No. 20-6007

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT OF THE UNITED STATES

WILLIAM WRIGHT, JR. – PETITIONER

VS.

ROSENBAUM, et al. – RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

WILLIAM HAROLD WRIGHT, JR.
United States Penitentiary
3901 Klein BLVD
LOMPOC CA, 93436

Pro-Se/Litigant

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QUESTION(S) PRESENTED

Did the District Court Erred in Denying Wright's Motion to Dismiss the indictment?

LIST OF PARTIES

1. MARTIN
2. ED CARES Circuit Judges.

RELATED CASES

United States V. Wright, NO. 19-12493-DD U.S. Court Of Appeals For the Eleventh Circuit judgment entered November 22, 2019.

United States V. Wright, NO. 19-4088-DD U.S. Court Of Appeals For the Eleventh Circuit judgment entered

Amended

United States V. William Wright, Jr.
No. 18-12678

Certificate of Interested Persons and Corporate Disclosure Statement

Apellant William Wright,Jr. files this Certificate of Interested Person Corporate Disclosure Statement, listing the parties and entities interested in this appeal,as require.

Kevin T. Beck,Esq.

Bently, A Lee, 111 fomer United States Attorney

Thomas J. Butler,Esq.

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David Chirtopher Hardy,Esq.

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U.S. Magistrate Judge Mark A. Pizzo

James C. Preston,AUSA

Rhodes, David P.,Assistant United states Attorney,
Chief, Appellate Division

Sansone, Hon, Amanda Arnold, United States Magistrate Judge

United States of America- Plaintiff/Appellee

U.s. Dist. Judge James D. Whittemore

William Wright,Jr.

In addition to the persons and entities identified in the Certificate of Interested Persons and Corporate Disclosure Statement in William Wright,Jr.'s, principle brief, the following person have an interest in the outcome of this case:

U.S. Magistrate Judge Flynn P. Sean

STATEMENT REGARDING ORAL ARGUMENT

Appellant respectfully submit that oral argument is neccessary to the just resolution of this appeal and will significantly enhance the decision making process.

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STATEMENT OF JURISDICTION

The date on which the United States Court OF Appeals decided my Case was Sept 2, 2020

The jurisdistion of this Court is invoked under 28 U.S.C § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

This Cause involved 21 U.S.C. 841(b)(1)(A) 841(b)(1)(C) 18 U.S.C. §

2. Count-1 must allge sufficient and specific fact that apprise the defendant of the charge against him. Defendant likewise argues that absence of sufficiently specific allegation as to the timeframe of the Conspiracy render this count insufficient and subject to dismissal e.g., APPENDIX Saldano v. United States 626, F. Supp. 384.
Undoubtly the language of the statute may be used in the general description of an offense but must be accompanied with a statement, e.g., APPENDIX United States v. Carll, 105 U.S. 611, 612, 26 L Ed 1135 (1882).
Thus an indictment not frame to apprise the defendant with reasonable certainty, e.g., APPENDIX United State v. Bobo, 344 F. 3d 1076, 1083 (11th Cir. 2003).

II. STATEMENT OF THE CASE

On October 4, 2016, a Federal Grand Jury in the Middle District of Florida Charged William Wright, JR. ("Wright") with Conspiring to distribute a Kilogram or more of heroin in Violation of 21 U.S.C. §§ 846 and 841(b)(1)(A), as well as (6) Substantive Count alleging possession, and aiding and abetting possession, of heroin with intent to distribute [DE9].

IV. STATEMENT OF FACTS

Wright move to dismiss the indictment he argued that the indictment was deficient because it fail to specify the location of the Conspiracy or name his co-conspirator and also because it provided an "open ended" date for the conspiracy. And I argued that the substantive count failed to allege whom, I aided and abetted or in what way. The district Court found the indictment sufficient and denied the motion. Wright also argued that the indictment failed to provide a Statement of Facts and circumstances that would inform Wright of the specific offense with which he charged and when it does not protect his right to double jeopardy.

And again the court of appeals has shone it's deliberate abuse of decretion and, usurpation of power. Wright argues that the the Court of Appeals has clearly conceded concerning this argument. And have shone no regards for Wright's constitutional rights.

Wright argued in his brief, at 34, 42-44. The District Court erred in denying Wright's motion to dismiss the indictment when the language in the indictment left the time frame of the conspiracy, "open ended" in the beginning date, and when it failed to provide a statement of facts and circum-stance that would inform Wright of the specific offenses with which he is charged and when it does not protect his right to double jeopardy.

