

NO. 18-7725

IN THE SUPREME COURT OF THE UNITED STATES

FILED
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SUPREME COURT U.S.

UNITED STATES,
Respondent,

v.

RALPH F. DELEO,
Petitioner,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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August 31, 2018

QUESTION PRESENTED

Should this Court exercise its supervisory power under Supreme Court Rule 10 and Grant review of petitioner's case because the Sixth Circuit ignored his principal argument and thus "departed from the accepted and usual course of judicial proceeding," thereby depriving him of his right to an appeal and due process of law?

Should this Court exercise its supervisory power under Supreme Court Rule 10 and grant review of petitioner's case because the Sixth Circuit ignored Supreme Court rulings that held that the **Right to Counsel is "Fundamental"**; that the right to counsel falls within the general rule of non-retroactivity and prisoner's may obtain relief on collateral review of claims based on a "new Watershed rule of criminal procedure," where the **Right to Counsel of Choice** is denied.

Whether this case meets the standard for application to to precedence set by the Supreme Court in the following Supreme Court rulings; 1. **Luis v. United States**, that the right to counsel is "fundamental" based on the **Sixth Amendment**, granting a defendant "a fair opportunity to secure counsel of choice" Also affirmed in **Powell v. Alabama**. 2. Also, the precedent set in the **new watershed rule of criminal procedure**, "implicating the fundamental fairness set in **Safffe v. Parks**, under **Teague's second exception doctrine**.

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RALPH F. DELEO,
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ON PETITION FOR A WRIT OF CERTIORARI
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Ralph F. DeLeo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Sixth Circuit is reproduced here in the Appendix (hereinafter "App.") to this petition at A. 1. The judgment of the United States District Court, District of Kentucky, is reproduced at App. B. 1.

JURISDICTION

The judgment of the Sixth Circuit was entered on June 28, 2018. A. 1

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION
PROCEDURAL RULE INVOLVED

The Fifth and Sixth Amendment to the United States Constitution provides, in relevant part:

No person shall...be deprived of life, liberty, or property, without due process of law...

The Sixth Amendment right to counsel grants a defendant "a fair opportunity to secure counsel of his own choice."

Supreme Court rule 10 provides, in relevant part:

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petitioner for a writ of certiorari will be granted only for compelling reason.

(a) a United States Court Of Appeals...has so far departed for the accepted and usual course of judicial proceedings... as to call for an exercise of this Court's supervisory power...

STATEMENT OF THE CASE

1. Procedural History

On November 16, 2009, petitioner was arrested by the

Boston office of the FBI on a complaint from Arkansas. While petitioner was being transported to Arkansas, petitioner was indicted in the United States District Court, in Massachusetts for racketeering, in violation of 18 U.S.C. §1962(d).

a. U.S. District Court, in Arkansas, 4:09-cr-00305

Petitioner was indicted on three counts - knowing and intentionally conspiring to possess with the intent to distribute more than 500 grams of cocaine hydrochloride in violation of 21 U.S.C. 843(b); and aiding and abetting the possession with intent to distribute more than 500 grams of cocaine hydrochloride, a violation of 21 U.S.C. 841(a)(1) and 18 U.S.C. 2. The jury returned a guilty verdict on all three counts. Petitioner was sentenced to the custody of the BOP for a term of 144 months.

b. U.S. District Court, in Massachusetts, 1:09-cr-1091

On December 17, 2009 while in pretrial lockdown (segregation) in Arkansas, petitioner and four co-defendants were indicted in the United Stated District Court, in Massachusetts, for racketeering, in violation of 18 U.S.C. §1962(d).

On April 24 2012, petitioner was named in a two-count superseding Information, in Massachusetts, which added a charge of a felon in possess of firearms and ammunition in violation of 18 U.S.C. §922(g)(1).

On November 21, 2012, petitioner entered a guilty plea in United States District Court of Massachusetts. Petitioner was sentenced to the custody of the Bureau of Prisons for a term of 236 months, minus 37 months prior served in pretrial lockdown in segregation awaiting trial.

2. Freeze of Untainted Assets

On November 16, 2009, the date of petitioner's arrest in Boston, The government seized \$47,061.92 in cash, a gold watch valued at \$27,000.00 from his person and apartment. In the following days the government froze petitioner's condominium valued at \$500,000.00. **These assets were untainted, belonging to petitioner. In 2013 the government returned petitioner's assets without a forfeiture hearing.**

Moreover, petitioner was detained in pretrial lockdown in segregation for 37 months. From the date of his arrest to his sentencing in Massachusetts, on November 21, 2012, **effectively eviscerating his Sixth Amendment Right To Counsel of Choice.**

3. Habeas Corpus History

On July 17, 2017, petitioner filed for writ of habeas corpus under 28 U.S.C. §2241, in the United States District Court, for the District of Kentucky (Lexington). Case No. 5:17-cv-00294.

