

19-5597
No.

ORIGINAL

FILED
JUN 12 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

RANDALL B. LORD — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Randall B. Lord
(Your Name)

601 McDonough Blvd SE
(Address)

Atlanta, GA 30315
(City, State, Zip Code)

(Phone Number)

QUESTIONS PRESENTED

- I. Is it a plain error for the District Court to regulatory deference to an agency's regulation before identifying ambiguity in the plain meaning of a statute?

- II. Does buying cryptocurrency (Bitcoin) from an exchange and selling it to customers at a profit meet the definition of a money transmitter under 18 U.S.C. §1960?

LIST OF PARTIES

[] 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:

Randall B. Lord

Michael A. Lord

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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

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,
 is unpublished.

The opinion of the United States district 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 is unpublished.

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 is unpublished.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 is unpublished.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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was February 15th, 2019.

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: March 11th, 2019, and a copy of the order denying rehearing appears at Appendix B.

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

18 U.S.C. §371 (Conspiracy to operate an unlicensed MSB)

18 U.S.C. §1960 (a),(b)(1)-(2) (Unlicensed Money Service Business)

31 CFR §1010.100 (ff)(5)(i)(A) (FinCEN's regulatory definition of MST)

FIN-2013-G001 (FinCEN's guidance on virtual currencies)

STATEMENT OF THE CASE

Michael A. Lord and Randall B. Lord here after referred to as the defendants, have been in the Bitcoin exchange business since 2013.

Bitcoins are a decentralized form of electronic or digital currency. existing entirely on the internet and not in any physical form. Currency is not issued by any government, bank or company, but rather is generated and controlled automatically through computer software operating on a "peer to peer" network". An individual can send and receive Bitcoin through peer-to-peer digital transactions or by using a third party broker. Such transactions are done on computers and smart phones. To acquire Bitcoin, a user typically purchases them from a Bitcoin exchanger. In return for a comission, exchangers accept payments in some conventional form. (e.g. cash, wire transfer, etc.).and sells the Bitcoin based on a fluctuating exchange rate.

In 1992, title 18 U.S.C. §1960 was enacted to combat the growing use of money transmitters to transfer large amounts of the monetary proceeds of unlawful enterprises. FinCEN, the agency that has regulatory oversight of the statute, issued guidance on March 18, 2013 to address this new and previously unregulated area of financial activity. Shortly after this was published the DOJ began investigating and prosecuting for violations of 18 U.S.C. §1960 regarding those dealing in virtual currencies.

On November 18, 2015 a federal grand jury in the Shreveport Division of the Western District of Louisiana returned an indictment with 14 counts against the defendants. Both were charged with conspiracy to defraud the United States government, operating a unlicensed money service business, money laundering, failure to file CTRs and Wire fraud. Michael A. Lord was additionally charged with a drug conspiracy.

On April 19, 2016, pursuant to a written plea agreement, defendants entered a plea of guilty to count one and Michael Lord entered a plea of guilty to the additional count fifteen in exchange for the court's dismissal of counts 2-14.

On February 21st, 2017, a motion to withdraw the guilty plea was filed. The District court ruled against this motion stating that actual innocence had not been asserted regarding the FinCEN registration requirement issue.

Randall Lord was sentenced to 46 months in prison and Michael Lord was sentenced to 106 months in prison. A timely notice of appeal was filed by the defendants on June 7, 2017.

On February 15, 2019 the 5th Circuit affirmed the district court's decision regarding the motion to withdraw the guilty plea and the sentencing, however, it reversed the enhancements given to Michael Lord regarding his drug conspiracy charge. See Appendix A

On March 11, 2019, the 5th Circuit denied Randall Lord's timely petition for rehearing. See appendix B

The defendants asserted that because the State of Louisiana did not require money transmitter license for cryptocurrencies, they were innocent of failing to register as a money transmitting business. The District Court ruled that based on FinCEN's guidance, that cryptocurrency exchangers were money transmitters, they were guilty of failing to register under 18 U.S.C. §1960. Their attorney did not argue for plain reading of the statutes definition of a money transmitter.

The Appellee's Motion for Rehearing in the 5th Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT

This court hold that when a statute can be unambiguously read in context, neither the rule of lenity nor Chevron deference is applicable. Esquivel-Quintana V. Sessions, 137 S.Ct. 1562, 1572; 198 L.Ed.2d 22,23 (2017). And although how ultimate statutory ambiguity concerning an agency's regulation of a criminal statute should be handled is an open question, under either route of interpretation, identified ambiguity would first defer to Congressional intent, Chevron v. Natural Resources Defense Council 467 U.S. 837, 842-844, 81 L.Ed. 694, 104 S.Ct. 2778 (1984); Yates v. United States, 135 S.Ct. 1074, 1081; 191 L.Ed.2d 64,75 (2015)

The court has also held that under Federal Rule of Criminal Procedure 52(b) a plain error may be considered for the first time on review if it had not been brought to the district court's attention if (1) The error had not been intentionally relinquished; (2) The error must be clear; (3) The error must have affected the Defendant's substantial rights.

Rosales-Mireles v. United States, 138 S.Ct. 1897,1904-1905; 201 L.Ed.2d 376, 383 (2018).

In the defendant's case all of the requisites for the plain error correction were met. Having asserted actual innocence to the crime both at the district court and appeals court. The defendant was overruled by the courts use of FinCEN guidance to the crime. Therefore defendant's attorney's failure to insist on a plain reading of the statute does not appear to be intentionally relinquished. The court's error in failing to use typical statutory procedure and instead granting regulatory deference was obvious because this court holds that the lower courts are obligated to construe criminal laws and are never to defer to the agency's interpretation before studying congressional intent.

