

NO. _____

In The
Supreme Court of the United States

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JERRY JABBARI RHODES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The bedrock principle of the American justice system is the Citizen's right to a trial by jury. For decades, in the federal system, that right has been a mere formality. Because of the lower courts' unconditional reliance on this Court's decision in *Watts*, a not guilty in federal court is often just advisory. It has no power to stop a judge from sentencing someone for conduct for which they were acquitted.

Petitioner Jerry Rhodes is serving a sentence for conduct he was found not guilty of. He asks this Court:

1. Is it reasonable and constitutional to sentence a defendant on facts for which a jury found the same defendant not guilty?

LIST OF PARTIES

Petitioner Jerry Rhodes was the Defendant and Appellant below.

The United States of America was the Plaintiff and Appellee below.

CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual and there are no corporate interests to disclose.

DIRECTLY RELATED PROCEEDINGS

The following proceedings are directly related to this case:

United States v. Jerry Rhodes, 3:14-607-JFA, final judgment entered in the United States District Court for the District of South Carolina on March 14, 2017

United States v. Jerry Rhodes, 17-4162, opinion of the United States Court of Appeals for the Fourth Circuit vacating Petitioner's sentence and remanding for re-sentencing on June 7, 2018

United States v. Jerry Rhodes, 3:14-607-JFA, amended final judgment entered in the United States District Court for the District of South Carolina on October 4, 2018 (App. p. 6a)

United States v. Jerry Rhodes, 18-4733, opinion of the United States Court of Appeals for the Fourth Circuit affirming Petitioner's sentence on October 8, 2019 (App. p. 1a)

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OPINIONS BELOW

The Fourth Circuit issued an unpublished opinion in *United States v. Rhodes*, 2019 U.S. App. LEXIS 30169 (4th Cir. 2019) (App. p. 1a). Rhodes argued that his sentence was both unreasonable because it violated the Due Process Clause and a violation of the Double Jeopardy Clause. The Fourth Circuit rejected both arguments because “they were squarely foreclosed by the Supreme Court’s … precedent.” *Id.* at *3 (App. p. 3a-4a).

STATEMENT OF JURISDICTION

The Fourth Circuit issued an opinion on October 8, 2019 (App. p. 1a-4a). 28 U.S.C. § 1254(1) authorizes jurisdiction in this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The question presented involves the Double Jeopardy Clause and the Due Process Clause of the Fifth Amendment to the United States Constitution which states:

“No person shall … be subject for the same offence to be twice put in jeopardy of life or limb … nor be deprived of life, liberty, or property, without due process of law….”

The Fifth Amendment is applicable to the States by the Fourteenth Amendment.

STATEMENT OF THE CASE

Petitioner Jerry Rhodes was indicted for conspiracy to possess with intent to distribute 500 grams or more of cocaine and 280 grams or more of crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and 846. Based on his prior record, he faced a mandatory life sentence if convicted on all charges.

The jury did not believe all the Government's evidence. They believed some of it. The jury found a conspiracy existed as alleged by the Government, but that Rhodes was only responsible for a "measurable quantity" of cocaine and crack cocaine. The practical effect of that verdict was an acquittal on 500 grams or more of cocaine and 28 grams or more of crack cocaine. The district court deemed Rhodes a career offender and sentenced him to 244 months. *United States v. Rhodes*, 736 Fed. Appx. 375, 376 (4th Cir. 2018).

In an unpublished opinion prior to the re-sentencing that triggered this appeal, the Fourth Circuit held the district court erred and vacated his sentence, ordering a re-sentencing without the career offender designation. *Id.* at 380-81. At that re-sentencing, Rhodes argued he could only be sentenced on conduct for which the jury convicted him. The district court disagreed and sentenced him to 205 months, largely on conduct for which the jury found him not guilty.

Rhodes' sentence was unreasonable because it conflicted with the jury's verdict. This argument is founded in the Due Process Clause, as sentencing on acquitted conduct essentially makes a jury verdict meaningless. Rhodes' sentence also violated the Double Jeopardy Clause, as he was being sentenced for conduct of which he had already been found not guilty.

