NO. 18-8647

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

AMILCAR CABRAL BUTLER
Petitioner

versus

UNITED STATES OF AMERICA,
Respondent

On Petition for Writ of Certiorari to the
United States Court of Appeals for
the Sixth Circuit in Cause No. 15-6126

PETITION FOR WRIT OF CERTIORARI FOR AMILCAR CABRAL BUTLER

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Amilcar Cabral Butler©

QUESTIONS PRESENTED

I. Is The Dicta Of A Prior Sixth Circuit Panel Opinion Law Of The Case And Remain Binding On Any Other Panel, Despite Error.

LIST OF PARTIES

AMILCAR CABRAL BUTLER
Defendant/Appellant

United States Of America
Plaintiff/Appellee

Debra Teufel Phillips
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The Honorable Aleta Arthur Trauger
United States District Court Judge

United States Court Of Appeals
for the Sixth Circuit
c/o E. Fifth Street, Room 540
Cincinnati, Ohio 45202-3988

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI
FOR AMILCAR CABRAL BUTLER

Amilcar Cabral Butler© peacefully prays for this Court's full consideration in that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States District Court for the Middle District of Tennessee, United States versus 323 Forest Park Drive, No. 3:06-CV-01156 (MDTN July 09, 2015), Appears at Appendix A.

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished, United States v. 323 Forrest Park Drive, No. 15-6126 (6th Cir. Feb. 14, 2018), appears at Appendix B.

STATEMENT OF JURISDICTION

The Sixth Circuit offered its opinion on December 08, 2018. Butler filed a timely Petition for Rehearing and/or Rehearing En Banc which the Sixth Circuit denied on February 14, 2018. Later, Butler filed an application for a 60 day extension of time within which to file a petition for a writ of certiorari that extends the time to July 15, 2018. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

On September 19, 2002, a jury in the United States District Court for the Middle District of Tennessee, Nashville Division, found Amilcar C. Butler ("Butler") guilty of conspiracy to posses and attempted possession of five kilograms or more of cocaine in violation of 21 U.S.C. § 846. The district court determined that Butler was subject to a mandatory life sentence under 21 U.S.C. § 846 because he had two or more prior felony drug convictions and sentenced him to a term of life imprisonment. The Sixth Circuit affirmed Butler's conviction and sentences. United States v. Butler, 137 F. App'x 813, 820 (6th Cir. June 22, 2005).

Six ½ years after Butler's incarceration, the government brought a civil forfeiture action in December 2006, against Butler's two real properties—323 Forrest Park Drive, Unit 2-4, Madison, Davidson County, Tennessee—alleging that Butler used these properties in connection with his drug-trafficking activities. The district court issued a notice, and to file an answer to the forfeiture complaint within twenty days of filing a claim. The government sent Butler notice of the complaint, and Butler subsequently filed several documents in district court in February 2007, addressing the forfeiture action. The government moved for summary judgment, alleging, without first establishing jurisdiction, that Butler lacked statutory standing to contest the forfeiture action, not because he did not file various documents in opposition in the district court that contested the government's authority to bring this late action, but because Butler had not filed a claim or an answer acceptable to the the district court's arbitrary view.

On March 28, 2008, the district court granted the government's motion, and the Sixth Circuit later affirmed. United States v. 323 Forest Park Drive, 521 F. App'x 379, 385 (6th Cir. 2013).

On May 20, 2015, Butler filed a Petition For Relief From Judgment Under Federal Rule of Civil Procedure 60(b)(4). In Butler's petition, he offered that the judgment was void because the government did not file its forfeiture action within the relevant five-year statute of limitations period under 19 U.S.C. § 1621 and because the government did not establish a nexus between his drug-trafficking activities and each of his two (2) real properties.

Since Butler's previous district court judge had retired, a new judge arbitrarily denied Butler's petition, holding that, because Butler lacked standing to challenge the forfeiture action, he also lacked standing to challenge what he perceived to be a void judgment. (COA at 2). The district court erroneously denied Butler leave to proceed in forma pauperis ("IFP") on appeal. The Sixth Circuit thereafter denied Butler IFP status sua sponte. United States v. 323 Forrest Park Drive, No. 15-6126 (6th Cir. Feb. 22, 2017) (order).

Once the filing fee was paid, Butler demonstrated again that the civil forfeiture judgment is void under Fed. R. Civ. P. 60(b)(4), because the government did not commence the forfeiture action until 6½ years after his September 17, 2000 arrest, which is outside the relevant five-year statute of limitations period under 19 U.S.C. § 1621 and because the government did not establish a nexus between the properties and Butler's alleged drug-trafficking activities under 21 U.S.C. § 881(a)(7). Additionall Butler offered that discovery of various different individual's will enable him to support his timeliness claim. Lastly, Butler offered that in accordance with the Sixth Circuit's Internal Operating Procedures that the government must be barred from filing a response because its' counsel filed a late notice of appearance.

