

Supreme Court, U.S.
FILED

JUN 11 2018

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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

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JOSE J. GALIANY-CRUZ, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR WRIT OF CERTIORARI

JOSE J. GALIANY CRUZ

Forma Pauperis

USP. TUCSON

P.O. BOX 24550

TUCSON, AZ 85734

ORIGINAL

June 11, 2018.

QUESTIONS PRESENTED FOR REVIEW

- I. COULD A HAZEL-ATLAS MOTION BE USE TO ATTACK A CRIMINAL CONVICTION? MOTION UNDER HAZEL-ATLAS IS IT OR IS IT NOT A SECOND OR SUCCESSIVE §2255 PETITION? DOES HAZEL-ATLAS PROVIDE THE COURT WITH JURISDICTION TO CONSIDER THE MOTION WHEN A FRAUD IS COMMITTED BY AN OFFICER OF THE COURT AND RAISES A QUESTION OF STATUTORY INTERPRETATION? SUBJECT MATTER JURISDICTION MAY BE RAISED AT ANY TIME?
- II. DID CONGRESS INTENDED FOR PUERTO RICO TO BE CONSIDERED A TERRITORY FOR PURPOSE OF SECTION 1111 IF SO, WHERE DOES FEDERAL CRIMINAL JURISDICTION BEGIN AND END?
- III. HAS SANCHEZ-VALLE DECISION MANIFEST ERRORS OF LAW AND FACT UNDER COMMONWEALTH OF PUERTO RICO AND UNITED STATES LAW? DOES SANCHEZ-VALLE APPLY RETROACTIVELY?

PARTIES TO THE PROCEEDING

The parties to the proceedings below are contained in the
Caption of the case.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Jose J. Galiany-Cruz, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case:

OPINION BELOW

A copy of the judgment and opinion of the United States Court of Appeals for the First Circuit in this case is included in appendix A.

(2)

JURISDICTION

The United States of Appeals for the First Circuit entered its Judgment on April 23, 2018. Jurisdiction is conferred upon this Court by 28 U.S.C. §1254(1), which grants the United States Supreme Court jurisdiction to review by writ of Certiorari all final judgment of the Courts of Appeals.

STATUTORY PROVISIONS INVOLVED

Fifth and Sixth Amendments of the United States Constitution.

The Counts of conviction charge a violation of Title 21 U.S.C. §841(a)(1), 18 U.S.C. §924(c), but sentencing by 18 U.S.C. §1111 (First Degree Murder).

STATEMENT

In this case the defendant-appellant proceeded to trial. The jury found defendant guilty of Count One 841(a) and Count Two 924(c) and determined, that the conspiracy was responsible for more than One kilogram of heroin and Five kilogram of cocaine. In the same time the Commonwealth of Puerto Rico initiated its own prosecution of defendant for the same evidence, witness, acts and the same conduct that formed the

basis for his federal indictment. One year later, in the federal court the terms of imprisonment under 18 U.S.C. §1111 recommended by the (PSR) and the government at the sentencing hearing were without its jurisdiction and of the verdict and the applicable guideline and violation of the Double Jeopardy.

The length of defendant-appellant sentence is unreasonable. The district court did not have territorial jurisdiction over 18 U.S.C. §1111 by virtue of the limitation of subsection (b) and Article IV, Sec. 2, Clause 2 and Double Jeopardy Clause.

The district court committed error at defendant sentencing, when said sentencing was based on consideration of "material untrue" and fraud upon the court.

REASON FOR GRANTING THE WRIT - I

This Honorable Court has not addressed whether a HAZEL-ATLAS motion is a legitimate means of attacking a criminal conviction which has already been assailed on direct appeal and via §2255; when a defendant "after-discovered fraud" to which the court lacks jurisdiction.

