SUPREME COURT OF THE UNITED STATES

NO: 12-CF-295 AND 12-CO-1598/ NO: 19-5185

IN THE 19-8478

SUPREME COURT OF THE UNITED STATES

FILED
MAR 16 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

JOHN KING - PETITIONER
(YOUR NAME)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE DISTRICT OF COLUMBIA COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JOHN R. KING, PRO SE
(YOUR NAME) # 35043-007

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QUESTION(S) PRESENTED

I. AFTER RECENT SUPREME COURT RULING IN UNITED STATES V. HAYMOND, 139 S.CT 2369 (2019) CAN A JUDGE RELIE ON FACTS NOT FOUND BY A JURY TO ENHANCE A SENTENCE?

II. AFTER THIS COURTS DECISION IN UNITED STATES V. ALLEYNE, 570 U.S. 99 (2013), WHERE THIS COURT MADE MCMILLAN V. PENNSYLVANIA 477 U.S. 79 (1986), NON-CONTROLLING, CAN THE PREPONDERANCE OF THE EVIDENCE STANDARD BE USED AT SENTENCING WHERE A SINGLE FACT IS BOTH AN ELEMENT OF THE OFFENSE AND A SENTENCING FACTOR?

III. BECAUSE MCMILLAN V. PENNSYLVANIA, 477 U.S. 79 (1986) IS NO LONGER CONTROLLING, CAN THIS COURT'S RULING IN U.S. V. WATTS, 51[illegible] U.S. 148 (1997) SURVIVES FIFTH AND SIXTH AMENDMENT SCRUTINY?

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PETITION OF A WRIT OF CERTIORARI

JOHN R. KING, PRO SE, PETITIONS FOR A WRIT OF CERTIORARI TO REVIEW THE JUDGMENT OF THE DISTRICT OF COLUMBIA COURT OF APPEALS IN THIS CASE

OPINIONS AND ORDERS BELOW

ON FEBRUARY 24, 2012 THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA SENTENCED THE PETITIONER AND IS AVAILABLE AT APPENDIX A. THE JUDGMENT OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA ISSUED IN USA V. JOHN R. KING, NO. 2011 CF3-009753 ON FEBRUARY 27, 2012 AND IS AVAILABLE AT APPENDIX D. THE DISTRICT OF COLUMBIA COURT OF APPEALS ISSUED IT'S ORDER AFFIRMING THE SUPERIOR COURTS CONVICTION AND SENTENCE ON OCTOBER 22, 2019 AND IS AVAILABLE AT APPENDIX B. THE ORDER OF THE DISTRICT OF COLUMBIA COURT OF APPEALS DENYING REHEARING AND REHEARING EN BANC WAS FILED ON JANUARY 16, 2020 AND IS AVAILABLE AT APPENDIX C.

JURISDICTION

THE JUDGMENT OF THE COURT OF APPEALS WAS ENTERED ON JANUARY 16, 2020. THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES:
"IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ... BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION..."

STATEMENT OF THE CASE

THE JURY IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA FOUND THE PETITIONER GUILTY FOR THREAT TO KIDNAP OR INJURE A PERSON, ROBBERY (2 COUNTS) AND DESTRUCTION OF PROPERTY LESS THAN $100. HE WAS SENTENCED TO 2 CONSECUTIVE TERMS OF 72 MONTHS FOR THE ROBBERIES AND A CONSECUTIVE TERM OF 32 MONTHS FOR THE THREAT TO KIDNAP OR INJURE A PERSON. 180 DAYS FOR THE DESTRUCTION OF PROPERTY WAS RAN CONSECUTIVE AS WELL. THE SUPERIOR COURT BASED IT'S SENTENCE (THE MAXIMUM TERMS) ON THE OFFENCE CONDUCT OF FOUR SEPARATE COUNTS WHICH THE PETITIONER WAS CHARGED WITH BUT THE JURY COULD NOT UNANIMOUSLY FIND HE COMMITTED. THE DISTRICT OF COLUMBIA COURT OF APPEALS AFFIRMED THE LOWER COURTS FINDINGS AT SENTENCING.

1. SENTENCING PROCEEDINGS

PETITIONER'S ATTORNEY OBJECTED TO THE SENTENCING COURT'S USE OF OFFENSES THAT RESULTED IN NO CONVICTION; TO SENTENCE THE PETITIONER. (SEE APPX. A). HOWEVER, THE COURT ADOPTED THE PRESENTENCE REPORT'S FINDING OF FOUR

OFFENSES, THE JURY WAS UNABLE TO FIND THE DEFENDANT GUILTY FOR, TO ENHANCE THE PETITIONER'S SENTENCE TO THE MAXIMUM ALLOWABLE UNDER THE STATUTE. THE COURT SENTENCED THE PETITIONER TO 176 MONTHS PLUS 180 DAYS. (SEE APPX. D).

