

19-8530

No. 20-

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

SACOREY CLARK,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

FILED
APR 06 2020

OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Whether CLARK's Affirmed Sentence & Judgment Must be Vacated in light of REHAIF, 139 S.Ct. 2191 (2019), Then Remanded, Where it is Warranted that CLARK Be Free to Argue On Remand All Available Claim(s), Which Include, but are Not Limited To The Applicability of REHAIF, 139 S.Ct. 2191, Upon the Existing Correlative Duty of The GOVERNMENT To Protect CLARK Against Injury from Any Quarter, While So Held?

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IN THE SUPREME COURT OF THE UNITED STATES

SACOREY CLARK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

SACOREY CLARK, respectfully petitions this Court for a writ of certiorari to review the opinion and judgment entered by the United States Court of Appeals for the Eighth Circuit, on August 19, 2019.

Opinion Below

The decision of the United States Court of Appeals affirming CLARK's Sentence can be found at UNITED STATES v. CLARK, 934 F.3d 843 (8th CIR. Aug. 19, 2019). A copy of the EIGHTH CIRCUIT's Opinion is appended to this Petition (App. 1A). A copy of the EIGHT CIRCUIT's Order denying Rehearing en banc and rehearing by panel is appended, also. (App. 2A). The DISTRICT COURT's ruling on CLARK's Objection(s), which occurred on the Record, in open Court was a "dead-bang winner" claim on appeal, that the recently dismissed Court-appointed failed to raise, where CLARK does not have three conviction(s), that are crimes of violence. As, vacating CLARK's Affirmed Sentence and Judgment is warranted, where UNITED STATES v. FIELDS, 863 F.3d 1012 (8th CIR. July 20, 2017) and REHAIF v. UNITED STATES, 588 U.S. __, 139 S. Ct. 2191 (2019), are applicable on Remand and exists as reasons for granting the writ. CLARK's Appellate review of all other available claims, in along with the applicability of REHAIF, 139 S.Ct. 2191 (2019), can not be reviewed by this Court properly without Remand. Due to the inaction(s)/action(s) of the recently dismissed Court-appointed Counsel's blantant failure to raise all available argument(s). As, without instructions issued by this Court to the Eighth Circuit to consider such argument(s), CLARK's ability to raise those argument(s) on remand, has been adversely affected. Equally resulting in seriously affecting the integrity, fairness or public reputation of the Judicial proceeding(s).

Jurisdiction

PETITIONER, SACOREY CLARK, was found guilty at trial, on May 03, 2017, for one count of being in violation of TITLE 18, UNITED STATES CODE, Section(s) §922(g)(1) & §924(a)(2). On May 09, 2018, CLARK was sentenced under 18 USC §924(e), to 180 months imprisonment by JOHN A. ROSS, UNITED STATES DISTRICT Judge for the Eastern District of Missouri, Eastern Division.

The UNITED STATES COURT OF APPEALS for the EIGHTH CIRCUIT, Affirmed CLARK's 180 Month Sentence in a published per curiam opinion, filed on August 19, 2019. (App. 1A). In May of 2018 CLARKAppealed Pro Se, however over CLARK's written objection(s) about the existing conflict of interest, even made on record by the said counsel, KEVIN C. CURRAN, was appointed as CLARK's Court-appointed counsel.

The now recently dismissed Court-appointed counsel, omitted to raise several dead-bang winner claims, in CLARK's Appeal. See: CLEMMONS v. DELO, 124 F.3d 944 (8th CIR. 1997), citing: BANKS v. REYNOLDS, 54 f.3d 1508, 1515 (10th CIR. 1995), equally constituting that Appellate Counsel was ineffective on CLARK's Appeal.

CLARK's Appellate Review of all other available "dead-bang" claims, which exist in addition to the applicability of FIELDS, 863 F.3d 0112 (8th CIR. July 20, 2017) & REHAIF, 139 S.Ct. 2191 (2019), has not only been forfeited and waived, due to the inaction(s)/action(s) of the recently dismissed Court-appointed Counsel, KEVIN C. CURRAN.

