

No. 20-5915

ORIGINAL

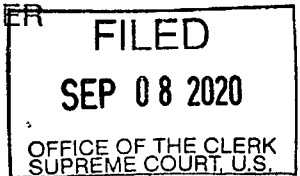
IN THE

SUPREME COURT OF THE UNITED STATES

Perry Don Cortese PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals For the Eleventh Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Perry Don Cortese
(Your Name)

FCI Bastrop Texas
P.O. Box 1010
(Address)

Bastrop Texas 78602
(City, State, Zip Code)

None.
(Phone Number)

QUESTION(S) PRESENTED

1. Did the District Court and the Eleventh Circuit Mis apply the Special Skill enhancement?
2. Did the District Court improperly calculate the Amount of Loss applied to Defendant in Calculating Sentencing?

LIST OF PARTIES

- ☒ 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:

RELATED CASES

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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 B 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☒ is unpublished.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 A 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☒ is unpublished.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☐ is unpublished.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☐ is unpublished.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

☐ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was June 5, 2020.

☒ 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).

TABLE OF AUTHORITIES CITED

CASES

	PAGE NUMBER
United States v Isaacson, 752 F.3d 1291 (11 th Cir 2014)	(1)
United States v AsKew, 193 F.3d 1181, 1183 (11 th Cir 1999)	(2)
United States v Elis, 419 F.3d 1189, 1192 (11 th Cir 2005)	(3)
United States v Cover, 199 F.3d 1270 1278 (11 th Cir 2000)	(3)
United States v Cook, 181 F.3d 1232 1233 (11 th Cir 1999)	(3)
United States v Gutierrez, 2017 Lexis 137053	
United States v Kreitman, 724 Fed Appx 704 (11 th Cir 2018)	(3)
United States v Sims, 800 Fed Appx 383, 392 (10 th Cir January 29, 2020)	
United States v. Morris, 635 Fed Appx 423, 458 FN4 (10 th Cir 2015)	(2)

STATUTES AND RULES

USSG 3B1.3

Fund Loss.

USSG 2B1.1(b)(4)

OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution guaranteeing Due Process,

STATEMENT OF THE CASE

On October 20, 2018 Cortese was convicted of Wire and mail Fraud count one and Money Laundering count two. On June 5, 2020 the Eleventh Circuit Affirmed the Conviction of Cortese

Reasons for Granting the Petition
~~STATEMENT OF THE CASE~~

The government contends that I (Cortese) used Special Skills in furtherance of the Conspiracy to Commit Mail & Wire Fraud and Money Laundering. As to Cortese the Government contends that Cortese acting as an Attorney to unfreeze bank accounts. Sentencing Transcript pg 32. During Trial the Government did not show that any account was unfrozen. Testimony was heard from Four Banks via their Fraud Investigator. Trial Transcript Vol. 5 pg 171; Volume 5 page 199; Volume 7 page 134 Page 174 Volume 7 page 134; Volume 6 page ; No Bank claimed to have ever spoken to Cortese or received any correspondence from Cortese. No Bank account was identified as ever being unfrozen. Cortese never spoke to a Bank or represented anyone before a Bank. ~~Cortese~~ Cortese was not involved in any of the Conspiracies acts to create loss. On two occasions Cortese acted as an Escrow agent in two transactions totaling \$255,000.00. Both transactions were documented with contracts and Escrow Agreements. These agreements were signed by parties that the Government admits are real people. However they claim these people were involved in the fraud. However, these individuals were not indicted in any case. Cortese created no loss. No act of Cortese resulted in a loss. Funds wired to Cortese Escrow account were deemed valid by Cortese's Bank and released.

REASONS FOR GRANTING THE PETITION

The US District Court did not determine any act By Cortese that Furthered or created loss ~~to~~ the Conspiracy.

Both the District Court and the Appellate Court used Broad ambiguous Comments, Example accounts controlled By Cortese and Ellis received wire transfers from accounts controlled by other co-conspirators.

The eleventh Circuit claimed the record itself provided enough proof to determine individual responsibility. It mentions \$580,000 that is associated with an account. Cortese had no access or control of this Account. The Appellate Court ties Cortese to this Account from a letter that Cortese wrote to the Bank Four (4) months after the Account was frozen stating "Please inform as to the Reason this account is frozen. I look forward to hearing from you." No response was made from the Bank and no further action was taken by Cortese. Cortese had been provided Documents Supporting Transaction to this Account. Further this was less than 60 days prior to Cortese Arrest. The only Funds provided at Trial was \$255,000⁰⁰ that The Government Traced to Cortese Account to Be distributed in Escrow. That were Funds that had a source from a Fraud lent check. Cortese had no knowledge of the check or funds were sent from another Attorney. The Appellate Court erred by applying \$15,500,000⁰⁰ in losses with a 20 point enhancement. In US v Isaacson 752 F3d 1291 (11th Cir 2014) The Eleventh Circuit decided that a Bookkeeper that created fake Corporations and Fake Business Plans was not responsible for the loss of \$15,500,000⁰⁰ because the victims did not rely on the Business Plans.

REASONS FOR GRANTING THE PETITION

Cortese was paid a total of \$6,000⁰⁰ in the two escrow Transactions. That Cortese processed. No other payments to Cortese were provided in evidence. In fact Cortese was not in receipt of any other funds. If Cortese were an active Participant in the conspiracy would he have only received \$6,000⁰⁰. Cortese was paid legal fees that evidence and testimony at trial supported was reasonable and customary. The Government acknowledges that Cortese made No money in the Conspiracy. The USAA stated at Sentencing that Cortese "Wanted what Ellis Had" and that explained why he was involved. This Decision conflicts with current case law decision of both the 11th Circuit and other circuits to hold Cortese liable for a loss that Cortese had no control or acted in any way to create or further said loss. No loss was caused or furthered by an act of Cortese.

Special Skills enhancement was applied to Cortese even though the Sentencing Judge stated pg 90 line 21 that Cortese only had a Bank account. That anyone can balance a Bank account. The Sentencing Court further at pg 94 Line 8-16 states NO consideration was given by the Court to Cortese Being an Attorney. Recent cases of U.S. v Kreitman and U.S. v. Gutierrez 2017 Lexis 137053. Support that an act that never occurred can not constitute a special Skill Every witness for the Government and defense ~~has~~ stated Cortese was not a part of the criminal acts being committed. No Bank account was unfrozen. Cortese was hired to perform Normal legal duties and only performed such. @

Cortese never mts represented Him self.
He Applied no Special Skill that furthered the Conspiracy
and He did not cause any loss.

Therefore the Two point enhancement was mts applied
and the Loss Calculation resulting in a 20 point ~~enhance~~
enhancement to Sentencing was wrongly Applied.
Cortese Sentence is not conformative to the law
as Applied in the cases attached.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Benny Cortese

Date: 9/3/2020