Abramski v. United States, 134 S.Ct. 2259, 2273; 189 L.Ed.2d 262, 285 (2014). Assuming that defendant's assertion that their conduct was not in fact criminal under the statute, it would certainly affect his substantial rights as that would make them factually or actually innocent of a crime that they were sent to prison for.

The Supreme Court should accept jurisdiction for this case to resolve a circuit split and because this is an issue of great public importance. The Fifth Circuit's decision to rely on a regulation over an unambiguous statute is in direct conflict with the Federal Circuit's clear directive never to do that. "Although a court gives appropriate deference to an agency's interpretation, but regulation, of an ambiguous statute that the agency is charged with administering, [citing Chevron], that deference does not permit abdication of the judicial responsibility to determine whether the challenged regulation is contrary to statute or devoid of administrative authority." Aerolineas Argentinas v. United States, 77 F.3d 1564, 1574 (Fed Cir 1996). While Mr. Lorde concedes his attorney's neither objected to the regulation being used in place of the statute at the district or appellate level and although a reviewing court's use of the plain error standard is not mandatory, does a reviewing court have the authority to correct this type of error? If so should it?

In a legal system increasingly subjected to the regulation of multiple agencies over clearly legislated intent, clarification is needed as to how to synchronize an agency's regulatory authority with the statute's meaning and legislative intent in criminal law.

Under 18 U.S.C. § 1960(b)(2), "Money transmitting" is defined as including transferring funds on behalf of the public and by and all means including but not limited to transfers within the United States or to locations abroad by wire, check, draft, facsimile, or courier.

The Defendants neither deny they were running a business, or that Bitcoin or other cryptocurrencies cannot be forms of money or instruments of value under 1960 (b)(1), rather the Defendants assert that they were not "transmitting". Under 31 C.F.R. §1010.100 (ff)(5)(i)(A) money transmission services are defined to require transmission of funds to "another location or person". In other words, it is a service of transmission where an individual or business must transfer funds on behalf of the customer to another location or person, usually a third-party. United States v. Faiella, 39 F.3d 544, 546 (S.D.N.Y. 2014). (Sending Bitcoin to a website for customers payments is transferring); United States v. Mazza-Alaluf, 607 F. Supp 2d 484, 489-490 (S.D.N.Y. 2009) (Transferring funds abroad to another country for clients using bank accounts is a money transferring business).

The Fifth Circuit in this case used FinCEN regulatory guidance on 18 U.S.C. §1960 which states "An administrator or an exchanger [of virtual currency] is a MSB [Money Services Business] under FinCEN's regulations, specifically a money transmitter, unless a limitation to or exemption from the definition applies to the person." In the Fifth Circuit's haste to adopt FinCEN's guidance defining all "administrators" or "exchangers" of cryptocurrencies as money transmitters it violates the definition provided in the statute and brings it into direct conflict with the Second Circuits interpretation of the statute. United States v. Velastegui, 199 F. 3d 590, 592 (2nd Cir 1999), circ denied, 531 U.S. 823, 121 S.Ct. 67, 148 L.Ed. 2d 32 (2000) ("A money transmitting business receives money from a customer, transmits that money to a recipient in a place that the customer designates, usually a foreign country.")

Merely exchanging Bitcoin for a profit to customers is not a money transmission and FinCEN's regulation is void. While a court may grant deference to an agency's regulation in the case of ambiguity, it may not adopt an agency's regulation if it is contrary to the statute. AeroFinas Argentinas v. United States, 77 F.3d 1564, 1574 (5th Cir 1996). Because a regulation cannot override a clearly stated statute *Id.* at 1575, FinCEN's guidance is invalid, thus the Fifth circuit's interpretation of 18 U.S.C. §1960 is in error in relation to cryptocurrencies. It must therefore cede ground to the 2nd Circuit's interpretation of the statute. Because defendants were not money transmitters as defined by the statute there was no obligation to register and therefore committed no crime in selling Bitcoin. The fact that the issue of statutory definition is not objected to earlier should excuse the procedural default because based on the defendants's facts, the plea as resulted in the conviction of one who is actually innocent. Bousley v. United States, 523 U.S. 614, 623, 140 L.ED. 2d 828, 118 S.Ct. 1604 (1998). Absent constitutional errors from the court (5th Amendment) and the defendant's attorney's ineffective assistance to timely raise statutory interpretation (6th Amendment) this conviction would not have occurred.

The Supreme Court should accept jurisdiction to resolve a circuit court split and address an issue of great public importance. In adopting FinCEN's regulation that cryptocurrency administrators and exchangers are money transmitters, the 5th Circuit is in conflict with the statute and the 2nd Circuit's interpretation of the same statute that a money transmitter must transmit funds on behalf of a customer to another person or location. United States v. Velastegui, 199 F.3d. 590, 592 (2nd Cir 1992) *Circ denied* 531 U.S. 823, 121 S.Ct. 67, 148 L.Ed. 2d 32 (2000). Guidance is also needed from the court as to how court's should handle new technologies like crypto currencies when legislation is silent on the issue.

While crimes can be committed with new technologies, over regulation threatens to stifle entrepreneurship and technological progress.

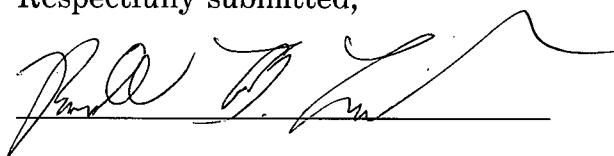
At the time of the plea, neither the accused, nor his counsel, nor the District Court correctly understood the essential elements of the crime with which the defendants were charged, therefore the plea was invalid under the U.S. Constitution.

Bousley v. United States, 523 US 614, 140 L.Ed.2d 828, 118 S.Ct. 1604 (1998)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Paul T.", is written over a horizontal line.

Date: June 07, 2019