

18-8868
NO. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

AMILCAR CABRAL BUTLER

Petitioner

versus

UNITED STATES OF AMERICA,

Respondent

Supreme Court, U.S.
FILED

APR - 8 2019

OFFICE OF THE CLERK

On Petition for Writ of Certiorari to the
United States Court of Appeals for
the Sixth Circuit in Cause No. 18-5374

PETITION FOR WRIT OF CERTIORARI
FOR AMILCAR CABRAL BUTLER

Authorized Representative
Amilcar C. Butler
[17854075]
c/o 2225 Haley Barbour Parkway
Yazoo City, Mississippi
near [39194]

Amilcar Cabral Butler®

QUESTIONS PRESENTED

- I. Is It Error For The District Court To File An Order Granting A Petition To Correct A Clerical Error In The Judgment Under Fed. R. Crim. P. 36, But Fail To File An Amended Judgment & Commitment In The Record.

LIST OF PARTIES

AMILCAR CABRAL BUTLER

Defendant/Appellant

United States Of America

Plaintiff/Appellee

Sunny A.M. Koshy

Assistant U.S. Attorney

c/o 110 Ninth Avenue South

Suite A-961

Nashville, Tennessee 37203

Attorney for Plaintiff/Appellee

The Honorable Aleta Arthur Trauger

United States District Court Judge

United States Court Of Appeals

for the Sixth Circuit

c/o 100 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[©] humbly prays for this Court's 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 Butler, No. 3:02-cr-00097, (MDTN April 04, 2018), Appears at Appendix A.

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished, United States v. Butler, No. 18-5374 (6th Cir. Sept. 20, 2018), Appears at Appendix B.

STATEMENT OF JURISDICTION

The Sixth Circuit offered its opinion on September 20, 2018 and subsequently denied Butler's Petition for Rehearing and/or Rehearing En Banc on November 14, 2018. Butler filed an application for a 60 day extension of time to file a petition for a writ of certiorari that extends the time to April 15, 2019. The jurisdiction of this Court is properly invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Rule 36 provides that the district court

"may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission." Fed. R. Crim. P. 36.

STATEMENT OF THE CASE

In September 2002, Butler was charged in a superseding indictment in the United States District Court for the Middle District of Tennessee, Nashville Division, and subsequently found guilty by a jury for conspiracy to possess and attempted possession of five kilograms or more of cocaine in violation of 21 U.S.C. § 846. (R. 50, Verdict Form). The district court determined that Butler was subject to two mandatory life sentences under 21 U.S.C. § 841(b)(1)(A) because he allegedly had two or more prior felony drug convictions and sentenced him to two life terms of imprisonment. The Sixth Circuit affirmed Butler's conviction sentence. *United States v. Butler*, 137 F. App'x 813, 820 (6th Cir. 2005). (R. 146-1).

On December 19, 2016, President Barack H. Obama commuted Butler's two (2) life sentences to a 240-month term of imprisonment. (R. 254).

On March 05, 2018, the district court filed Butler's Petition To Correct A Clerical Error In The Verdict Form Under Fed. R. Crim. P. 36¹ (R. 267), the Government subsequently Responded (R. 269), and the district court thereafter docketed U.S. District Court Judge Aleta A. Trauger's order on April 04, 2018 (R. 270), that AMENDED Butler's 2004 Judgment (R. 130), not the Verdict Form (R. 50). Butler filed a timely notice of appeal. (R. 272).

¹ The Jury Found Butler Guilty In Count One & Two Of The Same Statute, 21 U.S.C. § 846. However, Count Two Of The Written Judgment Reflects 21 U.S.C. § 841, even at this present day, time and hour.

STATEMENT OF THE FACTS

Title 21 U.S.C. § 846 are reflected in Counts One and Two of Butler's superseding indictment and verdict form. (R. 50). On September 19, 2002, the jury unanimously agreed that Butler was guilty of both counts as charged, 21 U.S.C. § 846 only, as solidified on Butler's verdict form. An order that was offered by U.S. District Judge Aleta A. Trauger on April 04, 2018, reflects a different statute in counts one and two, 21 U.S.C. § 841, perhaps because an amended judgment has not filed, only an Order (R. 270) reflecting this fact.

