19-6922

ORIGINAL

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
OCT 23 2019
OFFICE OF THE CLERK

CHARLES E. BATES — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS - Sixth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CHARLES E. BATES - 27605-076
(Your Name)
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Pine Knot, Ky 42635
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED FOR REVIEW

I.) Did the lower courts err in applying joint and several liability and ordering Chuck Bates to forfeit $19,571,532.09 in conflict with both the Supreme Courts previous ruling in the Honeycutt decision (Honeycutt v. United States, __ U.S. __ 137, S. Ct. 1626 (2017)) and the Eighth Amendment prohibition of excessive fines and punishments as the forfeiture amounts to more than 147 times the amount claimed Chuck Bates earned from the offense?

II.) Did the lower courts err in their interpretation and application of the enhancement at U.S.S.G § 2B1.1(b)(2)(C) as Chuck Bates offense did not result in substantial financial hardship to twenty-five or more victims? Specifically did the courts interpretation conflict with Congress' intent which would appear to require more than a mere statement of a victim but instead require some clear evidence and/or witness for cross-examination in fairness to a defendant?

III.) Did the district court abuse its discretion and deny due process in denying the motions of Chuck Bates to sever the trial from that of his father Charles Larry Bates as cumulative and unrelated testimony and evidence served to impair the jury from fairly discerning the facts and differentiating defendants as individuals; thus denying Chuck Bates a fair trial?

LIST OF PARTIES

- United States v. Bates, No. 15-20192, U.S. District Court for the Western District of Tennessee. Judgment Entered: Sept 5, 2017

- United States v. Bates, No. 17-6273, U.S. Court of Appeals for the Sixth Circuit. Judgment entered: July 31, 2019

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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,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] 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

Charles E. "Chuck" Bates petitions for a Writ of Certiorari after the United States Court of Appeals for the Sixth Circuit entered a decision on his appeal on July 31st, 2019. His appointed Counsel did not petition for a rehearing and subsequently withdrew from representation in September 2019. Chuck Bates timely filed for a Writ of Certiorari on October 23, 2019 and the Clerk for the Supreme Court returned the papers outlining some deficiencies and offering some guidance for prose petitioners. The Clerk gave Chuck Bates a sixty day extension to correct the papers and resubmit from the date of the clerk's letter of November 4, 2019.

The petitioner would demonstrate the lower courts have erred in issues that have specific constitutional and statuatory merit that require the review of this Court. In specific, rulings of the lower courts appear to be in conflict with previous decisions of the Supreme Court, U.S.S.G sentencing statutes and the Eighth Amendment.

The jurisdiction of this Court is invoked under 28 USC. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1.) Eighth Amendment of the United States Constitution:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

2.) United States Sentencing Guidelines at U.S.S.G § 2B1.1 (b)(2)(c)

Application of a sentencing enhancement premised upon a victim's "substantial financial hardship".

3.) Honeycutt v. United States, _ U.S. _ 137 S. Ct. 1626 (2017)

STATEMENT OF THE CASE

Charles E. "Chuck" Bates challenged his convictions on two grounds. First, the district court abused its discretion when it denied his motion to sever his trial from Charles "Larry" Bates trial. Larry Bates, his father, acted out in the courtroom and testified in such an incredible manner that his appearance in front of the jury caused prejudice to Chuck Bates.

Second, the district court abused its discretion in denying a motion in limine to exclude opinion testimony that simply failed to meet the Daubert standard for admissibility. This, with testimony that had no direct bearing as to Chuck Bates, was excessively cumulative and served to further prejudice the jury and denying him a fair trial.

In the event that this Court doesn't vacate the convictions, the 151 month sentence imposed, which included a forfeiture money judgment of $19,571,532.09, was both procedurally and substantively unreasonable. Indeed, the forfeiture was excessive, disproportionate, and a violation of the Eighth Amendment.

