No. 19-6922

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES EDWARD BATES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITIONER'S RESPONSE TO THE UNITED STATES BRIEF IN OPPOSITION

Reply Brief

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(Pro Se)

If it please this Court the petitioner is responding to clarify points and questions raised by the governments brief in opposition. I am a layman and not a lawyer and due to the current pandemic access to the most basic legal materials is currently unavailable to me. That said I hope the Court will allow me a bit of leeway as I attempt to lay out the issues in more laymans terms to aid the Court in this matter.

Allow me to respond briefly to the governments opposition of the four questions originally raised in the petition for certiorari.

1). Joint & Several Liability in Forfeiture
2.) Forfeiture that is excessive in violation of the Eighth Amendment
3) District Court abuse of discretion as to severance of trials
4) District court abuse of discretion as to the proper vetting and determination of "substantial financial harm" as it relates to the intent of Congress and the United States Sentencing Commission guidelines and resulting in a six point sentencing enhancement

The government's brief in opposition states it's first of several factual errors in it's opening statement, Clearly quoting from filings in a related civil action. In fairness the errors are truly as a result of copying a false narrative promulgated by attorneys who had and have a vested interest in personal financial gain to such a degree as to mislead and consistently give facts and the truth short shrift. That said this is a perfect example of that narrative leading the reader, and ultimately a jury, to wrongfully accuse and convict the petitioner. Specifically the governments brief states "Chuck" Bates served as the company's "second-in-command." This is absolutely in error as the petitioner was an employee of a corporation While indeed his employer was a corporation owned and Controlled by his father, Chuck Bates was never an owner, shareholder, director, or executive of First American Monetary Consultants.

Secondly the government's brief would attempt to give authority over monies of the company to the petitioner when the record would clearly demonstrate the petitioner had no access or authority to access the financials or monies deposited with the company

Joint & Several Liability in Forfeiture

While there are other fallacies in the brief these two alone point to and further bolster the petitioners argument as to the applicability of Honeycutt, (18 U.S.C. 981 (a) (1) (D)) as the petitioner did not jointly own a criminal enterprise or work to operate any known criminal enterprise. Even if the Court were to consider commissions paid to the petitioner by his employer on orders that ultimately were not completed, (noted in the brief as "unearned commissions" another term of art borrowed from the civil case) the amount of said commissions total less than $134,000.00. The district court ignored this Court's decision in Honeycutt and subsequently the Sixth Circuit effectually dodged this Court's decision as well. The forfeiture ordered was over $19.5 million, 147 times any perceived, "unearned" gain.

While the governments brief outlines some argument as to applicability it also falls into assumptions as to the petitioners role due to its reliance on a false narrative (Something addressed in the issue of severance.) Still the governments brief does call into question the decision of the Sixth Circuit and would appear to agree with the petitioner that this issue is far from clear as evidenced by many conflicting Circuit decisions on similar matters. As such it is important and necessary for the Court to bring some final clarity on these issues of forfeiture and joint and several liability.

The governments brief uses the example of a drug dealer and distributor. The petitioner was not a drug dealer but in the employ of a corporation marketing and selling legitimate and legal products for nearly two decades. Even at the end of petitioners tenure with First American Monetary Consultants 100% of the IRA clients and over 90% of the physical precious metals customers had their orders completely fulfilled as noted in the trial record. This in itself should add gravity to the petitioners claim that there was no intent to conspire to defraud or to take any monies which he did not earn. Further the petitioner himself was left with his own unfulfilled precious metals order as well as unpaid wages and commissions exceeding the so-called "unearned commissions" from orders the company did not ultimately fulfill.

So again Honeycutt should apply in this case as the petitioner was not an owner, did not conspire to defraud was not aware of the company's financials and contrary to the governments assertion did not have access to "the proceeds generated".

Court testimony from both the governments expert and the district Court appointed receiver at trial, clearly indicate the compartmentalized nature of the business and that the petitioner, never in his tenure, had access or authority to access any financials or monies the company controlled.

Forfeiture Excessive and in violation of the Eighth Amendment

Very briefly the forfeiture judgment handed down by the district court is excessive on it's face, and the use of conspiracy is so broad as to literally be used to entangle virtually any citizen. That aside, the only monies directly attributable to the petitioner in the record are the alleged "unearned commissions" amounting to less than $134,000^{00}. The forfeiture ordered exceeded 147 times that amount of over $19,560,000^{00}. An amount the testimony and facts do not demonstrate the petitioner ever had access to. While the petitioner certainly agrees that the company for which he was employed ultimately failed to completely deliver to some customers, it was not due to the actions of the petitioner who acted in good faith. As previously noted the petitioner failed to receive his own precious metals order. He acted in good faith with no intention to defraud any customer of the company.

