ORIGINAL

No. 19-8535

FILED
MAY 14 2020
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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

COURTNEY JOHNSON — PETITIONER
(Your Name)

United States Court vs.
of Appeals For the Eleventh Circuit — RESPONDENT(S)
United States of America

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

COURTNEY Johnson
(Your Name)

F.C.I Williamsburg P.O Box 340
(Address)

Salters, S.C 29590
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

1.) The 11th Circuit concedes that Johnson substantial Rights were not violated when the Government declined to instruct Johnson's Jury of the Status element and denied Johnson Relief. But on the other hand the 4th Circuit concedes that (Gary F. 3d 2020 WL 1443528 At* 4th Circuit Mar 25 2020) substantial Rights were violated due to fact Gary Signed a Plea unintelligently because the Plea was without the Status Element and such an error is structural.

So how can Gary in the 4th Circuit get Relief by signing a Plea without the Status element, but Johnson get denied Relief in the 11th Circuit for Johnson Jury was never instructed of the same exact missing Element?

2.) Did the trial erred when it failed to grant a Judgement of Aquittal when the government failed to present a sufficient Proof of each and every element from which a Rational Juror could conclude beyond a reasonable doubt that Johnson was guilty?

3.) How could the Government ever obtained Jurisdiction when the government never presented all the elements required neither Proved all four elements including the essential status element to the grand Jury?

Questions Presented

4.) If there are A Category of "9" type of felons that is Prohibited from Possessing a firearm which are felons that been convicted of felonies consisted of murder, rape, manslaughter, robbery, sodomy, larceny, Arson, mayhem, And burglary. As A non-violent offender that never been convicted of A felony that bans or Prohibit me from Possessing A firearm So As A non-violent offender how can I be indicted, charged, And convicted of Possession of A firearm by a convicted felone?

Larry Edward Hatfield v. Jefferson B Sessions Case No. 3:16-cv-00383-JPG-RJD

LIST OF PARTIES

[X] 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:

UNITED STATES COURT of APPEALS FOR THE ELEVENTH CIRCUIT

UNITED STATES DISTRICT COURT for the Middle District of Florida

MARIA CHAPA LOPEZ
UNITED STATES ATTORNEY

DAVID P. RHODES
ASSISTANT UNITED STATES ATTORNEY
Chief, APPELLATE DIVISION

SEAN SIEKKINEN
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TABLE OF AUTHORITIES CITED

Hatfield v Sessions CASE NO. 3:16-CV-00383-JPG-RJD

CASES U.S v HOOKER, 841 F.2d AT 1230 4th CIR (4) PAGE NUMBER

U.S v DANIELS 973 F.272 4th CIR (3) P.G VASQUEZ v HILLERY 474 U.S AT 263-64 (7)

U.S v PUPO 841 F.2d At 1239 4th CIR (3)

(9) NEDER v. U.S 527 U.S 1 1999 (4) WEAVER v 137 S.CT. AT 1908 (7) (8)

U.S v CARROL 105 U.S 611, 612 1882 (5) Rehaif v UNITED STATES (10)

APPRENDI v NEW JERSEY 530 U.S 466, 500 (2000) (5)

U.S v OPSTA, 659 F.2d 848, 850 8th CIR (5) FULMINANTE, 499 U.S AT 309 (9)

U.S v. DENMON, 483 F.2d 1093, 1095 8th CIR (5)

RUSSEL v U.S. 369 U.S 749, 770 1962 Smith, 312 U.S AT 334 (9)

U.S v GAYLE 967 F.2d 483, 485 11th CIR (5) ROSE v CLARK 478 U.S 570, 577-78 (9)

U.S v GONZALEZ-LOPEZ 548 U.S 140, 149 N.4 (7)

STATUTES AND RULES

U.S v GARY F.3d 2020 WL 1443528 At* 4th CIR MAR 25 2020

Fed. R CRIM. P. 7 (A) (4)

Fed R CRIM. P. 11 (h) (8)

922 (9)(1)

OTHER

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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,
[X] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district 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.

