

No. 19-7725

IN THE

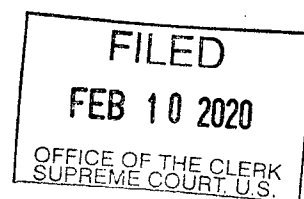
ORIGINAL

SUPREME COURT OF THE UNITED STATES

WILLIAM DESMOND CONRAD - PETITIONER

vs.

UNITED STATES OF AMERICA - RESPONDENT



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

PETITION FOR A WRIT OF CERTIORARI

WILLIAM DESMOND CONRAD

L.S.C.I. BUTNER P.O. Box 999

BUTNER N.C. 27509

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM DESMOND CONRAD — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

WILLIAM DESMOND CONRAD #39948 - 044
(Your Name)

LOW SECURITY CORR. INST. P.O. BOX 999
(Address)

BUTNER NORTH CAROLINA 27509
(City, State, Zip Code)

N / A
(Phone Number)

QUESTION(S) PRESENTED

1. Is the neglect or negligence committed by an Attorney a violation of the Constitution's Sixth Amendment's requirement of assistance of counsel ?.
2. Are a Pro se's rights violated by the lower courts when there is a failure to apply the Supreme Court's newest or most recent ruling or precedent ?.
3. Did Trial Counsel commit a violation of the U.S. Constitution's Sixth Amendment's requirement of effective assistance by not making argument for the application of ALLEYNE, 133 S.Ct. 2151 And DESCAMPS, 133 S.Ct. 2276, which were handed down two months prior to the sentencing ?.
4. Does the AEDPA prevent a Pro se from filing any other type of motion after he has filed a section 2255 motion to Vacate ?.
5. Is it constitutional for the lower courts to use the AEDPA as a type of shield against Pro se action ?.

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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,
☐ 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,
☐ 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

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 10/01/2019.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 11/15/2019, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and petition the government for a redress of grievances.

U.S. Constitutional Amendment V

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 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.

U.S. Constitutional Amendment VI

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 defence.

STATEMENT OF THE CASE

On or about...

6/13/10 : Investigation began, by Lt. Mateja of St. Charles Cyber Crimes

11/8/11 : Search Warrant executed

8/16/12 : Indictment returned by Grand Jury

11/19/12 : Initial appearance before Magistrate Lewis M. Blanton

11/21/12 : Entry of appearance by A.F.P.D. Scott F. Tilsen

Entered Plea of NOT GUILTY

Evidentiary hearing scheduled for 12/12/12

12/12/12 : Evidentiary hearing rescheduled for 2/4/13

1/17/13 : A.F.P.D. Tilsen filed waiver to pre-trial Motions

2/4/13 : Appeared in open court, waived rights to pre-trial Motions

3/20/13 : Pled GUILTY by agreement

3/26/13 : Ruling in FLORIDA V. JARDINES, 133 S. Ct. 1409 handed down

6/17/13 : Ruling in ALLEYNE V. UNITED STATES, 133 S. Ct. 2151 handed down

6/18/13 : Pro se letter/motion No. 1 in regards to appointment of substitute counsel and withdrawal of plea filed

7/19/13 : Pro se letter/motion No. 2 in regards to appointment of substitute counsel and withdrawal of plea filed

8/26/13 : Sentenced to 151 months incarceration plus LIFE

9/2/13 : Timely Notice of Appeal with extensions filed (13-3229)

6/6/14 : Appeal submitted (13-3229)

6/12/14 : Appeal denied (13-3229)

6/8/14 : Pro se petition to Vacate under 28 U.S.C. 2255 filed

8/31/15 : Unanswered Motion to Amend filed (1:15cv00107SNLJ)

STATEMENT OF THE CASE (Cont.)

09/22/15 : Governments response filed.

10/01/15 : Pro se Petition to Vacate under 28 U.S.C.2255 denied..

10/26/15 : Timely Notice of Appeal filed (15-3525).

11/13/15 : Timely Petition for Certificate of Appealibility filed (15-3525).

02/12/16 : Petition for Certificate of Appealibility denied (15-3525).

05/12/16 : Deadline for Petition for Certiorari (16-8253).

12/12/18 : Motion Pursuant to Rule 45 ; Excusable Neglect filed with Affidavit.

