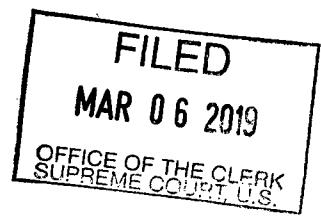


NO. 18-8506

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



JOSE JAIME LOPEZ,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

On Petition for a Writ of Certiorari to
The U.S. Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Jose Jaime Lopez
#28769-044
USP Big Sandy
P.O. Box 2068
Inez, KY 41224

QUESTIONS PRESENTED

- 1). WHETHER PETITIONER WAS DEPRIVED OF THE RIGHT TO COUNSEL BY THE U.S. COURT OF APPEALS FOR THE SEVENTH CIRCUIT'S FAILURE TO APPOINT COUNSEL AFTER PETITIONER DEMONSTRATED THAT HE WAS INDIGENT AND THAT HE COULD NO LONGER AFFORD COUNSEL?
- 2). WHETHER THE DISTRICT COURT FAILED TO PROVE ATTEMPT CONVICTION BEYOND A REASONABLE DOUBT?
- 3). WHETHER § 851(b) COLLOQUY ERROR WAS NOT HARMLESS?
- 4). WHETHER THE UNDERLYING CONVICTION IS IN DIRECT CONFLICT WITH SEVENTH CIRCUIT PRECEDENT?
- 5). WHETHER PETITIONER WAS IMPROPERLY CHARGED WITH ATTEMPT?
- 6). WHETHER THE SIMPLE NEGOTIATION OF A DRUG DEAL CONSTITUTES AN ATTEMPT CHARGE?
- 7). WHETHER THE ATTEMPT STATUTE OF 21 U.S.C. § 846 REQUIRES THE PRESENCE OF DEFENDANT?
- 8). WHETHER THE SEVENTH CIRCUIT IS REQUIRED TO SPECIFY THE SUBSTANTIAL STEP CONDUCT TO THAT SUSTAINS THE CONVICTION?
- 9). WHETHER THE FAILURE TO PRODUCE THE DOCUMENTS TO SUPPORT PRIOR 1999 CONVICTION DEPRIVES PROOF BEYOND A REASONABLE DOUBT?
- 10). WHETHER THE UNDERLYING CONVICTION IS BASED ON THE ABUSE OF THE ATTEMPT STATUTE?
- 11). WHETHER THE UNDERLYING CONVICTION IS BASED ON SPECULATION?

PARTIES

All parties appear in the caption on the cover page.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES	i
TABLE OF AUTHORITIES	iii
DECISIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT OF THE CASE	1
BASIS FOR FEDERAL JURISDICTION	2
REASONS FOR GRANTING WRIT	2
A). CONFLICTS WITH DECISIONS OF OTHER COURTS	
B). QUESTION OF GREAT IMPORTANCE	
CONCLUSION	8
APPENDIX	
DECISION OF THE U.S. COURT OF APPEALS DENYING COUNSEL	A
DECISION OF THE U.S. COURT OF APPEALS	B
ORDER OF THE U.S. COURT OF APPEALS DENYING REHEARING	C

TABLE OF AUTHORITIES

	Page
Gideon v. Wainwright, 372 U.S. 355	2, 3
Johnson v. Zerbst, 304 U.S. 458 (1938)	2, 3
U.S. v. Carrillo, 435 F.3d 767 (7th Cir 2006)	5
U.S. v. Cea, 914 F.2d 881 (7th Cir 1990)	4, 5
U.S. v. Miller, 782 F.3d 793 (7th Cir 2015)	7
U.S. v. Morgan, 222 F.2d 673 (2nd Cir 1958)	3
U.S. Ex. Rel. Caminito v. Murphy, 222 F.2d 698 (2nd Cir 1955)	3
U.S. v. Ocampo-Estrada, 873 F.3d 661 (9th Cir 2017)	4
U.S. v. Rodriguez, 851 F.3d 931 (9th Cir 2017)	4
U.S. v. Stallings, 301 F.3d 919 (8th Cir 2002)	7
U.S. v. Wilks, 46 F.3d 640 (7th Cir 1995)	5

DECISIONS BELOW

The decision of the United States court of Appeals for the Seventh Circuit is cited at 907 F.3d 537 (7th Cir 2018) and a copy is attached as Appendix B to this Petition.

JURISDICTION

The judgment of the U.S. Court of Appeals for the Seventh Circuit was entered on October 24, 2018. An order denying Petition for Rehearing was entered on December 19, 2018, and a copy is attached as Appendix C to this Petition. Jurisdiction is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendments V, VI, and XIII to the U.S. Constitution.

