No. 19-_____

IN THE
Supreme Court of the United States

ANTONIO SLATON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

SUZANNE HASHIMI
Counsel of Record
FEDERAL DEFENDER PROGRAM
101 Marietta Street, NW
Suite 1500
Atlanta, Georgia 30303
(404) 688-7530
Suzanne_Hashimi@FD.org

QUESTIONS PRESENTED

Whether a state conviction entered via an Alford plea creates an irrebuttable presumption such that a defendant in a federal supervised release revocation hearing, who is charged with committing a new offense, is prohibited from rebutting the violation with evidence of innocence?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

U.S. Sentencing Guidelines

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Antonio Slaton, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINION BELOW

The January 8, 2019, unpublished opinion of the United States Court of Appeals for the Eleventh Circuit in this case is included as Appendix A. A copy of the district court's order on the supervised release revocation is included as Appendix B.

JURISDICTION

The Eleventh Circuit entered its judgment on January 8, 2019. This Court has jurisdiction to consider this petition pursuant to 28 U.S.C. § 1254(1) as this petition is being filed within 90 days of the judgment below, namely on April 8, 2019.

STATUTORY PROVISIONS INVOLVED

Fifth Amendment

The Fifth Amendment provides that, "No person shall be . . . be deprived of life, liberty or property, without due process of law."

STATEMENT OF THE CASE

This petition for certiorari arises from a supervised release revocation hearing where a violation alleging the commission of new offenses and other violations were disputed. Mr. Slaton was originally charged in one count of conspiracy to receive, conceal, and retain United States property in the form of stolen Treasury checks in a multi-defendant, multi-count indictment. Subsequently, Mr. Slaton plead guilty and he was sentenced to twelve (12) months custody to be followed by a three (3) year term of supervised release and he was ordered to pay a $100 special assessment. After Mr. Slaton completed his custodial sentence, he began serving the three-year term of supervised release. Despite Mr. Slaton's presentation of evidence of innocence, the district court refused to consider the evidence and relied solely on his prior entry of an Alford plea in state court to find that he had violated the condition.

A Violation Report and Petition for Warrant for Offender under Supervision was filed but subsequently, an Amended Violation Report for Offender Under Supervision (hereinafter referred to as "Petition") amended the earlier petition. The Petition to Revoke Supervision was filed on September 5, 2017, and modified in October 2017, to include an allegation that Mr. Slaton had committed new offenses. Mr. Slaton is not contesting the resolution of other alleged violations of his supervised release. Rather, he is only addressing the violation based upon new offenses. According to the first violation in the Petition, Mr. Slaton "committed new offenses that include

Possession of Firearm by Convicted Felon, Possession of A Firearm During Commission of A Felony, Aggravated Assault and Aggravated Battery". Specifically, he was charged with shooting Raphael Washington in the foot. On March 15, 2017, Mr. Slaton entered an Alford plea to aggravated assault, aggravated battery, and possession of a firearm during the commission of a felony, but the charge for being a felon in possession of a firearm was nolle prossed. The Superior Court imposed a sentence of seven (7) years with the first two years to be served on probation and the remaining five (5) years suspended.[1] This violation is the most serious of the five alleged in the Petition insofar as the first violation constituted a Grade A(1) violation which subjected Mr. Slaton to a range of 30 to 37 months with a statutory cap of 24 months. The remaining violations were Grade C violations which subjected him to a range of 7 to 13 months, pursuant to the Revocation Table contained in U.S.S.G. § 7B1.4.[2]

At the revocation hearing, the government presented no independent evidence as to this violation and elected to rely solely upon a copy of the state conviction. Mr. Slaton testified under oath at the federal revocation hearing that

---

[1] Mr. Slaton remained in custody from his arrest on the state charges from September 14, 2017, through his sentencing on March 15, 2018. Thereafter, he came directly into federal custody on March 19, 2018.

