

No. 18-9780

Supreme Court, U.S.

FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER MATTHEW HANNIGAN
PETITIONER,

vs.

UNITED STATES OF AMERICA
RESPONDENT.

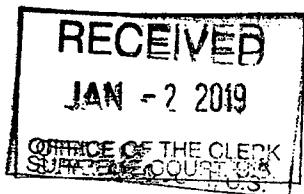
ON PETITION FOR A WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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ORIGINAL



QUESTION PRESENTED

I

Does the language of Rule 32(k) and 18 U.S.C. §3551 allow for the court to parcel the judgment into component parts?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED -	i
LIST OF PARTIES -	ii
TABLE OF CONTENTS -	iii
INDEX TO APPENDICES -	iv
TABLE OF CITED AUTHORITIES -	v
OPINIONS BELOW -	1
JURISDICTION -	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED -	1
STATEMENT OF THE CASE -	2
REASONS FOR GRANTING THE PETITION -	2
I. A JUDGMENT ISSUED UNDER FED. R. CRIM. P. 32(k)(1) SHOULD NOT BE PARCELED INTO COMPONENT PARTS. -	2
CONCLUSION -	5
APPENDIX -	1a

INDEX TO APPENDICES

	Page
APPENDIX A	
MANDATE FROM THE FOURTH CIRCUIT COURT OF APPEALS- - - - -	1a
APPENDIX B	
ORDER FROM THE FOURTH CIRCUIT COURT OF APPEALS, DISMISSING APPEAL - - - - -	1b
APPENDIX C	
JUDGMENT FROM THE FOURTH CIRCUIT COURT OF APPEALS, DISMISSING APPEAL - - - - -	1c
APPENDIX D	
JUDGMENT FROM THE DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA - - - - -	1d
APPENDIX E	
CRIMINAL DOCKET FOR CASE NO.: 7:09-CR-001334D - - - - -	1e
APPENDIX F	
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS	
18 U.S.C.	
§3551 - - - - -	1f
§3556 - - - - -	2f
§3664 - - - - -	3f

TABLE OF CITED AUTHORITIES

CASES	Page
Acha v. Beame 570 F.2d 57, 16 BNA FEP Cas 526, 15 CCH EPD P 840, 24 Fed. R. Serv., 2d 938 (CA2 NY 1978)	3
In Re: Taylor 171 F.3d 185, 188 (4th Cir. 1999)	4
Lang v. United States 474 F.3d 348, 351 (6th Cir. 2007)	4
Mill Pond Assoc., Inc. v. E&B Giftware, Inc. 751 F. Supp. 299 (DC Mass. 1990)	3
United States v. Alexander 772 F. Supp. 440 (D. Minn. 1990)	3
United States v. Pethick 513 F.3d 1200 (CA10 Colo. 2008) Subsequent App. 361 Fed. Appx. 910 (CA10 Colo. 2010)	3
FEDERAL STATUTES	
18 U.S.C. §3551(b)	3
18 U.S.C. §3664(o)	3
LEGISLATIVE MATERIALS	
The Antiterrorism & Effective Death Penalty Act of 1996	4
OTHER SOURCES	
Federal Rules of Criminal Procedure	
Rule 32(k)	3

IN THE
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PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix B to this petition and is unpublished. The Judgment of the United States District Court appears at Appendix D and is unpublished.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit rendered its opinion on September 7, 2017, then issued a mandate on September 29, 2017. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant Constitutional and statutory provisions: 18 U.S.C. §3551, §3556, and §3664 all appear in Appendix F of this petition.

STATEMENT OF THE CASE

On May 5, 2010, the District Court sentenced Christopher Matthew Hannigan ("Hannigan") to 336 months' imprisonment and a lifetime of supervised release. (Appendix D 1d-3d). The District Court deferred the determination of restitution and set a hearing for August 3, 2010. (Appendix D 5d). The District Court never held the hearing and Hannigan's judgment was never finalized. (Appendix E 5e). On June 29, 2017, Hannigan filed a notice of appeal, appealing the judgment. On July 14, 2017, the Government moved to dismiss the appeal as untimely. On September 7, 2017, the Fourth Circuit Court of Appeals dismissed Hannigan's appeal, stating his appeal of his conviction and term of imprisonment is untimely and his appeal from any final restitution order is premature. (Appendix B).