05/03/19 : Motion Pursuant to Rule 45 : Excusable Neglect Docketed.

07/30/19 : Motion Pursuant to Rule 45 : Excusable Neglect Denied..

07/30/19 : Notice of Appeal Signed.

09/09/19 : Brief and Memorandum for Appeal, No. 19-2736 filed.

10/01/19 : Judgment of the District Court Affirmed.

10/18/19 : Petition for Rehearing in Appeal No. 19-2736 Filed.

11/15/19 : Petition for Rehearing Denied.

REASONS FOR GRANTING THE PETITION

A new constitutional rule established by the United States Supreme Court for the conduct of criminal prosecutions is to be applied retroactively to all cases, State or Federal, which were pending on direct review or not yet final at the time the new rule was announced, with no exception for cases in which the new rule represents a "clear break" with the past, that is, where the new rule explicitly overrules past precedent of the Supreme Court, or disapproves a practice which the Supreme Court has arguable sanctioned in prior cases, or overturns a long standing practice that lower courts have uniformly approved; "final" means a case in which a judgment of conviction has been rendered, the availability of appeal exhausted, and the time for petition for certiorari elapsed or a petition for certiorari finally denied.

"We therefore hold that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, State or Federal pending on direct review or not yet final, with no exceptions for cases in which the new rule constitutes a "clear break" with the past; GRIFFITH V. KENTUCKY, 479 U.S. 314 at 328.

"United States Supreme Court review may be appropriate where a court disposes of a case on the basis of **a new rule that had not been debated by the parties** to give the losing party an opportunity that the losing party would not otherwise have had to challenge (or apply) the rule" UNITED STATES V. WILLIAMS, 504 U.S. 36 at 45, 118 L. Ed. 2d. 352, 112 S. Ct. 1735.

As this Petitioner is now a **Pro se** litigant his/her action is to liberally construed along any avenue providing relief; ESTELLE V GAMBLE, 429 U.S. 97 at 106, 97 S. Ct. 285 (1976).

REASONS FOR GRANTING PETITION (Cont.)

As taken from, the Federal Criminal Law News; Pre & Post Conviction Law Publication, Vol. 12, No. 3, written by Marcia G. Shein of the Federal Criminal Law Center; located at 2392 N. Decatur Rd. Decatur GA. 30033

Under the heading, SENTENCING on Pg 5 we find: "Failure to know the law with respect to sentencing"...and...under the heading APPEALS on Pg. 6 we find: "Failure to advise defendant of a change in the law"

This Petitioner believes that if a Federal Criminal Law Center so publishes the above statements as bases for argument in Pre & post conviction actions, then there must be some validity to these statements.

A atrocious error, an injustice has been made in regards to the above two (2) statements and now no one wants to correct these errors. (See Affidavit of WILLIAM DESMOND CONRAD, this Petition (Appendix D); line items: 50, 51, 52, 71, 76 and 78).

Petitioner attempted to show to the lower courts Assisant Federal Public Defender's (AFPD) fialure to know current law with respect to sentencing; See Motion Pursuant to Rule 45 (this Petition, Appendix E) page 2, Legal Discussion and argument, Paragraph 2.

Petitioner quotes "First, AFPD Tilsen neglected to in a timely manner, argue for, or demand the application of the nwely decied Supreme Court case of ALLEYNE V. UNITED STATES, supra. This case would have benefited this Movant greatly. The application of ALLEYNE would have more likely, than not pervented the imposition of a mandatory minimum sentence" End quote...And See...

Motion Pursuant to Rule 45 (this Petition Appendix E), Pages 2 and 3, Paragraphs 1, 2 and 3. Petitioner quotes "Secondly, AFPD Tilsen neglected to, in a timely manner, argue for, or demand the application of

REASONS FOR GRANTING PETITION (Cont.)

the newly decied Supreme Court case of DESCAMPS V. UNITED STATES,. This case would have benefited this Movant greatly. The application of DE-SCAMPS would have more likely, than not prevented the imposition of a mandatory minimum sentence." End quote.

Because of AFPD Tilsen's inactions, or in other words his excusable neglect, which now opens the door for this Court to apply both ALLEYNE and DESCAMPS via well established Supreme Court mandates and rulings.