2. DISTRICT OF COLUMBIA COURT OF APPEALS

THE APPELLATE COURT REASONED THAT U.S. V. WATTS, U.S. 148 (1997) DIRECTIVE THAT A SENTENCING COURT CAN NOT IGNORE OR COUNTERMAND THE JURY'S FINDING" DID NOT HAVE TO BE FOLLOWED, IN THE INSTANT CASE, BECAUSE "THE JURY WAS SIMPLY UNABLE TO FIND THE [PETITIONER] COMMITTED THE REMAINING CRIMES BEYOND A REASONABLE DOUBT". THE APPELLATE COURT AFFIRMED THE TRIAL COURT'S SENTENCE.

REASON FOR GRANTING THE PETITION

AFTER THIS COURTS RULING IN U.S. V. HAYMOND IN WHICH THIS COURT STATES THAT A SENTENCE ENHANCEMENT THAT COMES INTO PLAY ONLY AS A RESULT OF ADDITIONAL JUDICIAL FACTUAL FINDINGS BY A PREPONDERANCE OF THE EVIDENCE CANNOT STAND (SEE HAYMOND AT { 2019 U.S. LEXIS 24}) ALSO CITING IN US V. HAYMOND IN WHICH THIS COURT STATES EVEN WHEN JUDGES DID ENJOY DISCRETION TO ADJUST A SENTENCE BASED ON JUDGE FOUND AGGRAVATING OR MITIGATING FACTS THEY COULD NOT "SWELL THE PENATLY ABOVE WHAT THE LAW HAD] PROVIDED FOR THE ACTS CHARGED AND FOUND BY THE JURY. (SEE AT HAYMOND AT { 204 L.ED 2D 904}. ALSO AFTER ALLEYNE, CAN THE PREPONDERANCE OF THE EVIDENCE STANDARD BE USED AT SENTENCING WHERE A SINGLE FACT IS BOTH AN ELEMENT OF A CODIFIED OFFENSE AND A SENTENCING FACTOR.

IN THE INSTANT CASE, THE PETITIONER'S SIXTH AMENDMENT CLAIM WAS REJECTED BECAUSE THE DISTRICT OF COLUMBIA COURT OF APPEALS STATED "BINDING AUTHORITY ESTABLISHES THAT SUCH USE DOES NOT VIOLATE THE SIXTH AMENDMENT OR

DUE PROCESS. AS WATTS, ITSELF SQUARELY HELD, "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 THE EVIDENCE". 519 U.S. AT 156-57". ALSO IN MOTION TO DENY APPOINT OF COUNSEL THE TRIAL COURT STATES THAT DEFENDANT MAY BE ASSERTING THAT HIS SENTENCE VIOLATES THE SPIRIT OF APPRENDI AND ALLEYNE BECAUSE THE COURT SENTENCED HIM AT THE HIGH END OF THE APPLICABLE SENTENCING RANGES, BASED ON THE COURTS FINDING THAT HE ALSO WAS GUILTY OF THE COUNTS ON WHICH THE JURY HUNG." SEE TRIAL JUDGE MOTION DENYING APPOINTMENT OF COUNSEL AT PG #6". MOREVER, THE APPELLANT COURT STATED "WATTS IS OF NO HELP TO APPELLANT, BECAUSE THE TRIAL COURT DID NOT IGNORE OR COUNTERMAND THE JURY'S FINDING - THE JURY WAS SIMPLY UNABLE TO FIND THAT APPELLANT COMMITTED THE REMAINING CRIMES BEYOND A REASONABLE DOUBT... THE TRIAL COURT... USED THAT DETERMINATION TO SENTENSE HIM WITHIN THE GUILDLINES ALLOWABLE LIMITS." (SEE APPX. A) ALTHOUGH, IT IS NOTEWORTHY TO POINT OUT THAT THE DISTRICT OF COLUMBIA COURTS OF APPEALS MADE THE INSTANT DECISION IN THE PETITIONER'S CASE AFTER THIS COURT RULED ON HAYMOND AND ALLEYNE, (MAKING MCMILLIAN, NON CONTROLLING), THE APPELLATE COURT HAS NOT OVERTURNED IT'S BINDING PRECEDENT. SEE, GREENE V. UNITED STATES, 571 A.2D 218, 220 (D.C. 1990). AS CONCEDED BY THE D.C. COURT OF APPEALS "THE JURY WAS SIMPLY UNABLE TO FIND THAT APPELLANT COMMITTED THE REMAINING CRIMES BEYOND A REASONABLE DOUBT. HOWEVER, THE JUDGE USED FACTS NOT FOUND BY A JURY TO INCREASE HIS SENTENCE TO IT'S MAXIMUM TERM OF PUNISHMENT. THE PETITIONER RESPECTFULLY ARGUES THAT THE FACT THAT THE SENTENCE IMPOSED WAS IN AN ALLOWABLE GUILDLINES OR STATUTORY RANGE IS IMMATERIAL. WHAT IS MATERIAL IS THE "EFFECT" OF THE TRIAL COURT'S SENTENCE. THIS COURT MADE ITSELF CLEAR IN UNITED STATES V. O'BRIEN, 560 U.S. 218 (2010), THAT OFFENSE CHARACTERISTICS ARE NOT TO BE USED AT SENTENCING AS OFFENDER CHARACTERISTICS AND ARE FUTHER OUTSIDE THE AUTHORITY OF ARTICLE III JUDGE. (ALSO SEE 18 U.S.C. § 924(E)

The District of Columbia's guidelines, sentencing regime is practically similar to the U.S Sentencing Guidelines. See R.W. v. United States, 958 A.2d 259 (D.C Cir.2008)("Judges are free to apply or ignore them").