The district court and the appeals court erred in their interpretation of "substantial financial hardship" and applying the six level enhancement at U.S.S.G. 2B1.1(b)(2)(c). Over Chuck Bates objection, the government simply failed to establish that his offenses resulted in 25 or more people suffering substantial financial hardship. Sustaining the objection would have resulted in finding that Chuck Bates had a total offense level 31, criminal history Category I, and advisory guideline imprisonment range of 108 to 135 months. Incorrectly calculating his advisory imprisonment range makes the sentence procedurally unreasonable. Imposing a sentence exceeding the properly calculated range, when the district court varied downward at sentencing makes the 151 month sentence substantively unreasonable.

Finally, but importantly, the district court and the appeals court erred in overruling Chuck Bates' objection to a forfeiture money judgment for any proceeds he didn't receive. Joint and several liability for the forfeiture money judgment is improper in light of Honeycutt v. United States, __ U.S. __ 137 S.Ct. 1626 (2017).

This Court should vacate the sentence imposed and remand for resentencing.

FIRST ISSUE

The district court erred in applying joint and several liability and ordering Chuck Bates to forfeit $19,571,532.09 which is excessive and a violation of the Eighth Amendment. Subsequently the appeals court skirted the Honeycutt decision previously handed down by the Supreme Court creating a need for The Court's further review of joint and several liability in light of Honeycutt in order to clarify this issue for the benefit of both inferior courts and defendants.

LAW AND ARGUMENT

Chuck Bates objected to forfeiture of any proposed judgment for funds exceeding any amount he personally received, relying on Honeycutt v. United States, ___ U.S. ___ 137 S.Ct. 1626 (2017), (R.427, Chuck Bates Forfeiture Position, ID 2380-82; R.508, Chuck Bates Post Hearing Forfeiture Position, ID 8604-10; R. 588, Notice Regarding Forfeiture Amount, ID 10678-79). After considering both Chuck Bates' objections and the governments position, (R.483, U.S. Motion for Forfeiture, ID 7752-71; R.541, Government's Reply Brief on Forfeiture, ID 9952-65) the district court found that joint and several liability applied

; (R. 584, Order on Forfeiture Regarding Joint and Several Liability, ID 10664-72.) Ultimately the district court entered a forfeiture money judgment of $19,571,532.09 against Chuck Bates as proceeds paid to FAMC for unfulfilled orders, (R. 608, Order Granting Motion for Forfeiture ID 11053-74). There was no finding that he personally received the proceeds.

The district court erred in applying joint and several liability. While the Supreme Court addressed a money judgment under the drug forfeiture statutes in Honeycutt, supra, the same limitation prohibiting joint and several liability for forfeiture premised upon a fraud conviction applies, United States v. Fiumano, — Fed. Appx. —, 2018 WL 507171 (2d Cir. 2018); United States v. Carlyle, 712 Fed. Appx. 862 (11th Cir. 2017). Moreover it is an excessive fine and disproportionate to order forfeiture for any funds which Chuck Bates didn't receive. In this case $19,571,532.09 is 147 times the government's own claim of less than $134,000 in what the government deemed was the extent of Chuck Bates "unearned commissions". Essentially commissions paid on orders that remained partially or

wholly unfulfilled.
Accordingly, the forfeiture judgment entered against him violates the Eighth Amendment. The appeals court clearly skirts the Honeycutt decision placing scope on yet another subsection of forfeiture law while ignoring the decisions of the 2nd and 11th circuits in this matter. This again necessitates the Supreme Court's review of this issue.

SECOND ISSUE

The district court erred in applying and the appeals court erred in upholding the enhancement at U.S.S.G § 2B1.1(b)(2) because Chuck Bates offense did not result in substantial financial hardship to twenty five or more victims.

LAW AND ARGUMENT

Chuck Bates objected to the six point enhancement for causing "substantial financial hardship" to twenty-five or more victims pursuant to § 2B1.1(b)(2)(C), (R.480, Position Paper, 2, ID 7733-34; R. 512, Substantial Financial Hardship Memorandum, ID 8625-27), although he conceded the applicability of a two point enhancement because the offense involved more than ten victims. (R. 480, Position Paper, fn. 1, ID 7733).