REASONS FOR GRANTING THE PETITION

I. A JUDGMENT ISSUED UNDER FED. R. CRIM. P. 32(k)(1) SHOULD NOT BE PARCELED INTO COMPONENT PARTS.

An order of restitution is a component part of a criminal judgment, just as is a term of imprisonment, a fine, a term of probation, or an order of criminal forfeiture. Hannigan's criminal judgment was never finalized, as the issue of restitution was deferred and never determined. The Fourth Circuit Court of Appeals erred when it split Hannigan's criminal judgment into component parts, by ruling an appeal was untimely for conviction and term of imprisonment but premature for any appeal of a final restitution order. As Hannigan's judgment is not final, any appeal of any component of that judgment - restitution, conviction, term of imprisonment, or term of probation - is premature.

Under Fed. R. Crim. P. 32(k)(1), judgment in a criminal case specifically includes sentence. United States v. Pethick, 513 F.3d 1200 (CA10 Colo. 2008), subsequent app. 361 Fed. Appx. 910 (CA10 Colo. 2010). "A sanction authorized by section... 3556 [18 USCS §3556] may be imposed in addition to the sentence required by this subsection." 18 U.S.C. §3551(b). "A sentence that imposes an order of restitution is a final judgment". 18 U.S.C. §3664(o).

A provision for including a verdict of criminal forfeiture as a part of the sentence was added in 1972 to Rule 32. Since then, the rule has been interpreted to mean that any forfeiture order is a part of the judgment of conviction. See: United States v. Alexander, 772 F. Supp. 440 (D. Minn. 1990).

Like criminal forfeiture, the order for restitution is not separate from the sentence of conviction, imprisonment, and probation - it is included within. By Congress amending Rule 32 to include criminal forfeitures within the judgment of conviction, Congress clearly intended for the judgment not to be parceled into component parts, as the Fourth Circuit has done in this case.

In employment discrimination action, partial summary judgment entered by the court was neither certifiable nor final since plaintiff's claim for backpay, reinstatement, and pension contributions had been deferred for future consideration; therefore, judgment could neither be final nor on entire claim. Acha v. Beame, 570 F.2d 57, 16 BNA FEP Cas 526, 15 CCH EPD P 8040, 24 Fed. R. Serv. 2d 938 (CA2 NY 1978). The First Circuit has clearly rejected argument that judgment should be parceled into component parts of which only some parts would be entitled to postjudgment interest under 28 U.S.C.S. §1961. Mill Pond Assoc., Inc. v. E&B Giftware, Inc., 751 F. Supp. 299 (DC Mass. 1990).

The courts' rulings in the above civil matters have bearing in this case as they establish a precedent that a judgment is not to be part and parcelled. The Fourth Circuit has adopted, in this case, a policy that is contrary to precedent civil law and contrary to the intentions of Congress. As this case is a criminal matter, it involves the loss of liberty, so it makes this all the more critical for this court to rectify this error of policy and not allow it to promulgate. This decision to parcel the judgment has the potential to violate due process rights. The Antiterrorism & Effective Death Penalty Act of 1996 (AEDPA) establishes timeframes to take certain actions (i.e. §2255 appeal) and by parcelling the judgment it allows the court to arbitrarily enforce the AEDPA restrictions. Therefore, a reasonable defendant would not be able to understand or anticipate the established timelines. This effects not only Hannigan's §2255 rights, but future cases as well. How is Hannigan to determine when his case is "final" for the purposes of AEDPA, if the judgment can be parcelled? By parcelling, the Fourth Circuit waters down Congress' intent and the provisions of AEDPA.

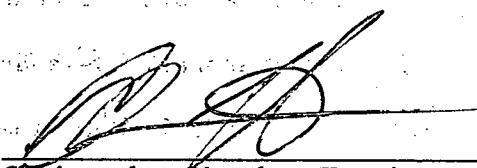
This instant case is specifically different than one where a defendant is attempting to appeal after being resentenced. See: Lang v. United States, 474 F.3d 348, 351 (6th Cir. 2007); In re: Taylor, 171 F.3d 185, 188 (4th Cir. 1999). In those instances the defendants successfully appealed their sentence and were resentenced, then attempted to appeal issues unchanged from the initial sentencing. In contrast, Hannigan has not been resentenced, instead his sentence and judgment were never finalized as the issue of restitution is still pending and the hearing to make a determination was never held.

As Hannigan's judgment of conviction was never finalized, the Fourth Circuit Court of Appeal's order, parcelling his criminal judgment into component parts, must be overturned and an order entered that any appeal is premature until his judgment has been finalized.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,



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