On December 08, 2017, the Sixth Circuit offered that the district court properly found Butler lacked standing to challenge what he perceived to be a void judgment. Additionally, the Sixth Circuit offered its' determination that Butler lacked standing to challenge the government's forfeiture action is law of the case and forecloses Butler's current attempt to challenge the validity of the forfeiture judgment. (COA at 3). The district court's order was affirmed. Later, Butler filed a petition for rehearing and/or rehearing en banc, which was subsequently denied as well.

REASONS FOR GRANTING THE WRIT

I. Is The Dicta Of A Prior Sixth Circuit Panel Opinion Law Of The Case And Remain Binding On Any Other Panel, Despite Error.

The law-of-the-case doctrine "posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." Arizona v. California, 460 U.S. 605, 618, 75 L. Ed. 2d 318, 103 S. Ct. 1382 (1983). However, the doctrine merely "directs a court's discretion, it does not limit the tribunal's power." Id.; see also Gillig v. Advanced Cardiovascular Sys., Inc., 67 F.3d 586, 589-90 (6th Cir. 1995).

The law of the case doctrine mandates that a lower court adhere to the rulings issued earlier in the case by the appellate court. Howe v. City of Akron, 801 F.3d 718, 739 (6th Cir. 2015). "[W]hen a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages of the same case." Scott v. Churchill, 377 F.3d 565, 569 (6th Cir. 2004) (quoting Arizona v. California, 460 U.S. 605, 618, 103 S. Ct. 1382, 75 L. Ed. 2d 318 (1983)). Courts need not adhere to the

law of the case in the face of an intervening change in law, new evidence, or a manifest injustice. Howe, 801 F.3d at 741.

The Impact of Precedent

First of all, Butler asserts one District Judge's decision is not binding on any other District Judge, even in the same district. See Chinn v. Jenkins, 2018 U.S. Dist. LEXIS 8548 (S.D. Ohio Jan. 19, 2018), citing, inter alia, Threadgill v. Armstrong World Industries, Inc., 928 F.2d 1366, 1371 (3rd Cir, 1991); Colby v. J.C. Penney Co., Inc. 811 F.2d 1119, 1124 (7th Cir. 1987); United States v. Articles of Drug Consisting of 203 Paper Bags, 818 F.2d 569, 572 (7th Cir. 1987); Starbuck v. City and County of San Francisco, 556 F.2d 450, 457 n.13 (9th Cir. 1977) (same). An exception would be where a judgment bars relitigation of a claim or issue under the doctrines of res judicata or collateral estoppel.

Second, Butler asserts that the district courts in the Sixth Circuit are bound by the published decisions of the Sixth Circuit Court of Appeals. A prior decision of the Sixth Circuit remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or the Sixth Circuit en banc overrules the prior decision. United States v. Elbe, 774 F.3d 885, 891 (6th Cir. 2014); Darrah v. City of Oak Park, 255 F.3d 301, 309 (6th Cir. 2001); Salmi v. Secretary of HHS, 774 F.2d 685, 689 (6th Cir. 1985); accord 6th Cir. R. 206(c). A panel of the Sixth Circuit may not overrule the published decision of another panel. Hinchman v. Moore, 312 F.3d 198, 203 (6th Cir. 2002); Neuman v. Rivers, 125 F.3d 315 (6th Cir. 1997).

However, what is binding in a prior published circuit court decision is the holding of the case, and not dicta included in the opinion. A panel

of the Sixth Circuit is not bound by dicta in a previously published panel opinion. Re/Max Int'l, Inc. v. Realty One, Inc., 271 F.3d 633, 643 (6th Cir. 2001); United States v. Burroughs, 5 F.3d 192, 194 (6th Cir. 1993). "Dicta is the '[o]pinion[] of a judge which do[es] not embody the resolution or determination of the specific case before the court.'" Hinchman v. Moore, 312 F.3d 198 (6th Cir. 2002) (quoting Black's Law Dictionary 454 (6th ed. 1990).

> [I]t is a maxim not to be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision. The reason of this maxim is obvious. The question actually before the Court is investigated with care, and considered in its full extent. Other principles which may serve to illustrate it, are considered in their relation to the case decided, but their possible bearing on all other cases is seldom completely investigated. Cohens v. Virginia, 19 U.S. 264, 399-400, 5 L. Ed. 257 (1821) (Marshall, C.J.). See also United States v. Rubin, 609 F.2d 51, 69 n.2 (2nd Cir. 1979) (Friendly, J., concurring).