But also, CLARK's ability to raised all available argument(s)/claims, on Remand has further been adversely affected, in a manner which is so prejudicial that the integrity, fairness, or public reputation of the Judicial proceeding(s), has seriously been affected.

And although, CLARK's Motion to Dismiss Court-appointed Counsel, was granted on October 30, 2019, the Eighth Circuit still adhered to the general standard that the Appellant can not raise any new argument(s) in his Petition for Rehearing that was not first raised in the brief(s), therefore CLARK's rehearing was denied on January 07, 2020.

CLARK, invokes this Court's Jurisdiction under 28 USC §1254(1), having timely filed this Petition for a Writ of Certiorari, Within the Authorized extension of time, provided by the Clerk of the Court.

Constitutional Provisions

SACOREY CLARK's Petition for Writ of Certiorari involves the Fifth Amendment's right to not be held to answer for an infamous crime, unless on a presentment or indictment of a grand jury; right to not be subject for the same offense to be twice put in jeopardy of life or limb; right to due process of law. And the Sixth Amendment's right to a speedy and public trial and the right to be informed of the nature and cause of the accusation. Also a Correlative duty to protect prisoners against injury, exists.

U.S. Const. Amend. 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 any person be subject for the same offense 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.

U.S. Const. Amend. 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 defense.

Correlative duty of the GOVERNMENT to protect against injury, LOGAN v. UNITED STATES, 144 U.S. 263, 12 S.Ct. 617 (1892)

The GOVERNMENT has the absolute right to hold prisoners for offenses against it, but it also has the Correlative duty to protect them against...injury from any quarter while so held; The right arises by necessary implication from the imposition of the duty as clearly as though it had been specifically stated in the Constitution; a right to be protected against injury does not depend upon any of the amendments to the constitution, but arises out of the creation and establishment by the Constitution itself of a national government, paramount and supreme within its sphere of action.

Statutory Provisions

SACOREY CLARK's Petition for Writ of Certiorari involves 18 USC §922(g)(1) &

§924(a)(2).

18 USC §922(g)(1) & §924(a)(2)

§922(g), It shall be unlawful for any person --
§922(g)(1), who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
§924(a)(2), Whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 shall be fined as provided in this Title, imprisoned not more than Ten (10) years, or both.

SACOREY CLARK's Petition for a Writ of Certiorari involves the Armed Career Criminal Act of 1994, 18 USC §924(e)(1) & §924(e)(2)(B).

18 USC §924(e)(1) & §924(e)(2)(B)

§924(e)(1), In the case of a person who violates section 922(g) of this Title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g)

§924(e)(2)(B), The term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that --

- (i) has as an element the use, attempted use, or threaten use of physical force against the person of another; or
- (ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that present a serious potential risk of physical injury to another;

SACOREY CLARK's Petition for a Writ of Certiorari involves Missouri Revised Code Section(s) §565.060 (which has later been recodified under RSMo §565.052), §569.020 and §565.030, RSMo 2000.

Missouri Revised Code §565.060 (RSMo. 2000), (later recodified under §565.052)

1.

A person commits the crime of assault in the second degree if he:

- (1) Attempts to kill or knowingly causes or attempts to cause serious physical injury to another person under the influence of sudden passion arising out of adequate cause; or
- (2) Attempts to cause or knowingly causes physical injury to another person by means of a deadly weapon or dangerous instrument; or
- (3) Recklessly causes serious physical injury to another person; or
- (4) While in an intoxicated condition or under the influence of controlled

substances or drugs, operates a motor vehicle in this state and, when so operating, acts with criminal negligence to cause physical injury to any other person than himself; or

(5) Recklessly causes physical injury to another person by means of discharge of a firearm.

2. The defendant shall have the burden of injecting the issue of influence of sudden passion arising from adequate cause under subdivision (1) of subsection 1 of this section.

