No. 20-5914

OCTOBER 2021

IN THE

SUPREME COURT OF THE UNITED STATES

ORIGINAL

CLIFTON ROBINSON — PETITIONER
(Your Name)

FILED
AUG 31 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SEVENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CLIFTON ROBINSON #21794-026
(Your Name)
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 1000
(Address)

MILAN MICHIGAN 48160
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1) PETITIONER OBJECTS TO THE LOWER COURTS DETERMINATIOS, THAT PETITIONER STIPULATED AT TRIAL THAT THE SCHEME INVOLVED "WIRE COMMUNICATIONS AFFECTING INTERSTATE COMMERCE." PETITIONER ARGUES THAT THE LOWER COURTS DECISIOS CONFLICTS WITH ESTABLISHED PRECEDENT OF THE SUPREME COURT RESULTING IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

2) WHETHER, THE FACT "INTENT LOSS" AMOUNTED ATTRIBUTED BY THE UNITED STATES SENTENCING GUIDELINES AT 2B1.1 (a)(1), 2B1.1 (b)(1)(I), 3D1.2 (d) CONSTITUTES ELEMENTS OF THE CHARGED OFFENSE NECESSARY TO INCREASE THE LOSS OF LIBERTY BASED UPON THE STATUTORY MINIMUM AND MAXIMUM ALLOWED BY LAW. SEE: ALLEYNE V. UNITED STATES, 570 U.S. 99, 108 S.CT. 2151, 186 L.Ed. 2d. 314 (2013). APPRENDI V. NEW JERSEY 530 U.S. 466, 120 S.CT. 2348, 147 L.Ed 2d. 435 (2000)?

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:

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OTHER

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 A 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[ ] is unpublished.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 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,
[X] is unpublished.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

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

The date on which the United States Court of Appeals decided my case was March 5, 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 _____.

[X] 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT;

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury.....Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb (in part).

SIXTH AMENDMENT;

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, (in part);

STATEMENT OF THE CASE

Petitioner was indicted by a Grand Jury in The United States District Court for the Central District of Illinois. Subsequent The indictment petitioner sought a bench trial to defend against 16 charges For Fraud related counts to include conspiracy to defraud The government 18 U.S.C. 286 (eight) counts of Wire Fraud; (Five) counts of mail Fraud; (Two) counts of aggravated Identity Theft. Subsequent The bench trial In which The district court Judge Found The petitioner Guilty and to consecutive Term's Totaling (99) months Imprisonment to be Followed by Three years of supervised Release.

Petitioner Filed a Timely NOTICE of Appeal contending in a pro se Brief That The Government Failed to prove Jurisdiction pursuant to The Interstate commerce nexus. This action Follows.

REASONS FOR GRANTING THE PETITION

Petitioner seeks a Writ of Certiorari on two compelling questions tied to the request for a Writ of Certiorari. Those questions being; Whether the record at trial reflects that petitioner stipulated to a essential jurisdictional nexus of the charged offense, "interstate commerce." The law requires that respondents prove that the conduct in which Petitioner was charged involved conduct "Wire Communications affecting interstate commerce and that the information and matter at issue was delivered by mail, in order to sustain petitioner's convictions under 18 U.S.C. 1343 AND 1341. This issue turns simply on two pieces of evidence. The purported stipulation and the trial record which petitioner claimed he vehemently objected to at the trial. Petitioner argues that the Respondents and the Appellate Court has failed to identify the "Stipulation" and the trial record supports petitioner's objection to any relevant factor related to the respondents jurisdiction to prosecute the case.

