

ORIGINAL

Docket No.
19-6849

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The
United States
Supreme Court

Cedric Sharrod Williams
Petitioner

v

United States of America
Respondent

On writ to the United States Supreme Court
from the Court of Appeals for the Fourth Circuit

AC Docket No. 18-7397

DC Docket No. 5:14-cr-00075-H

5:16-cv-00203-H

Brief of the Petitioner

Pro-Se
Litigant

Cedric Williams
Cedric Sharrod Williams
#58477-056
Petitioner
FCI Bennettsville

Question Presented

Whether the fourth circuit court of appeals erred in concluding that, despite the controlled substance [heroin] in this matter having been locked in a safe, a firearm that was not in the proximity of the locked safe nonetheless constituted "in furtherance of" for the purposes of an 18 USC §924(c)(1)(A) conviction

Table of Contents

Question Presented.....	i
List of Parties.....	ii
Opinions Below.....	iii
Jurisdiction.....	iv
Constitutional and Statutory Provisions Involved.....	v
Table of Authorities.....	vi
Question Presented	

I Whether the fourth circuit court of appeals erred in concluding that, despite the controlled substance [heroin] in this matter having been locked in a safe, a firearm that was not in the proximity of the locked safe nonetheless constituted "in furtherance of" for the purposes of an 18 USC §924(c)(1)(A conviction

Reasons for Granting the Writ.....	5
Conclusion.....	11
Certificate of Service.....	12
Appendix A (court of appeals decision).....	13

List of Parties

All parties to this case appear in the caption of the case on the cover page.

Opinions Below

Please see Appendix "A"

Jurisdiction

The date in which the appeals court, for the fourth circuit affirmed the petitioner's conviction and sentence was on

A petition for a rehearing or hearing En Banc was filed by this petitioner.

The court of appeals denied the petition for a rehearing or hearing En Banc on September 4, 2019.

A mandate was issued on September 12, 2019.

This Honorable Court has jurisdiction to hear this case pursuant to 28 USC §1254(1).

Constitutional and Statutory Provisions Involved

18 USC §924(c)

18 USC §924(c)(1)(A)

21 USC §841(b)(1)(B)

21 USC §846

28 USC §1254(1)

28 USC §2255

Webster II New College Dictionary 454 (2009)

H.R. Rep. No. 105-344 (1997)

Table of Authorities

- United States v Baily, 516 US 137 (1995)
- United States v Beckles, 565 F.3d 832 (11th Cir 2008)
- United States v Bonner, 648 F.3d 209 (4th Cir 2011)
- United States v Ceballos-Torres, 218 F.3d 409 (5th Cir 2000)
- United States v Liland, 254 F.3d 1264 (10th Cir 2001)
- United States v Mackey, 265 F.3d 457 (6th Cir 2001)
- United States v Muscarello, 524 US 125 (1998)
- United States v Timmons, 283 F.3d 1246 (11th Cir 2002)

Statement of the Case

The petitioner pleaded guilty, pursuant to a plea agreement to the following offenses, to wit;

Count one: Conspiracy to distribute and possess with the intent to distribute 100 grams or more of heroin in violation of 21 USC §§846 and 841(b)(1)(B)

Counts three & eleven: Possession of a firearm in furtherance of a drug trafficking crime in violation of 18 USC §924(c)(1)(A)

On May 12, 2015, the court imposed the following sentence:

120 months imprisonment with respect to count one" 60 month term of imprisonment regarding count three to be served consecutive to count one" and 300 month term of imprisonment to be served consecutive to counts one and three.

The total effective term of imprisonment was adjudicated to be 480 months.

This petitioner did not file a direct appeal.

A timely motion pursuant to 28 USC §2255 was filed on April 25, 2016.

The government filed a motion to dismiss the petitioner's 2255 pursuant to Rule 56(e) of the Fed. R. Civ. P.

On July 24, 2018, the court granted the government's motion and dismissed the petitioner's motion pursuant to 28 USC §2255.

The petitioner made a timely request to the fourth circuit court of appeals for a certificate of appealability with respect to the denial of the motion under 2255. The court of appeals declined to issue a certificate on June 12, 2019.