Absent Sixth Circuit guidance the district court examined the 2015 amendment, definitions of the word "substantial", and decisions from other circuit's, finding that it was required "to evaluate the substantiality of the financial hardship [the] victims suffered" which involved "a measure of relativity". (R. 575, Amended Order re USSG Objections, ID 10364). United States v. Minhas, 850 F.3d 873, 877-78 (7th Cir. 2017).

See also, United States v. Poulson, 871 F.3d 261, 267-70 (3d Cir. 2017). In addressing Chuck Bates' objection, the district court relied upon trial testimony, victim impact statements, sentencing testimony, and "other evidence in the record" which it deemed "reliable and sufficiently specific to support evidence of substantial financial hardship under § 2B1.1(b)(2)". (R. 575, Amended Order re USSG Objections, ID 10363). The district court acknowledged the need to make a "victim specific inquiry as to the substantiality of each victims loss" basing the potential enhancement "to each defendant separately based on that defendants involvement with each victim who suffered a substantial financial hardship". (R. 575, Amended Order re USSG Objections, ID 10365). The district court concluded noting that it had "reviewed the evidence in the record" and found that Chuck Bates qualified for a six point enhancement. (R 575, Amended Order re USSG Objections, ID 10366-67). Contrary to the requirement it recognized, there was simply no expression of the relative harm any victim suffered in the conclusory finding that Chuck Bates caused substantial financial hardship to specific victims.

In ruling, the district court found that Chuck Bates' offense resulted in Sidney Balovich, Dan and Florence Binner, Marcus Bartell, Barbara Edwards, Barbara Heyduck, Homer McCabe, Anne King, Greg Klouda; Florine Krehbiel, Ronald Levine, Joan Linarski, Jeanette MacAdam, Dawn Metz, Daniel Offutt, Nadel Olive, Karen Rideout, Marilyn Richie, Scott Scheierman, Carolyn Stulken, Marcia Nadine and T. Thurman, Jones Wood, Leon Wooley, George Bradley, Perry Gilbert, Robert Warner, Janet Cook, Shirley Voss, Bryon Mendez Peraza, Ellen McBride, and Dale McMindes each suffered substantial financial hardship and enhanced his offense level six points pursuant to U.S.S.G. § 2B1.1(b)(2)(c). (R.659, TR., 9/5/17, ID 12116-17). The district court explained that it "didn't just accept a checkmark on a form" but examined "what those people actually said about the impact of the loss" and, based upon either their victim impact statements or testimony, that each suffered a substantial financial hardship within the meaning of

U.S.S.G. §2B1.1(b)(2)(c). (R.659, TR., 9/5/17, ID 12117). No further explanation was offered, and Chuck Bates' argument regarding the 16 victims the court previously mentioned as potentially suffering a substantial financial hardship at the joint sentencing hearing (R. 542, Chuck Bates' Post Joint Sentencing Position, ID 9976-92; R.641, TR., 8/3/17, ID 11618-19) went unaddressed. This is error because the record must reflect that a sentencing court considered a particular, non-frivolous argument for a lower sentence, whether it was accepted or not. ~~Wallace~~ United States v. Wallace, 597 F.3d 794, 803 (6th Cir. 2010).

The district court erred in applying the enhancement for several reasons. First, at the conclusion of an evidentiary hearing on his PSR objections, Judge Lipman stated she had identified fifteen victims she felt had suffered substantial financial hardship based upon testimony and the portion of the victim impact statements she had reviewed at that point, (R. 641, TR., 8/3/17, ID 11600-02, 11616-19), although she listed sixteen different names. (R. 641, TR., 8/3/17, ID 11619).