Respondents erred in calculating the loss amount attribute to the petitioner. Petitioner's offense level was tied to a 16-level enhancement for "intended loss" of more than $1,500.000, SEE: U.S.S.G 2B1.1 (a)(1), 2B1.1(b)(1)(1), 3D1.2(d). Petitioner argues that the lower court applies a loss calculation reasonably foreseeable to the petitioner based upon guesstimation pecuniary harm, based upon the elements of "intent" and "knowledge," resulting from the potential results of the offense. Petitioner submits that the Fifth and Sixth Amendment to the United States Constitution prohibits a fact to be tied to the loss of liberty, if not found by the jury nor admitted by the petitioner. Here petitioner submits that the 16-level enhancement under the guidelines deprived the petitioner of his right to a jury determination on a essential fact as required by the Sixth Amendment. SEE; ALLEYNE V. UNITED STATES, 570 U.S. 99, 108, 133 s. cT. 2151, 186 L Ed. 2d. 314 (2013); Apprendi V. New Jersey, 530 U.S. 466, 120 s. cT. 2348, 147 L Ed. 2d. 435 (2000) Petitioner submits because "loss" and or "intended loss" has as an element "intent and or "knowledge" based upon reasonably foreseeable conduct, or knowledge, which results in this case being brought based upon what has been described as a substantial loss where the intent is tied to foreseeable knowledge to cause the loss triggers a extended loss of liberty, any loss which is significantly tied to a liberty interest has sixth amendment significance. SEE FOR SIMILAR VIEWS; GLOVER V. UNITED STATES, 531 u.s. 198, 203, 121 S. Ct. 696, 148 L. Ed. 2d. 604 (2001). Petitioner argues that the intended loss amount calculated under a lesser standard of proof violates the specific rights in which petitioner invoked as to the Fifth and Sixth Amendment to the U.S. Constitution.

1). PETITIONER OBJECTS TO THE LOWER COURT'S DETERMINATIONS AS CONFLICTING WITH CLEARLY ESTABLISHED PRECEDENT OF THE SUPREME COURT, AND CIRCUIT COURTS, RELATED TO A 'STIPULATION' PURPORTEDLY DURING THE TRIAL, THAT THE CHARGED OFFENSE INVOLVED WIRE COMMUNICATIONS, AFFECTING INTERSTATE COMMERCE. WHICH CONFLICT RESULTS IN A FUNDAMENTAL MISCARRIAGE OF JUSTICE.

Petitioner argues that the district court , and appellate court error, when during the course of the trial counsel stipulated to a jurisdictional requirement, of the charged offense, that the scheme involved "wire Communications," affecting inter-state commerce and that the information and matter at issue was delivered by mail, in order to support the convictions under 18 U.S.C. 1343 AND 1341.

Petitioner makes this observation from the perspective of the bench trial. Whereas petitioner asserts (he) would not have went to trial by giving up the fundamental right to have respondents prove every element of 1343 and 1341.

The intent of exercising his right was to maintain his innocence based upon the fact that respondents was without juri-sdiction "without" the critical element of the interstate nexus as required for a wire-fraud conviction under 1343.

The question surrounding the lower court's conclusion is grounded on the most recognizable evidence which would be the stipulation itself. If in fact petitioner stipulated that respondent's had jurisdiction, such a stipulation would contain a signed waiver supporting that petitioner "waived" his right to challenge the jurisdictional requirement of an "interstate nexus as required by law."

Whereas petitioner argued that respondents had failed to show/prove that the wire communication respondent's sought to attribute to the petitioner left the City or the State, a essential requirement of the jurisdictional requirement, required to violate 18 U.S.C. 1343 and 1341.

Petitioner argues that his conviction must be vacated if the record is devoid of a signed waiver. The court lacks authority to accept a waiver to a essential element of jurisdiction based upon counsel claiming that petitioner stipulated to a waiver of jurisdiction. The Appellate court opinion is instructive in this, as it implies that such evidence exists, but fails to produce a copy of the waiver signed by the petitioner. Petitioner cites that the trial record reflects his objection to any claim that he stipulated to a waiver of jurisdiction, and the court cannot just arbitrarily dismiss an objection without a hearing on the matter, or requiring the respondents to prove jurisdiction as a part of the prosecution. Petitioner argues that by invoking his right to trial petitioner has placed into doubt that the respondent's could prove the case at bar, to satisfy the jurisdictional requirements. SEE FOR SIMILAR VIEWS; NEDER V. UNITED STATES, 527 U.S. 1, 16, 119 S. Ct. 1827, 144 L. Ed. 2d. 35 (1999)(internal quotation marks omitted).

