No. 20-1702

IN THE
Supreme Court of the United States

JIMMY COBB,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

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

PETITION FOR REHEARING

JIMMY COBB
Pro se

Table of Contents

Table of Authorities

PREAMBLE

Pursuant to Rule 44.1 of this Court, Petitioner Jimmy Cobb, respectfully petitions for a rehearing of the denial of a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

The Eleventh Circuit's reason for denying Petition does not follow procedural due process that's afforded to every accused person of any crime by law of this Court and by the Fifth and Fourteenth Amendment of the Constitution.

PETITION FOR REHEARING

The original certiorari petition asked this Court to resolve three (3) issues: (1) the Courts jurisdiction to punish conduct that did not amount to a federal crime, (2) Vague Law given the Eleventh Circuits precedence rulings on statutes, and (3) Ineffective Assistance of Counsel for misunderstanding of law. This Court has stated,

"it cannot rely on prosecutorial discretion to narrow the statutes scope....Regardless, to rely upon prosecutorial discretion to narrow the otherwise wide ranging scope of a criminal statute's highly abstract general statutory language places a great power in the hands of the prosecutor. Doing so risks allowing "policeman, prosecutors, and juries to pursue their personal predilections," ***Smith v. Goguen*, 415 U.S. 566, 575, 94 S. Ct. 1242, 39 L. Ed. 2d 605 (1974)**, which would result in the nonuniform execution of that power across time and geographic location. And insofar as the public fears arbitrary prosecution, it risks undermining necessary confidence in the criminal justice system. That is one reason why we have said that we "cannot construe a criminal statute on the assumption that the Government will use it responsibly." ***McDonnell v. United States*, 579 U.S. ___, ___, 136 S. Ct. 2355, 195 L.**

Ed. 2d 639 (2016)(quoting *United States v. Stevens*, 559 U.S. 460, 480, 130 S. Ct. 1577, 176 L. Ed. 435 (2010)). And is why "[we] have traditionally exercised restraint in assessing the reach of a federal statute. " ***United State v. Auguilar*, 515 U.S. 593, 600, 115 S. Ct. 2357, 132 L. Ed. 2d. 520 (1995)**

REASONS FOR REHEARING

A petition for rehearing should present intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. **See Rule 44.2**.

Petitioner reason for petition is premised on the controlling effect of law by this Court and the Constitution premised on the fact that every accused person shall have the right to due process of law. In a system that has been founded on procedural safeguards for the accused, it's imperative that the accused receives factual and material information regarding his choices, fair

warning of law as to what he is being charged with and a chance to confront witnesses and information of his case.

VIOLATION OF DUE PROCESS

Misstatement of law

Due Process starts at the for front of a case with probable cause. The Petitioners Original Indictment accused him of Attempted Online Enticement of a Minor, 18 U.S.C. 2422(b). The Eleventh Circuit has stated, upon submission to the jury, " in order to be found guilty of this crime, the first element of proof that must be established by the Government, is that the defendant used the "Internet," to persuade, induce, entice, or coerce and minor for sexual activity, as Congress has provided. ***United States v. Murrell*, 368 F.3d 1283 (11th Cir. 2004); *United States v. Neilen*, 2011 Dist. LEXIS 107570 (11th Cir. 2011); *United States v. Hornaday*, 392 F. 3d 1306, 1310 (11th Cir. 2004)**(finding defendants

communication with parent, who turned out to be law enforcement agent, over the Internet, regarding engaging in sexual activity with the parents two children falls within the scope of 2422(b) even though actual minor not involved. Both the District Court and the Appeals court concurred with the defendant that there was never the use of the Internet, however, Petitioner's has been denied appeal based on of misapplication of law.

Other circuits have followed with the same rule of law under 18 U.S.C. 2422(b). "Use of the Internet for carrying out criminal activity has been recognized to constitute the "use of a facility of interstate commerce" required to support Federal jurisdiction. ***See United States v.* Borchert, 2004 U.S. Dist. LEXIS 27162, 2004 WL 2278551, at *3 (N.D. III. 2004); See also *United States v. Pierce*, 2011, CAAF) 70 MJ 391, 2011 CAAF LEXIS 1054, on remand, decisions reached on appeal by (2012 CCA LEXIS 70** (There was no prejudicial error in military judge's instruction on

18 U.S.C. 2422(b) using the word "Internet" in place of the phrase "any facility or means of interstate commerce,: as Internet was instrument of interstate commerce; this was a question of law for the military judge, while question of whether accused used facility or means alleged to commit Attempted Online Enticement of a Minor was question of fact, which judge properly left to members of jury. (Decision made by U.S. Army Court of Criminal Appeals).

