

No. 19-6300

1:14-cr-00206-LO-6

19-6486

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

EDUARD BANGIYEV
Petitioner,

v.

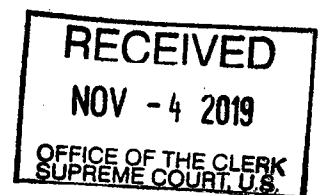
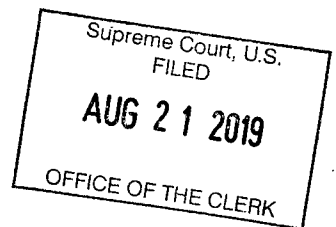
UNITED STATES OF AMERICA
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Pro Se

August 20, 2019



PETITION FOR CERTIORARI

QUESTION PRESENTED

The United States Supreme Court decision in the United States v. Honeycutt focused on the text of 21 U.S.C.S. 853, to determine that 853(a)(1) precludes co-conspirator liability. As the Court explained, the statute defines forfeitable property solely in terms of personal possession or use. Subsection (a)(1) limits forfeiture to property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of the crime, 21 U.S.C.S. 853(a)(1). To have obtained property, the court said, the person must have personally acquired it; one does not obtain property acquired by someone else. While the words directly and indirectly modify the word obtained, they do not erase the statute's requirement that the person in fact obtain the property.

The question presented is:

Whether the elements that availed the Supreme court decision in United States v. Honeycutt, also apply more broadly to the 18 U.S.C.S. 1963 statute.

PARTIES TO THE PROCEEDING

Petitioner Eduard Bangiyev was a defendnat in the district court and an appellant in the Fourth Circuit. The respondent is the United States of america.

OPINION BELOW

The Fourth Circuit opinion is reported at United States v. Bangiyev, No. 1:14-cr-0026-LO-6(E.D. Va, Feb. 14, 2019), and

reproduced at Appendix page 2-3. The District Court opinion is reported at Dkt. 926 and reproduced at Appendix page 1.

JURISDICTION

The District court issued its opinion on February 14, 2019. The Fourth Circuit issued its opinion on June 25, 2019 and denied Bangiyev's timely petition for rehearing en banc on July 30, 2019. Appendix page 4. This Court has jurisdiction under 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

Mr. Bangiyev pleaded guilty to one count of conspiracy to violate 18 U.S.C. 1962(d), RICO conspiracy, relating to the distribution of counterfeit currency. It has been noted that Mr. Bangiyev was not a leader of the conspiracy, but merely a low-level distributor. It has also been noted that Mr. Bangiyev did not know of, and had never met most of his co-conspirators. On September 21, 2015, the Court sentenced Mr. Bangiyev to 96 months in prison and three years supervised release.

On October 27, 2015, the Court entered a preliminary Order of Forfeiture, which it amended the next day on October 28, 2015. In the amended preliminary order, the Court Ordered:

(1) pursuant to 18 U.S.C. 1963(a)(3), that Mr. Bangiyev forfeit \$20,000,000 in proceeds obtained, directly or indirectly, from racketeering activity and that a money judgment in that amount be entered against him.

(2) pursuant to 18 U.S.C. 1963(a)(2), that certain properties be forfeited as interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over the racketeering enterprise; and,

(3) pursuant to 18 U.S.C. 1963(a)(3) and (m), and the provisions

of the plea agreement, that certain additional properties be forfeited as assets constituting or derived from proceeds Mr. Bangiyev obtained, directly or indirectly, from counterfeiting and racketeering, "as well as any property that is traceable to, derived from, fungible with, or a substitute from property that constitutes the proceeds of his offense."

The amended order also provides that Mr. Bangiyev's "liability for the money judgment...shall be joint and several with that of" several of his co-defendants, *Id* at 21.

REASONS FOR GRANTING CERTIORARI

The United States Supreme Court decision in the United States v. Honeycutt focused on the text of 21 U.S.C. 853 to determine that 853(a)(1) limits forfeiture to property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of the crime, 21 U.S.C.S. 853(a)(1). As the Court explained, the statute defines forfeitable property solely in terms of personal possession or use, which precludes co-conspirator liability.

18 U.S.C.S. 1963(a) defines what is forfeitable, and 1963(a)(3) mirrors that of 21 U.S.C.S. 853(a)(1). 1963(a) states that whoever violates 18 U.S.C.S. 1962 shall forfeit:

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any interest in; security of; claim against; or property or contractual right of and kind affording a source of influence over; any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The plain text of this statute, in no way, indicates that a defendant may be liable for the proceeds of a co-conspirator of which the defendant held no interest whatsoever.

This is not obfuscate or confusing. 18 U.S.C.S. 1963, and specifically 1963(a)(3), precludes co-conspirator liability as does 21 U.S.C.S. 853, and specifically 853(a)(1). The 1963 statute has been misinterpreted as was the 853 statute. Joint and several liability for the 1963 statute has been allowed to proliferate due to plain reading comprehension error. This error is especially plain because the amended forfeiture order (1) specifically uses 18 U.S.C.S. 1963(a)(3) to forfeit, joint and severally \$20,000,000 in proceeds obtained, directly or indirectly, from racketeering activity." The operative words are identical to that of the 21 U.S.C.S. 853(a)(1) statute.

Because the plain text of the statute was read incorrectly, in plain error, retroactivity is not at issue here, nor is an appeal waiver.

Mr. Bangiyev was not a leader, and only involved in the lower levels of the conspiracy as admitted by the District Court Judge. The defendant had no interest in security of, claim against, contractual right of any kind, nor did he obtain, directly or indirectly, any of the proceeds of his co-conspirators. Four of the co-conspirators of which the Petitioner shares joint and several liability with, are from Israel. It is very likely that upon the

completion of their term of imprisonment, that they will be deported or move back to Israel, leaving Mr. Bangiyev unfairly and solely liable for the entire \$20,000,000 joint and several forfeiture.

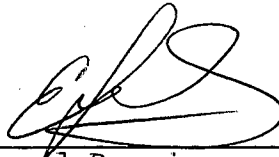
In United States v. Chittenden, the Fourth Circuit decided the text of 18 U.S.C.S. 982(a)(2) mirrors that of 21 U.S.C.S. 853(a)(1). Therefore, section 982(a)(2) likewise limits forfeiture to property constituting or derived from, proceeds the person obtained directly or indirectly, as the result of the crime. Thus, the United States v. Honeycutt decision's interpretation of that language as permitting forfeiture only of tainted property the defendant personally acquired applies with equal force to 18 U.S.C.S. 982(a)(2). In United States v. Chittenden, the Fourth Circuit decided joint and several liability forfeiture allowed under United States v. McHan, F.3d 1027, 1043 (4th Cir. 1996) was abrogated by Honeycutt. Yet, the United States v. McHan Circuit precedent was used by the District Court to deny the Petitioner's audita querela/coram nobis appealing his joint and several forfeiture. The Fourth Circuit was able to conclude that the decision in Honeycutt also applied to the 18 U.S.C.S. 982 forfeiture statute for Chittenden, but was unable to further apply this same interpretive logic for Mr. Bangiyev and the 1963 statute. The Fourth Circuit then affirmed the District Court's decision that used an abrogated McHan case to deny Mr. Bangiyev's joint and several forfeiture claim.

CONCLUSION

Joint and several liability for the 1963 statute is flatly inconsistent with this Court's holding in Honeycutt that the language, and specifically the term "directly or indirectly", precludes co-conspirator liability. Mr. Bangiyev respectfully requests this Petition for Certiorari to be granted.

August 20, 2019

Respectfully submitted,



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