

No. _____

In The
Supreme Court of the United States

ERIC CHRISTOPHER HALL,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- I. Does constructive possession established without showing intent or any physical evidence linking defendant to contraband found in a storage bedroom at the residence and on the property where defendant occasionally stayed violate the due process clause of the Fifth Amendment?
- II. Did the court violate the due process clause of the Fifth Amendment in its exercise of Rule 32(i)(3)(B) disputed issues resolved by adoption in finding the information in the presentencing report was supported by a preponderance of the evidence?
- III. Did the court abuse its discretion in not allowing the defendant to withdraw appellate counsel for inaccurate statements and relevant issues not addressed in the appellant brief?

PARTIES TO THE PROCEEDING

Petitioner Eric Christopher Hall was the defendant in the district court proceedings and the appellant in the court of appeals proceedings. Respondent the United States of America was the plaintiff in the district court proceedings and the appellee in the court of appeals proceedings.

STATEMENT OF RELATED CASES

United States of America v. Eric Christopher Hall, Case Number 7:17-CR-3-1BO, United States District Court Eastern District of North Carolina. Judgment entered December 18, 2018.

United States of America v. Eric Christopher Hall, No. 18-4919, U.S. Court of Appeals for Fourth Circuit. Judgment entered February 13, 2020.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Eric Christopher Hall respectfully petitions this Court for a writ of certiorari to review the judgment of the U. S. Court of Appeals for the Fourth Circuit.

OPINION AND ORDER

The U. S. Court of Appeals' unpublished opinion No. 18-4919 is found in the Appendix at 1. The District Court's judgment Case Number 7:17-CR-3-056 is found in the Appendix at 7.

JURISDICTION

The judgment of the U. S. Court of Appeals for the Fourth Circuit was entered on February 13, 2020. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

TIMING QUESTION

Petitioner requested an additional extension past the 60-day extension provided due to Covid-19. It was determined that by law an additional extension of time could not be requested. Please see motion for an extension of time filed on July 2, 2020 for provided explanation for the requested time. Petitioner at the time asked for the Court's consideration and acceptance of this untimely filing due to circumstances related to

Covid-19 and beyond counsel's, petitioner's, and the BOP's control.

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provides that “no one shall be deprived of life, liberty or property without due process of law.”

STATEMENT OF THE CASE

On January 12, 2017, in the United States District Court Eastern District of North Carolina, the government filed a criminal indictment for Eric Christopher Hall.

Count 1 and 5. Distribution of a Quantity of Cocaine Base (Crack) on February 18, 2016 and March 30, 2016, respectively, in violation of 21 U.S.C. § 841(a)(1).

Count 2. Possession with Intent to Distribute a Quantity of Cocaine Base (Crack) and Cocaine on February 19, 2016, in violation of 21 U.S.C. § 841(a)(1).

Count 3. Possession of a Firearm in Furtherance of a Drug Trafficking Crime on February 19, 2016 in violation of 18 U.S.C. § 924(c)(1)(A).

Count 4 and 6. Felon in Possession of a Firearm on February 19, 2016 and May 4, 2016, respectively, in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924.

Also, a forfeiture notice was filed.

On February 12, 2018, Mr. Hall pled not guilty to all counts on the indictment. On February 13, 2018, Mr. Hall was found guilty on Counts 2, 3, 4 and 6. Mr. Hall filed a Rule 29 motion for acquittal. The court held that the misrepresentation and reference to crack cocaine in count two of the indictment be stricken from the indictment, but otherwise the motion was denied. Mr. Hall was sentenced to 180 months on count two, a 60-month sentence for count three and a 120-month sentence for counts four and six. Counts four and six were consolidated and ran concurrent to count one and count three ran consecutive to count one for a total of 240 months. The district court's judgment was entered on December 13, 2018 and Mr. Hall filed a notice of appeal on December 18, 2018.

On appeal, Mr. Hall challenged the denial of the Rule 29 motion for a judgment of acquittal on his § 922(g)(1) conviction and argued the court rulings on his objection to the drug weight attributed to him at sentencing was inadequate and in violation of Fed. R. Crim. P. 32(i)(3)(B). Also, Mr. Hall alleged that the district court's failure to rule on the credibility of the evidence presented in his objection to the 198 ounces of cocaine the probation officer attributed to him violated Rule 32(i)(3)(B).