REASONS FOR GRANTING THE WRIT

- I. Is It Error For The District Court To File An Order Granting A Petition To Correct A Clerical Error In The Judgment Under Fed. R. Crim. P. 36, But Fail To File An Amended Judgment & Commitment In The Record.

Under Rule 36, a district court can correct a clerical error in judgment or in the record arising from an oversight or omission. To qualify for correction under Rule 36, "[a] clerical error must not be one of judgment or even of misidentification, but merely or recitation, of the sort that a clerk or amanuensis might commit, mechanical in nature." *United States v. Penson*, 526 F.3d 331, 335 (6th Cir. 2008) (quoting *Robinson*, 368 F.3d at 656).

Rule 36 was amended approximately one year before the district court's attempt to correct its error (the revised language went into effect on December 1, 2002). Previously, the rules stated as follows: "Clerical mistakes in judgments, orders or other parts of the record and errors arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders." The advisory

committee notes, however, advise that the changes "are intended to be stylistic only."

It does not appear that the Supreme Court or the Sixth Circuit has directly addressed the applicable standard of review in cases involving an appeal from a decision granting a motion under Rule 36. However, the Ninth Circuit has applied the rule of *United States v. Dickie*, 752 F.2d 1398, 1400 (9th Cir. 1985), to conclude that it "review[s] the grant or denial of a Rule 36 motion for clear error." *United States v. Pinkerton*, 14 F. App'x 831, 832 (9th Cir. 2001) (emphasis added). But see *United States v. Lightbourn*, 497 F. App'x 912, 913 (11th Cir. 2012) ("We review the district court's application of Rule 36 de novo.").¹

A. The District Court Has Not Issued An Amended Judgment & Commitment

In the instant matter, U.S. District Court Judge Aleta A. Trauger offered an order that was entered on the docket April 04, 2018 (R. 270), agreeing that, "The citation error in the Judgment pointed out by the type of clerical error contemplated by Rule 36." "Accordingly, the Judgment (Docket No. 130) is AMENDED as follows: For Count Two, the citation "21 U.S.C. § 841(a)(1)" should be replaced with "21 U.S.C. § 846.""

Although the District Court offered an Order of the Court that was entered on the docket April 04, 2018 (R. 270) that AMENDED count two on Butler's Judgment, the district court has not issued an amended

¹ Rule 36 has been consistently interpreted as dealing only with clerical errors, not with purported mistakes or omissions by the court. See 3 Charles Alan Wright, Nancy J. King & Susan R. Klein, *Federal Practice & Procedure* § 611 (3d ed. 2004) ("It is only a clerical error that may be corrected at any time under [Rule 36]. An error arising from oversight or omission by the court, rather than through a clerical mistake, is not within the purview of the rule.")

judgment & commitment reflecting this fact and the decision-maker(s) must fully consider this compelling reason for granting this petition for a writ of certiorari.

CONCLUSION

The petition for writ of certiorari must be granted.

Authorized Representative,
Amilcar C. Butler ^{All Right's Reserved}
Amilcar C. Butler, sui juris ^{UCC1-207 & 1-103.6}

I declare under the penalty of perjury under the laws of the United States of America and Common Law, that the foregoing is true, correct and not meant to mislead.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the foregoing has been sent with First-Class U.S. Postage, on the 8th day of April 2019 A.D., to the following:

Mr. Noel J. Francisco
Solicitor General
United States Department of Justice
c/o 950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Sunny A.M. Koshy
Assistant U.S. Attorney
c/o 110 Ninth Ave., South
Suite A-961
Nashville, Tennessee 37203

Amilcar C. Butler ^{All Right's Reserved}
Amilcar C. Butler, sui juris ^{UCC1-207 & 1-103.6}