The Circuits that have examined the issue, Three have found that in contesting a criminal judgment, a HAZEL-ATLAS petition is a second or successive §2255 petition. See: United States v. Baker, 718 F. 3d 1206-08 (10th Cir. 2013); United States v. Hooper, 470 F. App'x 115, 115-116 (4th Cir. 2012); United States v. Bush, 457 F. App'x 94, 95-96 (3d Cir. 2012). But other Circuits that have examined the issue, Two have found that in contesting a criminal judgment, a HAZEL-ATLAS petition is not a Second or Successive Petition. See: United States v. Smiley, 553 F. 3d 1137, 1144 (8th Cir. 2009); United States v. Bishop, 774 F. 2d 771, 774 (7th Cir. 1985). This Honorable Court, however, has held, albeit without criminal analysis, in HAZEL-ATLAS, this court pointed to "After-discovered fraud" as a basis upon which "relief [may] be granted against judgment of the term entry." Id at 244.

A party should may challenge subject matter jurisdiction on any time and any stage of the proceedings, when a fraud is committed by an officer of the Court and raises a question of Statutory Interpretation, when the crime occurred in the Commonwealth of Puerto Rico Land, State court have exclusive jurisdiction and federal court lacked jurisdiction, 18 U.S.C. §1111.

REASON FOR GRANTING THE WRIT - II

The defendant-appellant requested for the district court re-open the judgment against him upon the ground that the district court lacks jurisdiction over the Section 1111, by virtue of the limitation of Section (b), which is crime of murder, which was not committed on federal land or on government property or under any other circumstance which would give federal court jurisdiction under 18 U.S.C. §1111, is triable in state courts only and there is no constitutional provision or statute vesting in federal court such authority.

Defendant relies on language from *United States v. Maldonado-Burgos*, 2017 U.S. App. LEXIS 12200 (1st Cir. 2017) and *Commonwealth of Puerto Rico v. Sanchez-Valle*, U.S. 136, U.S. 1863 (2016) and 18 U.S.C. §1111 to alleges that Puerto Rico is not a territory but a Commonwealth,^{<1>} and thus the district court lacked jurisdiction to apply the murder when it occurred in the Commonwealth of Puerto Rico's Land.

Defendant claims that since the court lacked jurisdiction to apply the enhancement, it was misled by the Probation Officer and the Government in to applying it at sentencing.

<1> On July 25, 1952, Governor Luis Muñoz Marin, by resolution, inaugurated the Commonwealth of Puerto Rico under §5 of United States Pub. L. 81-600, 64 Stat. 320 (1950). This law was repealed in 1955, Act of June 10, 1955, 1955 P.R. Laws, p.228, at which time it was superseded by the Act now codified at Puerto Rico Laws Ann. tit. 28 §§44,46.

In 1812, Chief Justice John Marshall, of this Supreme Court stated in an opinion, "Congress has a right to punish murder in a fort, or other place within its exclusive jurisdiction; but no general right to punish murder committed within any of the State."

Further, he added, "it is clear that Congress cannot punish felonies generally:" *Cohen v. Virginia*, 4 Wheat (US) (264) (1821). See also Article IV, Section 2, Clause 2.

It is a well established principle of law that all federal "legislation applies only within the territorial jurisdiction of the United States unless a contrary intent appears." This Court, has held, in *Cahill v. United States*, 152 U.S. 211, 215, 14 S. Ct. 513 (1894); that:

"The laws of Congress in respect to those matters do not extend into the territorial limits of the States, but have force only in the District of Columbia, and other places that are within the exclusive jurisdiction of the national government."

Defendant questions whether Section 1111, applies to offenses wholly within the Commonwealth of Puerto Rico, because unlike Sections 1113, which applies to acts wholly within "the Special Maritime and Territory Jurisdiction of United States" and the Section 1114, which applies to acts wholly within "Puerto Rico", and Section 1121(c) applies only to acts in

"any Commonwealth", the Section 1111 in dispute applies only to acts wholly within and "Territory or Maritime Jurisdiction of the United States."

These amendments created a genuine ambiguity in the Statutes and Sentencing Guidelines.

If Congress intended the amendment to clarify that it wanted Homicides treated differently in Puerto Rico than in a State, its decision to amend only §§ 1114 and 1121 and to not take the simple expedient of inserting "Commonwealth" or "Puerto Rico", into §1111 is also curious, as was declared in the decision by Honorable THOMPSON, First Circuit Judge (Statement Concerning denial of Rehearing En Banc) in United States v. Maldonado-Burgos, Supra.