Specifically, Mr. Hall alleged that the government did not meet its burden and failed to provide evidence sufficient to support a finding of constructive possession of a firearm found in the trunk of a vehicle

immobilized near the residence. The court reviewed *de novo* the district court's denial of a motion for judgment of acquittal (*citing United States v. Young*, 916 F.3d 368, 384 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 113 (2019)). The court held that in viewing the evidence in the light most favorable to the Government, the jury's verdict will be sustained if substantial evidence supports the verdict. *United States v. Barfoot*, 899 F.3d 326, 334 (4th Cir. 2018). "Substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *United States v. Edlind*, 887 F.3d 166, 172 (4th Cir. 2018) (internal quotation marks omitted), *cert. denied*, 139 S. Ct. 203 (2018). The court held that in conducting its inquiry, "we are not entitled to assess witness credibility, and we assume that the jury resolved any conflicting evidence in the prosecution's favor." *United States v. Savage*, 885 F.3d 212, 219 (4th Cir. 2018) (internal quotation marks omitted), *cert. denied*, 139 S. Ct. 238 (2018).

The Government had the burden of proof to show beyond a reasonable doubt that Mr. Hall did violate 18 U.S.C. § 922(g)(1) with (1) a *previous* conviction of a crime punishable by a term of imprisonment exceeding one year and (2) he knowingly possessed, shipped, received or transported a firearm and (3) the possession was in or either affected commerce or was in commerce as the firearm travelled in interstate or foreign commerce at some point during its existence. *United States v. Moye*, 454 F.3d 390, 395 (4th Cir. 2006). The court

held that for the purpose of the possession requirement, constructive possession was sufficient and proof of actual or exclusive possession was not required. *United States v. Lawing*, 703 F.3d 229, 240 (4th Cir. 2012). The Government sought to establish possession of the firearm via constructive possession by showing that the defendant “intentionally exercised dominion and control over the firearm or had the power and the intention to exercise dominion and control over the firearm.” *United States v. Al Sabahi*, 719 F.3d 305, 311 (4th Cir. 2013). The Government can accomplish this through the admission of direct or circumstantial evidence. *Id.* Constructive possession of contraband may be met by a person if ownership is the result of dominion or control over the contraband or the premises or vehicle in which the contraband was concealed. *United States v. Herder*, 594 F.3d 352, 358 (4th Cir. 2010); *see also United States v. Burgos*, 94 F.3d 849, 873 (4th Cir. 1996) (en banc) (stating the constructive possession “may be sole or joint” (internal quotation marks omitted)). The Government maintained that sufficient evidence was presented to allow a jury to conclude that Mr. Hall was in constructive possession of the firearm found in the trunk of a vehicle on the property of the residence and that the butt stock of the firearm discovered in the trunk and the saw used to sever the butt stock were found in the residence where Mr. Hall lived. The Government maintained that this evidence provided and supported the inference that Mr. Hall severed the butt stock and as such at some point exercised dominion and control over the firearm. Furthermore, it was offered that Mr. Hall’s accessibility to the trunk of

the car which it maintained was not secured in a manner that would preclude entry also supported the inference and provided substantial evidence that Mr. Hall acquired constructive possession of the firearm.

Next, Mr. Hall challenged the court's failure to comply with Rule 32(i)(3)(B) at sentencing in not ruling on the credibility of evidence presented in objection to the 198 ounces of cocaine the probation officer attributed to him. The court reviewed this claim for plain error as Mr. Hall did not object to the district court's failure to rule on his objection. *United States v. Cook*, 550 F.3d 1292, 1297-98 (10th Cir. 2008) (plain error review is applicable where defendant fails to make a Rule 32(i)(3)(B) objection in district court); *see also United States v. Bolden*, 325 F.3d 471, 497 (4th Cir. 2003) (providing that sentencing courts "may simply adopt the findings contained in a PSR, provided that it makes clear which disputed issues were resolved by its adoption" (internal quotation marks omitted)). The court held that the district court did not commit plain error based upon its review of the record as the findings of the presentencing report were supported by a preponderance of the evidence.

Lastly, Mr. Hall argues that the Fourth Circuit's denial of his request to withdraw appellate counsel due to inaccurate statements and issues not addressed in his brief violated due process of the Fifth Amendment to the Constitution.

REASONS FOR GRANTING THE PETITION

I. Due Process Violation

A fundamental principle afforded all persons is due process of law. The Fifth Amendment to the United States Constitution provides that “no one shall be deprived of life, liberty or property without due process of law.” The idea that one must be afforded the Constitutional protections and safeguards inherent in the pursuit of justice must be sacrosanct. That we have rules, laws, statutes and guidelines that stand watch in the event that the blindfold “She” wears to ensure fairness and impartiality is not blind, equitable standards set as a benchmark of American jurisprudence that still seek to prevail by balancing the scales of criminal justice. We would be remiss in our collective duties if we did not examine, review, and challenge these processes along this continuum, the criminal justice process.