The issue presented here is wheth purported stipulation as required by the e Fraud" conviction contained evidence that the petitioner actually violated the statute and whether the "Stipulation" contained expressed language that petitioner understood his conduct was used for purpose of executing a scheme. Petitioner contends that the Seventh Circuit Court of Appeals entered a decision when denying petitioner relief which conflicts with decisions of another Circuit Court of Appeals, on the same important question as presented herein, as to whether there is evidence that petitioner actually signed a stipulation which supports evidence that petitioner violated the Interstate Nexus requirement of 18 U.S.C. 1341 AND 1343. SEE FOR SIMILAR VIEWS'; UNITED STATES V. BIYIKLIOGLU, NO. 14-31003 (5Th Cir. 2016). The issue as presented if in fact the record in the lower court does not contain a signed stipulation from the petitioner agreeing that petitioner violated 1343-1341, by using wire communications which crossed State lines, the respondents have failed to establish and subsequently prove a critical element offense. COMPARE; UNITED STATES V. KUHN, 788 F. 3d. 403, 413-14, (5th Cir, 2015) cert denied, 136 S. Ct. 1376, 194 L. Ed. 2d. 360, 2016 WL 854224 (U.S. 2016). The use of the internet alone is insufficient to establish the required interstate nexus. SEE; UNITED STATES V. KIEFFER, 681 F. 3d. 1143, 1155, (10 th Cir. 2012). The assertion of a stipulation standing alone does not establish a stipulation, support the conviction for 1343 and 1341. The Appellate court fails to point in it's decision (attached), where in the district court record such a stipulation can be found. Furthermore, petitioner points to a "objection" (verbally) made on record which for evidentiary purposes can't be ignored.

Petitioner argues that this court has reversed mail and wire fraud convictions that have dramatically expanded the scope of the statutes in which petitioner has been charged. SEE FOR SIMILAR VIEWS; SKILLING V. UNITED STATES, 561 U.S. 358, 413-15, 130 S. Ct. 2896, 177 L. Ed. 619 (2010); Cleveland v. united states, 531 U.S. 12, 26-27, 121 S. Ct. 365, 148 L. Ed. 2d. 221 (2000); MCNALLY V. UNITED STATES 483 U.S. 350, 360-61, 107 S. Ct. 2875, 97 L. Ed. 2d. 292, (1987).

Petitioner argues that there is no evidence, and respondents failed to prove that petitioner used Wire Communications to affect interstate commerce to execute a scheme. 18 U.S.C. 1343. SEE; UNITED STATES V. FARUKI, 803 F. 3d. 847 (7th Cir. 2015); Because wire fraud reaches a broad range of activity. The appellate court has applied - in conflict with this Court a expansive approach, to count a stipulation "objected to" by the petitioner as a representation in a scheme to defraud. As a result the conflict has resulted in a conviction in which the petitioner is "actually innocent." COMPARE;

NEDER, 527 U.S. AT 16; united states v. seidling, 737 F. 3d. 1155, 1160, (7th Cir. 2013). Petitioner submits that respondents offered no evidence, or a stipulation proving that the conduct in which petitioner was charged contained the element material to interstate commerce as a knowingly nexus to defraud. NEDER V. UNITED STATES, 527 U.S. 1, 21-25, 119 S. Ct. 1827, 144 L. Ed. 2d. 35, (1999); SORICH V. UNITED STATES, 555 U.S. 1204, 129 s. Ct. 1308, 1308-11, 173 L Ed. 2d. 645 (2009); (SCALIA, J. DISSENTING FROM DENIAL OF CERTIORARI) SEE; PASQUANTINO V. UNITED STATES, 544

U.S. 349, 377, 125 S;. Ct. 1766, 161 L. Ed. 2d. 619 (2005)(Ginsburg J. dissenting)..

2) WHETHER THE FACT 'INTENT LOSS' AMOUNT ATTRIBUTED BY THE UNITED STATES SENTENCING GUIDELINE AT 2B1.1(A)(1), 2B1.1(b)(1)(1), 3D1.2(d) CONSTITUTES ELEMENTS OF THE CHARGED OFFENSE NECESSARY TO INCREASE THE LOSS OF LIBERTY BASED UPON THE STATUTORY MINIMUM AND MAXIMUM ALLOWED BY LAW. SEE; ALLEYNE V. UNITED STATES, 570 U.S. 99, 108 S.Ct. 2151, 186 L. Ed. 2d. 314 (2013); APPRENDI V. NEW JERSEY, 530 U.S.. 466, 120 S. Ct. 2348 147 L. Ed. 2d. 435, (2000)?