The Fourth Circuit rejected both arguments, quoting this Court's decision in *United States v. Watts*: "a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as that

conduct has been proved by a preponderance of evidence.” *United States v. Watts*, 519 U.S. 148, 157 (1997).

In other words, being found not guilty in federal court means nothing in the face of the Government’s charging decisions and the district court’s opinion on the evidence under an extremely low burden of proof.

REASONS FOR GRANTING THE PETITION

1. Is it reasonable and constitutional to sentence a defendant on facts for which a jury found the same defendant not guilty?

The decision below was based on law this Court has rejected

Both the district court and the court of appeals in this case relied on *Watts*, which is the primary case from this Court addressing the use of acquitted conduct at sentencing. To reach its holding, this Court had to water down the concept of an acquittal by holding it “does not prove that the defendant is innocent; it merely proves the existence of a reasonable doubt as to his guilt.” *Watts*, 519 U.S. at 155 (quoting *United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 361 (1984)).

The language from this Court in *Watts* rejects the presumption of innocence:

In *Putra*, the jury simply found that the prosecution had not proved the defendant’s complicity in the May 9 sale beyond a reasonable doubt. The acquittal sheds no light on whether a preponderance of the evidence established Putra’s participation in that transaction. Likewise, in *Watts*, the jury acquitted the defendant of using or carrying a firearm during or in relation to the drug offense. That verdict does not preclude a finding by a preponderance of the evidence that the defendant did, in fact, use or carry such a weapon, much less that he simply possessed the weapon in connection with a drug offense.

United States v. Watts, 519 U.S. 148, 157, 117 S. Ct. 633, 638 (1997). Though the jury in both cited cases found the respective defendants not guilty of the allegations against them, this Court found that just meant the allegations were not proven. It held there was nothing to stop the Court from finding the allegations were proven. The jury's verdict was rendered advisory.

If a person is deemed innocent up to and until they are found guilty by a jury, it stands to reason they remain innocent if they are never found guilty by that jury. *Portuondo v. Agard*, 529 U.S. 61, 76 (2000) (Stevens, J. concurring)(noting that the Sixth Amendment “reflects respect for the defendant’s individual dignity and reinforces the presumption of innocence that survives until a guilty verdict is returned.”).

Cases from this Court, both old and new, counsel that *Watts* should be overruled. Over a century ago, this Court recognized the presumption of innocence was a foundation of American criminal law. *Coffin v. United States*, 156 U.S. 432, 453 (1895). The right to a fair trial is a fundamental liberty and the presumption of innocence is a basic component of that fair trial. *Estelle v. Williams*, 425 U.S. 501, 503 (1976).

This Court has warned against the dangers of weakening the power of the jury trial. “To implement the presumption [of innocence], courts must be alert to factors that may undermine the fairness of the factfinding process.” *Id.* “In the administration of criminal justice, courts must carefully guard against dilution of the

principle that guilt is to be established by probative evidence and beyond a reasonable doubt.” *Id.* (quoting *In re Winship*, 397 U.S. 358, 364 (1970)).

Two recent cases from this Court have continued the reasoning of those historic opinions. *Nelson v. Colorado* reaffirmed the foundation of American criminal law was the presumption of innocence. *Nelson v. Colorado*, 137 S. Ct. 1249, 1255-56 (2017). A person who is not found guilty of a crime cannot be punished for that crime. *Id.* at 1255, n.8. The presumption of innocence can only be stripped by a guilty verdict.

The opening line of the recent opinion in *United States v. Haymond* is clear: “[o]nly a jury, acting on proof beyond a reasonable doubt, may take a person’s liberty.” *United States v. Haymond*, 139 S. Ct. 2369, 2373 (2019). The language is powerful but, unfortunately, wrong. A jury is not the only entity that can take liberty. In fact, under the current sentencing regime a jury cannot get in the way of taking liberty. Its verdict means as much as a prosecutor and a district court want it to mean (or do not want it to mean).