3. Assault in the second degree is a class C felony.

Missouri Revised Code §569.020 (RSMo. 2000)

1. A person commits the crime of robbery in the first degree when he forcibly steals property and in the course thereof he, or another participant in the crime,

(1) Causes serious physical injury to any person; or

(2) Is armed with a deadly weapon; or

(3) Uses or threatens the immediate use of a dangerous instrument against any person; or

(4) Displays or threatens the use of what appears to be a deadly weapon or dangerous instrument.

2. Robbery in the first degree is a class A felony.

Missouri Revised Code §569.030 (RSMo. 2000)

1. A person commits the crime of robbery in the second degree when he forcibly steals property.

2. Robbery in the second degree is a class B felony.

Code of Federal Regulations

SACOREY CLARK's Petition for a Writ of Certiorari involves Code of Federal Regulations, Section(s) §0.55, §0.55(e), §0.55(i) & §0.160 - §0.171 (Subpart Y), of Title

28.

28 C.F.R. §0.55 & §0.55(e)

§0.55, The following functions are assigned to and shall be conducted, handled, or supervised by, the Assistant Attorney General, Criminal Division:

§0.55(e), Subject to the provisions of subpart Y of this part, consideration, acceptance, or rejection of offers in compromise of criminal and tax liability under the laws relating to liquor, narcotics and dangerous drugs, gambling, and firearms, in cases in which the criminal liability remains unresolved.

28 C.F.R. §0.55(i)

§0.55(i), All civil proceedings seeking exclusively equitable relief against Criminal Division activities, including criminal investigations, prosecutions,

and other criminal justice activities (including without limitation, applications for writs of coram nobis and writs of habeas corpus not challenging exclusion, deportation, or detention under the immigration laws), except that any proceeding may be conducted, handled, or supervised by the Assistant Attorney General for National Security or another Division by agreement between the head of such Division and the Assistant Attorney General, Criminal Division.

28 C.F.R. §0.160(a), §0.160(a)(3) & §0.160(a)(4)

§0.160(a), Subject to the limitations set forth in paragraph (d) of this section, Assistant Attorneys General are authorized, with respect to matters assigned to their respective divisions, to:

§0.160(a)(3), Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principle amount of the proposed settlement does not exceed \$4,000,000; and

§0.160(a)(4), Accept offers in compromise in all nonmonetary cases.

28 C.F.R. §0.171(a) & §0.171(b)

§0.171(a), Each United States Attorney shall be responsible for conducting, handling or supervising such litigation or other actions as may be appropriate to accomplish the satisfaction, collection, or recovery of judgments, fines, penalties, and forfeitures (including bail bond forfeitures) imposed in his district, unless the Assistant Attorney General, or his delegate, of the litigating division which has jurisdiction of the case in which such judgment, fine, penalty or forfeiture is imposed notifies the United States Attorney in writing that the division will assume such enforcement responsibilities.

§0.171(b), Each U.S. Attorney shall designate an Assistant U.S. Attorney, and such other employees as may be necessary, or shall establish an appropriate unit within his office, to be responsible for activities related to the satisfaction, collection, or recovery, as the case may be, of judgments, fines, penalties, and forfeitures (including bail-bond forfeitures).

Statement of the Case

The Parties in this Case are SACOREY CLARK, PETITIONER and the UNITED STATES, RESPONDENT, where vacating CLARK's Affirmed Sentence and Judgment is Warranted. The Recently dismissed Court-appointed Counsel, omitted to raise several "dead-bang winner" claims, which equally warrants CLARK's Sentence and Judgment being vacated, additionally as even prior to and even after the decision issued in REHAIF v. UNITED STATES, 588 U.S. ___, 139 S.Ct. 2191 (2019), CLARK's Indictment does not allege a violation of Statute, as pursuant to UNITED STATES v. HVASS, 355 U.S. 570 (1958), evidencing the existence of an Indictment that does not allege a violation of Statute, not merely due some deficiency in the Pleading of the Indictment, but with respect to the Substance of the Charge, upon which the Indictment was founded.

