

No. 16-30210

18-9431

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM MAURICE SMITH

— PETITIONER

(Your Name)

vs.

ORIGINIAL
ORIGINIAL

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

MAY 14 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Ninth Circuit Court of Appeals

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

William Maurice Smith #00685-112

(Your Name)

U.S.P. Florence, P.O. Box 7000

(Address)

Florence, Colorado 81226

(City, State, Zip Code)

N/A

(Phone Number)

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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 A to the petition and is

reported at N/A; 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[] is unpublished.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[] is unpublished.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[] is unpublished.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[] is unpublished.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 8/6/18.

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 C.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (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

Statute(s) 28 U.S.C. § 1291

21 U.S.C. § 851

21 U.S.C. § 841(a)(1)

21 U.S.C. § 846

First Step Act § 401

QUESTION(S) PRESENTED

Does Griffith v. Kentucky, 479 U.S. 314, (1987) apply to First Step Act of 2018?

If so did the Ninth Circuit Court of Appeals fail to apply Griffith v. Kentucky?

Should the Ninth Circuit Court of Appeals Remand Petitioner's Case back to the District Court for a Full Resentencing in Light of the First Step Act of 2018 [Sentencing Reform IV Section 401]?

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:

STATEMENT OF THE CASE

On December 19th, 2014, Justin Riddle was interviewed by Agent Waldo and BIA Special Agent Kevin Proctor. At the time, Riddle was designated as a confidential source. Riddle admitted that he was distributor of Methamphetamine by Juel Graham.

On January 9, 2015, Riddle introduced an undercover agent to Graham. According to Agent Waldo, an undercover agent purchased methamphetamine from Graham on three occasions. Graham told the undercover agent she was staying at the Country Inn & Suites hotel in Billings, Montana. She also told the undercover agent that the green BMW in the Country Inn & Suites parking lot belonged to her boyfriend.

After a fourth attempted drug transaction between the undercover agent and Graham, law enforcement set up surveillance at the hotel. Agents identified Smith when he came out of the hotel and got into the green BMW. They observed Smith sit in his car for few more minutes, then get out and walk back into the hotel.

Graham later admitted during trial she sold methamphetamine to Riddle and undercover agents.

On the morning of January 29th, 2015, Agent Waldo interviewed Cassidy Marie Holland who was incarcerated at the Yellowstone County Detention Center on a probation violation at the time. Holland told the agents she had known Smith approximately ten to fifteen years, and that she knew Smith had

been distributing methamphetamine for approximately one year prior to January 29, 2015. (ER 536). Holland had more frequent contact with Smith during the month of January 2015. (ER 536). On January 15, 2015, Graham brought Holland to see Smith at Room 302 of the Country Inn & Suites. (ER 535).

After the interview with Holland, Agent Waldo learned that Smith had active arrest warrants for traffic violations out of Billings, and a suspended Montana driver's license. (ER 146).

On the morning of January 30, 2015, Agents Waldo and Gary Seder and RAC Jeff Nedens conducted surveillance in the area of the Country Inn & Suites. (ER 147). At approximately 9:00 a.m., Agent Waldo saw Smith leave the Country Inn & Suites and get into a green BMW parked in the motel parking lot. (ER 147). A short time later, Smith got out of the green BMW and went back into the Country Inn & Suites. (ER 147).

Later that same day, RAC Nedens saw Smith leave the Country Inn & Suites, get into the green BMW, and drive away. (ER 148). Nedens radioed Agent Waldo, who then followed the green BMW west on Airport Road. (ER 148). Agent Waldo radioed Montana Highway Patrol Trooper David Morris, who was aware of Smith's active warrants and suspended driving status. (ER 149). Agent Waldo described Smith's location and direction of travel. (ER 149).

Trooper Morris conducted a lawful traffic stop based on Smith's outstanding traffic warrants and suspended drivers' license at approximately 4:00 p.m. (ER 552-553). Trooper Morris conducted a pat down of Smith's person to ensure Smith was not carrying weapons. (ER 556-557). Trooper Morris patted down the outside of Smith's clothing and located a glass pipe in Smith's jacket pocket. (ER 558). The Trooper felt Smith's waistband and felt an unrecognizable object in Smith's groin area. (ER 558). Trooper Morris asked Smith what the item was and Smith answered that it was his penis. (ER 558). Trooper Morris did not attempt to remove the item. (Exhibit E – DVD filed with CR 43).

