No. 19-7364

THE UNITED STATES SUPREME COURT

ORIGINAL

ERNEST WILIAM SINGLETON

Petitioner

VS

UNITED STATES OF AMERICA

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURTOF APPEALS FOR THE

SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

For:

ERNEST WILLIAM SINGLETON

REG. NO. 16051-032

F.C.I ELKTON

P.O. BOX 10

LISBON, OH 44432

QUESTIONS PRESENTED

I

WHEN A JURY FOUND SINGLETON GUILTY OF COUNT 10 OF THE IMDICTMENT, WHICH ALLEGED THAT HE DISTRIBUTED "ULTRAM"; HOW CAN IT BE DETERMINED THAT THE JURY DID NOT RELY ON "ULTRAM" IN FINDING HIM GUILTY, OF MONEY LAUNDERING THE PROCEEDS FROM DISTRIBUITING ULTRAM, OXYCODONE, AND DIAZEPAM WHEN A GENERAL VERDICT FORM WAS USED? AFTER TRIAL, ULTRAM WAS DETERMINED NOT TO BE ON THE FEDERAL DRUG SCHEDULES AND THEREFORE NOT A VIOLATION OF FEDERAL CODES.

II

DID THE GOVERNMENT VIOLATE BRADY V. MARYLAND WHEN THEY REFUSED TO RELEASE 34 C.I. DEBRIEFING VIDEOS, WHICH WOULD HAVE SUPPORTED SINGLETON'S THOERY OF DEFENSE, I.E., THAT HE WAS OPERATING A LEGITIMATE MEDICAL PAIN CLINIC?

III

DID THE PETITIONER RECEIVE INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN COUNSEL FAILED TO OBTAIN COPIES OF THE COMPUTER HARD-DRIVES, WHICH CONTAINED SURVEILLANCE FOOTAGE THAT WOULD HAVE SUPPORTED SINGLETON'S THEORY OF DEFENSE AND DISPROVED THE GOVERNMENT'S THEORY OF PROSECUTION?

LIST OF PARTIES

PETITIONER

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RESPONDENT

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U.S. v. Ernest William Singleton 626 Fed. Appx. 583 (6th Cir. 2015)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5TH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

6TH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

APPLICABLE STATUTES

2255. FEDERAL CUSTODY; REMEDIES ON MOTION ATTACKING SENTENCE

(a) A prisoner in custody under sentence of a court established by act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto.

If the court finds that the judgement was rendered without jurisdiction, or that the sentence was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgement vulnerable to collateral attack, the court shall vacate and set the judgement aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1- year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of--

(1) the date on which the judgement of conviction becomes final;

(2) the date on which the impediment to making a motion created by government action in Violation of the Constitution or laws of the United States is removed, if the movant was Prevented from making a motion by such government action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act [21 USCS 848 2244] , in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 [28 USCS 2244] by a panel of the appropriate court of appeals to contain--

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

JURISDICTION

The sixth circuit court of appeals entered an order denying Singleton a certificate of appealability on August 14, 2019. Singleton then went on to file a timely petition for panel rehearing, which was subsequently denied on October 18, 2019. As such the deadline for filing a petition for writ of certiorari is January 16, 2020. Furthermore, where Singleton is incarcerated said petition is considered timely filed when it's deposited in the institution's internal mail system.

Statutory jurisdiction to review the instant matter rests with this court pursuant to 28 U.S.C. 1254 entitled "Court of Appeals; certiorari; Certified Question."

STATEMENT OF THE CASE

On March 7, 2013 Singleton was charged with a superseding indictment which contained 23 counts, which included distribution of Ultram, Diazepam, and Oxycodone, with associated banking and money laundering counts.

Prior to Singleton's trial, which took place between June 4, 2013 through June 20, 2013, the government moved to dismiss count #14, and #16. At trial the jury convicted Singleton on all counts presented to them.

After trial, but before sentencing, it was discovered that the object of count 10, "Ultram" or "Tramadol" was not on the Title 21 drug schedules. As such, its distribution was not against the law. This resulted in count 10 being "legally inadequate" to sustain a conviction and it was subsequently set aside by the district court prior to sentencing.