A timely petition requesting, pursuant to Fed. R. Civ. P., Rule 35, for a rehearing or hearing En Banc was made with the circuit court, who denied same on September 4, 2019.

A mandate was issued on September 12, 2019.

This petition requesting a writ of certiorari is therefore timely file.

Statement of Facts

The facts of this instant matter is a compilation of two different events, occurring within one year of each other, resulting in one sentencing hearing.

The facts relevant to this petition are as follows.

In June of 2012, the petitioner was the subject of a traffic stop. Purportedly, during this stop, the authorities realized it was this petitioner that had been the focus of their attention in an ongoing drug investigation.

In any event, subsequent to the stop, the petitioner was followed by the authorities to the front of his girlfriend's house.

Once there the police requested and the petitioner consented to a search of the home. The search yielded the following unlawful items:

- (1) Narcotics [heroin] locked in a safe in the bedroom,
- (2) A shotgun in the same bedroom, under the bed approximately 10 feet or so from the drugs that were locked in the safe¹¹ and
- (3) Narcotics in the living room area, several rooms away from the bedroom.

It is noteworthy that both the petitioner and his girlfriend had the combination to the safe that was locked when the police searched it.

It is also noteworthy that the petitioner did not give consent to unlock the safe.

The petitioner was arrested and subsequently released on bond.

Approximately one year later and prior to the disposition of the above stated, the authorities once again arrived at the home of the petitioner's girlfriend and once again requested and received permission to search the house. (this time it was the petitioner's girlfriend who gave consent)

The search yielded the following items:

- (1) Narcotics in the kitchen cabinet, and
- (2) A firearm (handgun) in the bedroom closet.

The petitioner was once again arrested and both matters were subsequently transferred to the jurisdiction of the United States Attorney's Office.

The petitioner was sentenced as indicated in section I.

Question Presented

Whether the fourth circuit court of appeals erred in concluding that, despite the controlled substance [heroin] in this matter having been locked in a safe, a firearm that was not in the proximity of the locked safe nonetheless constituted "in furtherance of", for the purposes of an 18 USC §924(c)(1)(A) conviction?

Reasons for Granting the Writ

Section 924(c) of Title 18 provides in relevant part...

"Any person who, during and in relation to any crime of violence or drug trafficking crime" for which the person may be prosecuted in a court of the United States, uses or carries a firearm or who, in furtherance of any such crime possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime..."

To sustain a §924(c) conviction therefore, a firearm must have been used, "in furtherance of" a drug trafficking crime.

This "according to most circuits" requires the government to establish that a firearm, helped, furthered, promoted, or advanced the drug trafficking.¹

The mere presence of a firearm within the person's dominion and control during a drug trafficking offense is not sufficient by itself to sustain a §924(c) conviction.²

In the instant matter, although the firearm discovered by the police was in the same "house" as the narcotics¹ the presence of the firearm was not "in furtherance" of a drug trafficking offense.

As an initial matter, the government never accused nor suspected the petitioner of trafficking drugs at the house [the girlfriend's house] where the drugs and the firearms were discovered.

Furthermore¹ with respect to the first incident, occurring in June of 2012, the petitioner gave consent to the police to search the home. During the search¹ the police discovered drugs¹ "locked" in a safe, located in the same bedroom where the shotgun was discovered under the bed.

Here, the gun wasn't even in the same proximity of the drugs... not to mention that the drugs were locked in the safe.

In United States v Mackey, 265 F.3d 457 (6th Cir 2001), the court held that the possession of a firearm on the same premises as a drug transaction³ would not, without a showing of

¹ Please see United States v Timmons 283 F.3d 1246 (11th Cir 2002) United States v Ceballos-Torres 218 F.3d 409 (5th Cir 2000) United States v Liland 254 F.3d 1264 (10th Cir 2001)

² Timmons 283 F.3d at 1253

a connection between the two³ sustain a §924(c) conviction.

Here, there was no connection between the shotgun and the drugs, in fact, the mere fact that the drugs were locked in the safe⁴ and the gun was tens of feet away under the bed, nowhere near the locked safe established, if anything at all, a disconnection between the gun and the drugs.