[ ] 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

[X] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Feb 26, 2020.

[X] 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: ____________, 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. § 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).

GROUND ONE:

(Dismissal of an insufficient indictment)

The Supreme Court has found that section 922(g) does not possess a "Knowingly" status element concerning the Knowledge of one Knowing he or/she was prohibited from possessing a firearm, therefore petitioner's indictment must be vacated..

The goverment most charge and prove the Additional essential element that the defendant Knew he was prohibited from possessing a firearm (Rehaif) Every essential element must be charged in the body of an Indictment and the inclusion of a reference to the statue will not cure the failure to do so (U.N v Daniels 973 F.2d 272). The indictment charging petitioner did not Allege the essential fourth Element required to prove a violation of Section 922(g), that petitioner Knew he was prohibited from possessing a firearm The indictment is currently deficient. Where post-verdict challenge to the indictment Relates to the Absence of An element, the indictment will be held Sufficient if it contains words similar import (U.N v Pupo 841 F.2d At 1239 4th cir) There Are no words in petitioner's indictment that would place petitioner on notice that government Sought to prove that he Knew he was a prohibited person from possessing a firearm. Fifth Amendment guarantee that no person be held to Answer for a infamous crime unless on indictment of a grand jury.

Fifth Amendment guarantees that a grand jury consider and find All elements of the offense charged (U.N v Hooker, 841 F.2d At 1230 4th cir). Thus the government can not cure through subsequent Amendment an indictment presented by the grand jury that fail to Allege each essential element because there is no Assurance that the grand jury considered and found each essential element. The petitioner indictment is fatally defective because it fails to Specifically include every essential element of the charged offense. When a indictment fails to include an essential element of offense charged it thereby fails to charge any federal offense and a conviction under a insufficient indictment may not stand. The omission from the indictment deprived the district court of jurisdiction to proceed on to trial, thus rendering the defendant conviction And sentence Null and void. An indictment's relationship to jurisdiction is thus based on whether the indictment Alleges All of the elements constituting a federal offense And whenever it fails to do so the district court lack subject-matter jurisdiction. This error of Allowing the government to proceed on a deficient indictment is a violation of petitioner's 5th Amendment Right because an essential element is missing from the charged offense And that omission is not otherwise cured, (Neder v U.N States 527 U.S 1 1999). This error effects petitioner substantial right because petitioner was found guilty At a jury trial on a defective indictment. An indictment that fails to invoke a courts jurisdiction or state an essential element of the offense necessarily undermines the validity of a conviction. Fed. R Crim P. 7 (A) requires that capital and felony offenses be prosecuted by an sufficient indictment.

In an indictment upon a statue, it is not sufficient to set forth the offense in the words of the statue, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the the offense intended to be punished (U.S v Carrol, 105 US 611, 612 (1882)). "In order for an accusation of a crime (whether by indictment or some other form) to be proper under the common law, and thus proper under the codification of the common-law rights in the fifth and Sixth Amendments it must allege all elements of that crime, likewise, in order for a jury trial of a crime to be proper, All elements of the ~~elements~~ crime must be proved to a jury.... beyond a reasonable doubt.... (Apprendi v New jersey 530 US 466, 500 (2000) (Thomas J. concurring). When the indictment does not set forth all the elements of the offense in a clear and unambigious way, so that the grand jury is aware of all the elements, then the indictment is insufficient. (U.S v Opsta, 659 F.2d 848, 850 8th cir) Failure to allege the essential elements of criminal intent make the indictment fatally defective and requires dismissal of the indictment (U.S v Denmon, 483 F.2d 1093, 1095 8th cir 1973). To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guarantee of the intervention of a grand jury was designed to secure. (Russel v. U.S, 369 U.S 749, 770 1962) A criminal conviction will not be upheld if the indictment upon which it is based does not set forth essential elements of the offense (U.S v Gayle, 967 F.2d 483, 485 11th cir 1992).