Therefore, along with CLARK's Sentence and Judgment being vacated, his case should be remanded, not only for further consideration, in light of the applicability of REHAIF, 139 S.Ct. 2191 (2019), but CLARK's case warrants remand also for further consideration of any and all appellate claims, especially the "dead-bang winners", which the recently dismissed court-appointed counsel, KEVIN C. CURRAN had failed to raise, due to his Inaction(s)/Action(s) and ineffectiveness.

In March of 2016, CLARK was indicted. However, CLARK's Indictment did not allege a violation of Statute, with respect to the Substance of the Charge, I.d. HVASS, 355 U.S. at 574. Furthermore, all of which constitutes an existing absence of Jurisdiction, or at the very least an excess of Jurisdiction, to authorize the prosecution of CLARK, under 18 USC §922(g)(1) & §924(a)(2), which equally resulted in an Indictment from the Grand Jury being procured by Fraud.

On May 03, 2017 CLARK suffered further Fraud, where simply by the GOVERNMENT proving that Record(s) of prior State Law Judgment of Conviction(s), existed those said Record(s), without more became the basis of the Jury's Verdict, that was relied upon to prove guilt of the essential status element. And CLARK was found guilty at trial for one Count of violating 18 USC §922(g)(1), not in violation of both 18 USC §922(g)(1) &

§924(a)(2), due to an existing Indictment that does not allege a violation of Statute, under 18 USC §922(g)(1) & §924(a)(2). Where without more the Record(s) of Conviction(s), had been both inadmissible evidence and insufficient evidence to prove guilt, as to the essential status element of the offense.

On October 02, 2017, the DISTRICT COURT vacated the CLARK's Sentencing date, upon granting the Government's Motion to Stay Sentencing, resulting in a violation of Crim.P. Rule 32(b)(1), in order to wait on An Appellate Case to issue its decision in the year of 2018, so that CLARK's Robbery 2nd degree could be used as a crime of violence, where at the time CLARK's Robbery 2nd degree was not a crime of violence. And neither was CLARK's leaving the Scene of the Accident, or his Robbery 1st degree, nor his Assault 2nd degree, crimes of violence. (See: UNITED STATES v. FIELDS, 863 F.3d 1012 (8th CIR. 2017)).

Therefore, CLARK failed to have Three (3) convictions which were crimes of violence, even if his Robbery 2nd degree was determined to be a crime of violence.

On May 09, 2018, which was over one year after Trial, and over seven (7) months after the DISTRICT COURT vacated CLARK's sentencing date, CLARK suffered even more further fraud, where although CLARK, still to date, does not have Three (3) conviction(s), which are crimes of violence, the DISTRICT COURT took fraudulent action, in conflict with the decision issued in UNITED STATES v. FIELDS, 863 F.3d 1012 (8th CIR. July 20, 2017). Then ruled that CLARK's Assault 2nd degree, under RSMo. §565.060.1(3), (recodified as §565.052), was a crime of violence. The DISTRICT COURT issuing such ruling was necessary in order to enter a 180 month sentence, under 18 USC §924(e), (ACCA), which required three convictions, that were crimes of violence.

In May of 2018, CLARK Appealed Pro Se, seeking to Appeal both his conviction and his sentence, however over CLARK's written objection(s), KEVIN C. CURRAN, was appointed, as Appellate Counsel, in order to prevent any challenges to CLARK's conviction.

On Appeal, said Court-appointed Counsel, KEVIN C. CURRAN, deliberately omitted to raise, "dead-bang winner" claims, available, such as (1) whether CLARK's Assault 2nd degree

under RSMo. §565.060.1(3), is a crime of violence, See: FIELDS, 863 F.3d 1012 (8th CIR. July 20, 2017); (2) Whether CLARK's Robbery 1st degree, under RSMo. §569.020.1(4), is a crime of violence; (3) Whether CLARK's Indictment does not allege a violation of Statute, upon which the Indictment was founded, not merely due to some deficiency in the Pleading of the Indictment, but with respect to the Substance of the Charge, I.d. HVASS, 355 U.S. at 574.

