NO.: _____

IN THE
SUPREME COURT OF THE UNITED STATES

IN RE: LASHAWN ANDERSON
[Incarcerated]

On Petition for a Writ of
HABEAS CORPUS

PETITION FOR WRIT OF HABEAS CORPUS

Prepared by and/or for

LaShawn Anderson
LASHAWN ANDERSON in Pro Se
Reg.# 73715-004
FCC Coleman Low, Unit: B-4
P.O. BOX 1031
Coleman, FL 33521

QUESTION PRESENTED

This petition presents two important issues concerning the proper interpretation of the Saving Clause, 28 U.S.C. § 2255(e); and the appropriate application of the Armed Career Criminal Act, 18 U.S.C. §924(e) after this Court's decision in Johnson v. United States, 135 S.Ct. 2251 (2015).

Since this Court's decision, in Johnson v. United States, id., striking down the ACCA's residual clause as unconstitutionally vague, Circuit Courts of appeals have issued published decisions on whether various state controlled substance offenses qualify as predicate offenses to trigger 18 U.S.C. §924(e) enhancements. As a result of the differing conclusions these courts have reached, a direct conflict has emerged about whether state statutes are divisible and subject to categorical analysis, or are they broader than a never-existed federal common law. Thus, Descamps v. United States, 133 S.Ct. 2276 (2013); and Mathis v. United States, 136 S.Ct. 2243 (2016) have redefined which prior convictions qualify as predicate enhancement offenses.

In the ordinary case where someone has already filed for his first round of collateral relief this question would be raised in a request for second and successive authorization. see 28 U.S.C. §2244, and §2255. In the odd set of circumstances where a defendant has been found guilty of being a felon in possession of a firearm and then enhanced under the Armed Career Criminal Act he is authorized to seek relief in collateral review only when the law has been changed and The Supreme Court holds that relief should apply retroactively.

In Mr. Anderson's case he plead guilty and was enhanced under the ACCA. After he had filed for collateral relief this Court ruled in Mathis v. United States, 136 S.Ct. 2243 (2016). Mr. Anderson was denied second and successive authorization by the Eleventh Circuit, an order that is unappealable. Thus, Mr. Anderson's only recourse, for correcting a sentence found to be unconstitutional, is found in 28 U.S.C. §2241.

After Mr. Anderson was denied second and successive authorization and before he was able to articulate himself in a petition for Habeas Corpus, The Eleventh Circuit issued its ruling in McCarthan v. Director of Goodwill Industries - Suncoast, Inc., 851 F.3d 1076, (11th Cir. 2017) (en banc), effectively suspending the Writ in the Eleventh Circuit.

On or about April 2, 2018, The Fourth Circuit Court of Appeals visited the very same issued - Saving Clause interpretation - as did the Eleventh Circuit, in United States v. Wheeler, ___ F.3d ___, 2018 WL 1514418 (4th Cir. 2018). The Fourth Circuit deciding that the Saving Clause is available - if sentencing was carried out in accordance with the law, the law was retroactively changed after direct appeal and first habeas petition, and the sentence presents an error grave enough to be deemed a fundamental defect - putting the Fourth Circuit at odds with the Eleventh Circuit which recently held that a change in circuit sentencing law didn't qualify for the Saving Clause. Thus, Mr. Anderson presents, for resolution, the questions that follow:

1) Has the Eleventh Circuit 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 circumstances 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 interpretation, call for the exercise of this Court supervisory power, to the end that it may secure uniformity in the court of appeals?

3) Has the Eleventh Circuit established a procedural framework, by reason of its operation, that made it highly unlikely in a typical case that a prisoner would have a meaningful opportunity to challenge a sentence, later determined to be unconstitutional?

4) Does 28 U.S.C. §2241 provide relief from a sentence that this court has determined is unconstitutional in a decision subsequent to his being denied post conviction relief?

LIST OF PARTIES

All Parties appear on the caption to the case on the cover page. Mr. Anderson is the petitioner filing in pro se.

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTERESTS

Pursuant to Supreme Court Rule 29.6, LASHAWN LORENZA ANDERSON, makes the following disclosure:

1) Mr. Anderson is not subsidiary or affiliate of a publicly owned corporation.

2) Mr. Anderson declares that there is not a publicly owned corporation, nor a party to the proceeding, that has a financial interest in the outcome.

