19-5217

No. _____

ORIGINAL

Supreme Court, U.S.
FILED
JUL 0 3 2019
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER , 2019 TERM

LAVARES DETROEN WATKINS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

LAVARES DETROEN WATKINS
(Your Name)

F.C.C.- COLEMAN, U.S.P.- #1, P.O. BOX 1033
(Address)

COLEMAN, FLORIDA 33521-1033
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHETHER DUE PROCESS IS VIOLATED WHEN A COURT SENTENCES A DEFENDANT TO A TERM OF IMPRISONMENT THAT EXCEEDS THE OTHERWISE-APPLICABLE STATUTORY MAXIMUM SENTENCE AUTHORIZED BY CONGRESS FOR THE CRIME; WHERE THE DEFENDANT'S FLAT, CATEGORICAL INELIGIBILITY FOR HIS ACCA-ENHANCED SENTENCE WOULD SUFFICE TO EXCUSE THE TIME BAR BY THE APPLICABLE ONE-YEAR STATUTE OF LIMITATION, PURSUANT TO THE AEDPA, UNDER 28 U.S.C. § 2255(f)(3), PURSUANT THE "ACTUAL INNOCENT" EXCEPTION AND DOCTRINE, IN LIGHT OF SAWYER v. WHITLEY, 505 U.S. 333, 112 S.Ct. 2514, 120 L.Ed.2d 269 (1992)?

LIST OF PARTIES

[X] 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:

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STATUTES AND RULES

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

[X] 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 _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.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[ ] is unpublished.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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 27, 2019.

[X] 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 _____.

[ ] 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. § 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

U.S. CONST. AMEND V

No person shall be held to answer for a capital, or otherwise infamous crime, unless presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person...be deprived of life, liberty, or property, without due process of law;

U.S. CONST. AMEND VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been ccmmitted; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation;

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"); and

Title 28 United States Code, Section 2255(f)(3).

STATEMENT OF THE CASE

Mr. Lavares Watlins (hereinafter "Petitioner") is a federal prisoner serving a 210-month sentence after pleading guilty, in 2010, to being a felon in possession of a firearm. The district court enhanced his sentence, under the Armed Career Criminal Act ("ACCA"), pursuant to 18 U.S.C. § 924(e), after finding that his previous Alabama convicts for shooting into an occupied building; robbery, second degree; and assault, first degree qualified as ACCA predicate offenses. In June 2018, Petitioner filed a pro se 28 U.S.C. § 2255 motion, claiming that, he is entitled to a resentencing because his Alabama conviction for shooting a firearm into an occupied building is no longer a "violent felony" under the Armed Career Criminal Act in light of United States, v. Estrella, 758 F.3d 1239 (11th Cir. 2014), Johnson v. United States, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015), and Welch v. United States, 136 S.Ct. 1257, 194 L.Ed. 2d 387 (2016), thus, his ACCA enhancement is unconstitutional. The district court dismissed the § 2255 motion as untimely because it was filed more than one year after **Johnson** and determined that Petitioner was not entitled to equitable tolling.

Subsequently, Petitioner filed a motion for a Certificate of Appealability ("COA") and appointment of counsel to the United States Court of Appeals for the Eleventh Circuit. Unfortunately, on March 27, 2019, the Eleventh Circuit denied Petitioner a COA, and held that:"Here, reasonable jurists would not debate the district court's dismissal of Watkin's § 2255 motion as time-barred. First, because Watkins did not file a direct appeal, his judgment became final in July 2010, and his § 2255 motion, filed in 2018, was untimely by nearly seven years under § 2255(f)(1). Second, his § 2255 motion was untimely under § 2255(f)(3) because he raised a claim that relied on **Johnson**, which was decided nearly three years before he filed his § 2255 motion in 2018. Third, his motion was untimely under § 2255(f)(4) because his **Johnson** claim did not constitute a discoverable "fact," and, accordingly, his discovery of it did not trigger a new one-year limitations period. See Barreto-Barreto, 551 F.3d at 99 n.4.

Watkins argued that he was entitled to equitable tolling because he did not know about **Johnson** while he was in state custody, as he lacked access to federal law. Even assuming, **arguendo**, that Watkins was entitled to equitably toll his time in state custody, he failed to justify the eight-month delay between October 2017, when he learned of his potentially-viable **Johnson** claim, and June 2018, when he filed his § 2255 motion. **Arthur**, 452 F.3d at 1253. Thus, he failed to show both diligence and extraodinary circumstances once in federal custody and was not entitled to equitable tolling. See id. Accordingly, his motion for COA is DENIED and his motion for appointment of counsel is DENIED AS MOOT." "Thus, this certiorari proceeding was instituted.