[2] Title 18 U.S.C. § 3583(e)(3) limits a custodial sentence following revocation to a term of two years for Class D felonies.

he did not assault Washington and, in fact, he had left the area prior to the assault. His testimony was corroborated by the plea colloquy in Superior Court and a video recording from the gas station near the scene of the alleged assault, as well as photographs of the scene. Mr. Slaton also introduced aerial views of the scene captured in photographs showing the gas station and the barber shop behind it where the assault allegedly occurred.

Mr. Slaton told the story of his innocence. He testified that he and his friend, Sergio, who works as an electrician, arrived together at the gas station in Sergio's white utility van at approximately 1:00 p.m. He was very familiar with the area because his home of the last twenty-seven years is located a few miles from the gas station. In this first video, Mr. Slaton identified Sergio, Raphael Washington, (the alleged assault victim), Demetrius Wiley, (Washington's friend), and himself who are wearing distinctive clothing. Mr. Slaton testified that he spoke briefly with Washington and Wiley about the two offering to sell drugs in front of the gas station. He suggested to them that it was not appropriate to do so, but apologized if he had offended them. He shook hands and walked away. As Mr. Slaton can be seen walking towards the white van parked by the gas pumps, he was able to identify Washington and Wiley still at the gas station at 1:31 p.m. The van could be seen pulling out of the parking lot onto Campbellton Road, headed west at 1:32 p.m. After Mr. Slaton had left the area, Mr. Washington's foot was grazed by a bullet. At 1:55 p.m, Washington, who was accompanied by Wiley, was seen hopping on one foot, presumably due to his injury when he was shot.

Mr. Slaton was arrested by the Atlanta Police at his home a week later, for the alleged assault on Mr. Washington. When he was arrested, his home and person were searched, but no firearms or ammunition were found. Following his arrest, Mr. Slaton was unable to obtain his release on bond because a federal hold was placed on him based on the Petition. He sought advice from his federal probation officer, who suggested that he file a request for speedy trial. However, Mr. Slaton was unable to obtain a trial date and instead, languished for six months through the winter at the Fulton County Jail. He endured harsh conditions including no hot water, no heat, overcrowding, and staff shortages, with little time out of his cell. These conditions led him to enter an Alford plea rather than wait an additional sixteen months for a jury trial.[3]

---

[3] North Carolina v. Alford, 400 U.S. 25 (1970). This Court in Alford v. North Carolina, 400 U.S. 25 (1970), recognized the validity of a defendant entering a guilty plea while asserting his innocence of the crime. Specifically, Alford decided to enter a plea of guilty, despite his claim that he had not committed first-degree murder, in order to obtain the ability to plead to second-degree murder for a term of years rather than risk receiving the death penalty. In recognizing such a plea, this Court observed that usually a plea consists of two parts: (1) a waiver of trial rights and (2) an admission of guilt. Id. at 37. However, the Court took a pragmatic approach to the dilemma faced by defendants who face difficult choices like Alford who was facing the death penalty if he was convicted and concluded that a defendant's admission of guilt was not a necessary element of a guilty plea if the prosecutor was able to

During the plea colloquy, the assistant district attorney (ADA) sought to "explain everything in totality". The ADA described Washington had "a grazed shot to his foot" and that he was "adamant" that Mr. Slaton "be free". Additionally, the ADA acknowledged that there was a video which neither the prosecutor nor Mr. Slaton and his defense counsel had reviewed. Counsel for Mr. Slaton replied that Washington was "a gang member and a drug dealer" at the gas station and that, while Mr. Slaton does not disagree that Washington's foot was grazed, he denied shooting him.[4] At no time during the colloquy which was transcribed and presented at the revocation hearing, did Mr. Slaton agree to the ADA's factual basis or the evidence proffered by the ADA.

At the conclusion of the evidence in the revocation hearing, Mr. Slaton asked to be heard. Specifically, Mr. Slaton attempted to discuss the evidence presented during the course of the hearing, but before he could do so, the court interrupted with its analysis of the legal significance of an Alford plea and its impact on the revocation. In response, Mr. Slaton asserted, "As I understand the Court's

---

present evidence, which provided a factual basis for guilt. Id., at 37-38.