On July 25, 2017, petitioner filed an Addendum, and on October 12, 2017, he filed a supplementary motion.

On February 06, 2018, petitioner filed a timely appeal in United States Court of Appeals for the Sixth Circuit Court of Appeals.

Petitioner's §2241 was based on the new Supreme Court ruling in Luis v. United States, 136 S. Ct. 1083, 194 L. Ed. 256 (March 30, 2016). The Supreme Court has held that the **Right To Counsel** is "fundamental" and that "the Sixth Amendment grants a defendant 'a fair opportunity to secure counsel of his own choice." (quoting Powell v. Alabama, 287 U.S. 45, 53, 53 S. Ct. 55, 77 L. Ed. 158 (1932)). In addition, the Supreme Court held in Luis, that "the government can't freeze a defendant's assets if that pretrial lockdown effectively prevents him from hiring a lawyer." Petitioner was not only held in lockdown but held in segregation.

Petitioner pointedly briefed the court extensively on his primary argument - the "new water rule of Criminal procedure," "implicating the fundamental fairness and accuracy of the proceeding," that has a retroactive effect. Safte v. Parks, 494 U.S. 484, 485, 496, 110 S. Ct. 1257, 1086 L. Ed. 2d 415 (1990), under Teague's second exception.

4. Applicable Law

In Teague v. Lane, 489 U.S. 288, 308-310, 109 S. Ct. 1060 L. Ed. 2d 334 (1989). The court held that decisions establishing new rule of criminal procedure are not to be applied

retroactively on habeas review, absent certain circumstances, Under Teague, "a new rule can be retroactive to cases on collateral review if, it falls within one of two narrow exceptions to the general rule of non-retroactivity." Tyler v. Cain, 533 U.S. 656, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001).

Prisoner's may obtain relief on collateral review of claims based on a "new watershed rule of criminal procedure." Welch v. United States, 136 S. Ct. at 1264 (quoting Saffle v. Parks, 494, U.S. 484, 495, 110 S. Ct. 1257, 108 L. Ed. 2d 415 (1990). These are procedural rules that implicate "the fundamental fairness and accuracy of the criminal proceeding."

To date the Supreme Court has identified only the right to counsel as falling within this category. See Beard v. Banks, 542 U.S. 406, 124 S. Ct. 2504, 159 L. 494 (2004).

The government cannot freeze a defendant's untainted assets if that pretrial lockdown effectively prevents her from hiring a lawyer, the United States Supreme Court ruled in Luis v. united States, 136 S. Ct. 1083, 1089, 194 L. Ed. 2d 256(2016)

REASON FOR GRANTING THE WRIT

THIS COURT SHOULD EXERCISE ITS SUPERVISORY POWER UNDER SUPREME COURT RULE 10 AND GRANT REVIEW OF PETITIONER'S CASE BECAUSE THE SIXTH CIRCUIT IGNORED HIS PRINCIPAL ARGUMENT AND THUS "DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS," THEREBY DEPRIVING HIM OF HIS RIGHT TO AN APPEAL AND TO DUE PROCESS OF LAW.

1. The Sixth Circuit Decision Does Not Address

Petitioner's Principal Argument That The new watershed Rule of Criminal Procedure That Implicate "The Fundamental Fairness And Accuracy of The Criminal Proceeding" Under Teague's Second Exception.

2. The Sixth Circuit Decision Does Not Address The Government's Unfeffered pretrial lock-down (Segregation) OF PETITIONER And Restrain Of His Assets With No Connection To The Charged Crime. Effectively Eviscerating His Sixth Amendment Right To Hire Counsel Of Choice.

The Sixth Circuit mischaracterized petitioner's appeal as merely formalistic argument that "a prisoner must make a claim for actual innocence," while completely ignoring his primary argument that this case falls squarely within one of two narrow exceptions to the general rule of non-retroactivity and 'new watershed rule, under Teague's second exception.

See Applicable Law pp 5-6.