Petitioner argues that judicial fact-finding that increases the mandatory minimum and maximum sentences violates the original meaning of the Sixth Amendment, where the fact at issue increases the penalty for a crime. SEE FOR SIMILAR VIEWS; GLOVER V. UNITED STATES, 531 U.S. 198, 148 L. ED. 2D. 604, 121 S. Ct. 696 (2001)(Holding that any increase jail time has sixth Amendment significance). Petitioner's base offense-level was increased by 16-levels for an "intended loss of more than $1,500,000 SEE; U.S.S.G. 2B1.1(a)(1); 2B1.1(b)(1)(1), 3D1.2(d); The record fails to indicate by what methodology the court employed to reach the "intended loss" calculus. Petitioner argues that the guideline provisions relied upon by the court require a specific finding of more than $1,500,000, so as to apply a 16 level increase to attribute to petitioner to increase significantly the amount of liberty loss due to a speculative "intended loss" amount. The lower court accepted as part of the respondent's case in chief, that it would show that the scheme in which the appellant was indicted for involved more than $1.8 million in refunds, thus the Grand jury indicted petitioner upon the premise that petitioner claimed a total of more than $1.8 million in refunds, confusing to say the least.

Yet it appears based upon the aforementioned U.S.S.G. Manual used it required a "intended loss" of more than $1,500.000. Raising a question as to whether the "intended loss" is an element "of the fact based evidence necessary to be submitted to the Grand Jury for statutory purposes, Petit Jury for Sixth Amendment purposes, and Fifth Amendment purposes for Due Process. Where the fact implicates a subjective intent, to cause the guesstimation, intended loss projected by the guide-line provision that was used to calculate the offensive level to increase a 16-level enhancement for a amount never achieved by the petitioner, but speculated as "loss" under a definition "intended loss." In fact making the inquiry a fact-finding re-quirement. Petitioner argues that because intended loss has as an element "intent," respondents were required to prove petitioner knew that he intended to cause the loss of $1,500.000 dollars as required by the Fifth and Sixth amendments to the U. S. Constitution. Petitioner argues that he invoked the constitutional rights at issue herein to be found guilty of each element which increases the minimum and maximum sentence in which the court is authorize to impose based upon the

facts found by the judge at trial. In cla the benefit of a right that this court has nized guaranteed, favors that this court has grant a Writ of Certiorari to resolve whether intended loss has as an element a fact to be found by the Judge\ during the course of trial. SEE; APPRENDI V. NEW JERSEY, U.S. 466, 490, 120 S,. Ct. 23478, 147 L. Ed. 2d. 435, (2000); Alleyne, 570 U.S. 99, 133 s. Ct. 2151, 186 l. Ed. 2d>. 314, (2013); petitioner submits that the record is clear petitioner never agreed, admitted, or stipulated, or waived a challenge that any fact that increases the maximum or minimum statutory penalty must, if as here the petitioner does not admit, be submitted to the Judge for a finding beyond a reasonable doubt. Petitioner argues because intended loss has as an element the "presumption" of guilt as to the concerns of punishing thought. Petitioner argues that the presumption that he intended to cause a loss of $1,500.000 to invoke a 16 level increase which result's substantial loss of liberty, is fact based, based upon the intent in which the loss is calculated. The question posed to the court is whether that is a element to be found by the jury or admitted by the petitioner for purpose of the increased loss attributed to the petitioner's liberty.

