

SUPREME COURT OF THE UNITED STATES

DURYANE CHANEY,
Petitioner

v.

Case No. 19-5278

UNITED STATES OF AMERICA,
Respondent

PETITION FOR REHEARING, PURSUANT TO SUPREME COURT RULE 44

Comes now Duryane Chaney, pro se, petitioner, ("Chaney" herin) to respectfully request this Court Grant him a rehearing based on the intervening circumstance that have a substantial and controlling effect on his sentence due to a pending case in this Court (i.e. Shular v. United States, No. 18-6662) which, if granted, could compel this Court to remand Chaney's case to determine whether his prior conviction constitutes a "serious drug offense" for ACCA purposes. And, because the review of his writ of certiorari, perhaps, overlooked the fact that his 2014 sentencing under the ACCA was prior to this Court's rulings in cases, Infra, that changed the analysis for qualifying crimes of violence, determinative of Chaney's ACCA sentence.

In support thereof Chaney puts forth the following:

1. JURISDICTION:

Chaney makes his timely request for rehearing pursuant to Supreme Court

Rule 44. (See, Clerk's letter, Attached) which give this Court its jurisdiction. See also, Houston v. Lack, 487 US 266 (1988).

2. Chaney's pro se writ of certiorari filed on or about July 18, 2019 was an exercise in nebulous filing. However, construed liberally, Chaney's claim is that based on the cases decided in this Court, after Chaney's sentencing, call into question whether he is in fact an Armed Career Criminal. And, his attached "Motion for Abeyance", although inartfully drafted and improperly filed, did spell out that the pending case in this Court, United States v. Shular, No. 18-6662, if decided favorably, could compel this Court to remand Chaney's case for resentencing.

3. Specifically, at sentencing, in 2014, Chaney's 1981 prior conviction for "attempted unarmed robbery" was never subjected to the analysis of this Court's rulings in Johnson v. United States, 135 S. Ct. 2251 (2015); Sessions v. Demaya, 138 S. Ct. 1204 (2018) and United States v. Davis, No. 18-431 (2019) where such an analysis could, perhaps, determine that this particular prior conviction is disqualified as a predicate offense. To date, no lower court has ruled on, specifically, the "attempted unarmed robbery" issue. As such, Chaney could not be considered an armed career offender and subjected to a reduction of his sentence under the analysis post 2014.

4. Second, Chaney's prior drug offense in 2003 could be called into question as well. Specifically, the pending case in this Court to decide what constitutes a "serious drug offense" could require a remand

to determine whether Chaney's 2003 drug conviction can in fact qualify as a predicate offense for ACCA purposes. Thus, the sentencing issues in Chaney's rehearing requests concern issues that this Court has either previously granted relief or is pending (i.e. Shular) which could require relief. Because of the insufferable limitations of AEDPA this Court should consider whether, in fairness Chaney's deserves a rehearing and subsequent stay pending its disposition since a potential remand is more than plausible.


5. Accordingly, Chaney's two limited Grounds for rehearing are not for the purposes of delay and are in good faith. See, Gondeck v. Pan American World Airways, Inc., 434 US 1323 (1977) (Interest in finality of litigation must yield where interest in justice is at stake); Flynn v. United States, 75 S. Ct. 285 (1955) (Under Rule 44 petition for writ of certiorari should not be treated as definitive of determination in Supreme Court, subject to all consequences of such interpretation).

6. Lastly, Chaney request that this Court stay the mandate in this case pending the disposition of the rehearing because there exist a reasonable likelihood that this Court will determine that Chaney did not have proper analysis on his prior "violent" convictions in 2014, and that the pending Shular ruling in this Court could require a remand in this case. See, Foster v. Texas, 563 US 931 (2011) (stay granted pending disposition of rehearing); Bell v. Thompson, 545 US 794, 802 (2005) (timely filed petition for rehearing stays mandate until disposition of rehearing).

CONCLUSION

For the foregoing reasons Chaney prays that this Court will Grant him a rehearing and stay the mandate pending the disposition of a rehearing.

Respectfully Submitted,


Duryane Chaney, pro se
#31678-039
Federal Correctional Institution
P.O. Box 1000
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1/13/2019
Dated


CERTIFICATE OF SERVICE

I certify that on November 13, 2019, I mailed a copy of this brief (Petition for Rehearing with the Certificate) with attachments, via first class U.S. Mail, to the following parties:

Solicitor General of the United States
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746 that the foregoing is true in fact to the best of my knowledge and recollection

Dated this 13th Day of November, 2019


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CERTIFICATE

Petitioner, Duryane Chaney ("Chaney") presents this Certificate pursuant to Supreme Court Rule 44 for a rehearing based on two Grounds that establish the intervening circumstances of a pending case in this Court (i.e. Shular v. United States, No. 19-6662) if granted, could compel this Court to remand Chaney's case for a review to determine whether his predicate drug offense should qualify under the ACCA. And, second, whether the controlling effects of this Court's prior rulings regarding "crime of violence", Infra, are determinative of whether Chaney's prior conviction in 1981 for "attempted unarmed robbery" in his 2014 sentencing would qualify under the analysis developed by this Court after his sentencing.

Specifically, first, Chaney's prior conviction of "attempted unarmed robbery" was used in his sentencing in 2014 as a predicate offense for ACCA enhancement purposes. Chaney asserts that in denying his writ of certiorari this Court may have overlooked that under the standards developed by this Court in Johnson v. United States, 135 S. Ct. 2251 (2015); Sessions v. Demaya, 138 S. Ct. 1204 (2018) and United States v. Davis, No. 18-6662) Chaney's prior would not have counted and he would not have been sentenced as an "armed career offender." (See, writ of certiorari, p. 10).

Second, Chaney was sentenced under the ACCA based on a predicate offense that was considered a "serious drug offense." The question presented in Shular will ultimately define what constitutes a "serious drug offense." And, a favorable ruling in Shular could compel this Court to remand Chaney with instructions to review his prior drug

offense under the new standard of Shular and undermine his ACCA sentence.

Thus, Chaney's grounds for rehearing are based on the intervening circumstances of a change in the analysis of his predicate offenses based on decisions of this Court and pending in this Court. As such, Chaney's request for rehearing is not for the purposes of delay as he presents relevant issues that is parallel to that of prior rulings of this Court, ante, and Shular for which this Court granted Certiorari.

Accordingly , Chaney makes his request for a rehearing in good faith and in accordance with the standards of Rule 44.

Respectfully Submitted,



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