On habeas review (title 28 U.S.C. 2255) Singleton raised a claim alleging that because Ultram was found to be "legally inadequate" to sustain a conviction, the banking and money laundering counts (counts 11-23), which also had Ultram as an object, were also flawed and as a result he was prejudiced thereby.

Singleton also argued that he was prejudiced when the government violated Brady v. Maryland when they withheld exculpatory evidence in the form of 34 debriefings videos taken by investigating officers of the confidential informants used by those same officers.

Singleton also argued that counsel was ineffective when he failed to move for the production of security footage that was housed on computer hard drives, which would have supported Singleton's theory of defense and disproved the government's. The government seized said hard drives during the execution of a search warrant, and thus they were not available to Singleton during trial.

The district court summarily denied Singleton's 2255 petition without an evidentiary hearing.

I

WHEN A JURY FOUND SINGLETON GUILTY OF COUNT 10 OF THE INDICTMENT, WHICH ALLEGED THAT HE DISTRIBUTED "ULTRAM" HOW CAN IT BE DETERMINED THAT THE JURY DID NOT RELY ON "ULTRAM" IN FINDING HIM GUILTY, OF MONEY LAUNDERING THE PROCEEDS FROM DISTRIBUTING ULTRAM, OXYCODONE, AND DIAZEPAM. WHEN A GENERAL VERDICT FORM WAS USED? AFTER TRIAL ULTRAM WAS DETERMINED NOT BE ON THE FEDERAL DRUG SCHEDULES AND THEREFORE NOT A VIOLATION OF FEDERAL CODES.

At bar, Singleton was convicted of distribution of Ultram, in count 10, subsequently it was discovered that Ultram was not listed in the title 21 drug schedule as being a controlled substance. As a result, it was not "legally adequate" to support a conviction. Unfortunately, the government also listed Ultram as one object, in a multiple object general verdict form in connection with counts 11, 12, 13, 15, 17, 18, 19, 21, 22, and 23. Its inclusion prejudiced Singleton.

The district court's decision denying Singleton's claim was affirmed by the 6th circuit court appeals, holding:

> "The district court's adoption of the magistrate judge's conclusion
> That the jury's verdict rested on a valid legal theory....
> In reaching that conclusion, the magistrate judge noted that
> 'the jury convicted Singleton on counts 1, 3, 4, 5, 6, 7, 8, and 9
> indisputable demonstrating that it found the involvement of
> Oxycodone and/or Diazepam not solely Ultram in the conspirator
> and other criminality.'"

In affirming the district court, the 6th circuit caused a split with the 10th circuit.[1] In dealing with cases with a "legally inadequate theory" and which also runs contrary to this court's binding precedent on it as well.[2] Where they applied a "Sufficiency of the evidence test" as opposed to a "harmless error review."

As this court clearly outlined "in undertaking a harmless-error analysis 'it is not the reviewing court's function to determine guilt or innocence. Nor is it to speculate upon probable reconviction and decide according to how the speculation comes out. 'Thus 'the inquiry cannot be merely whether there was enough [evidence] to support the result'. Rather the proper question is 'Whether the error itself had a substantial influence. If so, or if one is left in grave doubt, the conviction cannot stand.''' (Internal citations omitted)[3]

At bar, the district courts analysis "inquired whether there was enough evidence to support the result", (I.E. "The jury convicted Singleton on Counts 1, 3, 4, 5, 6, 7, 8, and 9 demonstrating that it found the involvement of Oxycodone and Diazepam") not, "whether the error itself had a substantial influence [on the verdict]."

This court in, Skilling v. United States (Supra) address this issue. In Skilling this court recognized that "Any juror who voted for conviction on the underlining offense would have found the defendant guilty of the conspiracy offense." Id 664

The same logic is persuasive at bar. In that, any juror who found Singleton guilty of Ultram in count 10, would have had to find Singleton guilty, on count 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 which contained Ultram as one of the objects.