Chuck Bates maintained his objection, presenting his argument that the record did not contain evidence to support the enhancement for each victim the court listed as potentially suffering a substantial financial hardship individually. (R.542, Chuck Bates' Post Sentencing Position, ID 9976-92). Thereafter, the district court entered its amended order applying the enhancement, (R.575, Amended Order, ID 10361-67), and, at his final sentencing hearing, provided the names of thirty-two victims the district court found had suffered a substantial financial hardship as a result of Chuck Bates' offense. (R.659, TR., 9/5/17, ID 12116-17). Despite the commitment to make a "victim specific inquiry" no finding of the particular hardship nor a measure of its relativity was made. Chuck Bates' victim specific argument (R.542, Chuck Bates' Post Joint Sentencing Position, ID 9979-92) went un-addressed.

Next, while it is clearly entitled to rely on proof it deems credible without regard to its admissibility, including victim impact statements, (Fed. R. Crim. P. 32(i); U.S.S.G § 6A1.3; United

States v. Bolze, 444 Fed. Appx. 889, 891 (6th Cir 2012)); herein, Chuck Bates' objection mandated that the court not only resolve the factual dispute but rely strictly on "information [that] has sufficient indicia of reliability to support its probable accuracy". U.S.S.G. § 6A1.3(a); United States v. Brika, 487 F.3d 450, 457 (6th Cir 2007).

One error the district court made was to rely upon information contained in the victim impact statements challenged by Chuck Bates when the victim didn't testify. Absent any testimony it is impossible for the district court to conclude that the victim was reliable and, by extension, improper to reply upon the victim impact statement submitted since there was no basis for it to make the requisite finding of reliability. These statements are very different from, for instance, describing the emotional harm wrought from a violent crime. Interestingly, of the thirty-two victims the district court identified as supporting this enhancement for Chuck Bates, only Sidney Balouch, Marcus Bartell, Karen Rideout, T.E. Thurman, and George Bradley testified at trial. (R. 455, TR., 4/6/17, Rideout, ID 3477-3516; R.455-1, TR., 4/7/17, Bartels, ID 3798-3832, Balovich, ID 3877-3915; R.456, TR., 4/10/17; Thurman, ID 4196-4215; R457, TR., 4/11/17, Thurman, ID 4244-74; R.458, TR., 4/12/17, Wooley, ID 4621-45, Bradley, ID 4690-4730). In addition, T.E. Thurman testified about his mother, Marcia Nadine Thurman, Barbara Peraza-Santiago testified about her son, Brian Mendez-Peraza, and Jennifer Wooley testified about purchases by her husband, Leon. (R.459, TR., 4/13/17, Peraza-Santiago, ID 4782-4808). Mr. Bradley, Ms. Rideout, and Florine Krehbiel also testified at the evidentiary sentencing hearing. (R.461, TR., 8/3/17, Bradley, ID 11500-13, Krehbiel, ID 11528-43, Rideout, ID 11588-96).

Importantly, absent testimony from a victim, the mere fact that a victim impact statement submitted states that the individual suffered something he or she subjectively considered "substantial financial hardship" doesn't mean ~~they~~ that they suffered the type of harm Congress and the Sentencing Commission contemplated would result in a six point/level enhancement.

The guideline requires a relative assessment "much of [which] will turn on a victims financial circumstances". Minhas, supra, at 877. The record is barren regarding the financial circumstances of any of the victims. The government elected not to ask any of the witnesses it called at the evidentiary hearing in support of the enhancement (R. 641 TR., 8/3/17, ID 11446-597) about their financial circumstances including Krehbiel, Rideout, and Bradley, each a victim identified by the court as supporting the enhancement. The district court acknowledged it was required to measure the relative loss (R. 575, Amended Order, ID 10364) yet had no evidence about the percentage of net worth a victim lost as a result of the offenses from trial testimony, sentencing testimony, or the victim impact statements. In view of the Sentencing Commission and congressional intent in enacting U.S.S.G. § 2B1.1(b)(2)(C), the language of the guideline itself, and the requirement that the court make a relative finding about the financial hardship suffered, the lack of evidence regarding a victim's financial circumstances is fatal to the applicability of