REASONS FOR GRANTING THE PETITION

DUE PROCESS IS VIOLATED WHEN A COURT SENTENCES A DEFENDANT TO A TERM OF IMPRISONMENT THAT EXCEEDS THE OTHERWISE-APPLICABLE STATUTORY MAXIMUM SENTENCE AUTHORIZED BY CONGRESS FOR THE CRIME; WHERE THE DEFENDANT'S FLAT, CATEGORICAL INELIGIBILITY FOR HIS ACCA-ENHANCED SENTENCE WOULD SUFFICE TO EXCUSE THE TIME BAR BY THE APPLICABLE ONE-YEAR STATUTE OF LIMITATION, PURSUANT TO THE AEDPA, UNDER 28 U.S.C. § 2255(f)(3), PURSUANT THE "ACTUAL INNOCENT" EXCEPTION AND DOCTRINE, IN LIGHT OF SAWYER V. WHITLEY, 505 U.S. 333, 112 S.Ct. 2514, 120 L.Ed.2d. 269 (1992).

Petitioner contends that as in the capital habeas context where an exception is made for otherwise procedurally barred claims where the petitioner asserts that he is "actually innocent" of the aggravating factors that permit imposition of a capital sentence, Sawyer v. Whitley, 505 U.S. 333, 112 S.Ct. 2514, 120 L.Ed.2d 269 (1992), the petitioner in this case asserts he is "actually innocent" of the aggravating factors - the three prior "violent felonies" - that permit enhancement of his sentence under the ACCA.

Several circuits have embraced this analogy and extended the "actual innocent" exception to noncapital sentences, finding "little difference between holding that defendant can be innocent of the acts required to enhance a sentence in a death case and applying a parallel rationale in non-capital cases." United States v. Maybeck, 23 F.3d 888 (4th Cir. 1994)(application of "actual innocence" exception to aggravating factors of capital sentencing case is functionally equivalent to application of exception to aggravating factors enhancing a noncapital sentence); United States v. Mikalajunas, 186 F.3d 490 (4th Cir. 1999)(limiting application of "actual innocence" exception to habitual or career offender classifications); Spence v. Superintendent, Great Meadow Correctional Facility, 219 F.3d 162 (2d Cir. 2000)(where habeas petitioner is actually innocent of conduct on which his sentence is based, incarceration

is fundamentally unjust and miscarriage of justice exception to procedural default rule applies); Haley v. Cockrell, 306 F.3d 257, 265 (5th Cir. 2002)(assertions of actual innocence permit review of otherwise procedurally barred sentencing claims in career offender context because "fundamental purpose" of habeas corpus is to see that "constitutional errors do not result in the incarceration of innocent persons"), vacated sub. nom. on other grounds, Dretke v. Haley, 541 U.S. 386, 124 S.Ct. 1847, 158 L.Ed.2d 659.

Following the rule of the Fifth, Fourth and Second Circuits, and recognzing that the "actual innocence" doctrine is grounded in the equitable discretion of federal habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons, Herrera v. Collins, 506 U.S. 390, 404, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993), this court should conclude that the "actual innocence" exception should apply here to avoid the fundamental miscarriage of justice which would otherwise result if petitioner were forced to serve an enhanced sentence which was not predicated on three valid convictions for "violent felonies" or "serious drug offenses" within the meaning of the ACCA. In the early twentieth century, a state prisoner's failure to present a federal claim to the state courts was excusable as long as the prisoner had not "deliberately bypassed" the state's procedures. See Fay v. Noia, 372 U.S. 391, 438, 83 S.Ct. 822, 848 (1963). In the 1970s, the Supreme Court criticized Fay for undervaluing the state's countervailing interests in finality, comity and federalism. In a string of decisions, illustrated by Francis v. Henderson, 425 U.S. 536, 96 S.Ct. 1708 (1976) and Wainwright v. Sykes, 433 U.S. 72, 97 S.Ct. 2497 (1977), the Court retreated from Fay's "deliberate bypass" standard in order to "show due regard for States' finality and ccmity interests while ensuring that fundamental fairness [remains] the central concern of the writ of habeas corpus."

Dretke would permit federal habeas review of procedurally defaulted claims of error where a constitutional error probably resulted in the conviction of one who was actually innocent of the offense. Id.; see also House v. Bell, 547 U.S. 518, 536-537, 126 S.Ct. 2064, 2076-2077 (2006).