The court affirmed the district court’s ruling in favor of the Government that it met the burden of proof to show constructive possession of the firearm located at the residence—Mr. Hall occasionally stayed at the residence. Mr. Hall did have a room at the residence. Mr. Hall paid a portion of the rent and Mr. Hall’s bedroom did have some of his clothing. The Government used these determinations as conclusive proof that a firearm and butt stock found in the trunk of a car on the premises was in Mr. Hall’s dominion and control because the saw that was found in a storage bedroom in the house and was used to sever the butt stock

presented the same color paint as on the butt stock and weapon. The Government argued that even though other persons resided at the residence, possession could be joint, or sole, and actual or exclusive possession is not required.

United States v. Schmitt, 70 F.3d 524 (7th Cir. 2014) provided, in the context of a joint residence, that the element of mere proximity to contraband is not sufficient to prove constructive possession. In that, more is needed besides mere proximity to contraband; this must be coupled with other factors such as “connection with an impermissible item, proof of motive, a gesture implying control, among others.” The Government used proximity to try to establish ownership of contraband in a storage room of a house Mr. Hall shared with at least two other residents and the trunk of a vehicle of which the lock was destroyed and law enforcement had to use a screwdriver to pry open the trunk. Yet, the government maintained that the trunk was not secure in a manner that would preclude Mr. Hall’s entry. This argument fails as this same logic can be applied to any such resident at the home or another person wanting entry into the trunk. Mr. Hall’s fingerprints were not found on the trunk of the vehicle, on the firearm, the butt stock or the saw found in the storage room of the house. This does not show ownership, dominion or control over the contraband nor does it establish dominion over the premises in which the contraband was found. *U.S. v. Ambriz*, 727 F.3d 378 (5th Cir. 2013); *see also Henderson v. U.S.*, 135 S. Ct. 1780 (2015) (providing that constructive possession of a firearm is established,

lacking physical custody but still having power and intent to exercise control over the firearm). Throughout the circuit courts and this Court, it is well established that constructive possession via circumstantial evidence is permissible. However, this does not absolve the Government of its responsibility to connect the dots. It is well established that mere proximity to contraband at a residence is not enough to establish constructive possession. Moreover, “proximity to the item, presence at the property where the item is located or association with a person in actual possession of the item, without more, is not enough to support a finding of constructive possession.” *See United States v. Hampton*, 585 F.3d 1033, 1042 (7th Cir. 2009). It bears reiterating that Mr. Hall was not the only occupant at the residence and no witness testified to ever seeing Mr. Hall with the weapon, butt stock or saw. The vehicle where the firearm and butt stock were recovered was not owned or registered to Mr. Hall nor was Mr. Hall’s name on the lease of the residence. That the government could offer no more than mere proximity to the contraband is a stretch beyond any rule or rationale allowed by law. The Government must be held accountable to adherence to the criminal process by providing real, credible, and relevant evidence to support its contention. The Government has not done so and acceptance of this petition for a writ of certiorari begins the process towards accountability in a way in which justice may be served and Mr. Hall’s rights preserved. This violation impacts Mr. Hall’s conviction and sentence.

II. Rule 32(i)(3)(B) Violation

During the sentencing phase, Mr. Hall argued that the district court failed to properly exercise Rule 32(i)(3)(B) in ruling that the findings in the presentence report were supported by a preponderance of the evidence. The rule provides that: “[A]t sentencing, the court must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.” The record made clear that Mr. Hall disputed the findings in the presentencing report and challenged the information by proffering information that was inconsistent with that provided in the presentencing report while also raising credibility issues that warranted review and evaluation. Mr. Hall had a right to expect the district court to exercise its discretion and make a review consistent with the rule to exhibit trust in its ability, arguments and evidence as presented in the memoranda and the sentencing hearing. *U.S. v. Petri*, 731 F.3d 833 (2013); *see also United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008). Mr. Hall objected to the drug amount; he called into question the credibility of the witness, the timeline of the purported offense and no evidence of corroboration as well as the reliability of the information was proven or confirmed. Mr. Hall challenged the credibility of witness Emily Barnes with her criminal record and a letter from Emily’s mother indicating that Ms. Barnes was not credible and in fact, she called her a liar. At the time of

Mr. Hall's trial, Ms. Barnes was in jail on drug trafficking charges. Despite the obvious disputes, the district court accepted the presentencing report over Mr. Hall's objection and evidence without offering any accounting or explanation to support or explain the acceptance of the evidence in the presentencing report over that provided by Mr. Hall. *U.S. v. Saeteurn*, 504 F.3d 1175 (9th Cir. 2007). Mr. Hall's objections were valid, concrete and warranted the court's time and discernment. Ms. Emily Barnes' criminal arrest record as well as her police 911 call under an assumed name called into question her credibility as a witness and posed a conflict of interest regarding the complexities of her history with Mr. Hall. The concerns raised by Mr. Hall are valid and deserve to be addressed in accordance with the rules of law. Laws, rules, and procedures exist for adherence to procedural correctness and fairness and not to thwart any part of the constitutional requirements and the criminal process requisite to the pursuit of justice at all stages. This Court in accepting this writ opens the door to accountability and acknowledgement to the rules of law applicable at all level of jurisprudence. This violation implicates Mr. Hall's conviction and sentence.