Where, even after the decision issued in REHAIF, 139 S.Ct. 2191 (2019), the said Court-appointed counsel, still failed to raise the Claim(s), in respect thereto, such as HVASS, 355 U.S. at 574 due to the indictment not alleging a violation of Statute, with respect to the substance of the charge. Although, the 18 USC §922(g)(1) & §924(a)(2), statutory language, "convicted" & "a crime punishable by imprisonment for a term exceeding one year", is being prosecuted, as the essential status element, still to this very date. See: UNITED STATES v. JEROME NASH, Case No. 4:19-CR-00025-RLW, as pursuant to Eighth Circuit Appeal Case No. 19-2944.

And Please also note that, At trial CLARK was deprived his rights, as protected by the U.S. CONSTITUTION, 6th Amendment, upon CLARK whom subpeona MICHEAL LEVINSON, which the DISTRICT COURT stated that, in doing so CLARK went against the Court's orders because when said witness MICHEAL LEVINSON, had arrived to the DISTRICT COURT to testify. The DISTRICT COURT sent MICHEAL LEVINSON home, not allowing any testimony from him as CLARK's witness.

Reasons for Granting the Writ

INTRODUCTION

Part I. Summary:

First, CLARK's Affirmed Sentence and Judgment must be vacated, light of the applicability of REHAIF v. UNITED STATES, 588 U.S. ___, 139 S.Ct. 2191 (2019), which has interpreted §922(g) to require the GOVERNMENT to prove that a defendant knew the fact, or fact(s), that he had been placed under a Status, (§922(g) statutory language, "any person") to make him belong to the relevant category of person(s), that barred him from possessing a firearm or ammunition. Which is contrary to both the Lower Courts' and the GOVERNMENT's determination that, simply by the GOVERNMENT proving that a defendant either, (a) knew of his prior conviction(s), or (b) knew of the fact(s) of his prior conviction record(s), then the GOVERNMENT has proved guilt, as to a defendant's knowledge, with respect to the essential 'status' element, in order to sustain a conviction for violation of 18 USC §922(g)(1) & §924(a)(2).

As, the Lower Courts and the GOVERNMENT both have equally determined that, REHAIF, 139 S.Ct. 2191 (2019) has interpreted §922(g) to require the GOVERNMENT to prove that a defendant knew the fact, or fact(s) to make him (qualified, so to speak) to have belonged to the relevant category of person(s), (as if 'status' is a mere relation), that barred him from possessing a firearm or ammunition.

Second, on remand the applicability of LOGAN v. UNITED STATES, 144 U.S. 263, 12 S.Ct. 617 (1892), does in fact exist, with respect to the GOVERNMENT having the correlative duty to protect CLARK against injury from any quarter, while so held, where the inaction(s)/action(s) of the recently dismissed court-appointed counsel has adversely affected CLARK's ability to raise his claims both now within this Certiorari and also on remand, which his available claims both now and on remand, include, but are not limited to claims, pursuant to REHAIF, 139 S.Ct. 2191 (2019).

Third, in addition to further consideration of REHAIF, 139 S.Ct. 2191 being

conducted, on remand. It is also warranted that instruction(s) being issued by the U.S. Supreme Court Addressed to the Eighth Circuit that, CLARK be free to argue on Remand all other available Appellate Claims(s). See: UNITED STATES v. DOE, 465 U.S. 605, 104 S.Ct. 1237 (1984), I.d. at Footnote 18; and also SECTY. OF PUB. WELFARE v. INSTIT. JUVENILES, 442 U.S. 640, 99 S.Ct. 2523 (1979), I.d. at Headnote 3b & Footnote 9, which states, ... "free to argue on remand"...