Where the increase exceeds the (60) month sentence based upon the statute, calls once again into question the adequacy of the sentencing procedures. Petitioner argues that when invoking his Fifth and Sixth Amendment rights, that petitioner believed that "all facts which exists in order to subject petitioner to a legally prescribed loss of liberty was required by the constitution, specifically to be found guilty by the jury. Thus, petitioner argues that "intended loss" has as an element "intent," and is a fact based, upon knowingly intended to cause the harm necessary to complete the scheme in which punishment attaches. Under the Fifth and Sixth Amendments of the U.S. Constitution, due process and the right to trial by jury, taken together, entitle petitioner to a jury determination that he be found guilty of $1,500.000 dollars to establish the necessary element sought by the provisions employed by the (PSIR). Here the record reveals that the restitution resulted in 1.2 million thus falling way short of the guideline provision requirement to meet the 16-level increase, resulting in a substantial loss of liberty, this calculus was tied to a lesser standard of proof. COMPARE; E.G. IN RE WINSHIP, 397 US. 358, 364, 25 L. Ed. 2d. 368, 90, S. Ct. 1068. United States, V. Tucker, 404 U.S. 443, 447, 30 L. Ed. 2d. 592, 92 S. Ct. 589. McMillan V. Pennsylvania, 477 US 79 L. Ed. 2d. 67, 106 S. Ct. 2411. Mullaney V. Wilbur, 421 US 684, 44 L. Ed. 2d. 508, 95 S. Ct. 1881 (1975); UNITED STATES V. GAUDIN, 515 U.S. 505, 510, 132 L. Ed. 2d. 444, 115 S. Ct. 2310(1995)(trial by jury has been understood to require that the truth of every accusation, whether preferred in the shape of the indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve....4 W. Blackstone, commentaries on the laws of England 343 (1769); DUNCAN V. LOUISIANA, 391 us 145, 151-154, 20 L. Ed. 2d. 491, 88 S. Ct. 1444 (1968);

The Supreme Court has held repeat hat Due Process and associated jury pr ons extend, to some degree, "to determinations that [go] not to a defendant's guilt or innocence, but simply to the length of his sentence." Mullaney V. Wilbur, 421 US 684, 44 L Ed. 2d. 508, 95 S. Ct. 1881 (1975) (invalidating a Maine statute that presumed that defendant who acted with an intent to kill possessed the "malice aforethought" necessary to constitute the state murder offense (and therefore, was subject to that crimes associated punishment of life imprisonment). Petitioner has been subject to a 16-level increase, placing the burden on the petitioner to rebut the presumption, that he intended to cause a loss knowingly to receive refunds that 1) petitioner never received, 2) and the respondents proved based upon a methodology which permitted guessing as to the amount to meet the degree of culpability for the 16 level increase.

Petitioner argues that this court has acknowledged in a line of cases, with the degree of criminal culpability assessed. 421 US, AT 697-698, 44 l. Ed. 2d.. 508, 95 S. Ct. 1881. The consequences for 1.8 million differs from 1,500,000, Million which differs from 1.2 Million. Here the court adopted a assessment which reflected 1.8 million based upon the 16-level increase, by applying a lesser standard using the guidelines despite the definition of "intended loss," having two crucial elements. 1) intent, 2) knowingly, under the guidelines, the court characterize intent and knowingly as sentencing factors when in fact they are essential elements which bear upon the petitioner's intent to knowingly intend the loss of 1.8 million dollars, but falling short, but is punished for despite not reaching the intended loss which was erroneously assessed. SEE FOR SIMILAR VIEWS; PATTERSON V. NEW YORK, 432 us 197, 198, 53 L. Ed. 2d. 281, 97 S. Ct. 2319, (1977). McMillan V. Pennsylvania, 477 U.S. 79, 91 L. Ed. 2d. 67, 106 S. Ct. 2411 (1986); The procedural safeguards invoked by the petitioner were deprived the petitioner and given the unique facts which define intent-- and knowingly, as tied to intended loss, rejecting the basic principle of the Fifth and Sixth Amendments would in effect change the uniform course of this court's decisions - implicating the entire history of this courts jurisprudence.

CONCLUSION;

Petitioner seeks this Court to grant a Writ of Certiorari to address the lower court's determination which were contrary to "established" precedent of the Supreme Court in deprivation of Petitioner Fifth and Sixth Amendment Rights to the United States Constitution:

RESPECTFULLY SUBMITTED,

CLIFTON ROBINSON
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