the enhancement.
The district Courts relied strictly upon its review of the victim impact statements of 24 of the 32 victims it identified who didn't testify. Reliance upon an unexamined victim impact statement is even more problematic because each is a self assessment not subject to any cross-exam or other testing. While the district court stated it didn't merely rely upon a check mark but "What the people actually said about the impact of the loss" (R.659, TR., 9/5/17, ID 12117), the requisite relative evaluation required by the guideline is not met by an unexamined declatory statement that fails to address the loss in relative terms. "Whether a loss has resulted in a substantial hardship ... will, in most cases, be guaged relative to each victim. The same dollar harm to one victim may result in substantial financial hardship, while for another it may only be a minor hiccup". Minhas, supra, at 877. See also Poulson, supra, at 268-69.
Quite Simply, it was error for the district court to apply the substantial financial hardship enhancement by relying upon the victim

impact statements in a vacuum, rather than the crucible of the Sentencing Commission's intent that a sentencing court examine the relative impact a loss had on a victim and whether the loss rose to the level of "substantial financial hardship". This Court should vacate the sentence and remand for resentencing due to this error alone.

THIRD ISSUE

The district Court abused its discretion in denying the motion to sever Chuck Bates' trial from that of his father, Larry Bates.

LAW AND ARGUMENT

Chuck Bates' defense was severely prejudiced because he was required to present it in conjuction with Larry Bates' trial. Recognizing the prejudice he would suffer, Chuck Bates sought a severance pre-trial (R. 144, Joint Motion to Sever, ID 733-39; R. 154, Joint Reply to U.S. Response, ID 780-83) and, at each instance Larry Bates' actions caused him prejudice during trial, he renewed his motion for severance. The district court was both wrong and consistent in denying his motion to sever and each renewal thereof. (R. 178, Order Denying Pretrial, ID 949-51). Larry Bates' trial antics and testimony caused the denial of severance to be an abuse of discretion because Chuck Bates was denied a fair trial.

Chuck Bates acknowledges that he initially

Sought to sever his trial from Larry Bates' trial because he anticipated that Larry could provide exculpatory evidence. (R. 144, Joint Motion to Sever, ID 733-39; R. 154, Joint Reply to U.S. Response, ID 780-83). Further simply increasing the likelihood of Chuck's acquittal if he were tried separately from Larry's doesn't overcome the preference that co-defendants be tried together. Ross v. United States, 339 F.3d 483, 493 (6th Cir. 2003). The factual basis for Chuck Bates' right to a severance changed once the trial commenced. Before the week was concluded, Larry Bates' conduct in front of the jury had become so outrageous that just sitting next to him in the courtroom was prejudicial. (R. 455-1, TR., 4/7/17, ID 3793). Chuck Bates renewed his severance motion several times throughout the trial. (R. 455, TR., 4/6/17, ID 3638; R. 455-1, TR., 4/7/17, ID 3744-45; R. 460, TR., 4/20/17, ID 5467-68; R. 462, TR., 4/24/17, ID 5744; R. 462-1, TR., 4/25/17, ID 6203-05; R. 462-3, TR., 4/27/17, ID 6584; R. 473, TR., 4/28/17, ID 7399-404, 7488-96.). His ability to present a defense was severely handicapped and prejudiced by Larry.

