JL

No. 19-7737

IN THE SUPREME COURT OF THE UNITED STATES

Charles Wolfe II, Petitioner

vs

UNITED STATES OF AMERICA

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

PETITION FOR REHEARING

Charles Wolfe II, Pro Se Attorney,
counsel of record for Charles Wolfe II
P.O. Box 7000
Texarkana, TX 75505

Petition for Rehearing
Sup. Ct. R. 44.2

Appellant presents its petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

GROUNDS FOR REHEARING

A rehearing of the decision in the matter is in the interests of justice because the Eighth Circuit failed to adjudicate claim the District Court erred by failing to allow evidence of advice petitioner received from various attorneys, as it related to his mens rea and mental state. This guidance was the core basis of the efforts of legality, strictly adhered to by petitioner. The Eighth Circuit acknowledged this was a distinct claim, separate from the court's refusal to allow the affirmative defense of "advise of counsel", but limited the scope in Footnote 2. [Wolfe also claims that he should have been allowed to present evidence of the advice he received and what impact that [advice] had on his mens rea for the crime alleged]. "To the extent that this is an argument for admission of the letters into evidence..." The Eighth Circuit failed to rule on Fed. R. Evid. 401 claim. Failure to adjudicate all claims, renders a judgment null and void.

On March 23, 2020, this court denied the petition for a writ of certiorari.

The principal ground cited in the Eighth Circuit's per curiam opinion was that the crucial issue had been fully and completely determined by the ruling of the Court in, U.S. v. Pumpkin Seed, 572 F.3d 552, 558 (8th Cir. 2009) and U.S. v. Jirak, 728 F.3d 806, 813 (8th Cir. 2013). The grounds for comparing the rulings in Pumpkin Seed and Jirak, were surprising as petitioner had briefed the crucial issue in this case carefully. There was a lack of comparative issues. The petitioner was not granted any opportunity by the Court to distinguish this case from the

Pumpkin Seed and Jirak cases or to suggest why they should not be determined by the same rule. This case contains several crucial factual and procedural distinctions from the cases of Pumpkin Seed and Jirak that warrant its determination by a different or at least altered rule.

In Pumpkin Seed, the defendant was charged with 18 u.s.c.s. § 2241, Aggravated Sexual Abuse and § 1153, offenses committed within Indian Territory. The Court relied on Fed. R. Evid. 412(b)(1)(A), utilizing the federal rape-shield rule, Rape Shield Laws. This should not be controlling in the petitioner's case as sex-offense cases acknowledge victims sexual behavior have unique guidelines with factual and procedural distinction.

In Jirak, 18 u.s.c.s. § 287, relates to false, ficticious and fraudelent tax matters. Also § 510(a)(2), forgery, endoring a treasury check of the United States and § 1341, frauds and swindles. Unlike an Analogue conviction, these charges do not require a scienter requirement

In McFadden v. United States, 135 S.Ct. 2298, the Court noted that cases with these factual and procedural distinctions should be treated by a markedly different rule of law from those properly applicable in the Pumpkin Seed and Jirak decisions that the Court, in its order, stated was controlling in this case. Justice Thomas and Chief Justice Roberts, concurred that statutorily, knew was a controlled substance is an element. Knowledge, mens rea and state of mind, are essential elements. Lack of knowledge is an essential element and a defense, Liparota v. United States, 471 U.S. 419, 425 (1985). Petitioner was prohibited from evidence, disabling the