Furthermore, reversal is necessary where, as the jury's findings now stand Singleton stands convicted of money laundering and other banking crimes for distribution of a substance that did not appear on the Title 21 drug schedules (I.E. Ultram). Singleton asserts that his criminal record should reflect his convictions accurately.

This court has held in a harmless-error review "if an error had a substantial influence on [the verdict] or if the record is so evenly balanced that a conscientious judge is in grave doubt as to whether it has such an effect the conviction must be reversed."[4]

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[1] [1] United States v. Davis 750 F 3d 1186 (10th Cir. 2014)

[2] Hedgpeth v. Warden 555 U.S. 57, 172 L. Ed2d 388 (2008); Skilling v. United States 561 U.S. 358, 177 L. Ed. 2d 619 (2010), Griffin v. U.S. 502 U.S. 461, 116 L. Ed 2d 371 (1991)

[3] Hedepeth , Supra, citing Kotteakos , 90 L. Ed 1557, 66 S. Ct. 1239 (1946)

[4] Hedepeth , Supra, Quoting O'neal v. McAninel 513 U.S. 432, 438, 115 S. Ct. 992 (1995)

At bar, it's impossible for the government to show that the conspiracy convictions rested solely on the two permissible objects, when the jury also found Singleton guilty on the same invalid sole object found in count 10, and it's for this reason these counts should be reversed.

Thus this court should use its supervisory powers and remand this matter back to the 6th circuit court of appeals and/or grant Singleton certiorari review, for a certificate of appealibility where jurists of reason could debate the findings, and analysis, of the district court.[5]

II

DID THE GOVERNMENT VIOLATE BRADY V. MARYLAND WHEN THEY REFUSED TO RELEASE 34 C.I. DEBRIEFING VIDEOS, WHICH WOULD HAVE SUPPORTED SINGLETON'S THEORY OF DEFENSE, I.E., THAT HE WAS OPERATING A LEGITIMATE MEDICAL PAIN CLINIC?

This honorable court has held that a Brady[6] violation occurs when the government has in its possession evidence that is 1) exculpatory in nature; 2) was withheld by prosecutors and/or the police; and 3) the petitioner suffered prejudice as a result. This Brady rule is not new and has been binding precedent for some 56 years.

At bar, Singleton first learned of these 34 debriefing videos during trial when Detective Tim Dials first testified about them. (T.R. Vol 6. Pg. 84 June 11, 2013) Since, that time, Singleton has repeatedly attempted to gain access to them.

Singleton's theory is that the debriefing videos would show that the C.I.'s were treated within normal medical parameters, and that this evidence would be more compelling originating from

[5] Slack v. McDaniel 529 U.S. 473, 483, 120 S. Ct. 1595, 146 L. Ed 2d 542 (2000)
[6] Brady v. Maryland 83 S. Ct. 1194 (1963)

investigatory sources. Further, they could be used in a manner similar to the very evidence was used in U.S. v. Arney .[7]

The district court summarily denied Singleton's claim holding that Singleton did not show prejudice. However, the district court never reviewed the videos in question, nor was an evidentiary hearing granted. Without the district courts reviewing of the 34 debriefing videos, it's impossible for the court to assess the exculpatory weight they should be given.

Furthermore, in Kafo v. U.S.[8] , the 7th circuit held that "when a petitioner alleges facts, which if proven, would entitle him to relief, the district court must grant an evidentiary hearing." Kafo doesn't require the plaintiff, who is incarcerated and generally pro-se to prove his case before the evidentiary hearing is granted. Instead it grants an evidentiary hearing (with counsel and the subpoena power of the court) if the petitioner alleges facts, which if proven, would entitle him to relief.