Part II. CLARK, seeks to be free to argue on remand, all other available Appellate Claims, such as:

(1) REHAIF, 139 S.Ct. 2191 (2019), De La Montanya v. De La Montanya, 112 Cal. 101, Pac 345, LOGAN v. UNITED STATES, 144 U.S. 263, 12 S.Ct. 617 (1892) & UNITED STATES v. HVASS, 355 U.S. 570 (1958), which authorizes appellate review of whether CLARK's Indictment does not allege a violation of Statute, upon which the Indictment was founded, not merely due to some deficiency in the Pleading of the Indictment, but with respect to the Substance of the Charge, under 18 USC §922(g)(1) & §924(a)(2). Where the very meaning of the word status, both as a derivative and as definded in legal proceeding(s), forbids that it should be applied to a mere relation. Status implies relations, but it is not a mere relation;

(2) REHAIF, 139 S.Ct. 2191 (2019), De La Montanya, 112 Cal. 101, Pac 345, & LOGAN v. UNITED STATES, 144 U.S. 263, which authorizes appellate review of whether status can be applied as mere relation upon the GOVERNMENT simply being required to prove that a defendant either, (a) knew of his prior conviction(s), or (b) knew of the fact(s) of the record(s) of his prior conviction(s), to prove guilt, as to the essential status element, with respect to a defendant's requisite knowledge, in order to sustain a conviction for a violation of 18 USC §922(g)(1) & §924(a)(2)?;

(3) 28 CFR §0.55(e), REHAIF, 139 S.Ct. 2191, De La Montanya, 112 Cal. 101, 44 Pac 345, & LOGAN v. UNITED STATES, 144 U.S. 263, 12 S.Ct. 617 (1892), which authorizes Appellate review of whether the Criminal liability in CLARK's firearm Case, remains unresolved so that, CLARK's Case can be resolved, or settled by a Satisfaction of Judgment & a Satisfaction of Penalties, along with all other available remedies, under Subpart Y of

28 CFR?;

(4) LOGAN v. UNITED STATES, 144 U.S. 263, 12 S.Ct. 617 (1892), De La Montanya, 112 Cal. 101, 44 Pac 345, & REHAIF, 139 S.Ct. 2191, which authorizes Appellate review of whether the misapplication of 18 USC §922(g)(1) & §924(a)(2), violated the GOVERNMENT's correlative duty to protect CLARK against injury from any quarter, while so held, in order to warrant remedies, where even after the decision issued in REHAIF, 139 S.Ct. 2191, the 18 USC §922(g)(1), Statutory language, "Convicted" & "a crime punishable by imprisonment for a term exceeding one year", is being prosecuted, as the essential status element of the offense, still to this very date. See: JEROME NASH, Case No. #4:19-CR-00025-RLW, as pursuant to Eighth Circuit Appellate Case No. #19-2944;

(5) ONELAS v. UNITED STATES, 517 U.S. 690, 116 S.Ct. 1657 (1996) & LOGAN v. UNITED STATES, 144 U.S. 263, which authorizes appellate De Novo review of the Trial Courts' Ultimate , as to whether Police officers had reasonable suspicion to stop CLARK and Probable Cause to make a warrantless search, where FLORIDA v. J.L., 529 U.S. 266, 120 S.Ct. 1375 (2000), is the relevant case for the issue of an anonymous call, not TERRY v. OHIO, 392 U.S. 1, 88 S.Ct. 1868 (1968);

(6) UNITED STATES v. FIELDS, 863 F. 3d 1012, (8Th CIR. July 20, 2017), & LOGAN v. UNITED STATES, 144 U.S. 263, which authorizes appellate review to determine that CLARK does not have the requisite Three (3) Conviction(s) that are crimes of violence for the purposes of an enhanced sentence, under 18 USC §924(e), where De Novo review of whether CLARK's Assault 2nd degree, under RSMo. §565.060.1(3), (later recodified as §565.052.1(3)) is not a crime of violence, along with CLARK's Robbery 1st degree, under RSMo. §569.020.1(4) is also not a crime of violence.

ARGUMENT(s)

- I. WHETHER CLARK's AFFIRMED SENTENCE & JUDGMENT MUST BE VACATED IN LIGHT OF REHAIF, 139 S.Ct. 2191 (2019), THEN REMANDED, WHERE IT IS WARRANTED THAT CLARK BE FREE TO ARGUE ON REMAND ALL AVAILABLE CLAIM(s), WHICH INCLUDE, BUT ARE NOT LIMITED TO THE APPLICABILITY OF REHAIF, 139 S.Ct. 2191, UPON THE EXISTING CORRELATIVE DUTY OF THE GOVERNMENT TO PROTECT CLARK AGAINST INJURY FROM ANY QUARTER WHILE SO HELD?