framework establishing the foundation and the basis for his actions. Petitioner averred there was substantial evidence, including interactions with attorneys and labs, to mitigate the innocent state of mind claim affecting mens rea and Knowledge. Petitioner could have testified to consulting with counsel, frequency and number of supporting opinions. The District Court prematurely forbid exculpatory evidence by precluding mention of related evidence and arguments, pre-empting a potential advice of counsel defense. The District Court's misinterpretation of the legal letters of opinion conflict with the Ninth Circuit, where the Federal Law opinions of Attorney Timothy Dandar's letters were allowed in 2 cases, Ritchie and Way. United States v. Ritchie, No. 2:15-cr-00285-APG-PAL (Dist of Nev. 2015), Attorney Dandar's advice on legality was introduced Honorable, Judge Gordon, ruled the evidence was relevant as it tends to negate Knowledge and refused to preclude evidence to negate essential element. The government attempted to prove the Knowledge possessed, so, argument and evidence did not was relevant. United States v. Way, No. 1:14-cr-00101-DAD-BAM (E. Dist. Cal., May 16, 2018), the Honorable, Judge Drozd, allowed Attorney Dandar's monthly letter of opinion to be introduced as evidence and advice.

In United States v. Galecki, Nos. 18-4727 & 18-4730 (4th Cir. 2019), a case decided a mere 8 days before the Eighth Circuit affirmed petitioner's conviction, the Fourth Circuit reversed the analogue conviction as the District Court precluded legal advice, evidence and testimony to establish and convey an innocent state of mind. U.S. v. Bays, 680 F. Appx. 303, No. 15-10385 (5th Cir. 2017);

U.S. v. Stanford, 823 F.3d 814 (5th Cir. 2016); U.S. v. Gross, 60 F. Supp. 3d 1245 (S.D. Ala. 2014), all conflicting with petitioner's District Court, the defendants had analogue convictions reversed or dismissed after rulings allowed to present complete defenses, including mens rea and Knowledge. In Makkar, 810 F.3d 1139 (10th Cir. 2015), quoting Yarbrough, 527 F.3d 1092 (10th Cir. 2008), when an error deprives a defendant of important evidence relevant to a sharply controverted question going to the heart of the defense, substantial rights are affected.

The District Courts ability to so control an element for a critical defense to be presented, affects this and countless others and is of exceptional importance affecting the constitutional rights to a fair trial by jury. Evidence petitioner consulted attorneys, having an innocent state of mind, was probative of petitioner's mens rea. This Honorable Court's ruling could allow a consistent mens rea standard related to the Controlled Substance Analogue Act. Exclusion of evidence is an extraordinary remedy to be used sparingly in a criminal case. Relevant evidence is inherently prejudicial.

An evidentiary error violates petitioner's due process. Exclusion of: 1) main piece of evidence; 2) petitioner's main defense; 3) critical element relative to central evidence of mens rea and Knowledge. Barring important elemental arguments prevented petitioner from presenting complete defense. This violated a Fifth Amendment constitutional right in the Due Process Clause, challenging the integrity of these proceedings. Petitioner appears to be the only defendant in the country, barred from Knowledge evidence in an Analogue prosecution, except Galecki, Fourth Circuit was reversed.

A rehearing tightly and squarely focused on the distinctions between this case and the Pumpkin Seed and Jirak cases, and whether these distinctions merit a different rule of law, is a matter of fundamental fairness to petitioner and would not unduly burden the Court. I pray this Honorable Court, should act now in order to bring more clarity to the application of the Analogue Act, so that the "Guilty Be Convicted and the Innocent Go Free."

For the reasons just stated, Charles Wolfe II, urges that this petition for a rehearing be granted, and that, on further consideration the judgment of the Eighth Circuit be reversed or as appropriate.

Dated: 05-27-20

Respectfully submitted,

Charles Wolfe II

Charles Wolfe II
41808-044 (K1-003L)
Federal Correctional Inst.
P.O. Box 7000
Texarkana, TX 75505-7000
Pro Se Attorney for Charles Wolfe II

CERTIFICATE OF GOOD FAITH BY COUNSEL

I, Charles A. Wolfe II, Pro Se Attorney for Charles Wolfe II, certify that this petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.

Charles Wolfe II
Pro Se Attorney for Charles Wolfe II

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 27, 2020.

Charles Wolfe II
Charles Wolfe II
Pro Se Attorney for Charles Wolfe II