

19-7430

No. _____

IN THE
UNITED STATES SUPREME COURT

ORIGINAL

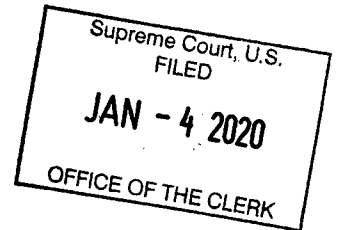
Richard L. Bryant,

Petitioner

v.

United States of America,

Respondent



On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Richard L. Bryant, pro se

Reg. # 25043-083

FCC Coleman USP II

P.O. Box 1034

Coleman, Florida 33521

QUESTIONS PRESENTED

This case involves a multi-count indictment that charged a drug distribution conspiracy in violation of 21 U.S.C. 846, involving 50 kilograms of cocaine and 50 grams of cocaine base, where the Defendant-Petitioner was found guilty by a jury and sentenced (in 1992) to a Guideline term of Life imprisonment based on drug quantities found by the court at sentencing.

Because this was a "covered offense" under Section 404 of the First Step Act of 2018, which made the Fair Sentencing Act of 2010 retroactive, the Petitioner sought a sentence reduction by filing a pro se motion under 18 U.S.C. 3582(c).

The questions presented are:

1. Whether a Defendant convicted by a jury of a drug distribution conspiracy involving multiple controlled substances, whose sentence has never been reduced, was eligible for a reduction under the Fair Sentencing Act of 2010, which was made retroactive by the First Step Act of 2018; and if so, because that single conspiracy count involves multiple statutory ranges, whether the Defendant must be re-sentenced to the lowest of those multiple statutory ranges.

2. Whether, ultimately, it is the Defendant's relevant conduct (drug quantity attributed to him), or the statute of conviction that controls his eligibility under the Fair Sentencing Act of 2010; and if it is the latter and a resentencing is required, because the drugs attributed to him were found by the court, and not the jury, whether *Apprendi* and *Alleyne* are implicated.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....2, 3

TABLE OF AUTHORITIES.....5-9

PETITION FOR WRIT OF CERTIORARI.....9

OPINIONS BELOW.....10

JURISDICTION.....10

TABLE OF AUTHORITIES

FEDERAL CASES

Alleyne v. United States, 570 U.S. 99 (2013).....14

Apprendi v. New Jersey, 530 U.S. 466 (2000).....14

Elmbrook School District v. Doe, 134 S. Ct. 2283 (2014).....11

Lawrence v. Chater, 516 U.S. 163, 168-69(1996).....11

Palmer v. United States (2:93-cr-00090-AWA, Doc. 271)

(E.D.Va. 2019).....14

Tyler v. Cain, 533 U.S. 656 (2001).....12

<i>United States v. Ancrum</i> , 2019 U.S. Dist. LEXIS 81455	
(W.D. Va. 2019).....	14
 <i>United States v. Bradshaw</i> , 2019 U.S. Dist. LEXIS 93989	
(W.D. Mich. 2019).....	14
 <i>United States v. Bryant</i> , (2:92-cr-88-6)(E.D. Va. 1992)	
(ECF 155,156,159).....	13
 <i>United States v. Davis</i> , 2019 U.S. Dist. LEXIS 36348	
(E.D. N.Y. 2019).....	14
 <i>United States v. Dodd</i> , 372 F. Supp. 3d 795, 2019 WL 1529516	
(S.D. Iowa 2019).....	14
 <i>United States v. Martinez</i> , 2019 U.S. Dist. LEXIS 98220	
(S.D.N.Y. 2019).....	14

United States v. Pride, 2019 U.S. Dist. LEXIS 97768
(E.D. Va. 2019).....14

United States v. Shaw, 2019 U.S. Dist. LEXIS 997247
(W.D. Wis. 2019).....14

United States v. Stanback, F. Supp. 3d 2019 U.S. Dist.
LEXIS 75413 (W.D. Va. 2019).....14