The Court of Appeals has concurred with the Lower Court has stated that the Petitioner could have and would have been convicted under 18 U.S.C. 2422(b) at trial, in the absence of the "Internet" use, as stated in the Court of Appeals response.

This Court has covered the term "use" in **Voisine v. United States, 579 U.S. ____ (2016)**, stating that a "use,' therefore, is an inherently intentional act-that is, an act done for the purpose of causing certain consequences or at least with knowledge that those consequences or at least with

knowledge that those consequences will ensue. However, how can you be punished for the use of object, if its not present and needed to violate the law. This, by far, is a misstatement of law and material information that affects a defendant's choice to proceed to trial or accept a plea.

In the Petitioner's case, the second reasoning for Appeal Courts denial is premised on the fact that the severity of penalty under 2422(b), which carries a 10-year mandatory minimum unlike 18 U.S.C. 2425, which carried a 0-5 year sentence. This Court has addressed this topic stating, " "when a defendant pleads guilty, he pleads guilty to the facts alleged not the penalty." ***Class v. United States*, 138 S. Ct. 798 (2017).**

When reviewing the facts of this case, which comes directly from the record, and information given to the Petitioner by the Lower Court and Counsel, shows that Petitioner was given erroneous information about the law 2422(b) that controlled his decision to proceed to trial. However, if the Petitioner's choice was to go to trial for 2422(b) or plead guilty to 2425, based on accurate information of the law, it's clear that proceeding to trial would have been the correct choice under established law for 2422(b), and Petitioner was prepared to do so.

For a Court to exclude an element from a statute to procure a conviction is nothing to look past. This is material information that must be known by a defendant in order to make an informed decision. This Court has stated,

> "[A] defendant cannot reach an intelligent conclusion, if he does not know the elements of the crime....and therefore does not know what the State has to prove; and his ignorant decision to plead guilty under such circumstances is not a reliable indication that he is in fact guilty ***Henderson v. Morgan*, 426 U.S. 637, 99 L Ed. 2d 108 (1976)**...An attorneys responsibility is to investigate and to evaluate his clients options in the course of the subject legal proceedings and then to advise the client as to the merits of each." ***Stano v. Dugger*, 921 F. 2d 1125, 1152 (11th Cir, 1991)**, "counsel must provide client understanding of the law in relation to the facts, so that the accused may make an informed and conscious choice between accepting the prosecutions offer and going to trial." ***Wofford v. Wainwright*, 748 F. 2d 1505, 1508 (11th Cir. 1984)(per curium).**

This also Court acknowledged, "clearly a plea could not be voluntary in the sense that it

constituted an intelligent admission that he committed the offense unless the defendant received "real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process". ***Smith v. O'Grady*, 312 U.S. 329, 334 85 L. Ed. 859, 61 S. Ct. 572 (1941).**

The Eleventh Circuit has stated that "the test for materiality is whether a reasonable man would attach importance to the fact misrepresented or omitted in determining course of action." ***SEC v. Merchant Capital, LLC*, 483 F.3d 747, 766 (11th Cir. 2007)(citation omitted)**. Put it another way, information is material if a reasonable investor would consider it significant to making an investment decision. ***Basic v. Levinson*, 485 U.S. 224, 230, 230, 108 S. Ct. 978, 99 L. Ed. 2d. 1941 (1988).**

Given that the above is law, it's clear that the proceedings against the Petitioner violated due process and was based on erroneous information.

Theres nothing in the record to suggest that Petitioner approached counsel on the day of trial that it would be in his best interest to proceed to trial, as the Petitioner knew that as of February 7, 2018, the Prosecution withdrew the plea and was preparing for trial

as was the Petitioner, on March 5, 2018. This was Counsels decision.

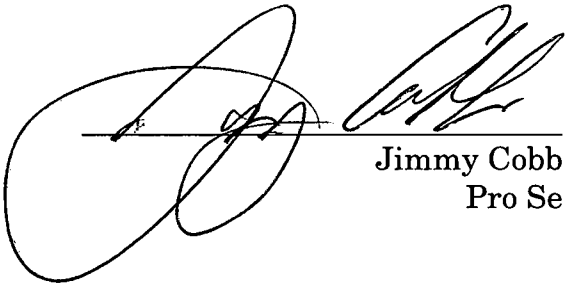
If this Court has deemed effective counsel and due process to be premised on the fact that an individual receives material information in order to make an informed decision, the record echoes the Petitioner claims that he was given inaccurate and misleading information.

CONCLUSION

For the reasons set forth in this Petition, Jimmy Cobb respectfully requests this Honorable Court grant rehearing and this Petition for a Writ of Certiorari.

DATED this 3rd day of November 2021.

Respectfully Submitted,



Jimmy Cobb
Pro Se