[4] Mr. Slaton's attorney speculated that the video would show that Mr. Slaton was at the gas station but that "whoever shot Mr. Washington is not on tape". Since neither the attorney nor Mr. Slaton had seen the video, this statement is pure speculation. In fact, Mr. Slaton did not receive or review any discovery prior to the colloquy.

ruling, none of this evidence is relevant, and the Court is making a finding regardless of the evidence that the Alford plea is sufficient grounds for the Court to find Violation 1". However, the court concluded that it was required by Eleventh Circuit precedent to find the first violation of the Petition had been proven with a copy of the state court conviction; "I think that's what the circuit authority requires me to do. Of course, I'm bound by Eleventh Circuit cases". At the conclusion of the hearings, the court found that the government had met its burden of proof for violations 1, 2, and 3 but failed to meet its burden of proof as to violations 4 and 5.[5] After revoking Mr. Slaton's supervised release, the court imposed a sentence of twenty-two months. If Mr. Slaton had prevailed on the first violation, his guideline range would have been seven to thirteen months. Mr. Slaton objected to the court's factual findings and legal analysis as well as the reasonableness of the sentence.

The Eleventh Circuit Court of Appeals upheld the district court's revocation of Mr. Slaton's supervised release based solely on his prior Alford plea and its refusal to consider evidence of his innocence. United States v. Slaton, No. 18-11667, 2019 WL 126750, *2 (11th Cir. 2019). The court specifically found that Mr. Slaton's presentation of evidence at the revocation hearing was an impermissible collateral attack on his state conviction which the district

[5] On appeal, Mr. Slaton challenged the district court's finding as to the first violation which alleged new criminal conduct and the sentence as to this violation.

court properly rejected. United States v. Slaton, *supra*, at *2.

REASONS FOR GRANTING THE PETITION

The Question Presented Is One Of Critical Importance To Many Defendants Facing Revocation Hearings.

The Eleventh Circuit Court of Appeals held that Mr. Slaton was not entitled to present evidence of his innocence at his supervised release revocation hearing for a violation based on committing a state offense, contrary to Morrissey v. Brewer, 408 U.S. 471, 489 (1972). In Morrissey v. Brewer, the Court set forth the six 'minimum requirements of due process' at a revocation hearing.[6] Specifically, Mr. Slaton was entitled to an "opportunity to be heard in person and to present witnesses and documentary evidence".[7] The promise of an opportunity to be heard and present evidence is empty unless the revocation hearing provides the defendant with a meaningful forum to have his evidence considered.

> The parolee [individual on supervised release] must have an opportunity to be heard and to show, if he can, that he did not violate

---

[6] Morrissey v. Brewer, *supra*, at 489.

[7] Morrissey v. Brewer, *supra* at 489. These same requirements are contained in Rule 32.1(b)(2)(C), Federal Rules of Criminal Procedure.

> the conditions, or, if he did, that circumstances in mitigation suggest the violation does not warrant revocation.[8]

Instead, the Eleventh Circuit relied upon Mr. Slaton's prior state Alford plea to erect a wall against consideration of any defense evidence to establish that he had not violated the condition of his supervised release which prohibited him from violating state law. Notably, the Alford plea here failed to meet the court's own definition of a valid Alford plea which is, "a guilty plea where the defendant maintains a claim of innocence to the underlying criminal conduct charged but admits that sufficient evidence exists to convict him of the offense". United States v. Ramirez-Gonzalez, 755 F.3d 1267, 1273 (11th Cir. 2014).[9] Similarly, Mr. Slaton did not admit that sufficient evidence existed and in fact, he disputed the prosecutor's factual basis. Nonetheless, he was not challenging the validity of the conviction, but rather he was presenting

---

[8] Morrissey v. Brewer, *supra*, at 488. See also, Gagnon v. Scarpelli, 411 U.S. 778, 786 (1973) (wherein the Court applying the same due process protections to a probationer in addressing the question of whether he was entitled to counsel at his revocation hearing).