United States v. Stone, 2019 U.S. Dist. LEXIS 99457
(W.D.N.Y. 2019).....14

United States v. Williams, (2:99-cr-116-02)(ECF 279)
(E.D. Va. 2019).....14

Youngblood v. West Virginia, 547 U.S. 867, 875 (2006).....12

FEDERAL STATUTES

Fair Sentencing Act of 2010, Pub. L. No. 111-220, 124

Stat. 2372 (2010).....2, 3

First Step Act of 2018, Pub. L. No. 115-391, 404,132

Stat. 5194,5222 (2018).....9, 11, 12, 14

18 U.S.C. 3582(c)(2).....11, 12

21 U.S.C. 841(b)(1)(B)(iii).....13

21 U.S.C. 846.....2

CONSTITUTIONAL PROVISIONS

U.S. Constitution, Fifth Amendment.....10

U.S. Constitution, Sixth Amendment.....10

PETITION FOR WRIT OF CERTIORARI

Petitioner Richard L. Bryant's request for relief under the First Step Act of 2018 should be remanded for a full merits review, based on the lowers Court's incorrect interpretation of his request as relevant to Section 404(c) of the Act, and the noted intervening factors that have arisen, all of which have a legal bearing on this case.

OPINIONS BELOW

The opinion of the Fourth Circuit Court of Appeals (App. A) is reported at *United States v. Bryant*, (No. 19-6446) 2019 U.S. App. LEXIS 27674 (4th Cir. 2019). The opinion of the District Court (App. B) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on September 30, 2019, and the Court of Appeals denied rehearing on November 4, 2019. The Petitioner's deadline for filing a Petition for Writ of Certiorari is February 1, 2020. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution states, in relevant part, that..."[n]o person shall be deprived of life, liberty or property, without due process of law."

The Sixth Amendment to the United States Constitution states, in relevant part, that..."In all prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury".

STATEMENT OF THE PROCEEDINGS BELOW

After a jury trial, Richard L. Bryant and others were convicted of various drug offenses in furtherance of a drug distribution conspiracy in Virginia Beach, Virginia. On December 18, 1992, the District Court, finding him accountable for drug quantities that placed him at the range of Life, sentenced him in accordance with the (then mandatory) Sentencing Guidelines to a term of Life imprisonment. Bryant appealed his conviction and sentence, and on September 30, 1994 the Court of Appeals affirmed on all counts of conviction and the sentence imposed.

In January of 2019, Bryant filed a 18 U.S.C. 3582(c)(2) Motion for Reduction of Sentence based on the First Step Act of 2018, which was denied by the District Court and affirmed by the Court of Appeals.

REASONS FOR GRANTING THIS WRIT

This Court should grant the Petition, vacate the judgment below, and remand for further consideration in light of the correct (and intervening) interpretations of Section 404(c) of the First Step Act, and relevant holdings of other Courts of Appeal.

A GVR is the appropriate way to dispose of this case. Under the "prevailing standard", *Elmbrook School Dist. v. Doe*, 134 S.Ct. 2283 (2014), a GVR should be granted..."where an intervening factor has arisen that has a legal bearing upon the decision." *Lawrence v. Chater*, 516 U.S. 163,

168-69 (1996); see also, *Youngblood v. West Virginia*, 547 U.S. 867, 875 (2006) (explaining that "issuing a GVR order in light of some new development is the traditional practice."); *Tyler v. Cain*, 533 U.S. 656, 666 n. 6 (2001) (GVR is warranted where there is "a reasonable probability that the Court of Appeals would reject a legal premise on which it relied and which may affect the outcome of the litigation.")

I.

The Court of Appeals affirmed the District Court's denial of Petitioner's "first" request under the First Step Act of 2018, after misinterpreting it as an impermissible "second" request which is prohibited under Section 404(c) of the Act.

Because several years prior, the Petitioner had filed a motion pursuant to 18 U.S.C.3582(c)(2) seeking relief under any or all of the so-called "crack amendments", which included Amendments 505, 706, (the then non-retroactive 750) and 782, the District Court erroneously construed, and the Court of Appeals affirmed, that this new motion under the First Step Act was an impermissible "second or successive 2255".

This holding was incorrect. Section 404(c) makes clear that no previous motions seeking this type of relief are to be counted against the Defendant who seeks relief under the First Step Act, and only those motions filed..."after the date of this Act".

