No. 20-

IN THE

Supreme Court of United States

ALGERE JONES, AKA Bush,

Petitioner,

– v. –

UNITED STATES OF AMERICA,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

MARLON G. KIRTON
KIRTON LAW FIRM
Attorney for Petitioner
175 Fulton Avenue, Suite 305
New York, New York 10169
(516) 833-5617
kirtonlawfirm@gmail.com

I. Question Presented

The Fourth Amendment prohibits unreasonable searches and seizures, the petitioner's underlying state court case was dismissed by the trial court applying the Exclusionary Rule, can a federal district court bar the use of the Exclusionary Rule during the petitioner's violation of supervised release hearing?

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IV. Petition for Writ of Certiorari

Algere Jones, a defendant currently on lifetime supervision in the Southern District of New York by and through Marlon G. Kirton, an attorney appointed under the Criminal Justice Act, respectfully petitions this Court for a writ of certiorari to review the judgment of the Second Circuit Court of Appeals.

V. Opinions Below

The decision by the Second Circuit Court of Appeals denying Mr. Jones' direct appeal reported as *United States of America v. Garcia (Jones),* 18-3554 (2nd Cir. April 15, 2020). The Order is attached in the Appendix A. The state court suppressed the narcotics with which Mr. Jones was charged. *U.S. PACER, Entry #92, page 37.*

VI. Jurisdiction

Mr. Jones' direct appeal to the Second Circuit Court of Appeals was denied on April 15, 2020. Mr. Jones invokes this Court's jurisdiction under 28 U.S.C. 1254, having timely filed this petition for a writ of certiorari within ninety days of the Second Circuit Court of Appeals' judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

VIII. Statement of the Case

This Court has said that the primary purpose of the Exclusionary Rule "is to deter future unlawful police conduct and thereby effectuate the Fourth Amendment's guarantee against unreasonable searches and seizures." *Pa. Bd. of Probation & Parole v. Scott,* 524 U.S. 357, 370-371 (1998); *citing, United States* v. *Calandra*, 414 U.S. 338, 347 (1974). The Exclusionary Rule thus "operates as a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved," *Scott, Id; citing United States* v. *Leon,* 468 U.S. 897, 906 (1984) (internal quotation marks omitted), "whether the exclusionary sanction is appropriately imposed in a particular case . . . is 'an issue separate from the question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct.'" *Scott, Id.* (quoting *Illinois* v. *Gates*, 462 U.S. 213, 223 (1983)). Therefore, the exclusionary rule does not mandate the exclusion of illegally acquired evidence from all proceedings or against all persons, *United States* v. *Calandra*, *supra*, at 348, and this Court has made clear that the rule applies only in "those instances where its remedial objectives are thought most efficaciously served," *Scott, Id;* citing *Arizona* v. *Evans*, 514 U.S. 1, 11 (1995).

The Petitioner argues that the Exclusionary Rule applies to defendants facing revocation proceedings for violations of probation. The search of the Petitioner's vehicle violated his rights under the Fourth Amendment because there was no basis for the traffic stop. Furthermore, the Petitioner's state court case was dismissed after the application of the Exclusionary Rule. It would be an efficient use of resources to apply the Exclusionary Rule to a narrow set of probationers who are facing violations based on the identical facts already adjudicated in a criminal proceeding. The witnesses and evidence have already been identified in the related

criminal court case. It would not be a burden on the violation court or the department of probation to litigate the case under the Fourth Amendment fully.

In the case at bar, Trooper Long did not have probable cause to search the vehicle. Trooper Long is a Pennsylvania State Trooper. On March 20, 2018, he pulled over Mr. Jones on Highway Interstate 81 in Dauphin County, Pennsylvania. He first said he thought that Mr. Jones was wearing an illegal headset. The observation was the basis of the pursuit. Yet he never drove up alongside to see whether he was wearing the headset on both sides. He was reminded during cross-examination that Pennsylvania law allows headsets to be worn in one ear while driving. He then testified that Mr. Jones drove through a construction site without his headlights as required by Pennsylvania law. The defense played Trooper Long's dashcam video at various portions of the cross-examination. The video captures the pursuit of Mr. Jones and the entire stop and search of the vehicle. At no point during the dashcam video were there any construction signs mandating headlights be turned on. A review of the dashcam video also shows very few vehicles driving on that stretch of highway with lights on. Trooper Long testified that as he spoke with Mr. Jones inside the car that he was nervous, his hands were shaking, and he was sweating. Eventually, Mr. Jones was asked to step out of the vehicle. The dashcam video captured Mr. Jones the entire time he was out of the car, and he was not nervous, fidgety, shaking, or sweating. Primarily everything relied on by Trooper Long for the existence of probable cause to search the vehicle was thoroughly debunked by the dashcam video.

Trooper Long did not have probable cause or reasonable suspicion to search the vehicle; therefore, all contraband found because of that search should be suppressed.

