

No. 18-8617 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
JUN 01 2018
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Kristen Patrick Doyle — PETITIONER
(Your Name)

vs.
United States of America — 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

Kristen Patrick Doyle
(Your Name)

FSI EKTON Po Box 16
(Address)

Lisbon, OHIO 44432
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1.) Did the United States Court of Appeals for the Fourth Circuit err in its denial of Defendant - Appellant's Motion to be granted relief under the clarifying amendment regarding two-point and five-point sentencing enhancements that now require a mens rea element?
- 2.) Did the court use a fine line to conclude that the Motion is not a Title 28 U.S.C Section 2255, but rather a Title 18 U.S.C. Section 3582(c)(2)?

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:

(2)

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TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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United States v Carroll, No. 16-16652 (11th Cir., April 2018)	5

STATUTES AND RULES

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[✓] is unpublished.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[✓] is unpublished.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[] is unpublished.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 April 3, 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: _____, 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. § 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

The only Constitutional provision that I find is that we are all to be treated equally in the eyes of the law. When circuits are not following congress's lead in its definition of what is a Clarifying Amendment and not honoring the retroactivity that Congress clearly states exists automatically with regard to Clarifying Amendments, then all are not equal under the eyes of the law.

STATEMENT OF THE CASE

On April 24, 2012, Petitioner plead guilty to one count of distribution of child pornography in violation of 18 U.S.C. 2252A(a)(2)(B), and one count of possession of child pornography in violation of 18 U.S.C. 2252A(a)(5)(B). On July 25, 2012, sentencing was held before the Honorable Chief Justice Judge Rebecea Beach Smith. The government agreed that the PSR guidelines were correct and ask the court to impose a low-end guidelines sentence of imprisonment. The government specified the need to avoid unwarranted sentence disparities clearly weighed in favor of a low-end guidelines sentence, pursuant to 18 U.S.C. 3553(a)(6).

The Pre-Sentence Investigation Report set the guideline point level at 34, which included a two-point distribution enhancement, now affected by this new law. On November 1, 2016, the federal guidelines amendments for child-pornography became law. The two point and five-point distribution enhancements now require a mens rea element. The United States Sentencing Commission has stated that there are two factors when determining of these enhancements apply to one's case. First: An agreement between one party and a second party must have actually received it. Under these new amendments, the government now has the burden to prove both elements as to what is now considered distribution enhancements. These guidelines under section 2G2.1, 2G2.2 and 2G2.3 are conductive clairfyng amendments, which makes them automatically retroactive according to Congress.

There is now a direct conflict between the circuits as the Eleventh has honored this in United States v Carroll supra and this court can eliminate this disparity.

REASONS FOR GRANTING THE PETITION

Petitioner states that there is a direct conflict when the government asks the sentencing court not to follow the USSG's recommendation because as the government states, "only Congress has the power to fix the sentence of a federal crime and limit the scope of judicial discretion." *Misretua v United States*, 488 US 361, 34 (1989).

First, the government says that Congress is the ultimate decision maker and then asks that the government be granted its request that the court defer from using Congress' instructions regarding retroactivity concerning a clarifying Amendment. Simply put, the Amendment is clarifying as per the USSG Commission. Congress clearly states that a clarifying amendment is retroactive. The Fourth Circuit has always accepted clarifying amendments as retroactive and therefore has erred in not applying retroactivity to this Amendment in the case at hand.

This case is one of thousands with regard to the issues confronted by thousands of felons who have been enhanced with 2-point and 5-point enhancements that are now requiring a mens rea element and now require a burden of proof to be placed upon the government. An Eleventh Circuit decision in *United States v Carroll*, No. 16-16652 (11th Cir, April 2018) now has created a disparity in sentencing that can only be addressed by this Honorable Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul Miller

Date: October 25, 2018