

19-5029

No. A

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Frederick Tyrone Calhoun,
petitioner,

FILED
JUN 26 2019
OFFICE OF THE CLERK
SUPREME COURT, U.S.

versus

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 WRIT OF CERTIORARI

Frederick T. Calhoun #87707-020
Federal Correctional Complex
P.O. Box 1031 (Low custody)
Coleman, Florida 33521-1031

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QUESTION

The Constitution requires the federal government to obtain an indictment and jury verdict before imprisoning a person. While on federal supervised release Frederick Calhoun entered an **Alford** plea to a state charge. The state court imposed no prison time. The federal court, however, (without an indictment or jury verdict), revoked the supervised release and imposed 4 years of imprisonment.

Does the Constitution require an indictment and jury trial before imposing a prison sentence for violating supervised release?

LIST OF PARTIES INVOLVED

All parties appear in this case are on the cover page.

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Lanier County, State of Georgia.

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OPINION BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit appears at Appendix "1".

The opinion of the United States District Court for the Middle District of Georgia appears at Appendix "2".

The transcripts relevant to these proceedings from the Superior Court of Lanier County, State of Georgia appear at Appendix "3".

JURISDICTION

The Eleventh Circuit issued its opinion on April 9, 2019, Mr. Calhoun timely invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment V:

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury...."

Amendment VI:

"In all criminal prosecutions, the accused shall enjoy the right to trial by impartial jury...."

STATEMENT OF THE CASE

The Eleventh Circuit Court of Appeals upheld the district court's revocation of Frederick Calhoun's supervised release even though he insisted on his innocence of the charges and no indictment ever issue and no jury ever found the violation events to have occurred. /1

In 2009, Frederick Calhoun pleaded guilty to possession with intent to distribute cocaine base and possession of a firearm in furtherance of a drug trafficking crime. (Appx. "1" and "2"). The United States District Court sentenced Mr. Calhoun to 120 months in prison. (Appx. 1 at 2). In 2015, Mr. Calhoun completed that sentence and began a 60 month term of supervised release. (Id.).

In 2016, two relatives of (Lewis Geddie and Willie Flintroyal) Mr. Calhoun became involved in a dispute. Mr. Geddie shot and killed Mr. Flintroyal (Appx. 1 at 4). Before suffering the same fate, Mr. Calhoun wrestled with Mr. Geddie and in that process shot and injured Mr. Geddie. **Id.**.. At which point Mr. Calhoun high-tailed it to safety, with Mr. Geddie shooting at Mr. Calhoun's back.(Id.)

The State of Georgia arrested both Mr. Geddie and Mr. Calhoun. The State prosecuted (still is) Mr. Geddie for murder. (Appx. "3" at 2);(Crim.Doc. 180-1 at 2). The State of Georgia also indicted Mr. Calhoun for aggravated assault and possession of a firearm by a convicted felon. **Id.**.. On December 1, 2017, fifteen months later, Mr. Calhoun entered an **Alford** plea to lesser included offense contained in Count 2 of the indictment. (Id.).

1/ This Court has granted certiorari to a similar situated prisoner in another case. **United States v. Haymond**, 139 S. Ct. 398 (2018)(certiorari granted).

During the entire fifteen months ordeal, Mr. Calhoun persisted his innocence of any wrongdoing. (Appx."3"). When the State offered to let him plead to time served without admitting guilt and permit immediate release, Mr. Calhoun took the offer. **Id.**.. But as the State of Georgia released him, federal probation authority took custody of him. (Id.).

Based on the arrest and **Alford** plea the United States Probation Office alleged that Mr. Calhoun had violated the conditions of his supervised release: first by committing aggravated assault (Violation 1), and second by possessing a firearm (Violation 2)(Appx. "1"). Mr. Calhoun was arrested and detained so that the district court could decide whether to revoke his supervised release. (Appx. "1").

In preparation for the revocation hearing, the probation officer categorized each of Mr. Calhoun's alleged violations as Grade A; the district court was required to revoke for Grade A violations. Taking Mr. Calhoun's criminal history into account the probation officer recommended 24 to 30 months imprisonment. (Appx. "1").

After the contested hearing, the district court determined by a preponderance of evidence that Mr. Calhoun committed Violations 1 and 2. The court revoked Mr. Calhoun's supervised release and imposed a sentence of 48 months.

REASONS FOR GRANTING THE WRIT

This Court confirms that the United States Constitution requires an indictment and a unanimous jury verdict in order for a federal criminal conviction to be valid. See **U.S. Const. Amend V, VI (1791); United States v.**

Gaudin, 515 U.S. 506 (1995); **In re Winship**, 397 U.S. 358 (1970)(in a criminal case, the government must prove each and every element of a charged offense beyond a reasonable doubt); see, e.g., **Alleyne v. United States**, 133 S. Ct. 2151 (2013); **Apprendi v. New Jersey**, 530 U.S. 466 (2000).