Vacating CLARK's Affirmed Sentence and Judgment is warranted. However, along with vacating CLARK's sentence and Judgment, CLARK's case should not only be remanded for further consideration in Light of REHAIF v. UNITED STATES, 588 U.S. ___, 139 S.Ct. 2191 and its applicability, which the recently dismissed court-appointed counsel had failed to raise.

But, CLARK's case warrants remand also, so that CLARK is free to argue on Remand, any and all available Appellate claim(s), which the recently dismissed court-appointed counsel failed to raise, in addition to the applicability of REHAIF, 139 S.Ct. 2191 (2019), due to the Inaction(s)/Action(s) of Counsel.

Therefore, we begin with the vacating of CLARK's Affirmed Sentence and Judgment, being warranted. As, dangerous implication(s), exist which raises question(s) of exceptional importance.

REHAIF, 139 S.Ct. 2191 (2019), is a case not only about Jury Instruction(s). However, both the GOVERNMENT and the Lower Courts have already misrepresented the case to avoid and ignore their duty to address Two significant issue(s). For one, the issue of whether the Indictment does not allege a violation of Statute, upon which the Indictment was founded, not merely due to some deficiency in the Pleading of the Indictment, but with respect to the Substance of the Charge, under 18 USC §922(g)(1) & §924(a)(2). See: UNITED STATES v. HVASS, 355 U.S. 570 (1958); And for two, the issue of whether the GOVERNMENT simply proving that a defendant either, (a) knew of his prior conviction(s), or (b) knew of the fact(s) of the Records of his prior conviction(s), the GOVERNMENT has proved guilt, as to a defendant's knowledge, with respect to the essential 'status' element in order to sustain a conviction for violation of 18 USC §922(g)(1) & §924(a)(2).

As, the Lower Courts and the GOVERNMENT both have, equally determined that, REHAIF, 139 S.Ct. 2191 (2019), has interpreted §922(g) to require the GOVERNMENT to prove that a defendant knew the fact, or fact(s) (of his convictions) to make him , (qualified, so to speak) to have belonged to the relevant category of persons, (as if 'status is a mere relation) that barred him from possessing a firearm or ammunition.

Where the further ability of the GOVERNMENT and the Lower Courts to provide further opportunities for additional misapplication of Statutes to occur, equally constitutes dangerous implication(s), which exist and must be resolved, immediately.

In CLARK's Case, §922(g)(1) requires the GOVERNMENT to prove that CLARK knew the fact, or knew the fact(s), that he had been placed under a status, which made CLARK belong to the relevant category of person(s), that barred him from possessing a firearm, under §922(g)(1) & §924(a)(2).

Furthermore, in CLARK's Case, the Indictment does not allege a violation of Statute, with respect to the Substance of the Charge, upon which the Indictment was founded simply due to the fact that, with respect to CLARK's Circumstances, the Substance of the Charge for being in violation of 18 USC §922(g)(1) & §924(a)(2), fails to exist.

As, De La Montanya v. De La Montanya, 112 Cal. 101, 32 L.R.A. 82, 53 Am. St. Rep. 165, 44 Pac 345, held that, "the very meaning of the word status, both as a derivative and as defined in legal proceeding(s), forbids that it should be applied to a mere relation. 'Status' implies relations, but it is not a mere relation."

Therefore, contrary to De La Montanya, 112 Cal. 101, 44 Pac 345 and also REHAIF, 139 S.Ct. 2191 (2019), both the GOVERNMENT and the Lower Courts have already determined that, REHAIF, 139 S.Ct. 2191, has interpreted §922(g)(1), to require the GOVERNMENT to prove that a defendant knew of the record(s) of his prior conviction(s) to make his possession of a firearm, unlawful where to prove guilt, as to the essential status element, both the GOVERNMENT and the Lower Courts rely upon the 18 USC §922(g)(1) Statutory language, "convicted" & "a crime punishable by imprisonment for a term exceeding one year", in order to make this determination.

