

NO. 18-8762

ORIGINAL

FILED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

JASON C. BROWN - PETITIONER

VS.

UNITED STATES - RESPONDENTS(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

6TH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

JASON C. BROWN 07175-088

FCI/ASHLAND
PO BOX 6001

ASHLAND, KY 41105

QUESTIONS PRESENTED

1. WHETHER BROWN'S FIFTH AMENDMENT RIGHT TO DOUBLE JEOPARDY, DUE PROCESS AND THE EXPRESSED TERMS OF THE 6TH CIR. COURT OF APPEALS LIMITED REMAND ORDER WERE VIOLATED WHEN THE DISTRICT COURT PERMITTED THE GOVERNMENT TO FILE A SECOND (SUPERCEDING) INDICTMENT BEFORE DISMISSING THE ORIGINAL INDICTMENT THAT JEOPARDY HAD ALREADY ATTACHED TO...

2. WHETHER THIS COURTS HOLDING IN CLASS V. UNITED STATES #16-424 (2018) AND THIS COURTS PRIOR RULINGS UPHELD BY CLASS APPLIES ALSO TO BROWN'S CONSTITUTIONAL CLAIM...

See: Menno-

Blackledge-

Brode-

LIST OF PARTIES

JASON C. BROWN VS. UNITED STATES OF AMERICA

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APPENDIX B: ORDER DENYING PETITION FOR REHEARING EN BANC.

APPENDIX C: UNITED STATES COURT OF APPEALS OPINION

SEE: APPENDIX(A) Page 4 of 4 OR

SEE ALSO: General Docket 6th C.R.
Court of Appeals #16-6852

Docket page #40-Date 10/26/17
"Order granting motion to dismiss
based upon appeal waiver".

TABLE OF AUTHORITIES

CASES:

Bellsouth Corp. V. FCC 96F.3d 849, 851-52 (6th Circuit 1996) *other*
Calderon V. Thompson 523 US 538, 549-50, 14L.Ed 2d 728.198 5ct(1989) *other*
Class V. United States 583 US (2018) *P.#5*
Green V. United States 355 US 184 (1957) *P.#7*
Haines V. Kerner 407 US 519(1972) *other*
Hines V. Royal Indemnity Co. 253 F.ed 111(6th Circuit 1958) *other*
Lisbenba V. California 314 US 219 (1941) *other*
McNeal V. United States 17f Appix 258 (6th Circuit 2001) *P.#7*
Westside Mothers V. Olszewski 454 F.3d 532 (6th Circuit 2006) *other*
Zipfel V. Halliburton Co. 861 F.2d 565 (9th Circuit 1998) *other*
United States V. Beals 698 F.3d 248, 256 (6th Circuit 2012) *other*
United States V. Brown 819 F.3d 800 (6th Circuit 2016) *P.#5*
United States V. Cunningham 679 F.3d 355 (6th Circuit 2012) *P.#6*
United States V. Hoslett 998 F.2d 684 (9th Circuit 1993) *other*
United States V. Murray 2Fed Appix 398 (6th Circuit 2001) *other*
United States V. Moored 38F.3d 1419 (6th Circuit 1994) *other*
United States V. Saikaly 424 F.3d 514 (6th Circuit 2005) *other*
United States V. Thomas 726 F.3d 1086 (9th Circuit 2013) *P.#7*

STATUTES AND RULES:

18 U.S.C.A. 3161 (c)(1) *P.#3*
18 U.S.C.A. 3162 (a)(1) *P.#3*
21 U.S.C. 841(a)(1) *P.#4*
28 U.S.C. 1291 *P.#4*

IN THE
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PETITION FOR WRIT OF CERTIORARI

etitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix C 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.

JURISDICTION

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 USC § 1254(1).

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED MY CASE WAS
OCTOBER 26, 2017

A TIMELY PETITION FOR REHEARING WAS DENIED BY THE UNITED STATES COURT OF APPEALS
ON THE FOLLOWING DATE: FEBRUARY 28, 2018, AND A COPY OF THE ORDER DENYING REHEARING
APPEARS AT APPENDIX 3.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional:

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb...nor be deprived of life, liberty or property, without due process of law.

Statutory Provisions Invoked:

18 U.S.C.A. 3161 (c)(1): "In any case in which a plea of not guilty is entered the trial of a defendant charged in an information or indictment with the commission of an offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appealed before a judicial officer of the court in which such charges is pending, whichever date last occurs. if a defendant consents in writing to be tried before a magistrate [United States magistrate judge] or a complaint, the trial shall commence within seventy days from the date of such consent."

18 U.S.C.A. 3162 (a)(1): "If in the case of any individual against whom a complaint is filed charging such individual with an offense, no indictment or information is filed within the time limit required by section 3161(b) [18 USCS 3161(b)] as extended by section 3161(h) of this chapter [18 USCS 3161(h)] such charge against that individual continued in such complaint shall consider, among others, each of the following factors: the seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of reprocsecution on the administration of this chapter [18 USCS 3161 et seq] and on the administration of justice."

21 U.S.C. 841(a)(1): Prohibited acts A: (a) unlawful acts, except as authorized by this title, it shall be unlawful for any person knowingly or intentionally---(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, a controlled substance;

28 U.S.C. 1291: Final decisions of district court: the courts of appeals (other than the United States Court of Appeals for the federal circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States for the district of the canal zone, the district court of Guam, and the district court of the Virgin Islands.

