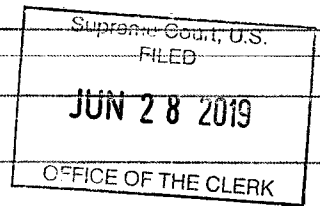


19-5221 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

No. 18-3470



RICHARD POTTS

Petitioner

— against —

UNITED STATES OF AMERICA

Respondent

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

RICHARD POTTS

USP Big Sandy

PO BOX 2068

INEZ KY. 41224

SUBMITTED: June 23, 2019

QUESTIONS PRESENTED

Does Honeycutt v. United States, 137 S.Ct. 1626 (2017)

apply retroactively to forfeiture judgments, that have been final for years, on collateral review?

And if so,

Can relief be obtained on collateral review pursuant to 28 U.S.C. § 1651 in the nature of a writ of audita querela when 28 U.S.C.

§ 2241 & § 2255(h)(2) prohibits a collateral

attack on non-custodial final forfeiture Money

Judgments?

PARTIES

The petitioner is Richard Potts, a pro-se
Litigant.

The respondent is the United States of America.

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Constitution:

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DECISIONS BELOW

The decision of the United States Courts of Appeals for the Third Circuit is not precedential. It was filed April 2, 2019 and a copy is attached as Appendix A to this petition (A-1). The order of the United States District Court for the Eastern District of Pennsylvania is reported. A copy is attached as Appendix A to this petition (A-2)

JURISDICTION

The judgment of the United States Courts of Appeals for the Third Circuit was entered on April 2, 2019. A copy of that order is attached as Appendix A to this petition (A-1). Jurisdiction is conferred by 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves Amendment I. § 9 clause 2 to the United States Constitution which provides :

The Privilege of the Writ of Habeas Corpus shall not be suspended

The Amendment is enforced by title 28, Sections 1651 2241 and 2255, United States Codes.

Amendment V to the United States Constitution which provides :

NO Person shall ... be deprived of life, liberty, or property, without due process of Law;

In the present case the Amendment is enforced by title 21, Section 853, United States Code.

STATEMENT OF THE CASE

On March 27, 2003, defendant was convicted of conspiracy to distribute 50. or more grams of cocaine base within 1,000 feet of a school, in violation of 21 U.S.C. § 846, and murder in furtherance of a drug trafficking offense, in violation of 21 U.S.C. 8486(x)(1).

On July 16, 2003 he was sentenced to a term of Life imprisonment and a forfeiture judgment of \$2.4 million based on the amount of money recieved by the street corner drug distribution organization.

Following an appeal and remand for resentencing in accordance with United States v. Booker, 543 U.S. 220 (2000) the District Court sentenced Potts to life imprisonment anew, without reimposing the July 16, 2003 forfeiture

judgment on October 20, 2005. The Third Circuit affirmed on September 26, 2007 and the conviction became final on December 25, 2007.

On June 4, 2018 Potts filed a pro se motion under the All Writs Act, 28 U.S.C. 1651 in the nature of the writ of audita querela.

On October 25, 2018, the District Court denied Potts motion under the All Writs Act on the ground that Honeycutt is not retroactive to cases on collateral review.

On April 2, 2019 the Third Circuit summarily affirmed the District Courts order because no substantial question was presented to that Court.

BASIS FOR FEDERAL JURISDICTION

The District Court had jurisdiction pursuant to the All Writs Act, 28 U.S.C. § 1651 in the nature of the common law writ of Audita Querela because neither Congress nor the Federal Rules of Criminal Procedure provide it for collateral review of a final order of forfeitures.

REASONS FOR GRANTING THE WRIT

A. Conflicts with decisions of other Courts

The holding of the courts below that this Court's decision in Honeycutt does not apply retroactively to forfeiture judgments that became final before its holding, and that because of that, the petitioner had not provided a valid legal objection to his forfeiture judgment that had been final for over ten years, is in conflict with Honeycutt and at least one District court within its own District. See, JAQUEL CREWS v. United States, 10-CR-663-04, January 23, 2018 motion for Partial Relief from Sentence brought under 28 USC § 1651 in the nature of a writ of audita querela from a forfeiture Money Judgment.

B. Importance of the Question presented

This petition presents a fundamental question of the utmost importance seeking clarification of this Court's decision in Honeycutt v. United States, 137 S.Ct. 1626 (2017) as it relates to the substantive rule exception to Teague v. Lane, 489 U.S. 288 (1989) understood by this Court in Schiro v. Summerlin, 542 U.S. 348, 353 (2004), and

whether it applies retroactively in a collateral proceeding pursuant to the All Writs Act.

The question presented is of great importance because it affects the personal property of people throughout the United States who were convicted of federal drug crimes and whose cases became final before Honeycutt.

Guidance on the question is of great importance because it will effect the above stated class of federal prisoners whose forfeiture judgments are founded on improper conspiratorial principles of Pinkerton v. United States, 328 U.S. 641 (1946) in conjunction with Joint and Several Liability of tort Law that tainted those judgments. The results of those judgments may lead

to thousands or even millions of dollars or properties being unjustly awarded to the government from the above stated class of federal prisoners untainted personal property that is not connected to their crimes of convictions. Without this Court's guidance on this question a substantial amount of prisoners from amongst this class of federal prisoners will not be able to petition the court for a review of their improper forfeiture judgments in light of Honeycutt, solely because those judgments have become final years before.