The Sixth Circuits failure to consider petitioner's primary argument, or the law upon which it and his entire appeal was based, deprived him of proper and meaning appellate review of his case, thereby infringed his right to an appeal which is protected by the Due Process Clause of the Fifth Amendment to the United States Constitution. Coppedge v. United States, 369 U.S. 438, 441 (1962) and Evitts v. Lucey, 469 U.S. 387, 393, 400-401 (1985). Explaining that a state need not grant any right to an appeal, but if it does so, "the procedures used in deciding appeals must comport with the demands of the Due Process...Clause of the Constitution"; Bundy v. Wilson, 815 F.

2d 125, 132-133 (1st Cir. 1987) ("Due process thus prohibits a state appellate court from arbitrarily and capriciously deciding to consider [a defendant's appellate] claim").

The Sixth Circuit in refusing to consider petitioner's claims, ignored the Teague rule that implicate "the fundamental fairness and accuracy of the criminal proceeding." and petitioner's RIGHT TO COUNSEL that the Supreme Court has identified as falling within this category. See Beard v. Banks, 542 U.S. 406, 417, 124 S. Ct. 2504, 159 L. Ed. 2d 494 (2004).

5. Extraordinary Circumstances

This Court should apply non-retroactive treatment, under the Teague Rule for the following compelling reasons in the interest of justice in this case;

1. The district court denied petitioner a fair opportunity to secure counsel of his choice when it forced him to proceed to trial with an attorney appointed under the Criminal Justice Act of 1964, 18 U.S.C. §3006A, who was unprepared to defend his client.¹

1. Petitioner filed five hand written motions to discharge appointed counsel during the eight months prior to trial for failing to prepare for trial. The trial court responded by ordering petitioner "not to write the court again, or be held in contempt of court." In the district court's Opinion in response to petitioner's §2255, the court wrote quote; "West (counsel) was not functioning as the counsel guaranteed to DeLeo by the Sixth Amendment. Nevertheless DeLeo cannot show prejudice." On direct appeal the Eighth Circuit Court of Appeals stated during oral argument that this case needed a "full §2255 hearing" to develop the record. The district court denied a hearing.

"[W]here a district court is on notice of a criminal defendant's dissatisfaction with counsel, the court has an affirmative duty to inquire as to the source and nature of that dissatisfaction-regardless of whether the attorney is court-appointed or privately retained." Benitez v. United States, 521 F. 3d at 634 (6th Cir. 2008). The district court not only failed that duty here, but threatened the defendant on record, in writing "to hold the defendant in Contempt of Court if he contacted the court again.

2. The government and the Court denied petitioner's fundamental right to be represented by counsel whom he chooses and can afford to hire by freezing his untainted assets, having him placed in pretrial lockdown in isolation/segregation for the duration of his cases - 36 months and denied his right to qualified counsel. The Supreme Court has ruled on March 30, 2016 in Luis "the government can't freeze a defendant's untainted assets if that pretrial lockdown effectively prevents [him] from hiring a lawyer."
3. In this case the government had their thumb on the administration of justice, effectively preventing petitioner his Sixth Amendment Right to Counsel of choice. It allowed the government to use the Sixth Amendment violation to help secure a conviction in

Arkansas, case No. 4:09-cr-00305. Moreover, to use that conviction as the Predicate Act to secure a R.I.C.O. indictment in Massachusetts, case No. 1:09-cr-1091. Unlike Luis v. United States, who's Sixth Amendment rights were violated in one court, petitioner suffered his Sixth Amendment right to Counsel of choice in two jurisdictions.

In sum, the Sixth Circuit decision deprived petitioner of his Sixth and Fifth Amendment due process rights by depriving him of full and fair litigation of his claim on direct review. This represents so far of a departure from the accepted and usual course of judicial proceedings that this Court should exercise its supervisory power and grant review. See Supreme Court Rule 10.

CONCLUSION

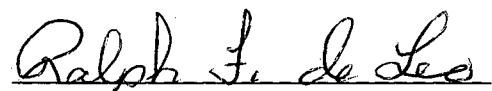
Petitioner asserts that this case qualifies under "watershed" rule, under Teague's second exception. The Supreme Court has repeatedly referred to the rule of Gideon v. Wainwright, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

The (right to counsel) and only this rule may fall within Teague exception to nonretroactivity. To date, the Supreme Court has identified only the right to counsel as falling within this exception. See Beard v. Banks, 542 U.S. 406, 417, 124 S. Ct. 2504, 159 L Ed. 2d 494 (2004). Petitioner is entitled to mandated reversals in the United States District Court's for

the District's of Arkansas and Massachusetts, due to
"Structural errors" in both trial courts.

For the following reasons and extraordinary circumstances,
this petition for writ of certiorari should be granted.

Respectfully submitted,



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