The prejudice became too much to overcome when Larry Bates took the stand and spun a fantastic tale with little foundation in reality. His testimony was so derisive and nonsensical, cross examination was virtually worthless because the jury wouldn't believe anything. (R. 462-2, TR., 4/26/17, ID 6510-36; R. 462-3, TR., 4/27/17, ID 6545-755). Clearly, Chuck's attempt to distance himself from Larry while they were tried together fell on deaf ears, (R. 474, TR., 5/1/17, ID 7605-22); and his rights to due process and a fair trial were denied. The joint trial also enabled the jury to see and hear highly prejudicial evidence which didn't apply to Chuck such as photographs of Larry's home; his personal gains from FAMC and speculation with a brokerage account; (R453-1, TR., 4/4/17, ID 2981-95, Ex. 20-36; R. 464, TR., 4/21/17, ID 7125-28, 7187-89, 7251, 7290); and the Better Business Bureau complaints against the company which Larry alone examined and was authorized to address. (R. 455, TR., 4/6/17, ID, 3431-32; R. 464, TR., 4/21/17, ID 7298-315, Ex. 393-95).

The appeals court too fails to understand just how very prejudicial it was for Chuck Bates to be tried with Larry Bates, his employer, but also his father. The jury was unable to discern adequately between Larry Bates and the rest of the codefendants, instead lumping all of the defendants together due to familial relation versus individual actions. Even the appeals court demonstrates some similar prejudice in their decision, as example claiming Chuck Bates merely used a house on a tract of land purchased by Larry Bates. The record would clearly indicate that Chuck Bates and his wife built their home and had a mortgage on same. While the property was indeed contiguous to land owned by Larry Bates, the tenor of the appeals court decision would tend to prejudice the reader that Chuck Bates was conspiring for benefits from Larry Bates actions. This is in direct conflict with the facts at trial that Chuck Bates built his home on his property, but to the jury, and apparently to the appeals court, Chuck Bates is being found guilty on association rather than true merit.

The atmosphere of the trial after Larry Bates testimony was so prejudiced to Chuck Bates that his counsel advised him to withhold testifying in the expectation the district court would recognize the

impossibility for Chuck Bates to receive a fair trial anticipating a severance and new trial. Clearly this did not happen and Chuck Bates is still seeking a fair trial as of this petition.
The appeals court in their decision focuses on United States v. Breinig, 70 F.3d 850 (6th Cir. 1995). The court states the defenses in Chuck Bates case "are less antagonistic than the defenses at issue in United States v. Breinig." (17-6263, Doc. 45-2, ID 23) However, Breinig actually underscores the issues at hand. The operational control and decisions of Larry Bates and the company FAMC, are just that; his decisions. The employees of the company are just that; employees. However in this case the codefendants share the same last name, work together and some live near one another. Despite the circumstantial nature of the evidence, as noted by the appeals court during oral argument, the jury could not fairly differentiate the individuals in this case and convicted on association instead of truth of intent. As such Chuck Bates did not receive a fair trial. Being tried with his father in essence created a "conspiracy" the facts simply do not prove. Chuck Bates appealed for a new trial to prove his innocence.

The district court erred in failing to sever Chuck Bates trial as it enabled the government to introduce evidence that was unduly prejudicial, misleading, cumulative and confusing to the jury. This court should vacate the convictions and remand for a new trial.

REASONS FOR GRANTING THE PETITON

In accordance with Rule 10 of this Court, the petitioner would submit that issues in this petition indeed rise to the level of meeting the standards of Rule 10 (a) and (c). Relevant decisions by the United States Court of Appeals for the Sixth Circuit clearly conflict with those of the Second and Eleventh Circuits, as well as coming into direct conflict with a decision of this Court.

In addition the appeals court has decided on an issue as to the United States Sentencing Guidelines that, frankly, requires the review of this Court as to the understanding of the intent of Congress and the Sentencing Commission of the statute in question as it affects countless defendants with regard to sentence enhancements and the lower courts decisions would appear to conflict with the statute in question.

The appeals court decisions would appear to abrogate the Founder's intentions as to the plain language of the Eighth Amendment.