Failing to indict the mens rea element deprives the defendant of any opportunity to contest that element, or for the grand jury to find the element is not supported. A conviction based on an Indictment where the grand jury was not informed of all the elements of the charged offense, where the indictment failed to inform the defendant of all the elements, and where the district court at the time of trial omitted an element undoubtedly violated petitioner's 5th Amendment due process right and deprived the government jurisdiction over the subject-matter.

The petitioner could not even determine if he had a defense regarding his knowledge of his status under 18 U.S.C (922 (g)) petitioner substantial rights were violated rendering the insufficient indictment null and void due to the invalidity of petitioner's indictment petitioner indictment must be dismissed.

Ground Two

(Structural Error)

The defendant never received "real notice of the true nature of the charged offense violating his substantial right to a fair trial. This omission enable the government to misinform the jury with improper Instructions rendering this error structural.

The defendants conviction and indictment must be vacated.

The Category of structural errors encompasses interests other than protection from an erroreous conviction, including "the fundamental legal principle that a defendant must be allowed to his own choices about the proper way to protect his own liberty. When a court denies a criminal defendant the right to conduct his own defense or the right to counsel of choice, for example, the error has infringed upon the defendant's autonomy interest regardless of the strength of the prosecution's evidence and regardless of ~~the strength~~ whether the error affected the ultimate outcome of the proceedings, because harm is irrelevant to the basis underlying the right the court has deemed a violation of that right structural error (U.S v Gonzalez-Lopez, 548 U.S 140, 149 n.4 (2006))

The error here is structural because it violates this same autonomy interest, because the defendant did not understand the true nature of the 922(g) Charge, petitioner was unable "to make his own choice about the proper way to protect his own liberty." (Weaver, 137 S.ct at 1908). The infringement on his autonomy in this scenario is at least comparable to if not significantly more problematic then infringement that occurs when a defendant is denied the right to represent himself or the right to the counsel of his choice. A special category of unpreserved errors.... that may be noticed regardless of thier effect on the outcome. Such errors are referred to as structural because they are "fundament flaws" that "undermined the structural integrity of a criminal tribunal. (See Vasquez v. Hillery, 474 U.S at 263-64).

(Rehaif): Supreme Court ruling states that there exist four essential elements that must be within petitioners indictment, yet were not and samesaid elements need to be within the jury instructions, which were not included and lastly all four elements of 922 (g) need to be found beyond a reasonable doubt for a guilty verdict. The district court plainly err in declining to instruct the jury of the fourth essential element that the United States had to prove that petitioner knew he was not allowed to possess a firearm. The district court also err in declining to grant a judgement of Aquittal based on a a failure to prove that fact as petitioner argues - or any other merits in regards of (Rehaif v. United States). This type of error falls into the narrow category of structural error. "The purpose of structural error doctrine is to ensure insistence on certain basic constitutional guarantees that should define the framework of any trial." Thus, the defining feature of a structural error is that it affects the framework within the trial proceeds, rather than being simply an error in the trial process itself. (Weaver v Massachusetts, 137 S.ct 1899, 1907 "2017") (citations omitted). Such an error entitles the petitioner to automatic reversal with any inquiry prejudice. In a criminal case that is tried before a jury, the absence of a "complete verdict" on every element of the charged offense establishes no more than that an improper instruction on a element of the offense violates the federal Constitution's Sixth Amendment guarantee of the right to a fair trial.

Fed. R Crim. P. 11 (h)

Structural errors are defects in the constitution of the trial mechanism which defy analysis by harmless-error standards (Fulminante, 499 U.S at 309) and deprive defendants of basic protections without which a criminal trial cannot reliably serve it's function as a vehicle for determination of guilt or innocence... and no criminal punishment may be regarded as fundamentally fair (Neder v. United States, 527 U.S 1, 8-9 "1999) (quoting Rose v. Clark 478 U.S 570, 577-78 "1986). The Structural error violated the petitioner's right to make a fundamental choice regarding his own defense in violation of his Sixth Amendment autonomy interest. Indeed the Sixth Amendment contemplates that "the accused is the master of his own defense.