The Petitioner's motion seeking relief under the "crack amendments" was filed several years..."prior to the date of this Act". See, *United States v. Bryant*, 2:92-cr-88-6 (E.D. Va. 1992)(ECF 155, 1556, 159).

"Furthermore", the District Court held, "[a]lthough the statutory penalties for 'crack' cocaine have changed, those for cocaine have not, and therefore the Defendant is still subject to the higher statutory penalties for being found guilty of being involved in a conspiracy to distribute in excess of five (5) kilograms of cocaine."

This holding of the District Court fails to acknowledge the fact that, after the First Step Act, count one of the indictment, charging the conspiracy, now has two statutory ranges: (1) 10 years to Life for the cocaine, and (2) 5 to 40 years for the cocaine base. Under a general verdict on a single count of conspiracy, as here, the Defendant's punishment for cocaine base now exceeds the statutory range, and thus violates the U.S. Constitution. (see, 21 U.S.C. 841(b)(1)(B)(iii)).

II.

Additionally, the Court of Appeals affirmed the District Court's holding that, in any event, the First Step Act of 2018 does not provide the Defendant relief because he was held accountable, by the Court at sentencing, for 29 kilograms of cocaine, and 31 kilograms of cocaine base. See, *United States v. Bryant*, 1994 U.S. App. LEXIS 27511 (4th Cir. 1994).

Other District Courts in the Fourth and other Circuits, have since held... "It is the statute of conviction, not actual conduct [or quantity of drugs found by the court] that constitutes eligibility under the First Step Act." See, *United States v. Davis*, 2019 U.S. Dist. LEXIS 36348 (E.D. N.Y.2019); *United States v. Stanback*, F. Supp. 3d 2019 U.S. Dist. LEXIS 75413 (W.D. Va. 2019); *United States v. Pride*, 2019 U.S. Dist. LEXIS 97768 (E.D. Va. 2019); *United States v. Martinez*, 2019 U.S. Dist. LEXIS 98220 (S.D.N.Y. 2019); *United States v. Stone*, 2019 U.S. Dist. LEXIS 99457 (W.D. N.Y. 2019); *United States v. Bradshaw*, 2019 U.S. Dist. LEXIS 93989 (W.D.Mich. 2019); *Palmer v. United States*, (2:93-cr-00090-AWA) (Doc. 271), (E.D.Va. 2019); *United States v. Williams*, (2:99-cr-116-02 (ECF 279), (E.D.Va. 2019).

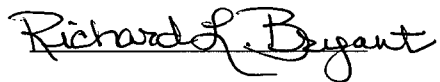
Equally relevant here, is the fact that other District Courts in the Fourth Circuit, and others, have since held that, although *Apprendi v. New Jersey* (2000) and *Alleyne v. United States* (2013) are not retroactively applicable on collateral review, their holdings are applicable in the context of the First Step Act; that is, (citing *Alleyne*, The Sixth Amendment right to a trial by an impartial jury, in conjunction with the Fifth Amendment's 'Due Process Clause', requires that..."[a]ny fact that by law increases the penalty for a crime is an element of that crime that must be submitted to a jury and proven beyond a reasonable doubt"). See, *United States v. Ancrum*, 2019 U.S. Dist. LEXIS 81455 (W.D. Va. 2019); *United States v. Stone*, 2019 U.S. Dist. LEXIS 99457 (W.D. N.Y. 209); *United States v. Shaw*, 2019 U.S. Dist. LEXIS 99247 (W.D. Wis. 2019) (noting that "Congress is presumed to legislate in light of constitutional requirements, and presumptively enacted the First Step Act in light of the holding in *Alleyne*"); *United States v. Dodd*, 372 F.Supp. 3d 795, 2019 WL 1529516 (S.D. Iowa 2019) (finding "[b]oth *Apprendi* and *Alleyne* are binding

on this court for sentencings held today in a First Step Act case.")

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Richard L. Bryant, pro se

A handwritten signature in black ink that reads "Richard L. Bryant". The signature is written in a cursive style with a horizontal line underlining the first part of the name.