

No. 19-6314

.....

IN THE

SUPREME COURT OF THE UNITED STATES

.....

ORIGINAL

RALPH WILLARD SAVOIE - Petitioner

vs.

UNITED STATES OF AMERICA - Respondent

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

.....

ON PETITION FOR WRIT OF CERTIORARI TO

THE FIFTH CIRCUIT COURT OF APPEALS

• PETITION FOR WRIT OF CERTIORARI •

.....

Ralph Willard Savoie

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QUESTIONS PRESENTED

- [1] Can United States v. Watts stand in light of recent holdings in Haymond v. United States?
- [2] Does a waiver of appeal, in light of Garza v. Idaho, require appellate court to reach merits of appeal to determine, on the record, whether claims fall outside the bounds of the waiver?
- [3] Does counsel's suborned perjury, created by contradictions between stipulated facts in plea agreement and objections to presentence investigation report ("PSR"), create an inherent conflict of interest requiring counsel's withdrawal from the case rather than allowing him to accept a retainer for a direct appeal allowing him to attempt to hide his suborned perjury?

LIST OF PARTIES

The list of all parties appears on the cover page.

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IN THE
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•PETITION FOR WRIT OF CERTIORARI•

.....

Petitioner respectfully prays that a writ of certiorari issue to address the judgment below.

OPINIONS BELOW

[X] Federal Courts:

•The opinion of the United States Court of Appeals for the Fifth Circuit appears at Appendix A to the petition and is unpublished.

JURISDICTION

This petition for writ of certiorari is being timely filed within 90 days of judgment. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1):

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petitioner of any party to any civil or criminal case, before or after rendition of judgment or decree.

id.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. §1343 [FRAUD BY WIRE, RADIO, OR TELEVISION]

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. If the violation occurs in relation to, or involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with, a presidentially declared major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122)), or affects a financial institution, such person shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

18 U.S.C. §3583(k)

Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 [18 USCS § 1201] involving a minor victim, and for any offense under section 1591, 1594(c), 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425 [18 USCS § 1591, 1594(c), 2241, 2242, 2244(a)(1), 2244(a)(2), 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425], is any term of years not less than 5, or life. If a defendant required to register under the Sec Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591 [18 USCS §§ 2241 et seq., 2251 et seq., 2421 et seq., 1201, or 1591], for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

UNITED STATES SENTENCING GUIDELINES § 3C1.1 [OBSTRUCTING OR IMPEDING THE ADMINISTRATION OF JUSTICE]

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (B) a clearly related offense, increase the offense level by 2 points.

UNITED STATES SENTENCING GUIDELINES § 3E1.1 [ACCEPTANCE OF RESPONSIBILITY]

If the defendant clearly demonstrates acceptance of responsibility for his offense, decrease the offense level by 2 levels.

STATEMENT OF THE CASE

On December 22, 2017, a Bill of Information was filed against the Petitioner, Ralph Willard Savoie, in the middle district of Louisiana. On March 26, 2018, Petitioner entered into a plea agreement and pleaded guilty to one count of wire fraud in violation of 18 U.S.C. §1343. (see Appendix C for Plea Agreement with Supplement). In this agreement, Savoie agreed to waive his appellate rights in some instances; however, he specifically retained the right to appeal (a) any sentence in excess of the statutory maximum; (b) any sentence which is an upward departure pursuant to the United States Sentencing Guidelines ("USSG"); and (c) any non-Guidelines sentence or variance above the guidelines range calculated by the Court. (id.).

On June 08, 2018, the U.S. Probation Office submitted Savoie's PSR, which held his total offense level to be 30. (Appendix D at 14, 15). As Savoie had no criminal history, his criminal history category was I. (id.). The PSR noted that the Petitioner's mental health and physical health conditions warranted consideration of a downward departure; and then recommended a sentencing range of 97 months' imprisonment to 121 months. (id. at 20, 23).

Addendums to the Presentence Report were filed by both the Petitioner and the Government. (see Appendix D, generally). These addendums provided the vehicle to object to the PSR, and are the focus in "Reasons for Granting the Writ." An additional addendum to the PSR was submitted on October 17, 2018 (Appendix D), and a second supplemental addendum was submitted on November 5, 2018. (id.). On October 24, 2018, a Victim Impact Statement was given in open court.