In MURPHY v. ROYAL, 875 F. 3d 896 (10th Cir. 2018) the Ten Circuit held: That congress had not disestablished Creek Reservation. Crime occurred in Indian Country as defined in 18 U.S.C. §1151(a). Because defendant was Indian and because crime occurred in Indian Country, federal court had exclusive jurisdiction and Oklahoma lacked jurisdiction, 18 U.S.C. §1153(a). State conviction and death sentence were invalid. This case is ROYAL v. MURPHY, U.S. No. 17-1107 review granted by this Supreme Court on 5/21/2018. However, he raises it to preserve the issue for further this Court review.

REASON FOR GRANTING THE WRIT - III

In SANCHEZ-VALLE, this Court held for purpose of the Double Jeopardy Clause that Puerto Rico and the United States Constitute a single sovereign, and thus, "the double jeopardy clause bars both Puerto Rico and the United States from prosecuting a single person for the same conduct under equivalent criminal laws." 136 S. Ct. at 1877.

While this Court has not yet ruled expressly on the retroactivity of the Sanchez-Valle decision. The defendant-appellant aver's that new substantive rules do apply retroactively, substantive rule after the range of conduct on the class of persons that the law punished. Procedural rules, by contrast, regulate only the manner of determining the defendant's culpability. Under this framework, defendant's asking for this Honorable Court to rule expressly on the retroactivity of the Sanchez-Valle decision.

In Ashe v. Swenson, 397 US 436, 90 S.Ct. 1189, 25 L. Ed 2d 469 (1970); this Court Held: there can be no doubt of the "retroactivity" of the United States Supreme Court's decision that the Fifth Amendment guaranty against Double Jeopardy is enforceable against the states through the Fourteenth Amendment. Id at 90 S. Ct. 1189.

Thus, the rule announced in Sanchez-Valle should be substantive because it "prohibit[s] prosecuting a single

person for the same conduct under equivalent criminal law."

This Court held that: The GRAFTON and SHELL Co. decision, in and of themselves, do not control here. The magnitude of that change requires consideration of the dual-sovereignty question anew. Id 136 S. Ct. at 1874.

Defendant requested the district court for a reconsideration (Rule 59(e)) of his motion because defendant lacked the opportunity to argue how the new case should apply. Citing: Quinones-Ruiz v. United States, 873 F. Supp. 359, 362 (S.D. Cal. 1995). Because, the reconsideration was appropriate when the new case of SANCHEZ-VALLE was decided.

If this Honorable Court state that Sanchez-Valle apply retroactively, in the alternative, this Court should may considered his Rule 59(e) petition as timely under 28 U.S.C. §2255 (f) and/or transferred it to the appropriate court of appeals to consider as a request to file a second/successive §2255 motion.

REQUESTED

Those issues present a conflict among the lower court. The conflict is such that lower courts faced with the same or very similar facts would decide the cases differently. A case may be sufficiently important to merit Supreme Court review if the impact of the lower court's decision extends beyond the narrow interests of the litigants to affect an entire industry

or a large segment of the population. Those issues recurs frequently and consume substantial judicial resources.

This case involves messy factual dispute and jurisdictional defects that this Court should may solve the issues if Certiorari is Granted.

Those issues are very important. Those issues affects a large number of people.

CONCLUSION

For all of the foregoing reasons the Defendant, Jose Galiany Cruz, respectfully requests that this Court grant the petition for writ of Certiorari, and accept this case for review. In the alternative, Mr. Galiany requests that his petition be granted, his sentence vacated and his case remanded to resentence without the application of 18 U.S.C. § 1111 in the sentencing.

Respectfully Submitted, in Tucson, Arizona, on June 11, 2018.

By:

JOSE GALIANY CRUZ

Reg. No. 23745-069

USP. TUCSON - PO Box 24550

TUCSON, AZ 85734