By LaShawn Anderson
LASHAWN L. ANDERSON

TABLE OF CONTENT

TABLE OF AUTHORITIES

Cases:

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PETITION FOR A WRIT OF HABEAS CORPUS

Lashawn Anderson respectfully petitions for a Writ of Habeas Corpus so that he may be relieved of his unconstitutional sentence.

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 Court of appeals has determined that 28 U.S.C. §2241 is unavailable to prisoners serving sentences that are unconstitutional regardless of their ability to satisfy the Second Successive Clause of 28 U.S.C. §2255. Thus, the Supreme Court is the only court in which a prisoner so situated 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, §2242.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Mr. Anderson's Constitutional challenges are premised upon violations of the Fifth and Sixth Amendments to the United States Constitution. 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. Anderson seeks a Writ of Habeas Corpus pursuant to 28 U.S.C. §2241 because 28 U.S.C. §2255 is "inadequate or ineffective" to correct his unconstitutional sentence.

Mr. Anderson seeks relief from his sentence that was imposed pursuant to 18 U.S.C. §924(e).

Moreover, Mr. Anderson challenges the Eleventh Circuit's McCarthan, Id, decision as an unauthorized suspension of the Writ. see the Constitution of the United States, 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

Mr. Anderson was charged on a one count indictment of possession of a firearm and ammunition by a convicted felon in violation of 18 U.S.C. §922(g)(1) and §924(e). He entered an open guilty plea. The Court found him guilty and sentenced him to 180 months in prison followed by a term of supervised release.

On appeal, Mr. Anderson argued that the court violated his Fifth and Sixth Amendment rights by sentencing him as an Armed Career Criminal based on prior convictions that were not alleged in the indictment. The Eleventh Circuit Court of appeals affirmed. United States v. Anderson, 420 Fed. Appx. 897 (11th Cir. 2011) (10-14124). This Court denied certiorari on May 23, 2011. Anderson v. United States, 131 S.Ct. 2920 (2011).

REASON FOR FILING IN THE SUPREME COURT

Mr. Anderson is detained under a sentence that has been found to be unconstitutional by this court in Johnson v. United States, 135 S.Ct. 2551 (2015) and Mathis v. United States, 136 S.Ct. 2243 (2016).

Mr. Anderson's 18 U.S.C. §924(e) conviction is unconstitutional because it is based on an indivisible predicate, State, offense that includes as an element "delivery..."of "... a controlled substance." FLA. Title XLVI, Crimes Chapter 893. Under the State Statute a person is chargable for bringing a sick loved one's prescription home from a pharmacy.

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 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 the deprivation of good time credits or parole determination";

(2) "the sentencing court was unavailable"; or

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

The Fourth Circuit; in United States v. Wheeler, ___F.3d___, 2018 WL 1514418 (4th Cir. 2018), held that a change in law that lowered a prisoner's 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 in which Mr. Anderson may seek relief from his unconstitutional sentence.

REASON TO GRANT THE WRIT

This Court could exercise its supervisory authority in Mr. Anderson's case to establish a National Standard concerning Saving Clause interpretation. Mr. Anderson is currently serving a fifteen year sentence that is unconstitutional and he has no other remedy except habeas corpus in the Supreme Court due to a misguided saving clause interpretation.

Mr. Anderson has previously filed for relief under 28 U.S.C. §2244, seeking second successive authorization. The petition was denied without reaching the merit of the claim. 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 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.

Although, Mr. Anderson has been convicted of a weapon's possession offense rather than murder, his undeserved fifteen year sentence is a life altering experience that is not deserved.

Mr. Anderson's sentence is imposed in violation to the Constitution of the United States. Because he could not satisfy the strict demand of 28 U.S.C. §2255(h), his only remedy was in a petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241(c)(3). While Mr. Anderson's petition for Second Successive authorization was pending, the Eleventh Circuit was seeking to narrow the circumstances under which a prisoner could seek review of an unconstitutional sentence.

In McCarthan v. Director of Goodwill Industries-Suncoaxt, Inc., 851 F.3d 1076 (11th Cir. 2017)(en banc), in which the Eleventh Circuit 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 the deprivation of good-time credits or parole determination"; (2) "the sentencing court was unavailable," such as when the sentencing court itself has been dissolved; or (3) "practical considerations (such as multiple sentencing courts) might prevent a prisoner from filing a motion to vacate." Id. at 1092-93.