III. Abuse of Discretion, Due Process Violation

Mr. Hall, upon receiving the brief submitted to the U.S. Court of Appeals for the Fourth Circuit, disagreed with some of the statements made in the brief attributed to him and the omission of relevant issues. Mr. Hall felt a sense of distrust as the conversations he

had with the attorney did not coincide with the brief submitted. Mr. Hall understood the role of his attorney, as well as the role he played in his own defense. Mr. Hall wrote the Fourth Circuit and provided discrete evidence to support the information in the brief that he felt was inaccurate and would hurt his case. Since the insurgence of *Gideon v. Wainwright*, courts recognized a defendant's right to counsel or the right to proceed *pro se*. *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963); *Faretta v. California*, 422 U.S. 806, 819-20 (1975). The right is no less important at the appellate stage. The relationship between counsel and defendant and the understanding of each person's role in the process is important to the attorney's ability to exercise the best legal strategy for his client's legal issue and the importance for the client to participate in his own defense. In *U.S. v. Meillo*, 631 Fed.Appx. 761, 765 (2015), the court acknowledged the dire implication of the broken relationship between attorney and client when a difference of opinion exists regarding legal strategy and communication breaks down. In *Meillo*, the court reconsidered a prior ruling and granted the motion for counsel to withdraw citing "there had been a breakdown in trust, confidence and communication. . ." Many courts have entertained this request and ruled based upon the facts of the matter as presented. Attorney and client roles are distinct and defined. It is understood that a defendant "does not have the unbridled right to reject assigned counsel and demand another." *United States v. Calabro*, 467 F.2d 973, 986 (2d Cir. 1972). The court in *United States v. Houston*, 732 Fed.Appx. 24, 31 (2018) indicated four factors for

consideration when deciding a motion to substitute counsel: (1) the timeliness of the motion for new counsel; (2) whether the district court fully considered the matter; (3) whether the conflict between attorney and client “was so great that it resulted in a total lack of communication preventing an adequate defense”; and (4) whether the defendant “substantially and unjustifiably contributed to the breakdown in communication.” *United States v. John Doe No. 1*, 272 F.3d 116, 123 (2d Cir. 2001). This latter case and the roles are distinguished, in part, from the case at bar. Mr. Hall’s motion was filed to have appellate counsel withdrawn. And while Mr. Hall did not indicate that he wanted to replace counsel with another appointed counsel or proceed *pro se*, the relationship and rationale leading Mr. Hall to file the motion is not diminished by the result. In *United States v. John Doe No. 1*, 272 F.3d 116, 123 (2d Cir. 2001) (summary order), the court acknowledged the defendant’s history in this regard, but still afforded consideration for the request and articulated with clear and concise language its decision and rationale for the decision made. Mr. Hall’s information regarding what would be challenged in his brief was not in keepings with the communication between he and counsel at that time. Upon receiving a copy of the brief, he was dismayed and felt betrayed by admissions made in the brief that were not his own. Acceptance of this writ allows the wheels of justice to realign itself in keeping with the rules of law and accountability to the process of seeking justice fairly and equitably. This

violation implicates Mr. Hall's opportunity to revisit his conviction and sentence.

CONCLUSION

The issues and arguments raised in this writ are not frivolous. They are not the result of an inmate with too much time on his hands. It is not an attempt to discredit or denounce the system to which Mr. Hall owes some legal obligation and level of responsibility. The issues presented in this writ are the result of the discordant politics of law and accountability. The bedrock of American jurisprudence is founded on laws that have become precedential, that have resulted in changed times, difficult circumstances, and cultural and ideological shifts in perspectives in how rules are supposed to be interpreted and applied. From law we learn governance and guidance that is not intended to pigeonhole one legal interpretation over the other, but to ensure that along this process of criminal justice we are afforded the ability to feel safe and free to exercise the inalienable rights and the protection therein. The acceptance of this writ will lay bare some of the imperfections of the criminal justice system while also standing firm in correcting injustice, maintaining responsibility, and demanding accountability as Mr. Hall's conviction and sentence are implicated in the rulings in issue I and issue II.

For the reasons stated herein, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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