In the second instance⁵ rather the second consensual search occurring a year later, the police discovered drugs in the kitchen cabinet, and a firearm in the closet of one of the bedrooms, a distance from the kitchen.

Again, there was no allegation that the house was being used as a drug trafficking location.

In any event, there remained no established connection between the drugs and the gun sans the fact that the two were under the same roof at the same time.

It is well established that, in order for the possession to be "in furtherance" of a drug crime⁶ the firearm must be strategically located so that it is quickly and easily available to use⁷ United States v Lomax, 293 F.3d 701 (4th Cir 2001).⁴

³ Recall that the government never purported nor established that the girlfriend's house was an establishment where drug trafficking occurred.

⁴ Quoting United States v Muscarello 524 US 125 (1998)

(i) The historical development of the phrase
"in furtherance of"

Perhaps, in order to fully appreciate the phrase "in furtherance of", a quick historical review is required. This petitioner contends that the lower courts have "watered" down the congressional intent, thereby eroding petitioners due process rights.

In United States v Baily, 516 US 137 (1995), the United States Supreme Court adopted, with respect to the "then" 924(c)(1)(A), a narrow definition of the term "use". The court opined that "use" required evidence sufficient to show an active employment of the firearm by the accused, a use that made the firearm an operative factor in relation to the predicate offense" otherwise 924(c).

this court stressed that Congress' choice of the word "use" implied that mere possession of a firearm was insufficient to sustain a conviction under 924(c).

In response to Bailey Congress amended §924(c) to indicate such an intention. By adding, "possession in furtherance of", language" Congress intended to broaden the reach of the statute beyond this court's narrow construction, (see Ceballos-Torres, 218 F.3d at 409).

The legislative history indicates that the amended version

of the statute added the phrase criminalizing possession, "in furtherance of", a drug trafficking crime in order to reverse the restrictive effect of the Baily decision.⁵

What has perpetuated a "blurred line", in the interpretation of 924(c), therefore is that mere possession and in furtherance of, have become one in the same⁶ when this was not and is not the Congressional intent.

In determining what evidence is sufficient to establish a violation of 924(c), the statutory term, "furtherance", should be given it's plain meaning.

According to the dictionary, "furtherance" means, "the act of furthering, advancing, or helping forward"⁶

Therefore⁷ 924(c) requires the government to present evidence indicating that the possession of a firearm, furthered, advanced, or helped forward a drug trafficking crime.⁷

Notably, therefore⁷ a firearm in the mere presence of a drug is not sufficient to establish the "in furtherance of", required of a 924(c) conviction, United States v Beckles, 565 F.3d 832 (11th Cir 2009).

Here, this petitioner has conceded and continues to maintain that he "constructively" possessed the firearms, however he claims that there was no evidence that this possession was in furtherance of a drug trafficking offense.

⁵ Lomax 293 F.3d at 705

⁶ Webster's II New College Dictionary 454 (2009)

⁷ United States v Bonner 648 F.3d 209 (4th Cir 2011)

The government, contrary to the fourth circuit's decision that the petitioner's request for a COA, must clearly show that a firearm was possessed, "to advance or promote", the commission of a drug offense. The mere presence of a firearm in the same house where the drugs were found, particularly since the drugs were "locked" in a safe" is not a sufficient basis for imposing the "draconian", consecutive enhancements placed on this petitioner.

The government must have proven or otherwise illustrated through a factual basis which tie the drugs to the firearm, that the firearm was possessed to advance or promote the drug offense.⁸

The government did not.

⁸ H. R. Rep. No. 105-344 (1997)

Conclusion

Wherefore, for all of the aforementioned reasons¹¹ this petitioner requests that this court reverse and remand the petitioner's enhancement pursuant to 924(c) with instruction to the fourth circuit to eradicate the 924(c) enhancements.

Respectfully Submitted

A handwritten signature in cursive script, appearing to read "Cedric Williams", is written over a horizontal line.

Cedric Sharrod Williams

Petitioner

Pro-Se