

No. 18-8654

ORIGINAL

Supreme Court, U.S.
FILED

DEC 20 2018

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Karyea Williams — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court of Appeals Of The Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Karyea Williams
(Your Name)

Edgefield FCI P0 Box 725 Edgefield SC
(Address)

Edgefield South Carolina 29825
(City, State, Zip Code)

Register No. 26621-171
(Phone Number)

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JAN - 7 2019

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

- 1) Did The Court Of Appeals err by dismissing the appeal of the District Court's reasoning that Mathis was inapplicable to Karyea Williams on Collateral Review ?
- 2) Did the Court Of Appeals err by failing to determine that the Jerry Jabbari Rhodes, 736 Fed. App'x 375(2018 - Mathis v United States, 136 S. Ct. 2243(2016) can be retroactive under Teague's exception to the general rule of retroactivity ?
- 3) If Mathis reiterated and clarified Descamps because the lower courts were erroneously applying the categorical and modified categorical approach at sentencing why should a defendant who was victimized by their erroneous view of the rules not be allowed to have their sentences reduced??

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:

Carrie Fisher Sherard
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55 Beattie Place, Suite 700
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United States District Court Judge
Timothy M. Cain
United States District Court
For The District of South Carolina
Greenville Division

The United States Court of Appeal
For The Fourth Circuit

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(6:13-cr-00816-TMC-1) , (6:16-cv-02957-TMC)**

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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 _____ 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 _____ 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 September 21, 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

AMENDMENT V OF THE UNITED STATES CONSTITUTION PROVIDES THAT
NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY OR PROPERTY
WITHOUT DUE PROCESS OF LAW

RULES OF THE SUPREME COURT OF THE UNITED STATES - Rule 10

The United States Court of Appeals has sanctioned such a
departure by the district court as to call for an exercise
of the Supreme Court's supervisory power.

STATEMENT OF THE CASE

Petitioner, Karyea Williams filed an application under 28 USC § 2244(b) to the United States Court of Appeals for the Fourth Circuit seeking authorization to file a motion under 28 USC 2255 based on the Supreme Court decision passed in Johnson v United States, 135 S. Ct. 2551(2015) The petition was granted on / /18 Petitioner supplemented the motion with a claim that under the Supreme Court decision in Mathis v United States, 136 S. Ct. 2243 (2016) and United States v Hinkle, 832 F.3d 569(5th Cir.2016) the categorical approach would have determined that the "intent to distribute" in his prior conviction under S.C. Code Ann. § 44-53 -370 are broader than the elements in the controlled substance offense elements defined in USSG § 4B1.1.

On April 4, 2018 the District Court Mathis is inapplicable to petitioner's case. The court denied his claim because he was sentenced as a Career Offender and not under the ACCA Mathis is inapplicable. After the court's dismissal of petitioner's claim the court applied the principles of Mathis to another petitioner sentenced as a career offender under similar circumstances. See United States v Rhodes, No. 17-4162, slip op.(4th Cir.June 7, 2018) Petitioner then filed a Rule 59(e) motion claiming that based on the Rhodes case the court should reconsider its denial of his § 2255 motion. On 6/18/18 the court concluded that Mathis did not create a substantive change in the law, therefore it does not trigger the belated commencement provision of § 28 USC 2255(f) (3). The District Court added that since the petitioner was sentenced on Oct. 28, 2014 more than a year and a half before Mathis he cannot retroactively rely on it. Petitioner appealed the decision to the US Court of Appeals.

On September 21, 2018 petitioners appeal of the District Court's denial of his claims was denied by the United States Court of Appeals for the Fourth Circuit. Mandate was issued on Nov.13, 2018

REASONS FOR GRANTING THE PETITION

Petitioner claims that he can rely on Mathis based on the principles of Welch v United States, 578 US ___, 136 S. Ct. 1257(2016) because a newly established right recognized in Johnson is retroactive. In Welch the court explained that whether a new rule is substantive or procedural is determined by considering the functioning of the rule not its underlying source. The District Court's reasoning was that Mathis did not announce substantive change in the law, rather it reiterated and clarified Taylor v US., 496 US 575 (1990) , Shepard v United States v US, 544 US 13(2003) and Descamps v US., 133 S. Ct. 2276(). Muhammad v Wilson, 715 F. Appx 251 252 (4th Cir.2017)

Petitioner claims that although Mathis clarifies existing precedent it falls under the Teague exception to the general rule of retroactivity. In light of the Supreme Courts reasoning in Welch whether Mathis should be applied retroactively should include consideration of the functioning of the rules applied in Mathis. According to Welch Id at 136 S. Ct. 1266, the source of Mathis is irrelevant. Because Mathis reiterated and clarified prior existing precedent is not dispositive of the question of the retroactivity Mathis. Its the functioning of the rules passed down in Mathis.

Williams also should not be held to be time barred due to the timeliness of his claims. His claim merely justifies that fact that rules of Descamps, Taylor, and Shepard unlawfully imposed him in the first instance at sentencing. The courts misapplication of the rules allowed the government to negotiate a sentence far more severe than Sentencing Guidelines could lawfully subject him to.

With respects to Williams claims based on Mathis he should be allowed the benefit of the Rhodes case as if he was sentenced today. According to the Supreme Court's reasoning in Welch whether he was sentenced under the Career Offender or the ACCA guidelines does not matter because according to Mathis, Hinkle, and now Rhodes he is still sentenced under a criminal process which rests at a point where it ought never to repose. See Welch Headnote 11, citing Mackey v United States, 401 US 667, 693(1971)

Petitioner claims that he should not be held in prison based on an enhancement which was unlawfully applied to him due to the government misunderstanding of the principles passed down in Des-camps. His sentence is not authorized by substantive law because Mathis shows that the substance of the career offender guidelines cannot rely on the state's predicate offences under S.C. Code Ann. 44-53-370. According to the principles of Mathis the Career offender USSG 4b1.1 sentencing guidelines does not make his state prior offense criminal under federal law and therefore the sentence is not now and have never been authorized by substantive law. See Bousley v United States, 523 US 614, 620(1998) quoting Davis v. United States, 417 US 333, 346(1974)

Petitioner's claims should have been allowed to proceed in the district court because regardless of the retroactivity of Mathis his sentence was based on a mistake of the courts interpretation of the rules applicable to the categorical approach. Mathis's functioning demonstrates that it falls under the Teague exception to the general rule of retroactivity because it addresses " substantive rules accorded by the constitution." It decriminalizes PWID under 44-53-370.

The United States District Court erroneously used the categorical approach to determine that the predicate offense of PWID under SC Code Ann 44-53-370 qualifies as a "controlled substance offense" under USSG 4b1.1. The petitioner attacked the error on collateral review based on a new decision passed by the Supreme Court Mathis v US which clarified the district courts understanding of the rules of how to apply the categorical approach. The district court held that Mathis was inapplicable to petitioner because he was sentenced a year and a half before the new decision was passed. The petitioner should not be held to be barred from his claim because of the court's erroneous view.

CONCLUSION

Respectfully although Mathis decision is based on existing case law. Its new approach decriminalizes the conduct which can be used under the USSG. Karyea was sentenced as a career offender based on the court's error. His sentence should be vacated and remanded. The petition for a writ of certiorari should be granted.

Respectfully submitted,

Karyea R. Williams

Date: 3-13-19