The record reveals that neither the defendant government, counsel, district Court Judge, nor the defendant correctly understood the essential elements of the crime with which defendant was charged. The Court grounded this ruling in the principle that the defendant must receive "real Notice of the true nature of the charge against him which the Court described as "the ~~most~~ first and most universally recognized requirement of due process. (Smith, 312 U.S at 334).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

The district court's error is structural because the deprivation of the defendants autonomy interest under the fifth Amendment due process clause has consequences that necessarily unquantifiable and indeterminate, (See Gonzalez - Lopez 548 U.S At 150) rendering the impact of the district courts error simply too difficult to measure, finding structural error where "the precise effect of the violation cannot be ascertained. The impact of this error - an undisputed constitutional violation where the defendant was misinformed about the nature of the charges against him instead the type that is fundamental to the judicial process. It is impossible to know how the defendants counsel, but for the error, would have advised him, what evidence may have been presented in his defense and ultimately what choice the defendant would've proceeded on to trial. The defendants status is the "crucial element separating innocent from wrongful conduct (Rehaif, 139 S.ct At 2197) (citing United States v X-citement video Inc., 513 U.S. 64, 73 "1994")

Yet the district court failed to inform the defendant that knowledge of his prohibited status was a element of the offense, denying him the opportunity to decide whether he could or desired to mount a defense to this element of his § 922 (g)(1) charges as it was his sole right to do so.

Ground Three 18 U.S.C 922(g)(1) is unconstitutional as applied

3.) 18 U.S.C 922(g)(1) statue is unconstitutional and violates my 2nd Amendment Rights. The Rights of the People to keep and bear Arms. The 2nd Amendment Right is exercised individually and belongs to All Americans. If the Supreme Court has announced that there is a presumption that 2nd Amendment Rights belong to All Americans a category which would include Felons - then this Court is bound to follow that presumption, unless the Government can Rebut it. The People have a Right to bear arms for defense of themselves and thier own State, or the United States, or for the purpose of Killing game and no law shall be passed for disarming the People or any of them unless for crimes of violence committed, or real danger of Public injury from individuals. Colonial and English societies of the 18th century excluded Felons from Possessing firearms and the Founders did not consider felons within the common-law rights to arms or intend to confer any such right upon them. At the time of the founding, English common law felonies consisted of murder, rape, manslaughter, Robbery, sodomy, larceny, arson, mayhem, and burglary. So if the founders intended to allow Congress to disarm unvirtuous felons, that intent would have necessarily been limited to those individuals convicted for one of those nine felonies. Johnson, however never been convicted of one of those felonies.

Ground three

The Principle objective of 922(g)(1) is to Keep firearms away from the persons Congress classified as Potentially irresponsible and dangerous. 922(g)(1) Keeps guns out of the hands of those who have demonstated that they may not be trusted to Possess a firearm without becoming a threat to Society. Defendant is a non-violent offender that never commited a felony with a firearm. The history of 922(g)(1) highlights the irrationality of the Government's Position. The federal firearm Act of 1938 - the first major piece of Federal legislation on this matter only banned those "convicted of a crime of violence" From owning a gun. PL 75-785, June 30, 1938, 52 stat. 1250. that legislation did not reach non-violent offenders. In 1961 Congress Amended the statue to Substitute "crime Punishable by imprisonment for a term exceeding one Year for "crime of violence". 6 Years later. Congress Passed a Omnibus Crime Control and Safe Streets Act of 1968. That Act Cemented 922(g)(1) into current form. But the Act Also crafted something else 18 U.S.C 925(C) a Relief valve for felons impacted by 922(g)(1) to Restore thier firearm rights by Application to the Attorney General. Specifically, If Attorney Gen through A.T.F determines that felons is not likely to Act in manner to dangerous to Public Safety and granting Relief would not be contrary to Public interest. The Attorney Gen. may Restore the felons Rights. 925(C) is a tacit Admission by Congress that 922(g)(1) is