AS previously stated, Wright now argues that the court of appeals has "Conceded" on this argument. By refusing to address this essential argument on his appeal. It is only one logical reason why the court of appeal did not address this essential argument, because of its realization that the indictment was insufficient as a matter of law. And that the indictment "Clearly" lack a state-ment of facts and circumstances that would inform Wright of the specific offenses with which he is charged, and does not protect him to double jeopardy. Apparently the court of appeal recognized that this was, an imper-ative, and a "inescapable" argument. And refuse to address this essential argument. Which is a manifest injustice.

How can the Court of appeals and the government preceive or suggest that that a Charging instrument is not require to inform appellant, whom he aid or abetted in his indictment? Which is patently absurd. This prospective request can only be granted in, Alice in Wonderland, Convict now Judge Later perspective. But in a more realistic Judicial System these types of proceed-ing is not allowed. Appellant Six Amend-ment right Cannot be Circumvented. Once the government Charge appellant with a Charging instrument("indictment") aid and abetting become a Charge, which is and accusation.

Which the Const. VI Amend. guarant-ee that appellant be inform of the nature and Cause of the accusation against him.

The govern does not and Cannot Cite any authority that and indictment Charging aiding an abetting, that the person need not be identify.

Wright argues that the absence of a sufficiently Specif allegation as to the timeframe of the Conspiracy render this Count insufficient and Subject to dismissal because the conspiracy technically Could have Commenced at anytime since birth and throughout his Fifty-Four years until late September 28, 2016. And it is not sufficiently specific to protect him against double jeopardy when Coupled with the Lack of identification with least one allgo co-con spirator.

The court made an erroneous finding of Fact suggesting, the start date of "at least 2016", along with the specific and date and dates of the substantive charges provided enough notice to Wright of the dates of the alleged conspiracy to "Confirm[] to minimal Constitution standard, which is clearly err-oneous.

But some appeals court have notice uncertainty regarding a conspiracy beginning and ending date does not render an indict-ment Fatally defective so long as overt acts in the indictment adequately limited the time frame of the conspiracy. Which this indictment clearly Lack overt acts.

Count 1, the Count under which Wright was Convicted, was too vague to satisfy his Sixth Amendment guarantee to be informed of the government accusation against him. To pass Constitution muster, an indictment must be sufficiently specific to inform the defendant of the charge against him to plead double Jeopardy in any future prosecution for the same as offense. Those requirement are satisfy by an indictment that track the wording of the statute, as long as the language set forth the essential element of the Crime. And provide a statement of facts and circumstance that provides notice of the offense. The Appeals Court concur with the District Court, finding that and "open file' discovery can cure an invalid indictment. It is settle Law that a bill of particular cannot save an invalid indictment, similar reason "open file' discovery cannot cure an invalid indictment.

The Appeal Court stated "while Wright indictment did not name specific co-conspirators it intended to call as witness, and during "discovery" Wright sought information for purpose of cross examining and impeaching those witnesses.
Opinion, at 5"

The trial Judge's stated reasons for denying the motion to dismiss were in error [DE 77].

SUMMARY OF THE ARGUMENT

The District Court erred in denying Wright's motion to dismiss the indictment when the language in the indictment left the time fame of the Conspiracy open ended in the beginning date and when it failed to provide a statement of facts and circumstance that would inform Wright of the specific offenses with which he is charged and when it does not protect his right to double jeopardy.

ARGUMENT

A. Standard of Review

This Circuit reviews the District Court's denial of a motion to dismiss the indictment for abuse of discretion, but the sufficiency of an indictment is a legal question that this Court review de novo. See United States v. Pendergaft, 297 F.3d 1198, 1204 (11th Cir. 2002).

B. THE DISTRICT COURT ERRED IN DENYING WRIGHT'S MOTION TO DISMISS THE INDICTMENT

On February 1, 2017, Wright Filed a motion to dismiss indictment, which was denied on May 2, 2017 [DE65, DE77]. "To pass Constitutional muster, an indictment must be sufficiently specific to inform the defendant of the charge against him and to enable him to plead double jeopardy in any future prosecution for the same offense." See United States v. Yonn, 702 F.2d 1341 (11th Cir. 1983). An indictment is sufficient if it alleges the (1) essential element of the charged offense, (2) notifies the accused of the charges and (3) enable the accused to rely upon a judgment enter under the indictment as a bar against double jeopardy. See United States v. Jordan, 582 F.3d 1239, 1245 (11th Cir. 2009). An indictment is sufficient if it tracks the statute under which the accused is charged and provides a statement of facts ~~that~~ provides notice of the offense. See United States v. McNair, 605 F.3d 1152, 1186 (11th Cir.) cert. denied, 562 U.S. 1270 (2011). In United States v. Cecil, 608 F.2d 1294 (9th Cir. 1979), the Ninth Circuit found defective an indictment, which stated that a conspiracy occurring in Arizona, Mexico and elsewhere, 'beginning on or before July, 1975 and continuing on or after October, 1975, because the language left the time frame of the conspiracy "open ended in both direction" and when it failed to provid a statment of facts and circumstance that would inform the accused of the specific offenses with which they are charged. See Id. at 1297.