No Person shall be held to answer for a capital, or otherwise infamous crime...without due process.

In all prosecutions, the accused shall enjoy the right to... have the assistance of counsel for his defense.

No involuntary servitude, except as punishment for crime whereof the party shall have been duly convicted, shall exist.

STATEMENT OF THE CASE

Petitioner was improperly charged and unlawfully convicted for attempted drug possession.

The Court of Appeals for the Seventh Circuit has affirmed the conviction for 21 U.S.C. § 841 (Attempted Possession) based on speculation with no evidence of conduct that constitutes a substantial step.

The Court of Appeals also affirmed a 21 U.S.C. § 851 mandatory life enhancement without proof beyond a reasonable doubt and held that any § 851(b) Colloquy Error was Harmless.

The petitioner requested the court of appeals to appoint him counsel for the assistance and preparation for rehearing and or petition for a writ of certiorari. The court of appeals denied the request and forced petitioner to proceed pro-se due to his inability to afford counsel to prepare and file rehearing and or petition for writ of certiorari. See Attached Appendix A.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the due process clause of the fifth amendment to the U.S. Constitution and the right to counsel clause of the sixth amendment to the U.S. constitution.

REASONS FOR GRANTING THE WRIT

1). CONFLICTS WITH DECISIONS OF THE SUPREME COURT OF THE UNITED STATES.

The denial of petitioner's motion for appointment of counsel by the Seventh Circuit is directly contrary to the holding of Johnson v. Zerbst, 304 U.S. 458 (1938); Gideon v. Wainwright, 372 U.S. 335 (1963), which requires the assistance of counsel in all stages of the proceedings.

Petitioner in this case retained counsel to assist him with his direct appeal. After the Seventh Circuit decided Petitioner's appeal, he moved the Seventh Circuit to appoint counsel to prepare and file Petition for Rehearing, or in the alternative, Petition for a Writ of Certiorari, due to the fact that Petitioner could not afford counsel's price for the preparation and filing of a Petition for Rehearing and/or Petition for a Writ of Certiorari.

The Seventh Circuit refused to appoint counsel and petitioner was forced to prepare and file Petition for Rehearing and the foregoing Petition for a Writ of Certiorari acting as his own attorney.

A conviction in a case where the defendant has not enjoyed the fundamental right to counsel is void and his imprisonment also violates the U.S. Constitution Amendment XII which forbids involuntary servitude. See U.S. v. Morgan, 222 F.2d 673. (2nd Cir 1958).

The refusal to appoint counsel by the Seventh Circuit constitutes a Sixth Amendment denial of counsel violation in direct conflict with this court's decisions.

The court below seriously misinterpreted Johnson and Gideon by failing to appoint counsel. This court should correct this misinterpretation and make it clear that Petitioner is entitled to counsel at Petition for Rehearing and Petition for a Writ of Certiorari proceedings.

2). CONFLICT WITH DECISION OF THE SUPREME COURT

The petitioner's conviction for attempted drug possession based on speculation and affirmance of the Seventh Circuit Court of Appeals is in direct conflict with the Supreme Court decision of In Re Wiship, 397 U.S. 358 (1970).

To jail a man without evidence of guilt is to impose involuntary servitude. U.S. Ex. Rel Caminito v. Murphy, 222 F.2d 698 (2nd Cir 1955).

3). CONFLICTS WITH DECISIONS OF OTHER COURTS

The holding of the Seventh Circuit that § 851(b) colloquy error was harmless is in direct conflict to the holdings of U.S. v. Ocampo-Estrada, 873 F.3d 661 (9th Cir 2017). U.S. v. Rodriguez, 851 F.3d 931 (9th Cir 2017).

§ 851(b) colloquy error for mandatory life sentence enhancement is not harmless.

4). CONFLICTS WITH SEVENTH CIRCUIT DECISIONS

The decision of the Seventh Circuit is in direct conflict to the holdings in U.S. v. Cea, 914 F.2d 881 (7th Cir 1990).

As in Cea, there was no evidence of where the deal was to take place and where Lopes was arrested.

The result reached in Cea is also required here. More evidence of a substantial step is necessary.

5). IMPORTANCE OF QUESTION

This case presents a fundamental question of the interpretation of the drug attempt statute. The question presented is of great importance because it affects the abusive prosecution of drug attempt offenses. In view of the large amount of drug cases, guidance on the question is also of great importance.

The issue's importance is enhanced by the fact that the lower court has abused the drug attempt statute to unlawfully convict petitioner by unlawfully charging petitioner for attempt.