On November 13, 2018, Savoie's sentencing hearing was held. (see

Appendix E). In this hearing, Agent Stuart Collins of the Internal Revenue Service ("IRS") testified about certain amounts he believed attributable to Savoie. (Appendix E at 6-61). (Unbelievably, Mr. Collins testified that he is not "familiar with everything when it comes to investments, okay?". id.). Also, Petitioner testified. His testimony is what the Court used to determine that he, Savoie, would not receive a reduction for acceptance of responsibility (even though he pleaded guilty and followed through in a timely manner) and would receive, instead, a two-point enhancement for obstruction of justice. (id. at 66-73, 77-115).

The Court then sentenced Savoie to 168 months' imprisonment to be followed by a term of three years' Supervised Release. (Exhibit E at 111, 112). He was then ordered to pay restitution in the amount of \$1,143,965.10 and forfeiture in the amount of \$1,134,070. (see Appendix E at 111-115).

Savoie timely appealed, retaining his trial counsel again for the direct appeal. (Appendix B at 1, 2). The Appellant's Brief was filed by Savoie on April 22, 2019 (id. at 4); the Government filed a motion to dismiss on June 17, 2019. (id. at 6). The Fifth Circuit granted the Government's motion to dismiss the appeal on July 01, 2019, while denying as moot the Government's motion for an extension of time (in the event the appeal was not dismissed). (id. at 6).

This petition for certiorari follows.

REASONS FOR GRANTING THE PETITION

Petitioner Ralph Savoie submits three issues of first-impression for granting this petition for certiorari review.

I. CAN UNITED STATES V. WATTS STAND IN LIGHT OF RECENT HOLDINGS IN HAYMOND V. UNITED STATES?

In early 2019, the Court held that the mandatory provisions of 18 U.S.C. §3583(k) are unconstitutional. (see Haymond v. United States, ___ L. Ed. 2d ___ (2019)). Moreover, in the opinion, the Court signaled that it may be time to revisit the constitutionality of utilizing acquitted conduct for sentencing purposes. Petitioner Savoie asserts the facts of his case exemplify the problems that persist in using both acquitted and relevant conduct for sentencing purposes.

a. UNDERLYING FACTS HERE SUPPORT WATTS ABROGATION

Ralph Willard Savoie, Defendant and Petitioner pro se ("Savoie"), pleaded guilty to violating 18 U.S.C. §1343: Wire Fraud. (Doc. 22, at 1). He signed a Plea Agreement which included a detailed Factual Resume which included the term "securities" but one time as an ambiguous reference. Based upon that single reference, the probation officer who prepared Savoie's presentence investigation report ("PSR") included a four-level enhancement for securities fraud.

In a manner detailed below, Savoie's counsel waived the standing objection to that four-point enhancement because of his, counsel's, desire to divert the Sentencing Court's attention from his, counsel's, subornation or perjury. Consequently, Savoie's sentence was increased some 100+ months beyond what it would otherwise have been - tantamount to a life sentence for 70-year-old Savoie.

The Court previously highlighted that:

18 U.S.C. §3661 provides that no limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense that a court of the United States may receive and consider for the purpose of imposing an appropriate sentence [including conduct for which the defendant was acquitted by a jury].

United States v. Watts, 519 U.S. 148, 117 S. Ct. 633, 136 L. Ed. 2d 554 (1997).

An acquittal in a criminal case does not preclude the government from relitigating an issue when it is presented in a subsequent action governed by a lower standard of proof, as (1) an acquittal on criminal charges does not prove that a defendant is innocent, but merely proves the existence of a reasonable doubt as to the defendant's guilt; (2) without specific jury findings, it is impossible to know exactly why a jury found a defendant not guilty on certain charges; and (3) thus, a jury cannot be said to have necessarily rejected any fact when it returns a general verdict of not guilty. id. Or, at least, that is what Watts instructs.