Likewise Wright argues that his case run on all fours with, United States v. Saldano, 626 F. Supp. 384 (S.D. Fla. 1986); United States v. Cecil, 608 F.2d 1294; 1979 U.S. App. LEXIS 10167. In view of these deficiencies, we find that the indictment fails to allege sufficient facts to facilitate the proper perparation of a defense and to ensure that defendant were prosecuted on facts present to Grand Jury. This indictment clearly lacked a statement of the facts and circumstances that would inform the accused of the specific offense with which he was charged. See Hamling v. United States, 418 U.S. at 117-18, 94 S. Ct. 2887. Similarly, the fact that an indictment may have tracked the language of the statute will not render it valid if it fails to allege an essential element of the offense or the minimum facts required to Fulfill the purpose of indictments. CF. United States V Keith, 605 F.2d at 464; United States V. Cutis, 506 F.2d 985, 990 (10th Cir. 1974). (holding that the indictment's Failure to identify with any particlarity the nature of the alleged Sheme to defraud render the indictment Fatally defective. The requirement that an indictment contain a few basic Factual allegation accord appellant adequate notice of the Charges against him and assure him that prosecution will proceed on the basis of facts presented to the grand jury. Such a requirement is neither burdesome nor unfair to the prosecuting authorities.

The Supreme Court States, "our prior case indicate that an indictment is sufficient IF it contain the element of the offense Charged and Fairly inform a defendant of the Charge against which he must defend, and Second enable him to plead an acquittal or Conviction in bar of Future prosecution For Same Offense." See Hagner V. United States, 285 US 427, 76 L Ed 861, 52 S. Ct. 417 (1932); United States V. Debrow, 346 U.S. 374, 98 L Ed 92, 74 S. Ct. 113 (1953).

It is generally sufficient that an indict-ment set forth the offense in the word of the statute it self, as long as those word of themselves fully, directly, and expressly, without any uncertainty or amb iguity, set forth all the element necessary to constitutute the offense intended to be punish-ed, "United States V. Carll, 105 US 611, 612, 26 L Ed 1135 (1882). Undoubtedly the language of the statute may be used in the general desc-ription of an offense, but it must be acco-mpanied with such a statement of facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged. "United States V. Hess, 124 U.S. 483, 487, 31 L Ed 516, 8 S. Ct. 571 (1888).

United States V. Bobo, 344 F.3d 1076, 1083 (11th Cir. 2003) (quoting Russell V. United States, 369, U.S. 749, 763, 82 S. Ct. 1038, 8 L Ed. 2d 240 (1962). Thus "'[an] indictment not framed to apprise the defendant with reasonable certainty, of the nature of the accusation against him is defective, although it may follow the language of the statute.'" Id. (quoting Russell, 369 US at 765).

Even if the indictment track the Statute's Language, It must nevertheless''' be accompanied with such a Statement of the Facts and Circumstances as will inform the accused of the specific offense, coming under the general description, with which he is Charged.''' Id (quoting Russell, 369 U.S. at 765).

Likewise, in United States v. Soldano, 626 F. Supp 384 (S.D. 1986), the South District of Florida dismissed an indictment because the indictment stated that the conspiracy existed "From an unknown date until on or about late April, 1983." Also, the Soldano Court noted that the open ended nature of the indictment, couple with lack of identification of any coconspirator, present constitional problem.

Likewise, in this case, the Count I Conspiracy Charge stated that it existed '(F)rom an unknow date, which was at least in 2015, through on or about September 28, 2016' and failed to provide a Statement of Facts and Circumstances informing Wright of the specific offense

With Which he was Charged. Futher, the Count1 Conspiracy Charge failed to referrence the identification of any co-conspirtor.

Likewise, in reviewing the specificity of the essential element allege in Count1, It appears that this Count does not identify Solciano's allege co-conspirators. See Ramos, 666 F.2d at 474. It Further appears that the indictment does not set forth the timespan of the Conspiracy; "From an unknown date until on or about late April, 1983 .... See Marable, 578 F.2d at 154; CF United States v. Cecil, 608 F.2d 1294, 1297 (9th Cir. 1979). ("open-ended" time frame consider insufficient. See also Yonn, 702 F.2d at 1348, n.6. It appears that the lack of these allegation Cause Count 1 to be deficient such that the necessary essential element are not set forth. See Yonn at 1348. To b constitutionally sufficient Count 1 must allege sufficient and specific facts that apprise the defendant to the charge against him so that he can intelligently prepare his defense, and it must supply him with sufficient fact to plead fromer jeopardy in a later prosecution.