6). IMPORTANCE OF QUESTION

This case presents a fundamental question of the interpretation of the drug attempt statute. The question presented is of great importance because it affects the abusive prosecutions of attempt drug offenses. In view of the large amount of drug cases, guidance on the question is also of great importance.

The issue's importance is enhanced by the fact that the lower court has abused the attempt statute to unlawfully convict petitioner for the simple negotiation of a thwarted drug deal.

7). IMPORTANCE OF QUESTION

This case presents a fundamental question of the interpretation of the drug attempt statute. The question presented is of great importance because it affects the abusive prosecution of attempted drug offenses. In view of the large amount of drug cases, guidance on the question is also of great importance.

The issue's importance is enhanced by the fact that the lower court has abused the attempt statute to unlawfully convict petitioner without being present at the scene of the crime or the governmental intervention.

The Seventh Circuit decisions of U.S. v. Wilks, 46 F.3d 640 (7th Cir 1995); U.S. v. Carrillo, 435 F.3d 767 (7th Cir 2006); U.S. v. Cea, 914 F.2d 881 (7th Cir 1990) infers that the determining factor that takes a criminal defendant beyond the mere preparation stage for attempt cases is the defendant's presence at the scene of the governmental intervention. The Seventh Circuit decisions of Wilks, Carrillo, and Cea infers that the determining factor that makes a criminal defendant beyond the mere preparation stage for

attempt convictions is the presence of the monetary payment at the scene of the governmental intervention.

The court below seriously misinterpreted the drug attempt statute. This court should correct this misinterpretation and abuse and make it clear that the 21 U.S.C. § 846 attempt statute requires the presence of defendant and monetary payment present at the scene of the governmental intervention.

8). IMPORTANCE OF QUESTION

This case presents a fundamental question of the interpretation of the drug attempt statute. The question presented is of great importance because it affects the abusive prosecution of attempt drug cases. In view of the large amount of drug cases, guidance on the question is also of great importance.

The issue's importance is enhanced by the fact that the lower court has abused the attempt statute to unlawfully convict petitioner without specifying the petitioner's substantial step conduct that supports the petitioner's conviction.

The court below seriously misinterpreted and abused the drug attempt statute. This court should correct this misinterpretation and abuse and make it clear that the 21 U.S.C. § 846 attempt statute requires the specification of the substantial step conduct that sustains the conviction.

9). IMPORTANCE OF QUESTION

This case presents a fundamental question of the sufficiency of evidence for 21 U.S.C. § 851(c)(1) mandatory Life sentence enhancement cases. The question presented is of great importance

because it affects the § 851 mandatory Life sentence enhancement's burden of proof. In view of the large amount of 21 U.S.C. § 851 enhancement cases, guidance on the question is also of great importance.

The issue's importance is enhanced by the fact that the lower court has failed to present evidence of a valid judgment for 21 U.S.C. § 851(c)(1) mandatory life enhancement purposes.

The government is required to present evidence of a valid judgment and the government may not meet the burden of proof with mere allegations. See U.S. v. Stallings, 301 F.3d 919 (8th Cir 2002); U.S. v. Miller, 782 F.3d 793 (7th Cir 2015).

The court below seriously misinterpreted the 851(c)(1) burden of proof. This court should correct this misinterpretation and make it clear that the 851(c)(1) burden of proof requires the production of a valid judgment.

10). IMPORTANCE OF QUESTION

This case presents a fundamental question of the interpretation of the drug attempt statute. The question presented is of great importance because it affects the abusive prosecution of attempt drug cases. In view of the large amount of drug cases, guidance on the question is also of great importance.

The issue's importance is enhanced by the fact that the lower court has unlawfully convicted the petitioner based on the abuse of the drug attempt statute.

Whether the underlying conviction is based on the abuse of the attempt drug statute is an important question for this court to decide in the interest of involuntary servitude concerns.

11). IMPORTANCE OF QUESTION

This case presents a fundamental question of the interpretation of proof beyond reasonable doubt. The question presented is of great importance because it affects the burden of proof of drug cases. In view of the large amount of drug cases, guidance on the question is also of great importance.

The issue's importance is enhanced by the fact that the lower court has overlooked the fact that petitioner's attempt to possess drugs as opposed to (Lopez's brother-in-law) is based on speculation.

Whether the underlying conviction is based on speculation is an important question for this court to decide in the interest of involuntary servitude concerns.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

Dated on this 6th day of March, 2019.

Respectfully submitted

By Jose Jaime Lopez

Jose Jaime Lopez
#28769-044
USP Big Sandy
P.O. Box 2068
Inez, KY 41224