[9] In so defining a conviction following the entry of an Alford plea, the Ramirez-Gonzalez Court noted that Georgia law provides that an Alford plea is a guilty plea which subjects a defendant to the same consequences as he would after a trial and conviction. Id., at 1273; Morrell v. State, 297 Ga. App. 592, 593 (2009); Argot v. State, 261 Ga. App. 569, 571-572 (2003).

evidence that he did not violate the condition of his supervised release that prohibited him from committing criminal offenses. This Court should grant the Petition for Writ of Certiorari to address the Eleventh Circuit's failure to adhere to the minimum due process requirements of Morrissey v. Brewer, *supra*. The district court imposed a mandatory condition of supervised release that prohibited Mr. Slaton from committing any federal, state, or local crime. While the court was required to impose this condition pursuant to 18 U.S.C. § 3583(d), the court had discretion to impose additional conditions, including a condition that he not sustain any federal, state, or local convictions. 18 U.S.C. § 3583(d); United States v. Williams, 741 F.3d 1057, 1060 (9th Cir. 2014). In the instant case, the court elected not to impose such a discretionary condition. The Petition alleged in the first violation that Mr. Slaton had committed violations of Georgia state law. In response to this violation, Mr. Slaton denied committing the allegations contained in the first violation and sought to present evidence to establish his innocence. The government presented only a copy of Mr. Slaton's conviction based upon an Alford plea to three of the four counts contained in the indictment against him.[10]

Contrary to the Eleventh Circuit's finding, Mr. Slaton was not collaterally attacking his state conviction despite the obvious flaws in the plea colloquy. During the plea

---

[10] However, the government inaccurately claimed that Mr. Slaton had plead guilty to being a felon in possession of a firearm contrary to both the conviction and the transcript from the plea colloquy.

colloquy, it became apparent that Mr. Slaton and his attorney to a lesser extent had not seen the state's discovery and neither he nor his attorney agreed that the ADA had presented a factual basis for the plea, a critical element of an Alford plea according to Ramirez-Gonzalez. Mr. Slaton is not conceding that the plea is constitutional but he is not challenging the constitutionality on appeal nor did he do so at the revocation hearing. Rather, he presented evidence to show that he had not committed the offense conduct alleged in the Petition.

In effect, the Eleventh Circuit held that an Alford plea creates an irrebuttable presumption that Mr. Slaton violated the supervision condition that he not commit a new criminal offense. This presumption bars defendants from prevailing at a revocation hearing by introducing exculpatory evidence that they did not commit the criminal offense. The district court and the court of appeals, in essence, found that Mr. Slaton's presentation of evidence of innocence necessarily constitutes a collateral attack on the conviction, rather than evidence of his innocence of the violation. Such a conclusion is a giant departure from the guarantee those process rights assured by Morrissey, *supra*.

Of course, the government had the burden of proving by a preponderance of the evidence that Mr. Slaton committed the new offenses alleged in Violation 1 of the Petition.[11] 18

---

[11] The district court appeared to shift the burden of proof to the defense in noting that the defense evidence "did

U.S.C. § 3583(e)(3); United States v. Copeland, 20 F.3d 412, 413 (11th Cir. 1994). To that end, the government relied exclusively on a copy of the conviction to meet its burden of proof whereas Mr. Slaton presented evidence to show he had not committed the offenses. The court was only willing to consider the evidence presented by the government and rejected the defense evidence with the dubious legal finding that it legally could not consider the defense evidence. The court appears to have agreed with the government that Mr. Slaton was collaterally attacking his prior state conviction rather than presenting evidence to show that he had not violated the condition that he was prohibited from violating any federal, state, or local laws.