A defendant recives the benefits of a new rule of law if his case is still on direct appeal or not yet final when the Supreme Court issues its Opinion, even if the rule represents a clear break with past precedent or pratice; GRIFFITH V. KENTUCKY, 479 U.S. 314, 93 L. Ed 2d. 649 (1987); MINNESOTA V. DICKERSON, 508 U.S. 366, 124 L. Ed. 2d. 334 (1993); JOHNSON V. UNITED STATES, 520 U.S. 461, 137 L. Ed. 2d. 718 (1997)..

The District Court NEVER said that the application of Rule 45 (b) (1)(B) was improper or inapplicable, it only stated that "Despite the defendants protestation to the contrary, this is essentially a successive section 2255 motion that may not be filed without authorization from the court of appeals." And the court of Appeals said in regards to the issue of a second or successive (S.O.S) 2255 is that "the judgment of the district court is summarily affirmed"

In rebuttal, the district court said that my motion may not be filed, but it was, and the district court did not recharacterize my Rule 45 motion until AFTER it was filed in the district court, and to use the AEDPA as a shield in order not to reach the merits of my Rule 45 Motion is not only unacceptable it is also repugnant, offensive and contrary to justice.

REASONS FOR GRANTING PETITION (Cont.)

Neither court reached the merits of my Rule 45 Motion, neither of the courts said that my Motion was improper, so the issues remain unresolved, **WERE MY ATTORNEYS NEGLECTFUL ?, AM I ENTITLED TO THE APPLICATION OF ALLEYNE AND DESCAMPS OR NOT ???**.

This Petitioner believes the the District Court (JUDGE Limbaugh) in order to avoid embarrassment over his statement, the one that I put back in his face about AFPD Tilsen being the most experienced criminal lawyer in Southeastern Missouri, and to avoid reaching the merits there by causing more embarrassment, recharacterized my Motion without any warning simply because it was convenient for him to do so. See Brief and Memorandum of Appeals No. 19-2736 (this Petition Appendix F) Pages 1-3, Paragraphs 1-9; See Motion Pursuant to Rule 45 (this Petition Appendix), Page 2 Legal Discussion and Argument, Paragraph 1; Also See Sentencing Transcripts of August 26th 2013, Page 6, lines 16 through 18.

In WALKER V. UNITED STATES, 810 F. 3d. 568 at 573; (2016). the United States Court of Appeal for the 8th Circuit stated, and I quote; " **II Discussion: A. Mandatory Minimum Sentence**; at the time of WALKER's sentencing in 2011, controlling Supreme Court precedent held that the Constitution permitted a judge to find, by a preponderance of evidence, any fact that increased the mandatory minimum sentence for a crime. See HARRIS V. UNITED STATES, 536 U.S. 545 at 568-69, 122 S. Ct. 2406, 153 L. Ed. 524 (2002); accord UNITED STATES V. WEBB, 545 F. 3d. 673, at 677 (8th Cir. 2008).

On June 13, 2013, the Supreme Court overruled HARRIS in ALLEYNE, holding that any fact that increases the mandatory minimum sentence must be submitted to a jury and found beyond a reasonable doubt. See ALLEYNE, 570 U.S. at_____, 133 S. Ct. at 2155. (End quote).

REASONS FOR GRANTING PETITION (Cont.)

On June 13, 2013, when the Honorable Court overruled HARRIS this Petitioner was two (2) full months from sentencing and four (4) months from the start of his direct appeal. This Petitioner was on the cutting edge of the ALLEYNE and DESCAMPS rulings. The Petitioner Humbly asks this Court of last review, of last hope to undo the error created by my Attorneys and the Eight Circuit District Court and find that the application of ALLEYNE and DESCAMPS must now be enforced in order to circumvent the miscarriage of justice..

This Petitioner Humbly requests that this Most honorable High Court Vacate the ruling by the Eight Circuit District Court Dated August 26th 2013, and Remand this case back to the District Court with instructions to apply ALLEYNE V. UNITED STATES, 133 S. Ct. 2151; 186 L. Ed. 2d. 314, and DESCAMPS V. UNITED STATES, 133 S. Ct. 2276; 186 L. Ed. 2d. 438., so that this Petitioner might actually have a chance at justice.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William D. Conrad

Date: 10 Feb 2020

APPENDIX A

The following is the Judgment of the
United States Court of Appeals for
the Eighth Circuit in No. 19-2736