The district court ruled that the Exclusionary Rule did not apply to probationers in revocation proceedings. *See Appendix B*. The Second Circuit affirmed citing *United States v.*

Hightower, 950 F.3d 33 (2nd Cir. 2020). *Hightower* reasons that this Court has held that the Exclusionary Rule does not apply to a defendant on parole in a revocation proceeding. *Pa. Bd. of Probation & Parole v. Scott,* 524 U.S. 357, 370-371 (1998). Defendants who are on parole have identical legal status as those on probation for Fourth Amendment purposes. *Citing Scott* and *United States v. Jones*, 299 F.3d 103, 109 (2nd Cir. 2002). *Hightower* concludes by holding that the Exclusionary Rule does not apply to probationers in revocation proceedings. *Id.*

IX. REASONS FOR GRANTING THE WRIT

The Second Circuit has decided an important question of federal law that conflicts with a relevant decision of this Court.

In *Hightower* (citations omitted), the defendant was searched in a park by plainclothes officers without a warrant, and they found a firearm on his person. The district court found that the Exclusionary Rule did not apply because the defendant was a probationer. The district court reasoned that since there is no constitutional difference between probationers and parolees (*citing United States v. Jones*, 299 F.3d 103, 109 (2nd Cir. 2002) and this Court's decision in Scott. The district court did not decide whether the search was constitutional under the Fourth Amendment because, in its view, the defendant had no recourse under the Exclusionary Rule. The *Hightower* majority adopted the reasoning of the district court, overruling *Rea*. In *Rea*, the Second Circuit held that the Exclusionary Rule applies in warrantless searches of probationers in revocation proceedings. *United States v. Rea*, 678 F.2d 383 (2nd Cir. 1982). The *Hightower* Court reasoned that *Scott* abrogated *Rea* because this Circuit ruled in *Jones* that "the constitutional guarantees governing revocation of supervised release are identical to those applicable to revocation of

parole or probation." *United States v. Jones* 299 F.3d 103, 109 (2nd Cir. 2002). The *Hightower* court considered the *Jones* ruling binding precedent. Therefore, they held that this Court's decision in *Scott* applies to probationers.

Samson undercuts the fundamental premise of the *Hightower- Jones* line of cases. In *Samson*, a California parolee was searched without a warrant and probable cause. *Samson v. California*, 547 U.S. 843, 846 (2006). The parolee was not committing any offense, and the officer had no warrant. *Id.* The officer verified the fact that he had no warrant. *Id.* The officer still searched him because he was on parole. *Id at 847.* The officer recovered drugs, and he was arrested and violated. He challenged the search. He lost and was sentenced to seven years. *Id.* This Court affirmed the revocation and held that "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee." *Id at 857.* At the heart of the Court's reasoning is a distinction between those on parole and those on probation. The Court noted that there is a "continuum of state-imposed punishments." *Id at 850.* The Court reasoned, "On this continuum parolees have fewer expectations of privacy than probationers because parole is more akin to imprisonment than probation is to imprisonment." *Id.* The Court further reasoned, "In most cases, the State is willing to extend parole only because it is able to condition it upon compliance with certain other requirements." *Id.* The Court went on to say, "On the Court's continuum of possible punishments, parole is stronger medicine ergo, parolees enjoy even less of the average citizen's absolute liberty than do probationers." *Id.*

Samson abrogates the premise in *Jones* that constitutional issues for probationers and parolees are identical. The Second Circuit decided *Jones* in 2002. The U.S. Supreme Court decided *Samson* in 2006. There is no mention of *Samson* in *Hightower*, which was decided in 2019. This abrogation means *Rea* still stands as the governing revocation cases involving

probationers. *Rea* invokes the Exclusionary Rule to enforce Fourth Amendment violations in the Second Circuit. In *Hightower*, the Second Circuit decided an important question of federal law that conflicts with a relevant decision of the United States Supreme Court.

All the Circuits that have ruled on this issue held that the Exclusionary Rule does not apply to probationers in revocation proceedings. *United States v. Phillips*, 914 F.3d 557 (7th Cir. 2019). *United States v. Charles*, 531 F3d 637 (8th Cir. 2008). *United States v. Herbert*, 201 F.3d 1103 (9th Cir. 2000). *United States v. Armstrong,* 187 F.3d 392 (4th Cir. 1999). However, none have considered *Samson*. *Id.*

X. CONCLUSION

For the foregoing reasons, Mr. Jones requests that this Court issue a writ of certiorari to review the judgment of the Second Circuit Court of Appeals.

Dated: July 14, 2020

Respectfully submitted,

s/Marlon G. Kirton
Marlon G. Kirton, Esq.
KIRTON LAW FIRM
175 Fulton Avenue
Suite 305
Hempstead, New York 11550
Tel.: (516) 833-5617
Fax: (516) 833-5620
Email: kirtonlawfirm@gmail.com