However, CLARK's Conviction and sentence is conflict with both REHAIF, 139 S.Ct. 2191 & De La Montanya, 112 Cal. 101, 44 Pac 345 and must be vacated, not only to protect CLARK against injury from any quarter, while so held. See: LOGAN v. UNITED STATES, 144 U.S. 263, which is cited by: COFFIN v. REICHARD, 143 F.2d 443, at 444 (6Th CIR. 1944);

UNITED STATES v. GREENE, 497 F.2d 1068, at 1082 (7TH CIR. 1973); and HUNG-PING WANG v. WITHWORTH, 811 F.2d 952 (6TH CIR. 1986).

But, also so that Remand for further consideration in light of REHAIF, 139 S.Ct. 2191 (2019), can occur to ensure the U.S. Supreme Court can act as a Court of review, upon failure by the EIGHTH CIRCUIT, to resolve the existing dangerous implication(s).

As, REHAIF, 139 S.Ct. 2191 (2019), had also interpreted §922(g) to require the GOVERNMENT to prove that a defendant knew he possessed a firearm, which is not just merely having custody of a firearm, because **Knowledge of possession** is an act that is **Voluntarily, knowingly & intelligently made** and that does not include **receipt of stolen property**.

Where CLARK's Case is not a case of **Actual possession**, which requires CLARK to be named and Identified, as the **Actual Transferee/Buyer** upon an **ATF 4473 FORM/ATF FORM 4473**. However, although the GOVERNMENT Intends to have the Question(s) of Fact, **Supercede the Question(s) of Law**, so that CLARK's Case can be a **case of Constructive Possession**, CLARK's case is also not a case of Constructive possession, because the **Actual Transferee/Buyer** of the Firearm with Serial Number #TAN 20311, had **filed a Stolen Property Police Report**, which equally eliminated any affirmative link between the **Actual Transferee/Buyer**, whom is named **Micheal Levinson** (a State of Missouri, Resident) who is the **Registered and Actual Gun owner Transferee/Buyer** residing at 1529 Fathom Dr., Bellefontaine Neighbors, Missouri and CLARK.

Moreover, in a case of Constructive possession, it is the affirmative link existing between a defendant and an actual Tranferee/Buyer, which in turn provides the existence of fact/fact(s), necessary to prove a defendant knew these set of fact(s), that showed that he had been placed under a status by his constructive possession of the Actual Transferee's Firearm to make the defendant belong to the relevant category of person(s), (as cited within §922(g)(1) - §922(g)(9)), barred from possessing a firearm.

Therefore, CLARK's Affirmed Sentence and Judgment, exists in violation of the Law(s) of the UNITED STATES and in violation of the 5th & 6th Amendment(s) to the U.S. CONSTITUTION, as pursuant to the Correlative duty of the GOVERNMENT to Protect CLARK against

injury, along with Section(s) §922(g)(1), §924(a)(2) & §924(e), of TITLE 18, U.S.C., which are also duties owed to PETITIONER, upon the existing on-going, lengthy periods of Incarceration, suffered by CLARK, which occur in absence of Jurisdiction, or at the very least, occurred in excess of Jurisdiction.

CONCLUSION

For the foregoing reason(s), PETITIONER prays that a Writ of Certiorari issues to review the Judgment of the United States Court of Appeals for the Eighth Circuit, which occurred in absence of the application of REHAIF v. UNITED STATES, 588 U.S. __, 139 S.Ct. 2191 (2019).

And then, Vacate the Affirmed Sentence and Judgment to remand the case to the Eighth Circuit with specific instructions that CLARK be free to argue on remand, all available claim(s), in addition to REHAIF v. UNITED STATES, 588 U.S. __, 139 S.Ct. 2191 (2019).

Dated: March 19, 2020

Respectfully Submitted,

SACOREY CLARK, PETITIONER

"without Prejudice"

Sacorey Clark

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