When Mr. Slaton attempted to be heard on the evidence presented during the revocation hearing, the court interrupted based on its legal finding that it was required to find the government had met its burden of proof by tendering a copy of Mr. Slaton's state court Alford plea. Specifically, the court cited to Argot v. State, 261 Georgia Appeals 569 (2003), and noted that under Georgia law, a conviction following the entry of an Alford plea is the same as if he had entered a guilty plea or gone to trial and been convicted. The court further observed the Eleventh Circuit, in United States v. Hofierka, 83 F.3d 357 (11th Cir. 1996), had held that a defendant cannot collaterally attack a prior conviction being used to revoke supervision, but rather he must do so in a separate proceeding under 28 U.S.C. § 2255. Based on these legal observations, the court

---

not discredit or preclude the possibility that Mr. Slaton was, in fact, guilty of the offenses charged".

found that the government had proven the violation with a copy of the conviction. In an effort to clarify the court's ruling, Mr. Slaton inquired, "[a]s I understand the Court's ruling, none of this evidence [presented by Mr. Slaton] is relevant, and the Court is making a finding regardless of the evidence that the Alford plea is sufficient grounds for the Court to find Violation 1". The court agreed and stated "I think that's what the circuit authority requires me to do. Of course, I'm bound by Eleventh Circuit cases." However, the question presented to the district court was not whether Mr. Slaton could collaterally attack his Georgia conviction during the revocation hearing, which, was rejected by the Eleventh Circuit in the cases cited by the court. There are no cases on the issue presented by the instant case, whether a defendant is entitled to present evidence of innocence to show that he did not violate the conditions of his supervised release during a revocation hearing.

The Eleventh Circuit, as well as several other circuit courts, have upheld a district court's reliance on an Alford plea as a sufficient basis to revoke a defendant's term of supervised release. Several circuit courts have examined whether a particular kind of conviction under state law is sufficient to establish the violation. All of these courts have also recognized that a valid guilty plea leading to a conviction, when unchallenged by other evidence, is sufficient to establish the violation. United States v. Glenn, 744 F.3d 845 (2nd Cir. 2014)(wherein the court found that a Connecticut conviction involving an Alford plea qualified as a conviction at a supervised release revocation); United States v. Savage, 542 F.3d 959 (2nd

Cir. 2008)(same); and United States v. Poellnitz, 372 F.3d 562 (3rd Cir. 2004)(wherein the Court rejected a nolo plea under Pennsylvania law as a conviction which would support a violation of supervised release). While a conviction may be sufficient to prove that a defendant has committed an offense and thus, violated a condition of his supervision in the absence of any other evidence, it is not conclusive where contrary evidence is introduced by the defendant. As the Court in United States v. Guadarrama, 742 F.2d 487, 489 (9th Cir. 1984) observed, a conviction is "probative" of whether a defendant has committed an offense. Moreover, the absence of a conviction, a determination not to bring charges, dismissal of charges and even an acquittal does not prohibit a probation officer from alleging that a defendant has committed an offense under the lesser standard of proof, preponderance of the evidence, applicable to a revocation hearing, rather than the standard of evidence beyond a reasonable doubt at a trial. United States v. Stephenson, 928 F.2d 728, 732 (6th Cir. 1991)(wherein the Court found that the evidence was inadequate to establish a violation but recognizing that the absence of a conviction was not fatal to the alleged violation).

However, no court, until now, has held that the district court is required to reject and refuse to consider evidence presented to establish that a defendant did not commit a new offense, once the government has introduced a copy of the conviction. This Court should grant the petition for certiorari to assure that the many defendants, who face revocation, retain their right to be heard and present evidence consistent with their right to due process.

CONCLUSION

Mr. Slaton respectfully request that the Court grant his Petition for a Writ of Certiorari.

Respectfully Submitted,

SUZANNE HASHIMI
Counsel of Record
FEDERAL DEFENDER PROGRAM
101 Marietta Street, NW
Suite 1500
Atlanta, Georgia 30303
(404) 688-7530
Suzanne_Hashimi@FD.org

April 8, 2019