The Fourth Circuit Court of Appeals announced its new savings clause test in United States v. Wheeler, ___ F.3d ___, 2018 WL 1514418 (4th Cir. 2018). The Fourth Circuit holding that; the savings clause is available if sentencing was carried out in accordance with the law, the law was retroactively changed after an appeal and first habeas petition, a prisoner can't qualify for a second habeas petition, and the sentence presents an error grave enough to be deemed a fundamental defect. Thus, Mr Anderson would be eligible for habeas relief if he were incarcerated in the Fourth Circuit rather than the Eleventh.

This puts the Fourth Circuit at odds with the Eleventh Circuit, which holds that a change in sentencing law doesn't qualify for the saving clause.

CONCLUSION

Mr. Anderson moves this Court to issue the Writ of Habeas Corpus. This Courts decision in this case will provide all courts around the nation a final and uniform standard by which the saving clause should be interpreted. Mr. Anderson is serving an unconstitutional sentence. Had the Federal Bureau of Prison decided to designate Mr. Anderson to a prison in the Fourth Circuit, rather than the Eleventh, he would be eligible for relief under 28 U.S.C. §2241. This is a circuit split that should be resolved by this Court.

Respectfully Submitted on July 5, 2018, By:

Lashawn Anderson

Lashawn Lorenza Anderson, Pro Se
Reg# 73715-004

LaShawn Anderson #73715-004
Federal Correctional Complex-Low
P.O. Box 1031
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August 1, 2018

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
1 FIRST STREET NE
WASHINTON, DC 20543-0001

RE: In Re Anderson

Dear Clerk,

The enclosed petition for an Extraordinary Writ of habeas Corpus was returned to Mr. Anderson for failure to comply with this Court's Rules. A thorough reading of Mr. Anderson's petition will, however, show that it complies with the rules for which it was returned.

The Petition complies with Rule 20.1 where it shows that: (1) The Writ will aid the Court's appellate jurisdiction by providing a final and uniform standard by which the saving clause should be interpreted in all circuits across the Nation; (2) The exercise of the court's discretionary powers is warranted by a conflict between the Eleventh and Fourth Circuit Court of Appeals interpretation of the saving clause; and (3) Mr. Anderson is held in the State of Florida where the Eleventh Circuit has effectively suspended the writ of habeas corpus to individuals in Mr. Anderson's situation. Thus, relief cannot be obtain unless the Bureau of prisons decides to designate Mr. Anderson to an institution in the Fourth Circuit; a circumstance that is outside of Mr. Anderson's control.

The enclose petition complies with Rule 20.4(a) where it shows that Mr. Anderson is housed in the State of Florida where Eleventh Circuit precedence in McCarthan bars Mr. Anderson from filing his petition in the District Court in the District in which he is confined. 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 in which Mr. Anderson may seek relief from his unconstitutional sentence.

The enclosed petition complies with Rule 20 where it states the relief sought by Mr. Anderson: "Mr. Anderson respectfully petitions for a Writ of habeas corpus so that he may be relieved of his unconstitutional sentence" And "Mr. Anderson moves this court to issue a Writ of habeas corpus."

Rule 39.1 states that "if the court below appointed counsel for an indigent party, no affidavit or declaration is required, but the motion shall site the provision of law under which counsel was appointed." Mr. Anderson's MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS asserts, as for grounds, "that he has been previously appointed counsel pursuant to the Criminal Justice Act."

Rule 20.2 states that "the petition shall... follow, insofar as applicable, the form of a petition for a writ of certiorari prescribed by Rule 14. "Insofar as applicable" the enclosed Extraordinary Writ follows the form of a petition for a writ of certiorari.

There is no opposing counsel as this is an Extraordinary Writ of habeas corpus to which Mr. Anderson is the only party. Furthermore, "Habeas corpus proceedings, except in capital cases, are ex parte, unless the Court requires the respondent to show cause why the petition for a writ of habeas corpus should not be granted." Rule 20.4(b)

Your time, consideration, and the copy of the Court's Rules that was furnished is greatly appreciated. Thank You.

Sincerely,

LaShawn Anderson

LaShawn Anderson, Pro Se