

No. _____

19-6496

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID ELIJAH SMITH

(Your Name)

— PETITIONER

vs.

UNITED STATES OF AMERICA

— RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FILED

AUG 16 2019

OFFICE OF THE CLERK
SUPREME COURT, U.S.

UNITED STATES COURT OF APPEALS FOR THE FORTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DAVID ELIJAH SMITH, Reg. No. 14702-056

(Your Name)

FCI Fort Dix, P.O. Box 2000

(Address)

Joint Base MDL, NJ 08640

(City, State, Zip Code)

None

(Phone Number)

QUESTION(S) PRESENTED

(1) DID THE PETITIONER'S SENTENCE FOR 18 U.S.C. 922(g) VIOLATE THE STATUTORY MAXIMUM IN VIOLATION OF BLAKELY V. WASHINGTON, 542 U.S. 296, 304; APPRENDI V. NEW JERSEY, 530 U.S. 99; WHERE THE PETITIONER WAS SENTENCED TO 120 MONTHS AND 36 MONTHS FOR SUPERVISED RELEASE, A TOTAL OF 156 MONTHS. SEE E.G. HAYMOND V. UNITED STATES, NO. 17-1672, JUNE 26, 2019.

(2) DID THE PETITIONER KNOW, THAT FINDING MENS-REA OF KNOWING IN A GUN, OR FIREARM STATUTE, 18 U.S.C. 922(g) AND (k). SEE, E.G. REHAIF V. UNITED STATES, NO. 17-9560, S.C.T. JUNE 21, 2019.

(3) DID THE DISTRICT COURT AND APPEALS COURT ERROR WHEN THE PETITIONER STATED, THAT IT WAS OVER 30 ERRORS INSIDE THE PRESENTENCE REPORT, IN VIOLATION OF DUE PROCESS OF LAW AND TOWNSEND V. BURKE, 334 U.S. 736 (1948).

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TOWNSEND V. BURKE, 334 U.S. 736 (1848)

STATUTES AND RULES

18 U.S.C. 922(g)(1)

18 U.S.C. 922(k)

OTHER

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☐ is unpublished.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 N/A 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☐ is unpublished.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☐ is unpublished.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.

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:

RELATED CASES

TOWNSEND V. BURKE, 334 U.S. 736 (1948)

HAYMOND V. UNITED STATES, NO. 17-1672, S.Ct. JUNE 26, 2019

REHAIF V. UNITED STATES, NO. 17-9560, S.Ct. JUNE 21, 2019

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was JUNE 6, 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: _____, 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. § 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. 922(g) and (k); United States Constitution Amendments V, VI, XIV, and (VIII).

STATEMENT OF THE CASE

On August 1, 2016, the Appellant made a phone call to Kejuan Smith, three times, telling Kejuan Smith a person coming to the Liquor house to sell some firearms and vests. However, when the person came to the Liquor house, he only had a few firearms and one vest left. I, the Appellant told him to save one firearm and one vest for my grandson, and that person said O.K., and I paid him, the money to hold it for him. Within minutes Kejuan Smith came to the liquor house and picked-up the firearm and vest out of the trunk of that person car. Thanked me, and told me he would pay me back later. The Appellant never touched or had the firearm in his possession. The phone call, claimed that the Appellant was talking to someone else in the room about, how much that person wanted for, firearms and vest and what type of vest. It shows that Appellant never sold the firearm to Kejuan Smith, somebody else did. However, the PSR did-not state this information and always stated that David Smith, the Appellant, sold Kejuan Smith two firearms and a vest. That false materially evidence misleading, inaccurate, and unreliable. The truth was never told inside PSR. paragraph 27 and 53 never stated, what the phone call really entailed. The Appellant never should have been indicted for 18 U.S.C. 922(g)(1) or 922(d). Agent Waddell claim when asked, what did David Smith give Kejuan Smith, Agent Waddell states I Think, one firearm and one vest. The Agent

Waddell, really do not know, he said I think that means, not for sure. The Appellant was not indicted for 18 U.S.C. 371, or 18 U.S.C. 2, therefore to be indicted for just plain 18 U.S.C. 922(g)(1) was wrong and again the indictment should be dismissed.

The summary of all the arguments is that the PSR is unreliable, never told the truth about the phone call, stated that a 9mm pistol was in the phone call, two firearms was given to Kejuan Smith. That Appellant was in two places at the same time. Violation of Probation that never happen. See paragraphs 64 Burglary in Delaware in 1988. As a hold, Due Process is violated when a PSR is independable, vague, unclearly, inaccurate, incorrect, erroneous, not just a few poaragraphs, but over 30 paragraphs in PSR.

The Appellant had an affirmative duty to make a showing that the information in the PSR is unreliable and articulate the reasons why the facts contained therein are materially false evidence, inaccurate, and untrue. This PSR speaks for itself, just go over the errors on each paragraph that the Appellant stated, in Issue One and it is in no question that Due-Process has been violated by law. Furthermore, paragraph 84, Case No. 88-CR-2001

found not guilty of possession or consuming fortified wine, liquor, or mixed Beverage for an unauthorized person. This plainly show, that paragraph 64, the Delaware Burglary that, the Appellant could not receive 434 days for violation in 1988 and was in court in North Carolina in 1988, this just shows how unreliable the PSR is. Violation that never happen. Case No. 88-CR-2001 is in Wilmington, N.C. County Courthouse. The PSR is unreliable.

REASONS FOR GRANTING THE PETITION

(1) Did the Petitioner's sentence for 18 U.S.C. 922(g) violate the statutory maximum in Blakely v. Washington, 542 U.S. 296, 304. Apprendi v. New Jersey, 530 U.S. 99, a Petitioner's sentence 120 month and supervised release proceeding 36 months exceed the 120 statutory maximum which is a total of 156 months. See e.g. Haymond v. United States, No. 17-1672; Argued February 26, 2019, Decided June 26, 2019:

The maximum timer that Petitioner can get for 18 U.S.C. 922(g)(1) is 10 years or 120 months, however the Petitioner was also sentenced to 36 months supervised release, therefore the total sentence is 156 months beyond the 120 months maximum in violation of , Booker, Apprendi, Blakely, and Alleyne supra. Can the conviction stand?

(2) Did the Petitioner know, that finding mens-rea of knowing in a gun firearm statute, where the District Judge, U.S. Attorney or Attorney for the Petitioner did not know. See, e.g. Rehaif v. United States, No. 17-956 S.Ct. (6-21-2019). The Petitioner did not know what the Government must prove therefore the Petitioner's conviction can not stand by law.

The Petitioner's conviction is based on a finding of mens-rea of knowing in a gun firearm statute, where the District Judge, U.S. Attorney or Attorney for the Petitioner did not know. See, e.g. Rehaif v. United States, No. 17-956 S.Ct. (6-21-2019). The Petitioner did not know what the Government must prove therefore the Petitioner's conviction can not stand by law.

(3) Did the District Court and Appeals Court err when the Petitioner stated that it was over 30 errors inside the Presentence Report, in violation of Due Process of Law and Townsend v. Burke, 334 U.S. 736 (1948).

Based upon the foregoing points and authorities the
Petitioner respectfully request this Honorable Court to grant
the within writ and reverse or vacate the Judgment of the Court
below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Donald E. Smith", written over a horizontal line.

Date: Oct. 8, 2019