The doctrine of precedent or stare decisis, however, is much broader than the question of which prior decisions by which courts are binding on subsequent courts. Part of the doctrine of precedent is the law of the case Under that doctrine, findings made at one point in the litigation become the "law of the case" for subsequent stages of that same litigation. United States v. Moored, 38 F.3d 1419, 1421 (6th Cir. 1994), citing United States v. Bell, 988 F.2d 247, 250 (1st Cir. 1993). "As most commonly defined, the doctrine [of law of the case] posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." Arizona v. California, 460 U.S. 605, 618, 103 S. Ct. 1382, 75 L. Ed. 2d 318 (1983),

citing 1B Moore's Federal Practice ¶0.404 (1982); Patterson v. Haskins, 470 F.3d 645, 660-61 (6th Cir. 2006); United States v. City of Detroit, 401 F.3d 448, 452 (6th Cir. 2005). "If it is important for courts to treat like matters alike in different cases, it is indispensable that they 'treat the same litigants in the same case the same way throughout the same dispute.'" United States v. Charles, 843 F.3d 1142, 1145 (6th Cir. 2016) (Sutton, J.), quoting Bryan A. Garner, et al., The Law of Judicial Precedent 441 (2016).

Law of the case is persuasive, not binding. "Law of the case directs a court's discretion, it does not limit the tribunal's power." Id., citing Southern R. Co. v. Clift, 260 U.S. 316, 319, 43 S. Ct. 126, 67 L. Ed. 283 (1922); Messenger v. Anderson, 225 U.S. 436, 32 S. Ct. 739, 56 L. Ed. 1152 (1912); see also Gillig v. Advanced Cardiovascular Sys., Inc., 67 F.3d 586, 589-90 (6th Cir. 1995). "While the 'law of the case' doctrine in not an inexorable command, a decision of a legal issue establishes the 'law of the case' and must be followed in all subsequent proceedings in the same case in the trial court or on a later appeal in the appellate court, unless the evidence on a subsequent trial was substantially different, controlling authority has since made a contrary decision of the law applicable to such issues, or the decision was clearly erroneous and would work a manifest injustice." White v. Murtha, 377 F.2d 428 (5th Cir. 1967), quoted approvingly in Association of Frigidaire Model Makers v. General Motors Corp., 51 F.3d 271 (6th Cir. 1995). The purpose of the doctrine is twofold: (1) to prevent the continued litigation of settled issues; and (2) to assure compliance by inferior courts with the decisions of superior courts. United States v. Todd, 920 F.2d 399 (6th Cir. 1990), citing Moore's Federal Practice.

> The doctrine of law of the case provides that the courts should not "reconsider a matter once resolved in a continuing proceeding." 18B Charles Alan Wright, Arthur R. Miller, and Edward H. Cooper, Federal Practice and Procedure: Jurisdiction and Related Matters § 4478 (4th ed. 2015). "The purpose of the law-of-the-case doctrine is to ensure that 'the same issue presented a second time in the same case in the same court should lead to the same result.'" Sherley v. Sebelius, 689 F.3d 776, 780, 402 U.S. App. D.C. 178 (D.C. Cir. 2012) (quoting LaShawn A. v. Barry, 87 F.3d 1389, 1393, 318 U.S. App. D.C. 380 (D.C. Cir. 1996)). For a prior decision to control, the prior tribunal must have actually decided the issue. Wright et al., supra, § 4478. "A position that has been assumed without decision for purposes of resolving another issue is not the law of the case." Id. "An alternate holding, however, does establish the law of the case." Id. "An alternate holding, however, does establish the law of the case." Id. Unlike claim preclusion, the law of the case does not apply to issues that a party could have raised, but did not. Id. The law-of-the-case doctrine is a prudential practice; a court may revisit earlier issues, but should decline to do so to encourage efficient litigation and deter "indefatigable diehards." Id. Howe v. City of Akron, 801 F.3d 718, 739-740 (6th Cir. 2015).

In sum, the law of the case doctrine is not an appropriate basis for denying relief when the statement of the law in appellate opinion is both dictum and in error. Landrum v. Anderson, 813 F.3d 330 n.1 (6th Cir. 2016), citing United States v. McMurray, 653 F.3d 367 (6th Cir. 2011). The government knew or should have known about Butler's September 17, 2000 arrest and his real properties before the five year statute of limitation period exceeded to bring a civil forfeiture action in December 2006. The dictum and error in the district and appellate cour order is not an appropriate basis for denying Butler relief under Fed. R. Civ. P. 60(b)(4), on the premise of the law of the case doctrine.

CONCLUSION

The petition for writ of certiorari must be granted.