Ground three

Overboard by facially applying to all felons regardless of thier underlying crime or circumstances. Indicating a bad fit between 922(g)(1) and the Government's purpose of keeping firearms out of the hands of dangerous criminals who may create armed mayhem. Congress stopped funding 925(c) in 1992 trasforming what should have been a simple administrative proceeding into a constitutional litigations. 922(g)(1) is an a unconstitutional violation of the 2nd Amenident as applied to defendant a non-violent felon. because 922(g)(1) was for felons who was convicted of a crime punishable by imprisonment for a term exceeding one year for crime of violenee. (Hatfield v Sessions case No. 3:16-CV-00383-JPG-RJD)
If 925(c) was a relief valve for felons impacted by 922(g)(1) to restore thier firearm rights by application to the Attorney General
But Congress no longer fund 925(c) and 925(c) is no longer a relief valve for 922(g)(1), So the 922(g)(1) statue is unconstitutional as applied to non-violent offenders....

STATEMENT OF THE CASE

THE defendant was charged with A one count Indictment Asserting the defendant was Previously convicted felon in Possession of firearm in violation of 18 U.S.C section 922(g)(1) And 924(e) which was filed on March 28, 2018 A Jury trial commenced on June 4, 2018 & June 5, 2018 A hung Jury was Announced And the Court declared A mistrial. A second Jury trial Commenced on July 23, 2018, On July 24. 2018 the Jury found the defendant guilty. Defense counsel submitted A Judgement of Aquittal on that Ground The Government failed to present sufficient Proof of each and every element. . . from which A Rational Juror could conclude beyond A Reasonable doubt that defendant was guilty. A notice of Appeal was filed on February 22 2018. On June 21 2019 (Rehaif v United States) was granted Relief. Defendant conviction was Affirmed Feb 26. 2020 (U.S v. Gary. F.3d. 2020 WL 1443528 at *4) (4th Cir Mar 25. 2020) Gary conviction was vacated on Mar. 25, 2020. Defendant Amend Gary case to his writ of Certiorari Petition.

REASONS FOR GRANTING THE PETITION

THE REASON FOR GRANTING this PETITION IS the fact the GOVERNMENT NEVER obtained Jurisdiction due to the fact the Government never Presented the Grand Jury with the fourth essential element that makes 922 (g) (1) A federal offense which is the status element. The Government must Prove to the Grand Jury that the defendant Knew he was A Prohibited Person from Possessing A firearm, but however the Government Still obtained Jurisdiction without Proving the fourth essential element to the Grand Jury creating A structural error. The fact that the defendant Never received notice of that missing element of the offense Rendering The district Court error structural. Rehaif error satisfy Plain error Review because such an error is structural which per-se affects defendant's Substantial Rights and seriously Affected the fairness, integrity and Public Reputation of the Judicial Proceedings. The Grand Jury was never ~~of~~ informed of this fourth essential elements, the defendant was not Notified of this missing element, The Jury was never instructed of this missing element, And the defendant was found guilty by A Jury on A invalid indictment. But the Government concedes that it would've been erroneos to instruct the Jury of the missing essential element. The Government

Reason for Granting the Petition

Also concedes that the District Court did not commit Plain Error in failing to instruct the Jury of the Rehaif element, but contends, that omission of this element from the Jury instruction did not affect defendant substantial Rights because there is overwhelming Evidence the outcome would not have been no different. A Structural error effects defendant substantial Rights Regardless of the strength of the Prosecutions evidence or whether the error affected the ultimate outcome of the Proceedings. The Reason this Petition should be granted is because defendant must receive real notice of the true nature of the charge against him. the first and most universally recognized Requirement of due Process. The defendant was denied the basic guarantees that should define the framework of any trial. Such errors is the case where the consequences of a constitution deprivation are necessarily unquantifiable and indeterminate. Failing to instruct a Jury on a element of the offense is within the special category of forfeited errors. Any conviction resulting from a structural error can not reliably serve its function as a vehicle for determination of guilt or innocence and no criminal Punishment may be regarded as fondementally fair.

(My Petition is enclosed with the Gary case Attached at the end of Petition)

The Court should vacate Johnson's indictment and conviction due to the insufficient indictment and the structural error and/or instruct the lower Court to do so.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

By: Courtney Johnson

Date: ______________________