As such, when the district court's opinion as affirmed by the 6th circuit is in contradiction with both this honorable court's holding in Brady[9], and is in opposition to the 7th circuit opinion in Kafo[10] this court should use its supervisory authority, to remand the matter back to the 6th circuit, or grant Singleton a writ of certiorari for the application of a C.O.A.. Where jurists of reason could debate the findings of the district court, especially where the C.I. videos were never reviewed at evidentiary hearing, or at minimum in camera, by the district court prior to entering her opinion. Slack v. McDaniels[11]

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[7] United States v. Arney 831 F3d 725 (6th Cir. 2016) The court reversed holding "the jury heard testimony only from the patient witnesses presented by the government who were drug abusers or dealers, leading them to infer all of Dr. Arney's other patients were in a similar situation. Other patients could have testified to the contrary ". Id. At 733

[8] Kafo v. United States 467 F. 3d 1063 (7th Cir. 2006)

[9] Brady v. Maryland Supra

[10] Kafo v. United States Supra

[11] Slack v. McDaniels Supra

III

DID THE PETITIONER RECIEVE INEFFECTIVE ASSISTANCE OF COUNSEL, WHEN COUNSEL FAILED TO OBTAIN COPIES OF THE COMPUTER HARD-DRIVES, WHICH CONTAINED SURVEILLANCE FOOTAGE THAT WOULD HAVE SUPPORTED SINGLETON'S THEORY OF DEFENSE AND DISPROVE THE GOVERNMENT'S THEORY OF PROSECUTION?

At Singleton's trial, the government, on official D.O.J. letterhead communicated with defense counsel and indicated;

> "The computers seized by the D.E.A. have not been imaged, but that I have been informed that the imaging will be performed as a priority." (D.E. 452)

During Singleton's 2255, the government asserted:

> "The United States never took possession of/or copied the computers/security systems." (D.E. 438)

These two statements are in direct contradiction as it is impossible for them to both be seized by the D.E.A. and for them not to be in possession of the same.

To make matters worse, when Singleton filed a motion for Rule 11 sanctions making the district court aware of the government's contradictory positions, the government responded by taking a third position that stated;

> "The mirror images were taken of the computers by law enforcement during the search, but the computers were never removed from the property." (D.E. 542)

This position contradicts both the previous statements. The end result was that the government was never required by the court to release these videos for Singleton's use in his 2255 or for the court to review Singleton's 2255. This is especially grievous and in bad faith where the government knew the imaged drives were available yet claimed they didn't possess them.

With the government changing of its position in relation to these computer hard drives and with the government never releasing the material to Singleton for his use and submission to the court, the court denied Singleton's claim indicating that he didn't show prejudice.

But, with the district court never reviewing evidence requested by Singleton and withheld by the government the district court could not have made an informed opinion. As it's impossible to assess the exculpatory weight the videos should be given without their being reviewed.

As asserted in argument II, in Kafo[12] (Supra) the 7th circuit held,"When a petitioner alleged facts, if proven, would entitle him to relief the district court must grant an evidentiary hearing. Kafo[13] doesn't require the plaintiff who is incarcerated, and generally pro-se and without the subpoena powers available at an evidentiary hearing, to prove his case before the evidentiary hearing is granted. Instead it grants the evidentiary hearing if the petitioner alleges facts if proven would entitle him to relief."

At bar, in spite of Singleton presenting the governments contradictory positions to the district court, the court rejected Singleton's motions and efforts to have the government ordered to release the material.

As a result the district court opinion as affirmed by the 6th circuit is in contradiction with the 7th circuit's opinion in Kafo[14] supra and this honorable court's decision in Slack v. McDaniels [15] here jurists of review based upon the factual base presented could debate the findings of the district court, where the district court entered its opinion without requiring the

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[12] Kafo v. United States Supra
[13] Kafo v. United States Supra
[14] Kafo v. United States Supra
[15] Slack v. McDaniels Supra

government to release the videos in their possession in spite of their contradictory positions and as such never reviewed the videos to address the exculpatory nature of the evidence.

CONCLUSION

Wherefore, the petitioner Ernest William Singleton pro se, prays that this court will remand the matter back to the 6th circuit court of appeals using its supervisory authority or in the alternative grant Singleton a writ of certiorari.

Further, the petitioner prays for any other relief that is just and equitable.

Respectfully submitted,

Date: 01/01/2020