In 1992, the Court first considered whether and how the actual innocence exception announced in the 1986 trilogy applied to a procedurally barred claim of sentencing error. See Sawyer v. Whitley, 505 U.S. 333, 346-347, 112 S.Ct. 2514, 2522-2523 (1992). Sawyer acknowledged the difficulty of attempting to translate the concept of "actual innocence," developed initially in the context of federal habeas review of procedurally defaulted claims of error relating to a defendant's conviction, to a sentencing error (in that case, a capital sentence), by noting that "[t]he phrase 'innocent of death' is not a natural usage of those words." 505 U.S. at 341, 112 S.Ct. at 2520. But despite these semantic obstacles-and in recognition of the actual innocence exception's birth as the "fundamental miscarriage of justice" exception-the Court "str[o]ve to construct an analog" that would give content to the actual innocence exception, as applied to a claim of flat legal ineligibility for a death sentence. The Court ultimately concluded that such a claim was viable if the prisoner could convincingly show that, as a result of the error complained of, no reasonable juror "would have found [him] eligible for the death penalty." 505 U.S. at 336, 112 S.Ct. at 2517. More specifically, Sawyer held that a convincing showing of legal ineligibility for the aggravating circumstances that subjected the defendant to a death sentence in the first place would suffice to overcome any procedural impediments to habeas review of that claim. Id. at 347, 112 S.Ct. 2523(agreeing with courts of appeals that held that "the actual innocence' requirement must focus on those elements that render a defendant eligible for the death penalty").

In the aftermath of Sawyer, the courts of appeals began to consider whether and how Sawyer's holding applied to claims of actual innocence of a non-capital sentence,

including a non-capital sentence erroneously enhanced on the basis of a prior non-qualifying predicate conviction, in cases where the prisoner could not meet the cause-and-prejudice standard. The Courts of Appeals that considered this issue reached different conclusions about the applicability and breadth of this exception as applied to non-capital sentencing errors. See generally Haley v. Cockrell, 306 F.3d 257, 264-266 (5th Cir. 2002)(summarizing and discussing the circuit split). The Supreme Court granted certiorari in Haley to resolve this conflict, but ultimately decided the case on other grounds without reaching the issue. See Dretke v. Haley, 541 U.S. 386, 393-394, 124 S.Ct. 1847, 1852-1853 (2004). The issue thus remains an open one in the Supreme Court. It is also an open one in the Eleventh Circuit. The Eleventh Circuit Court's own precedent does not allow habeas relief on a freestanding innocence claim in non-capital cases," Cunningham v. District Attorney's Office for Escambia County, 592 F.3d 1237, 1272 (11th Cir. 2010), but the Court has not yet addressed whether a claim of actual innocence can serve to an untimely claim of error relating to a non-capital sentence, including a claim of flat legal ineligibility for an enhanced non-capital sentence. Yet an analysis of first principles strongly suggests that such a claim does indeed exist.

The underlying principle at stake in the default context is the same fundamental principle animating the petitioner's substantive claim for relief-the notion that a person should be held in prison for any period of time that exceeds the maximum statutory period of incarceration authorized by Congress because of a legal error concerning his eligibility for that sentence. Allowing such claims to go unredressed would result in a quintessential miscarriage of justice. Neither the government nor the petitioner, nor society as a whole, has a valid interest in the continued incarceration of a defendant beyond that which Congress has authorized.

Accordingly, a defendant who can unequivocally demonstrate that he is flatly ineligible for an enhanced non-capital sentence that exceeds the otherwise-applicable statutory maximum sentence provided by Congress for his crime based on intervening precedent is entitled to have his claim adjudicated on the merits, even if he failed to raise it in a timely fashion. If, as Sawyer held, a defendant can show actual innocence of a death sentence by showing that he is legally ineligible for an aggravating factor necessary to impose that sentence, then it stands to reason that a defendant likewise can show actual innocence of a non-capital sentence by showing that he is flatly ineligible for the imposition of that sentence (here, because intervening precedent declassified a prior conviction used to impose that enhancement. Accordingly, even if the Petitioner's claim was untimely, the fundamental injustice inherent in his claim of error would suffice to excuse any such time barrier in the paticular circumstances of this case.

* * * * *

For the foregoing reasons, this Court should hold that the imposition of erroneous ACCA-enhanced sentences above the otherwise-applicable 10-year maximum sentence violates due process, entitling a defendant to Section 2255 relief.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JAVARES D WATKINS

Date 6-21-2019