Haymond recognized the jury’s supervisory function over the criminal justice system. That function is grounded in the jury’s ability to limit judicial authority to punish an offender. *Id.* at 2376. Though *Haymond* placed great weight on that supervisory power, it has little application in the current federal sentencing regime. If a jury verdict can be disregarded at sentencing, it hardly seems accurate to claim that verdict has any ability to limit punishment.

In the Court of Appeals and the district court the Government relied on the argument that Rhodes' statutory punishment was limited by the jury verdict. But it cannot say the *actual* punishment was limited in any real way by the jury.

Watts is a departure from the Court's historical respect for the jury trial. It is a perfect example of why *stare decisis* cannot be an "inexorable command," and is "at its weakest when [the Court] interprets the Constitution..." *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1499 (2019). Its reasoning is not in line with the Court's past or present understanding of the jury system. It is inconsistent with most decisions addressing the importance of the presumption of innocence and the right to a trial by jury.

In Apprendi v. New Jersey, this Court held that due process requires sentencing to be based on what a jury finds, not what a judge decides. *Apprendi v. New Jersey*, 530 U.S. 466 (2000). While that holding specifically addressed statutory maximums, it should apply to sentencing in general. The specificity of the guidelines and the wide range of statutory penalties in federal law mean that the ultimate driver of a sentence will be the specific conduct underlying a conviction. Taking the jury out of that equation violates the process this Court has long held is due a defendant at trial.

Watts is an outlier in a long line of cases respecting the jury system and its accompanying presumption of innocence. It should be overruled.

Why this Court should grant certiorari

Flowery language about the power of a jury and the honor of the American criminal justice system is only worth its practical effect in a courtroom. The jury clearly rejected the vast majority of the evidence and testimony presented by the Government against Rhodes. Yet every sentencing argument he made in an attempt to key his sentence to the activity of which the jury found him guilty was met with the idea that as long as the judge thought he more likely than not did it, he was sentenced almost as though he had pled guilty.

In fact, he may have been better off pleading guilty. He would have been able to negotiate facts with the prosecutor. Instead the Government took its failed case, repackaged it with the preponderance of the evidence burden, and did in front of the district court what it could not do in front of the jury; hold Rhodes accountable for everything it alleged he did.

The fact pattern in this case make this a particularly concerning use of acquitted conduct at sentencing. Rhodes has maintained throughout his case that he was a drug user, not a dealer as alleged by the Government. This creates a trap for a defendant asserting his constitutional right to a trial by jury.

A defendant who has some minor involvement in a drug conspiracy cannot admit he was a major player in that same conspiracy. He is then stuck being sentenced for weight he never dealt with. But as cooperating witnesses smell a trial, they start cooperating in earnest. The same defendant is in danger if he goes to trial and truthfully asserts his minor role in the drug world; any admission likely results

in a guilty verdict. At that point, the Government's entire allegations are in front of the district court at sentencing with a low burden of proof. The defendant is back in danger of being sentenced for weight he never dealt with.

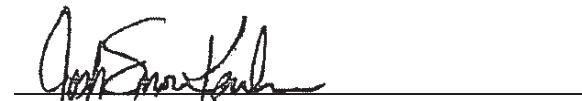
In this scenario, the prosecutor's charging decisions, and subjective beliefs, become far more important than a jury verdict. Even after a not guilty, if the prosecutor believes his witnesses, he can simply take another shot at the defendant. But under the preponderance of evidence standard he is far more likely to get a conviction.

The Circuit have been allowing sentencing on acquitted conduct without question since the *Watts* opinion. Only this Court can overturn one of its own decisions, so only this Court can put a stop to sentencing on acquitted conduct, which is inconsistent with the legal system's long history of honoring the presumption of innocence.

CONCLUSION

Rhodes respectfully requests this Court grant the petition, vacate the decision of the Fourth Circuit, and remand this matter with instructions to sentence Rhodes on only the conduct for which the jury found him guilty, consistent with both this Court's precedent, the United States Constitution, and the goals of the criminal justice system.

Respectfully submitted,



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