Specifically at issue the Sixth Circuit has ruled on joint and several liability and assigned a huge forfeiture judgment exceeding 147 times the claimed gain from the offense. This court previously ruled in Honeycutt that an individual should be limited to the individual's actual gain. Instead of applying the law as decided by the Supreme Court, the Sixth Circuit has attempted to parse words and subsections of code. In doing so it has again raised the spectre of unfair punishment on a matter This Court had thought to have settled requiring a review by the Court. The basic tenet of fairness to a defendant to not be unduly punished or to be punished jointly and severally for gains he/she did not receive is at issue. This Court's review of the issue is essential to maintain order and consistency among the lower courts.

The lower courts, without previous guidance on a statutory provision of the United States Sentencing Guidelines, has misinterpreted the seemingly clear intent of Congress and the Sentencing Commission. At issue is an enhancement that requires hard evidence and witness participation to fairly and adequately determine relative "substantial financial hardship."

In essence, Congress and the Sentencing Commission's intent in the statute language was to merit proper punishment based on facts but at the same time allow for a defendant or counsel to inquire directly as to the substantiation of the claims of relative "substantial financial hardship" to a victim as the result of a defendant's actions. As such it would appear the lower courts erred in applying the enhancement by relying upon victim impact statements in a vacuum, rather than the crucible of the Sentencing Commission's intent that a sentencing court examine the relative impact a loss had on a victim and whether that loss rose to the level of "substantial financial hardship". Without the direct testimony from a victim, a mere statement claiming the individual suffered something he or she subjectively considered "substantial financial hardship" does not mean they suffered the type of harm Congress and the Sentencing Commission contemplated would result in a six point enhancement. This Courts review is needed to properly aid in the fulfillment of the statute's intent to protect victims but equally to protect defendants from over sentencing as a six point enhancement adds several years in each circumstance and again brings to fore the issue of excessive punishment that unduly harms the individual defendant. The misintepretation of this statute in just one case of four defendants has added over a decade in years of incarceration and hundreds of thousands of dollars in releted costs. The Court's guidance is needed to clarify the intent of the statute and the proper application of law.

Finally, while a single case may not seem to rise to such a level as to merit the Court's review, the bedrock of our Judicial system must always be the faith of the people it was designed to serve. One of the most basic principles is the absolute belief the individual will receive a fair and proper trial. While the Court has ruled as to the merits necessary for severance of trial, the lower Courts have much discretion in the matter. However, this case affects not just the petitioner or even merely his co defendants, but literally thousands of cases where the trial of close family members or even work associates creates an atmosphere truly debilitating to the proper defense of the individual. Simply, the individual, in this occassion, did not get an opportunity for a fair trial. The government often battles against severance, particularly in trials where it has charged individuals under conspiracy laws. It is one thing to try multiple defendants in such circumstances of loose association, but to refuse to sever a trial of close family members can actually create "conspiracy" in the mind of the jury and at that point we fail to protect the individual defendant's bedrock due process of a fair trial. When this occurs we then leave the law, and prosecute on guilt by association instead of individual actions. This then casts aspersions on our judicial system as one-sided, heavy-handed, a place impossible to gain a fair hearing; undermining the very basis for this necessary branch of government.

Clearly not all such arguments win the day, but the petitioner believes the Court will find just such an issue in this case and remand for a new and fair trial. The faith of at leest one citizen/defendant will be bolstered knowing every person can count on their fair day in court. As it stands, too many fear such mistreatment and take plea agreements instead of going to trial. This was not the intent of the Founders. The individual's expectation and the Constitution's promise of a fair trial are paramount to the efficacy of the judicial system. It is far more important than the arguments of "efficiency of judicial resources." This is especially true when innocent men and women are imprisoned, creating a double burden in the costs of incarceration and the loss of productive taxpayers; not to mention the familial costs to our society.

All of these issues presented, the petitioner prays for relief that this petition be granted for not only his benefit, but also for the tens of thousands of others who need the Court's review of these issues; to settle the forfeiture issue at hand, properly address Congress' and the Sentencing Commission's intent and to make clear the individual's rights to fair due process remain unabridged.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

CHARLES E. BATES

Date: December, 5th, 2019