STATEMENT OF THE CASE

On first appeal, the 6th cir. court of appeals vacated and remanded this case for a speedy trial act violation United States v. Brown 819 F.3d 800 815(6th cir. 2016). The limited remand order instructed the district court to dismiss the indictment with or without prejudice based on the factors in 18 USC 3162(a)(2).

Before complying with the 6th circuit court of appeals remand order the district court allowed the government to seek and file a superceding indictment before dismissing the original indictment. Compare R.111 superceding indictment, page ID# 1152, with R.115 Memorandum order dismissing original indictment, page ID# 1166. Brown filed a motion to dismiss the superceding indictment arguing the practice violated law of the case and his fifth amendment rights. R.124 Motion for dismissal, page ID#1195. The district court denied the motion claiming the superceding indictments and premature filing was "of no consequence" R.142, Memorandum order denying motion to dismiss, page ID# 1255. After repeated violations of Brown's rights, leaving him and the public with lack of confidence in the justice system, Brown pled guilty to avoid facing 30 years of incarceration. Brown under the impression that the constitutional right violation of double jeopardy and due process was preserved for appeal, filed a notice of appeal on December 23, 2016 R.165 Notice to Appeal page ID# 1321...on appeal Brown argued that his constitutional rights was violated. The court of appeals ruled that said argument was barred by Brown's plea waiver. Brown then asked the 6th cir court of appeals to rehear his appeal and was denied on February 28, 2018. Brown then filed a motion to recall the mandate in the court of appeals in light of this court's recent ruling in United States v. Class 583 US(2018), this motion is still pending in the 6th circuit court of appeals.

REASONS FOR GRANTING THE PETITION

Whether Brown's Fifth Amendment right to double jeopardy, due process and the expressed terms of the 6th circuit court of appeals limited remand order were violated when the district court permitted the government to file a second (superceding) indictment before dismissing the original indictment that jeopardy had already been attached to...

The limited remand order by the 6th circuit court of appeals instructed the district court to "determine only...whether the original indictment that the 6th circuit court of appeals vacated and remanded should be dismissed with or without prejudice based on factors enumerated in 18 U.S.C. 3162(a)(2)" to adjudicate the case. Brown, 819 f.3d at 803. Yet the district court ignored the court of appeals limited order, allowing and acknowledging a superceding indictment to the same exact charges and conduct as original pending indictment to be entered in open court before original indictment was dismissed. See R.111, superceding indictment page ID#1152; R.115, Memorandum order dismissing 'original indictment,' page ID#1166. By allowing the government to file and obtain a superceding indictment, the district court and government forced Brown to defend against both the dismissal proceedings enumerated in 18 U.S.C. 3162(a)(2) and the superceding indictment at the same time, prejudicing Brown on both accounts and violating his fifth amendment rights.

This writ of certiorari questions the constitutionality of the lower court's denial of Brown's motion to dismiss the unconstitutional superceding indictment on fifth amendment grounds. See R.124, Motion to dismiss superceding indictment, page ID#1195; R.142, Memorandum order denying motion to dismiss, page ID#1255. Brown was under the impression that he preserved this issue in his motion to dismiss the superceding indictment. The 6th circuit "reviews de novo a claim that a district court's ruling violates the constitution" United States v. Cunningham, 679 F.3d 355,374 (6th Circuit,2012) Brown's motion to dismiss properly preserved the issue. See R.124 motion to dismiss, page ID#1195.

By disregarding the 6th circuit court of appeals limited remand order and subjecting Brown to defend against two indictments at the same time, for the same crime, in the same court, the district court and government violated the guarantees in the fifth amendment.

Fifth amendment rights are pivotal to defendants. "The constitutional prohibition against double jeopardy was and still to this day is designed to protect defendants from being subjected to defend against two indictments at the same time for the same crimes in the same court and possible conviction more than once for an alleged offense without due process of law." Green v. United States 355 us 184(1957). Also protected by the fifth amendment "denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice." Lisbenba v. California 314 us 219,236(1941) "Due process requires that all procedures be fundamentally fair." McNeal v. United States 17.f.appix 258, 264(6th circuit 2001) (citation omitted)

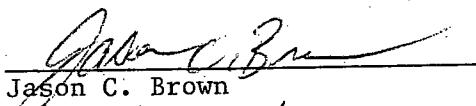
Upon findings of a speedy trial act violation occurred the information or indictment shall be dismissed, a district court must then "only" consider factors in 18 U.S.C. 3162(a)(1)(2017). Here, the 6th circuit found a 'STA' violation and ordered the district court only to determine whether the indictment would be dismissed with or without prejudice. Brown 819 F.3d at 803. The district court allowed the government to proceed with the vindictive prosecution of Brown before fulfilling the 6th circuit court's order, R.111 superceding indictment, page ID#152. The lower court in defying the 6th circuit court of appeals explicit limited mandate, blatantly disregarded the US Constitution and Brown's rights.

In fact by the government filing a superceding indictment instead of following the due process and law of case and dismissing original indictment and reindicting. The district court preempted the 6th circuit court's limited order to remand and dismiss original indictment...What distinguishes a superceding indictment from a reindictment is that; A superceding indictment is issued "without the original indictment first being dismissed." United States V. Thomas 726 F.3d 1086,1089 9th circuit(2013)(emphasis added) The 6th circuit court's order and law of the case dictates the government should have waited until after the original indictment was dismissed without prejudice to initiate reprosecution. The district court allowing the government to proceed in reprosecution before the original indictment was dismissed violated the fifth amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Jason C. Brown

Date: 5/25/18