Other law enforcement came to assist Morris as the pat down of Smith's pant pockets continued and Morris discussed the item in the waistband with them. (ER 656; Exhibit E – DVD filed with CR 43). Trooper Morris then felt Smith's waistband again, feeling the area and manipulating Smith's clothes. (Exhibit E – DVD filed with CR 43). Trooper Morris discontinued his search. (Exhibit E – DVD filed with CR 43). Another Trooper patted down Smith's torso and uncovered an empty holster. (ER 557). Approximately one minute and forty-five seconds after Trooper Morris stopped his search, he returned to Smith's side, immediately lifted Smith's jacket, untucked Smith's shirts, and retrieved an item from Smith's waistband which was a rubber-banded white plastic bag containing methamphetamine. (ER 656; Exhibit E – DVD filed with CR 43). During the

suppression hearing, Trooper Morris acknowledged that he did not think the item in Smith's waistband was a weapon. (ER 559).

Trooper Morris placed Smith in the back of his patrol car and transported him to the detention facility where he was charged with Possession with Intent to Distribute; Possession of Drug Paraphernalia; and Driving While Suspended. (ER 656).

DCI Agents then drove to the Country Inn & Suites to secure Room 302. (ER 622). The general manager, Mark Breitwiser, accompanied the agents to Room 302 and opened the door. (ER 622). The agents entered Room 302 and confirmed that Room 302 was empty. (ER 622). Mark Breitwiser re-keyed the door, and then a law enforcement officer remained at the entrance to Room 302 pending receipt of a search warrant. (ER 622).

Room 302 was originally reserved for one night's stay, January 7, 2015, by a male identified by a Montana Driver's license as James Edward Smith with a Billings address. (ER 622). Although James Smith held the room with his driver's license and Visa credit card, the room was paid for with cash. (ER 622). Between January 8, 2015 and January 30, 2015, the room was continually extended for one night or a few nights at a time with additional cash payments. (ER 622).

After Agent Waldo obtained a search warrant for Room 302, at approximately 10:00 p.m., agents searched the room and found approximately one

pound of methamphetamine, approximately another eight ball of methamphetamine, two handguns, and two digital scales. (ER 525, ER 157-178). Agent Waldo labeled the evidence as being seized at 5:00 p.m. (ER 527; ER 498-512). On February 3, 2015, pursuant to a state search warrant, the green BMW was searched. Law enforcement seized \$6,840 in cash and another firearm. (ER 180-188).

Special Agent Proctor sent the methamphetamine to the DEA laboratory for analysis. (ER 343). Forensic Chemist Melissa Porter tested the suspected methamphetamine. Ms. Porter determined that the approximate pound of suspected methamphetamine seized from Smith's motel room is 459.2 grams of a substance containing methamphetamine (456.9 grams of pure methamphetamine). (ER 386). Ms. Porter determined that the eight ball of suspected methamphetamine seized from Smith's motel room is 3.8 grams of a substance containing methamphetamine (3.7 grams of pure methamphetamine). (ER 388). Finally, Ms. Porter determined that the suspected methamphetamine seized from Smith's waistband is 45.4 grams of a substance containing methamphetamine (45.3 grams of pure methamphetamine). (ER 388-389).

REASONS FOR GRANTING THE PETITION

The petitioner's reason for granting this petition is because the petitioner wants to be sure that the Court of Appeals are governed by Griffith v. Kentucky 479 U.S. 314 (1987).

If this is true then why is it that the Ninth Circuit Court of Appeals failed to apply The First Step Act of 2018, Section IV Sentencing Reform § 401. REDUCE AND RESTRICT ENHANCED SENTENCING FOR PRIOR DRUG FELONIES. For in this Specific case the 9th Cir. has already taken "notice" that the petitioner sentenced was enhanced by 21 U.S.C. § 851. (See Appendix "A")

Petitioner tried to show due diligence when he wrote a Rule 28(j) letter in compliance with Federal Rules of Appellant Procedure. (See Appendix "B") For under Houston v. Lack, 487 U.S. 266 (1988) petitioner gave the prison authorities a stamped self addressed stamped envelope to the 9th Cir. containing Rule 28(j) letter. Which was to be deemed filed on the date it was signed and delivered to prison authorities.

The 9th Cir. entered their order denying Petitioner for Rehearing on 1/15/19, five days after petitioner forwarded the Rule 28 (j) letter. See Appendix "C". The Mandate did not issue until after January 25th, 2019, which was still enough time to receive the Rule 28(j) letter and take notice to not issue the mandate. See Appendix "D"

Petitioner then tried to file for a extension of time to this Honorable Court because of the Government shutdown and institutional lockdowns that denied him access to the law library. See Appendix "E"

This Court's Clerk then forwarded a letter to petitioner requesting more information. See Appendix "F"

So the question that puzzles the petitioner is "does Griffith apply to the First Step Act? and If so did the Ninth Circuit Court of Appeal error in not following Griffith by treating the First Step Act retroactively to the petitioner that would have required them to remand the petitioner's case back down to the district court for a full resentencing.

CONCLUSION

Petitioner request that his case be Granted Sentence Vacated and case be Remanded back to the 9th Cir Ct. App. and/or in tha Alternative Stay proceeding until recall of mandate motion is determined.
The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Maurice Smith

Date: 05/03/2019