The United States District Court revoked Mr. Calhoun's supervised release and sent him to prison for 4 years without either an indictment or a jury finding. (Appx. "1"). Moreover, the district court applied the preponderance of the evidence standard rather than the beyond a reasonable doubt standard. (Id.). As the Eleventh Circuit had, "the district court did not abuse its discretion in revoking Calhoun's supervised release because a preponderance of the evidence supported a finding that Calhoun violated the conditions of his supervised release." (App. "1" at 2). In affirming the district court's judgment the Eleventh Circuit transgressed the Constitution and placed itself in conflict with this Court's decisions and at least one of its sibling courts. See **Calhoun v. United States**, Appeals No. 18-11069, p.2. (11th Cir. April 9, 2017)(reproduced in Appx. "1").

To be sure, in part, the district court relied upon a State of Georgia conviction to revoke Mr. Calhoun's supervised release, but the district court overlooked that the Georgia conviction never involved a "beyond a reasonable doubt" fact finding. (App. "3") (Transcripts of the state plea hearing and sentencing). After spending 15 months in county jail waiting for trial, the state and Mr. Calhoun agreed upon a deal to effectuate Mr. Calhoun's immediate release without a trial. The deal involved the state court accepting an **Alford** plea, that is, a guilty plea despite Mr. Calhoun's protestation of actual innocence. (Appx. "3").; see generally, **North Carolina v. Alford**, 400 U.S. 25 (1970).

Summarizing the salient facts, Mr. Calhoun stumbled into a fight between two relatives. In that dispute one relative (Mr. Geddie) murdered the other relative (Mr. Flintroyal). Before Mr. Geddie could shoot Mr. Calhoun, Mr. Calhoun wrestled with Mr. Geddie and shot Mr. Geddie with Mr. Geddie's own gun. Then, Mr. Calhoun ran away as the then-wounded Mr. Geddie continued to fire the gun at Mr. Calhoun.

Despite Mr. Geddie murdering Mr. Flintroyal and the apparent wisdom of Mr. Calhoun's wrestling and running, the State of Georgia arrested Mr. Calhoun and kept in jail for 15 months without a trial. Then, Mr. Calhoun tired of jailed and after counsel assured him that **Alford** plea did not admit guilt and would not affect his federal supervised release status, Mr. Calhoun entered a guilty plea, that included his protestation of actual innocence. (Appx. "3").

The federal district court saw the law differently than Mr. Calhoun's attorney, the court believed the **Alford** plea permitted it to conduct a revocation hearing. Without the normal panoply of constitutional protection (including jury trial), the district court convicted Mr. Calhoun of aggravated assault and unauthorized possession of a weapon. (Appx. "1" at 5) ("The district court determined by a preponderance of the evidence that Calhoun committed Violation 1 [assault] and Violation 2 [unauthorized possession of a weapon].")

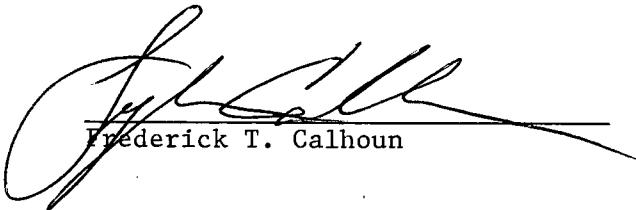
In deciding the facts that resulted in Mr. Calhoun's imprisonment without a jury the district court transgressed the Constitution by depriving Mr. Calhoun of the protections due process affords a defendant in a criminal proceeding. Cf. **United States v. Haymond**, 139 S. Ct. 398 (2018) (certiorari granted oral argument complete, opinion pending).

Of course, Mr. Calhoun realizes that both the district court and the appellate court took cover from Congress having enacted 18 U.S.C. § 3583(e)(3), which provides in essence that a revocation may occur under a preponderance of the evidence. (Appx. "1" at 7). But the lower courts' statutory support is undercut by the Fifth and Sixth Amendment; and neither precedent or statute may override a Constitutional mandate. See **United States v. O'Brien**, 560 U.S. 218 (2010)(Any fact that changes the statutory range is an element of the crime regardless of the label legislative gives it); see also, **Almendarez-Torres v. United States**, 523 U.S. 224 (1998)(permitting a judge found element only when the underlying factual basis was determined by a jury admitted by the accused).

CONCLUSION

Mr. Calhoun is imprisoned although no constitutionally proper finding of fact support his loss of liberty. This Court should grant the writ, vacate the judgment and remand the matter to the court of appeals to comport its opinion if this case and its rule in general to the Constitution.

Respectfully submitted on this 23 day of June, 2019, by:



Frederick T. Calhoun

APPENDIX "1"