In this case the district court reasoned that the rule in Honeycutt is not substantive because it did not alter the range of conduct punished by Federal Law, but decided only whether joint and several

Liability could be imposed as a consequence of that conduct. And, that Teague does not permit a collateral attack on the final forfeiture judgment against defendant based on Honeycutt [And], that defendant has not provided a valid legal objection as required for a writ of audita querela under the All Writs Act. See, Memorandum of the court, October 24, 2018. Pages 5-6. (A-2)

The lower courts holding is in conflict with This Court's holdings and legal reasonings in Honeycutt, And Teague's new substantive rule exception in Schriro.

Honeycutt held:

... forfeiture pursuant to § 853 (a)(1) is limited to property the defendant himself actually acquired as the result of the crime,...

(a) Section 853 (a) limits forfeiture to property flowing from, § 853(a)(1) or used in, § 853(a)(2), the crime itself--providing the first clue that the statute does not countenance joint and several liability, which would require forfeiture of untainted property.

(b) Joint and several liability is also contrary to several other provisions of § 853.

(c) The plain text and structure of § 853 leave no doubt that Congress did not... incorporate the principle that conspirators are legally responsible for each other's foreseeable actions in furtherance of their common plan.

In Teague, this Court held:

...new... rules of criminal procedure
will not be applicable to those cases
which have become final before the
new rules are announced...

Also, "Teague's] framework applies in a federal collateral
challenge to a federal conviction" Welch v. United State

578 U.S., (2016)

In Schrino, this Court held:

...new substantive rules generally
apply retroactively.

And,

A rule is substantive... if it alters
the range of conduct or the class of
persons that the law punishes.

And,

This includes decisions that narrow
the scope of a criminal statute
by interpreting its terms, as well

as constitutional determinations that place particular conduct or persons covered by the statute beyond the state's power to punish.

And, Welch states:

...this Court has determined whether a new rule is substantive or procedural by considering the function of the rule...

And,

By extension, where the conviction or sentence in fact is not authorized by substantive law, then finality interest are at their weakest.

As clarified in Schiro, a decision that narrows the scope of a criminal statute by interpreting its terms is one that is included in its "alters the range of conduct or persons that the Law punishes" category

that fall outside of Teague's general bar on retroactivity.

The lower court overlooked this in its analysis of Honeycutt when it concluded that Honeycutt decided only whether joint and several liability could be imposed as a consequence of that conduct and merely clarifies the interpretation of a criminal forfeiture statute. This reasoning is unconvincing.

Honeycutt interpreted § 853 as such;

Section 853(a)(1)... limits forfeiture to property the defendant "obtained, directly or indirectly, as the result of" the crime. Neither the dictionary definition nor the common usage of the word "obtain" support the conclusion that an individual "obtains" property that was acquired by someone else. And the adverbs "directly" and "indirectly" refers to how a defendant obtain the property

they do not negate the requirement that he obtain it at all. Section 853 (a)(2) and § 853(a)(3) are in accord with this reading.

And,

The plain text and structure of § 853 leave no doubt that Congress did not ... incorporate the principle that conspirators are legally responsible for each other's foreseeable actions in furtherance of their common plan.

Honeycutt overturned the Third Circuit's interpretation of § 853(a)(1) in United States v. Pitts, 193 F.3d 751 (3rd Cir 1999), and officially halted its practice of holding co-conspirators liable, jointly and severally, for all conspiracy proceeds. See United States v. Gjeli, 867 F.3d 418 (3rd Cir 2017),

as amended (Aug. 23, 2017) (following *Honeycutt* and noting that forfeiture ... is limited to property each defendant himself actually acquired as the result of the crime.)

Still, the Lower court reasoned that *Teague* does not permit a collateral attack on the final forfeiture judgment against [petitioner] based on *Honeycutt* decision, and that [he] has not provided a legal objection as required for a writ of *audita querela* under the All Writs Act.

Teague's framework creates a balance between first, the need for finality in criminal cases, and second, the countervailing imperative to ensure

that criminal punishment is imposed only when authorized by law." Welch

That balance turns on the function of the rule at issue - a new substantive rule.

When a new rule changes the scope of the underlying criminal proscription, the Teague balance tips in the opposite direction of finality, because a new substantive rule will necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal.

Teague's balancing act also has its place with sentences in fact that are not authorized by substantive law, Welch, *supra*, and therefore include criminal forfeiture statutes like 21 U.S.C. § 853, Section 853.

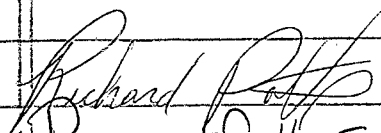
Under Teague's exception in Schiro Honeycutt announced a new rule that is substantive, and that permits retroactive application on collateral review of a final conviction.

In the present case, the petitioner would have been capable of proving at an evidentiary hearing in the district court that his July 16, 2003 forfeiture Money judgment contained nearly \$1.5 million in untainted money that does not constitute nor derived from the proceeds that petitioner obtained, directly or indirectly from illegal drug sales made through the Daniel Coach drug distribution organization throughout the sixteen months that he was found to have been a member. Daniel Coach's testimony evidences this fact.

Thus the court below failed to apply Honeycutt retroactively to petitioner's All Writs Act motion, thereby rejecting him an opportunity to evidence, at a hearing, that his forfeiture Money Judgment ran afoul the tainted amount authorized by 21 U.S.C. § 853(a)(1) in light of Honeycutt.

CONCLUSION

For the foregoing reasons certiorari should be granted, or in the alternative this case should be sent back to the district court for a hearing on the merits in light of Honeycutt.


Respectfully Submitted
June 23, 2019