Subsequent proceeding for the same offense. Russell V. United States, 369 U.S. 749, 763-4, 8 L. Ed 2d 240, 82 S. Ct. 1038 (1962); Hamling V. United States, 418 U.S. 87, 41 L Ed. 2d 590, 94 S. Ct. 2887 (1974). Failure (626 F. Supp. 386) to comply with either of these constitutional consideration render the indictment defective and subject to dismissal.

Likewise, in United States V. Forrester, 616 F. 3d 929, 940-41 (9th Cir 2010), in addition, uncertainty regarding a conspiracy's beginning and ending date does not render an indictment fatally defective so long as "overt act" alleged in the indictment adequately limited the time frame of the conspiracy. United States V. Laykin, 886 F. 2d 1534, 1542 (9th Cir. 1989). Specific facts alleged in the indictment were sufficient to limit the time frame). Here the second superceding indictment tracks the language of the conspiracy statute, identifies a location and co-conspirators, and alleged the purpose of the conspiracy. It also allege a semi-discerate time period (it gave an end date but no beginning date) and certain overt acts. Taken together the indictment was sufficient to apprise Forrester of the charge against him enable him to prepare a defense, and to avoid double jeopardy on the same charge. Wright argues that his indictment is quite the contrary to Forrester indictment, it does not name any co-conspirators, give a partial location, does not allege any overt acts.

the Appeals Court made a erroneous finding of facts concerning the timespan of the conspiracy. Alleging the finding, conform to minimal constitutional standard, and provide enough notice to Wright of the date of the alleged conspiracy. patently absurb.

Further, the substantive fare no better. Count 2-7 under Title 21, U.S.C, §§ 841(a)(1) and (b)(1)(C), and Title 18, U.S.C., § 2 are identical except for the date of offense and the fact that count 5-7 allege a quantity of over 100 gram of herion whereas count 2-4 do not allege a quantity of herion. These count fail to allege who Wright aid and abetted in committing the offenses and does not allege how Wright aided and abette this person.

Wright asserts that Count-1 under Title 21, U.S.C. §§ 841(a)(1) and (b)(1)(C), and Title 18, U.S.C. § 2, the principle Charge Itself does not allege, whom Wright Conspired with. Which does not Satisfy his Six Amendment right. To be informed of the nature and Cause of the accausation against him. Which means that Count-2-4 Cannot be substain, as a matter of Law.

It is settle Law that one Cannot Conspire, or aid or abet himself.

24 LeD 819, 96 U.S. 360

Likewise, in United States v. Simmons, Argued 12, 1878 of April
Decided 22, 1878 of April

Simmon court note that, since the defendant was not Charge with using the Still boiler and other Vessel himself but only with Causing and procuring Someone else to use them the name of that person Should have been give it was niether impracticable nor unreasonabe.

Therefore, based on the foregoing, Wright respectfully request the Court to reverse base on the District Court's error in not dismissing the indictment. (17)

Wright Likewise argues,
Russell V. United States, 369 U.S. at 771, 82 S.Ct. 1038 (Citing Stirone V. United States, 361 U.S. 212, 218, 80, S.Ct. 270, 4 L Ed. 2d 252 (1960). If a bill of particular were allowed to Save an insufficient indictment, the role of the grand jury as intervenor would be circumvented. Rather than the assurance that a body of Fellow Citizens had assessed the facts and determined that an individual Should Face prosecution, the prosecutor would be in a position to second guess what actually happened within the grand jury and fill in the gaps with what he assumed transpired. The protection of a significant Check on the power of the Court and prosecutors would be lost. For Similar reason, "Open File" discovery Cannot Cure an invalid indictment. Thus, the trial judge's Stated reason for denying the motion to dismiss were in error. [DE 77].

Wright also argues, that a three Judge panel had this argument under advisement for a year. And never even attempted to address this argument. That the indictment does not have, a statement of facts and circumstances to inform Wright of the charge agianst him, and does not protect his right to double jeopardy. This was clearly adusive by the Court, and manifest injustice. See United States V. Bobo, 344 F.3d 1076, 1083 (11th Cir. 2003).

REASON FOR GRANTING THE PETITON

a United States Court appeal has entered a decision in Conflict with the decision of anotha-United States Court of appeal on the Same important matter; a United States Court of appeal has decided an important Federal question in way that Conflict with relevant decision of this Court.

This decision is of great importance to the public interest.

Likewise, appellant argues respectfully. Because of these Courts deliberate abuse of decretion and usurpation OF power, and because of the endrance appellant is going through. Appellant respectfully request this Honorable Court For immediate relief From this dire Situation. In the interest of justice.

Appellant respectfully request this Honorable Court to reverse this Conviction.

CONCLUSION

The petition For a writ of Certiorari Should be granted.

Respectfully Submitted.

Date: October 2, 2020