Yet, such a position seem diametrically at odds with Haymond; for, there remains unsolved business in asking, "[W]hen does a 'criminal prosecution' arise implicating the right to trial by jury beyond a reasonable doubt?" Haymond, slip op. 588 U.S. ____, 6 (2019). "At the founding, a 'prosecution' of an individual simply referred to 'the manner of [his] formal accusation.'" id. (citing 4 W. Blackstone, Commentaries on the Laws of England 298 (1769)(Blackstone)). The concept of a "crime" was a broad one linked to punishment, amounting to those "acts to which the law affixes ... punishment," or, stated differently, those "element[s] in the wrong upon which the punishment is based." id., 588 U.S. ____, 6; (citing 1 J. Bishop Criminal Procedure §§ 80, 84, pp. 51-53 (2d ed. 1872)(Bishop)).

Within the bounds of Apprendi and Alleyne, the Haymond holdings clarify

that these limitations also apply to terms of imprisonment imposed upon revocation of post-incarceration supervision. The ceilings of Apprendi yield to the floors of Alleyne and are now well-defined. But Savoie asserts the walls seem to have extended beyond those boundaries as lawmakers have circumvented them, legislating them away by extending most statutory maximums beyond even the median federal sentence for murder - in many cases extending them to life imprisonment, effectively obliterating historical limitations of sentencing courts. (see Holloway v. United States, 2014 U.S. Dist. LEXIS 102707 (S.D.N.Y. 2014) (citing median federal murder sentence in fiscal 2013 was 240 months); also (see Blakely v. Washington, 542 U.S. 296 (2004), discussing a crime as including any fact which "annexes a higher degree of punishment.")).

Particularly relevant to Savoie's case is U.S.S.G. §1B1.3, which pertains to relevant conduct and requires a sentencing court to consider all acts and omissions that were part of the same course of conduct or common scheme or plan as the offense of conviction. Watts, at 19 U.S. 153.

Petitioner Savoie asserts that his case illuminates the paradoxical residue of relevant conduct which persists in requiring review of this Honorable Court to resolve in the interests of justice relating to every federal criminal case where "relevant conduct" is used to dramatically enhance the terms of imprisonment based upon "facts" found by a preponderance of evidence standard unconstitutionally founded. Accordingly, Savoie asks the Court to grant certiorari review of this issue and to appoint him counsel to proceed.

II. DOES WAIVER OF APPEAL, IN LIGHT OF GARZA V. IDAHO, REQUIRE APPELLANT COURT TO REACH MERITS OF APPEAL TO DETERMINE, ON THE RECORD, WHETHER CLAIMS FALL OUTSIDE THE BOUNDS OF THE WAIVER?

Early in 2019, the Court held that there is a presumption of prejudice

where accused instructed his trial counsel to file a notice of appeal but trial counsel refused to do so because the accused's plea agreement included an appeal waiver, regardless of whether accused signed said waiver. Garza v. Idaho, 139 S. Ct. 738, 203 L. Ed. 2d 77 (2019). The Garza holdings follow squarely from Roe v. Flores-Ortega, 528 U.S. 470 (2000), and from the fact that even the broadest appeal waiver did not deprive a defendant of all appellate claims.

Most importantly, "[w]hen an attorney's deficient performance costs a defendant an appeal that the defendant would have otherwise pursued, prejudice to the defendant should be presumed with no further showing from the defendant of the merits of his underlying claims." (ibid.)

Distinguished from Garza, Savoie's counsel filed an appeal clearly in the bounds of his preserved appellate rights. The Government's response was that it was not; and with no explanation, the Fifth Circuit dismissed Petitioner's appeal leaving Savoie flummoxed. He, therefore, respectfully requests the Court to extend the Garza holdings to require an appellate court to reach the merits of allegedly waived appellate rights at least to the extent of a determination of whether claims raised do fall within the boundaries of the waiver.

III. DOES COUNSEL'S SUBORNED PERJURY, CREATED BY CONTRADICTIONS BETWEEN STIPULATED FACTS IN PLEA AGREEMENT AND OBJECTIONS TO PRESENTENCE INVESTIGATION REPORT ("PSR"), CREATE AN INHERENT CONFLICT OF INTEREST REQUIRING COUNSEL'S WITHDRAWAL FROM THE CASE RATHER THAN ALLOWING HIM TO ACCEPT A RETAINER FOR A DIRECT APPEAL ALLOWING HIM TO ATTEMPT TO HIDE HIS SUBORNED PERJURY?