Common sense would dictate that a long history of completed customer orders, working for a company that at one point, not too long before the failure of the company, held an "A+" rating with the Better Business Bureau and the petitioners livelihood dependent upon satisfied customers and repeat business serve to back up his contention and the facts, that he had no intent or inducement to defraud or reason to question his faith in his employer. While the petitioner would clearly have preferred all customers orders had been fulfilled, his own as well, he did not gain $19,000,000 + dollars and it is an abuse to place a judgment of 147 times any gain he may have personally earned in good faith.

District Courts abuse of discretion as to severance

All of the questions in the petitioner's writ for certiorari boil down to severance being the crux of all of them. Had the district court allowed Chuck Bates a fair and separate trial it is reasonable to believe the government's case may very well have failed. Absent multiple defendants who shared the same ~~[illegible]~~ last name the government's contention of a grand conspiracy would have been difficult to prove and the abuse of discretion by the district court allowed the creation of a "conspiracy"

in the minds of the jurors. Further, subsequent testimony regarding the company's principal and matters that solely applied to the principal only served to solidify a false narrative based on, as the Sixth Circuit noted, a lot of circumstantial evidence. The petitioner would note other employees of the company, including those who received a greater amount of "unearned commissions" than he is said to have received as well as an office manager who was found (by the efforts of the principal's own investigation) to literally have stolen hundreds of thousands of dollars of customer's coins, were not included in the governments case because it would also undermine their narrative of some sort of "family conspiracy".
Testimony as to the principal's finances, assets, and handling of company funds was not directly germane to the petitioner or other defendents and only further served to injure the petitioner's ability to receive an impartial and fair trial. Additional testimony directed at co-defendants added further burden on a jury that could not fairly separate the actions of individuals at the trial.
A fair trial is the bedrock of a true system of justice and an absolute right and necessity to maintain the public faith in the judicial system as a whole.

The petitioner Was denied a fair trial and as a result denied due process. His own Court appointed attorney advised him to withhold testifying as the testimony of the principal of the company had by that point so tainted and jaded the jury as to the attorney instructed the petitioner to anticipate a new trial and an opportunity at that point to set the record straight in a fair setting. The Sixth Circuit decision took that opportunity away.

The petitioner hopes to have the opportunity to clear his name and regain his liberty. All defendants in this case filed multiple motions before and during the trial for severance and each and every time the district court abused it's discretion each step of the way until a fair trial was unobtainable. An error this Court can prayerfully correct.

Indeed the jury was ~~prevented~~ prevented "from making a reliable judgment about guilt or innocence" in this case as the testimony that did not pertain to the petitioner was overly prejudicial; specifically so in light of the familial relationship of the defendants. The jury essentially inferred guilt by association.

The petitioner contends this was a direct affront to the fairness of a trial and due process as outlined by the founder's and the United States Constitution.

District Courts abuse of discretion as to the proper vetting and determination of "substantial financial hardship" as it relates to the intent of Congress and the Sentencing Commission guidelines resulting in a six point sentencing enhancement.

As to the abuse of discretion of the district court in application of the six point enhancement for "substantial financial hardship", the petitioner has never argued with the fact that some customers of the Company with which he was employed failed to receive their complete orders and were certainly negatively impacted financially. At issue is the district court erred in the application of the enhancement as it failed to adequately determine the true effect to 25 or more victims as outlined by the United States Sentencing Commission and what would appear to be the intent of the Commission and Congress. The district court did not have testimony for 25 victims. Actually fewer than eight testified at trial and the government did not examine them as to the specific hardship they may have endured. The additional victims the district court chose in applying the six point enhancement were not brought to testify either at trial or at sentencing. disallowing examination or cross examination of the witness/victim to determine the true harm suffered. The government contends the district court relied on testimony, and victim impact statements. Those statements were a virtual multiple choice form prepared by the court and no supporting documentation as to the direct financial hardship was supplied. Certainly the petitioner and his counsel were denied the opportunity to properly examine the claims and it would appear this action of the district court does not meet the standards or the intent of the sentencing statute.

This is a very important matter as this enhancement adds years to a given sentence. As such it is imperative that documentation and examination to support or disprove the claims as to the relative hardship incurred. Certainly more is required than a mere multiple choice style form provided by the district court. It is the petitioner's belief this Court will find such dependence on a simple form and the denial of the petitioner and counsel to fairly cross examine the claims of a victim, abuses due process and places defendants in great jeopardy as again a six point enhancement is severe by it's nature and effect.

The petitioner thanks the Court for bearing with his layman's abilities in this matter. These are not some hopeful legal theories or arguments. The petitioner realizes it is the job of the government to "win" arguments against such petitions, but this is not notches for a "score" column. For the petitioner Chuck Bates, and all others similarly effected, this is about liberty, freedom, and due process.

The bottom line is the petitioner has had his rights to due process abused resulting in an innocent person being wrongfully convicted and unduly sentenced. Further the petitioner would offer he has been excessively penalized in violation of the Eighth Amendment and as a result essentially relegated to indentured servitude for the rest of his life.

Despite these abuses the petitioner still holds hope and believes these errors will be corrected and his freedom and good name restored.

Conclusion

The petitioner's request for a writ of certiorari should be approved.

Respectfully submitted,

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