In the instant case, the Jury was deadlock on counts during deliberation. They ultimately were unable to unanimously find that the Petitioner committed these poor specific crimes; used by the sentencing Court to enhance Petitioner's sentence. The D.C Court of Appeals somehow distinguishes this fact from an outright Jury acquittal. (See Appx.___). Supposedly, arguing, per logic, that a finding of no guilt, per a non-unanimous finding of not guilty. The "effect" of both findings being a finding of not guilty.

The Petitioner on Appeal argued this Court's directive in Watts, which stated "[a] Judge violates a Defendant's Sixth Amendment rights by making findings of fact that ignore or countermand those made by the Jury and then relies on these factual findings to enhance the defendant's sentence." The District of Columbia Court of Appeals distinguished the fact of a Jury's unanimous finding of not guilty with a Jury's inability to unanimously find the defendant guilty of four offenses.(See Appx. A at 12). Subsequently, the Appellate Court stated "Watts is of no help to Appellant"thereby this Court's directive inapplicable aswell.

The Petitioner respectfully argues that a Jury's finding of no guilt, no matter how derived, is not distinguishable from a jury's

unanimous finding of not guilty. Moreover, the Petitioner further argues that, in any event the demise of McMillan, now forbids a lower Court from using offense characteristics "in the manner of" offender characteristics to "effect" an enhancement at sentencing in a defendant's case. There is simply no existing controlling Supreme Court precedent that states-a Sentencing Court has the constitutional authority to find facts that are both elements of offenses and sentencing factors and find this fact by a standard of preponderance. To be sure see Kinder v. United States, 509 U.S.946 at 947 (1992).

The D.C Court of Appeals cannot ignore this Court's directive is Watts, especially after McMillan was made non-controlling by this Court's decision in Alleyne. Remand is required to correct the Sixth Amendment Fact Finding violation in the instant case. The Petitioner was innocent before until proven guilty and remains innocent of the four specific offenses used to enhance his sentence. The Judge should not be permitted, constitutionally, to determine that a defendant is more likely than not guilty or innocent of an offense used to support a greater punishment. Better yet a Sentencing Judge should focus on determining in what manner a defendant more likely than not committed the offense. The Petitioner argues this is what is distinguishable and therefore his case should be remanded.

II. McMILLAN v. PENNSYLVANIA, 477 U.S.79 (1986) ABROGATION CONTROVERTS U.S v. WATTS, 519 U.S. 148 (1997).

It is axiomatic that this Court's decision in McMillan, supra, stood for two propositions: 1) under the Fifth Amendment a legislature was allowed to designate a single fact that defines a crime as an element and sentencing factor; and 2) under the Sixth Amendment a Judge could find a single fact (even ones that define a crime) at sentencing, that a Jury did not, to increase a defendant's punishment- as long as that punishment within a statutory range.

However, it was later settled in Alleyne, supra, that McMillan does not comport with the Constitution and, as a result, is no longer controlling law. The underpinnings of Watts, supra, rested on the principals of McMillan. See 519 U.S.at .Therefore, it would stand logically that Watts, supra is in question.

In the instant case, the Sentencing Judge specifically used offense conduct to increase the Petitioner's punishment in this case (see Appx. A at 12). If it stands after Alleyne , that a legislature cannot designate a single fact that defines a crime to be an element and a sentencing factor found by a preponderance then the Petitioner's sentence is in grave error. Furthermore, if it stands after Alleyne , that a Judge may only consider the manner in which a defendant committed a lesser, greater or separate offense while committing the instant offense; then too the enhanced punishment served on the defendant is in grave error.

THE PETITIONER RESPECTFULLY REQUEST THAT HIS CASE BE REMANDED ONCE THIS ISSUE IS REVISITED AS HE IS SERVING A GREATER PUNISHMENT THAN HE WOULD ABSENT THE FIFTH AND SIXTH AMENDMENT VIOLATIONS IN HIS CASE.

CONCLUSION

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED AND THIS CASE SHOULD BE REMANDED TO THE DISTRICT OF COLUMBIA COURT OF APPEALS WITH INSTRUCTIONS TO FURTHER REMAND THIS CASE TO THE DISTRICT OF COLOMBIA SUPERIOR COURT IN LIGHT OF THE QUESTIONS PRESENTED.

DATED; MARCH 11, 2020

RESPECTFULLY SUBMITTED,

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