge stated that, under the written plea agreement, Curry was giving up his right to appeal his conviction and sentence, and Curry agreed.

Curry contends the Magistrate's statement should not bar his constitutional claims, because it was made to ensure Curry understood "the terms of any plea agreement provision waiving the right to appeal or to collaterally attack the sentence. See Fed.R.Crim.Proc. 11(B)(1)(B)(N). It does not expressly refer to a waiver of the appeal right here at issue. And if it is interpreted as expressly including that appeal right, it was wrong, as the Government failed to object, or correct the District Judge at sentencing when he informed Curry that he had the right to appeal his sentence. See sent. Tr..No.268, Pg.91,8-21. However, in light of Curry's circumstances, Rule 11 encompasses Rule 11(C)(1)(B). Rule 11 was amended to include the right to appeal to reflect the increasing practice of including in plea agreements which require the defendant to waive certain appellate rights.

The general sense of your basic Rule 11 sets forth recommendations that are not binding.

However, the Government had the opportunity to specifically serve Curry with an Rule 11(B)(1)(N) plea, which states "Inquiry's thus of critical importance is ensuring that an anticipatory waiver that is made before defendant know's what the sentence will be---is none-the-less a knowing waiver because the defendant is aware of and understands the the risk involved in his decision.

The Court of Appeals erred, by contending that Currys' waiver was valid based on the totality of circumstances being "knowing and voluntarily" That Curry understood the full significance of the waiver.

Regarding Fed.R.Crim.P. 11 plea hearing colloquy; The Government never stipulated that Curry was agreeing to waive the right to contest his "sentence". (see plea hearing Transcript Recording Pg. 9, 3-16).

REASON FOR GRANTING THE PETITION

Moreover, the record establishes that there was never any meetings of the minds, specifically, because of ambiguity in the terms; the plea agreement "terms states that the parties agreed to a (6) level enhancement, pursuant to U.S.S.G. sub-section 2B3.1(b)(2)(b), and also states in the same breath that the parties agree that "No increase or decrease" would be applied to Currys' offense level under the guidelines. (See Fed.R.Crim.P.11 plea hearing colloquy Pg.8, 10-13).

UNDER THE PRINCIPLES OF CONTRACT DOCTRINE LAW

A plea agreement is essentially a contract between an accused and the Government" and is therefore subject to interpretation under the principles of Contract Law. United States v. Lewis 633 F.3d, 262, 269 (4th Cir.2011). As such, it is elementary that, "when a plea in any significant degree on a premise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled. "Id (quoting Santobello v. New York, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed 2 427 (1971).

And while "each party should receive the benefit of it's bargin," ~~the Government is bound only by the promises it actually made to induce the defendant's plea.~~ United States V. Dawson, 587 F. 3d, 640,645(7th cir. 2009)

Once again, Curry contends there's a material misunderstanding, and ambiguity in the "terms" of the plea agreement, and one of contract law's fundamental doctrines, is that there can be no agreement unless there is a "meeting of the minds". Charbonnages De France V. Smith, 597 F.2d 406, 414(4th cir 1979).

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REASON FOR GRANTING PETITION

See restatement (second) of contracts statute 17,20 (1981). In other words, the parties must have assented to the essential elements of their bargain. Where "substantial confusion" calls into question whether there has been such a meeting of the minds over a plea bargain, there is no valid agreement to be enforced.

Houmis B. United States, 558 F 2d 182,183 (3rd cir 1977)(vacating sentence pursuant to guilty plea in face of "doubt whether any meeting of the minds ever resulted from plea negotiations").

See United States V.Bradley, 381 F.3d 641,648(7th cir 2004)(invalidating plea agreement and vacating judgment because there was no meeting of the minds on the nature of the charge to which the defendant pleaded).

The Court of Appeals review the District Courts interpretation of the parties plea agreement de novo. United States V. Woods, 378 F. 3d 342,348 (4th cir 2004).

In construing a plea agreement, the Courts rely on general contract law principles.

CONCLUSION

Petitioner never came to an agreement that he were waiving his right to contest his sentence, or that he should have any enhancements applied to his offense level under his guidelines. The record speaks for itself, and therefore Petitioner's plea is **invalid**, and the Fourth Circuit was wrong for granting the Governments' motion to enforce an invalid waiver, and Petitioner prays this Honorable Court grants his petition for review.

(b)

(e)