As previously stated, Petitioner pleaded guilty to a Bill of Information charging him with wire fraud. The Plea Agreement included a detailed Factual Resume to which Savoie had objected to his counsel as containing several factual inconsistencies. Rather than contest these discrepancies

with the government prosecutor, defense counsel advised Petitioner to sign the Plea Agreement containing the wrong information or else face up to an additional twelve counts and decades more in prison. Under this cloud of intense coercion, Savoie signed the Plea Agreement, thereby stipulating to "facts" under oath at the change of plea hearing.

Yet, these inconsistencies troubled Savoie; so, he instructed his defense counsel to correct the record. Accordingly, defense counsel agreed to do so by objecting to these "facts" as reported in the Presentence Investigation Report ("PSR") which is gleaned from the Plea Agreement. The Government disagreed with the objections of the defense, but further clarified its position that the factual disputes had no impact on the sentencing recommendations. (see Appendix D, objections 1, 2, and 4).

At sentencing, Counsel teed up the segue into these objections by asking Savoie leading questions about the factual disputes. (Appendix E at 67, ln. 5-12). These questions formed the basis of the Sentencing Court's two-level enhancement for obstruction of justice pursuant to U.S.S.G. §3C1.1 based on the belief that Savoie had perjured himself through the contradiction of "facts" declared as true in the Plea Agreement's Factual Resume - to which Savoie had sworn to as true under oath at the change of plea hearing. Based on the perjury finding, the District Court further denied Savoie a three-level reduction for acceptance of responsibility pursuant to U.S.S.G. §3E1.1.

Rather than defending Savoie by explaining that he, Savoie, had not perjured himself, but, rather, that defense counsel had suborned perjury by allowing, if not forcing, Savoie to stipulate to facts that he, Savoie, had disputed from the outset, counsel backed away from this misconduct by waiving the objections to the PSR that pertained to the factual disputes.

Counsel also failed (intentionally so as to cover his misconduct) to object to the five-level ultimate increase in Savoie's adjusted base offense level.

Compounding the ineffective assistance of counsel, Savoie's purported advocate then proceeded to accept Savoie's invitation to be retained for the direct appeal. (Yet, Savoie did so without fully grasping the magnitude of his counsel's misconduct.) Defense counsel took Savoie's money and proceeded to raise the frivolous claim that the District Court had abused its discretion by imposing an unreasonable sentence based upon the Court's refusal to grant Savoie the reduction for acceptance of responsibility - and, conveniently, made no mention of the obstruction enhancement being based on conduct that had been caused by counsel's refusal to correct, initially, the record to which Savoie had wanted to object. Only later did counsel file objections to the PSR which contradicted Savoie's sworn statements from the change of plea hearing.

For these matters, the Petitioner prays for certiorari review.

CONCLUSION

In order to reevaluate Watts and acquitted/relevant conduct in light of Haymond v. United States, to determine whether an appellate court must reach the merits in circumstances akin to Garza v. Idaho, and to evaluate a case of defense counsel's suborned perjury and subsequent cover-up, the petition for writ of certiorari should be granted.

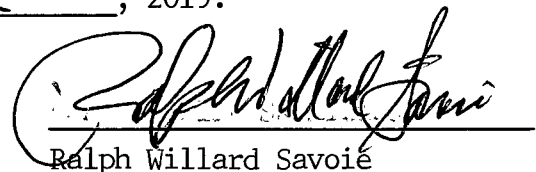
Respectfully Submitted,


Ralph Willard Savoie, pro se

DECLARATION

I, Ralph Willard Savoie, do hereby declare under penalty of perjury in accordance with 28 U.S.C. §1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 26 day of SEPTEMBER, 2019.


Ralph Willard Savoie

CERTIFICATE OF SERVICE

I, Ralph Willard Savoie, do hereby certify that the foregoing petition was served upon the United States Supreme Court via first class mail with prepaid postage affixed at the following address:

UNITED STATES SUPREME COURT
1 FIRST STREET, N.E.
WASHINGTON, D.C. 20543

Additionally, I hereby certify that this petition for writ of certiorari was placed in the prison mailing system with first class prepaid postage affixed on the 26 day of SEPTEMBER, 2019.

