

20-6092

No. _____

Supreme Court, U.S.
FILED

AUG 21 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NATHAN Hill — PETITIONER
(Your Name)

Warden of LEE County,
U. S. P vs. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NATHAN Hill # 10251-045
(Your Name)

P. O BOX 305
(Address)

Jonesville VA 24263
(City, State, Zip Code)

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

- 1) Whether this Court's "holding" in *Alleyne v United States*, set forth a Rule of statutory interpretation; that could be used on Collateral Review
 - a) The lower courts have mistakenly conflated Alleyne's Rule of statutory interpretation, into, the new Rule of Constitutional Law, which has resulted in the statutory Rule, being eviscerated.

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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Harris v United States...	536 U.S. 545 (2002)
Haymond v United States...	17-1672 (2019)
McMillan v Pennsylvania...	477 U.S. 89 (1984)
Rivers v Roadway...	511 U.S. 298 (1994)
United States v Hill...	252 F.3d 919 (7th Cir. 2001)
United States v Wheeler...	886 F.3d 415 (4th Cir. 2018)

STATUTES AND RULES

28 U.S.C. § 2241(c)(3)
28 U.S.C. § 2255(e)
21 U.S.C. § 848(a)
21 U.S.C. § 848(b)
18 U.S.C. § 3583(k)

OTHER

Alleyne v United States *id.* - Rule of Statutory interpretation

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☒ is unpublished.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☒ is unpublished.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 July 28, 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).

Statement of the Case

In 1998, Hill was charged and convicted for violating 21 U.S.C. § 848(a), however, during sentencing the court found facts under the preponderance of evidence standard, that led to the court sentencing Hill under § 848(b).

During the war on drugs this practice was permissible. But on direct appeal, Hill challenged the District Court's sentencing under § 848(b). Hill argued that the court violated Hill's due process rights.

In support of Hill's position he relied upon Justice Thomas's concurring opinion in *Apprendi v. New Jersey* 530 U.S. 466 (2000). The Seventh Circuit held that *Apprendi* did not overrule *McMillan v. Pennsylvania* 477 U.S. 89 (1984). See *United States v. Hill* 252 F3d 919, 921 (7th Cir. 2001).

The Seventh Circuit relying on *McMillan*, and their precedent case reasoned that § 848(b) was not a distinct, aggravating crime of § 848, and that it was instead a sentencing factor. Hill then sought writ of certiorari from this Court. This Court ordered the Solicitor General to respond, but nevertheless, denied Hill's request; when this Court upheld *McMillan* in *Harris v. United States* 536 U.S. 545 (2002). See also *Hill v. United States* 536 U.S. 962 (2002).

In *Harris* this Court affirmed the Rule of Statutory, "Any fact that increases the mandatory minimum is a sentencing factor". *Harris* also answered the procedural question that was before the Court, that is, such "facts" did not have to be placed in the indictment and proven beyond a reasonable doubt.

The Rule of statutory interpretation set forth by HARRIS foreclosed any reasonable chance for Hill to relitigate an issue in his initial § 2255, that was already decided against him.

Approximately, NINE years after the close of Hill's initial § 2255, this Court decided *Alleyne v United States*, 570 U.S. 99 (2013). In *Alleyne* this Court revisited its Rule of interpretation, that it had relied on in HARRIS. SEE *Alleyne* Id at 103. The Court also revisited its procedural rule, which resulted in a new Rule of Constitutional law.

Therefore, the Court set forth two Rules in *Alleyne*. Id. However, in Hill's case the lower courts have mistakenly conflated *Alleyne*'s Rule of statutory interpretation into, *Alleyne*'s new Rule of Constitutional law, thereby canceling out this Court's statutory Rule.

In Hill's case, he specifically pointed out that there were two distinct Rules in *Alleyne*. And he informed the Court that he was relying on this Court's ESSENTIAL holding in *Alleyne*, Id at 112-113 "the CORE crime and fact triggering an increase maximum or minimum together constitutes a new Aggravating crime" see also Id at 115-116 "the ESSENTIAL point is that the Aggravating fact is an element of a distinct, aggravating crime"

Hill relying on this Rule, as applied to his case, that is, § 848(b) demonstrated that the provision was not a sentencing factor, but instead a distinct Aggravating crime. NECESSARILY *Alleyne*'s Rule as applied to § 848(b) creates a substantive change in law.

Hill also relied on *Rivers v Roadway* 511 U.S. 298, 312-312 (1994) and *Bousley v United States* 523 U.S. 614, 619-620 (1998), to show

that a federal criminal statute can have but one meaning, that is, § 848(b) had been a distinct, Aggravating crime since Congress enacted the provision.

Moreover, Hill also addressed any question as to general retroactivity by relying on Bousley.

The District Court after two years dismissed Hill's writ of habeas corpus 28 U.S.C. § 2241(c)(3); by holding that Hill failed to meet the second prong of Wheeler. SEE *Wheeler v United States* 886 F3d 415 (4th Cir 2018). Specifically, Wheeler's second prong reads as follows; "subsequent to the prisoner's direct appeal and first § 2255 motion, the aforementioned settled substantive law changed and was deemed to apply retroactively on collateral review"

The District Court relied on authority from the Court of Appeals that has decided that Alleyne's [new Rule of Constitutional Law] cannot be used on collateral review. see D.C order pg 10.

None of the authorities cited by the District Court answered "Hill's question", which is distinct from a new rule of constitutional law. This has been a re-occurring problem EVERYTIME the name Alleyne is mentioned, the lower courts rather than addressing the question before it address a different question.

Hill timely appealed to the Fourth Circuit, he pointed out that the District Court failed to acknowledge and address his reliance on this Court's Rule of statutory interpretation, as applied to § 848(b), and he made clear, that he never relied on Alleyne's new Rule of Constitutional Law.

The Fourth Circuit without addressing and at ~~not~~ acknowledging this Court's Rule, affirmed the lower court's decision. See Exhibit (B). This Exhibit (opinion) also has no mentioning of this Court's

Rule of statutory interpretation.

A quick glance at both of the opinions will show that the Courts somehow overlooked Hill's position.

REASONS FOR GRANTING THE Petition

For decades, previous to this Court's Rule of statutory interpretation, set forth by *Alleyne*, the government was able to remove "crimes" from their proper place of designation. That is, "crimes" were turned into "sentencing factors," which necessarily resulted in thousands of defendants being deprived of their fundamental rights.

Hill's case is a prime example, he was charged and convicted for violating 21 U.S.C. § 848(a), which carries a prescribed mandatory minimum of 20 years and a mandatory maximum of life. But, during sentencing the government was allowed to move Hill from the "crime of conviction," to a new distinct, aggravating crime, § 848(b), which requires a mandatory minimum of life. Hill's punishment ballooned from the minimum of 20 to a mandated life sentence, this scheme was carried out under the preponderance of evidence standard, § 848(b) was found to be a sentencing factor. This sequence of events was happening in all the federal courts across America.

Interestingly, it ceased after this Court's *Alleyne*, however, it was the Rule of statutory interpretation that put an end to such practice. Of course, *Alleyne* set forth a new Rule of constitutional law, but before the procedural rule of *Alleyne* could be applied, the courts had to move the crimes back to their proper place of designation. In 2019, this Court applied the Rule of statutory interpretation to 18 U.S.C. § 3583(k) see, *Haymond v. United States* No. 17-1672 (June 28, 2019).

This Court held that § 3583(k) was not a mere factor, that could be proven under preponderance of the evidence standard. And instead, the provision was a new distinct aggravating crime, see (Id. majority opinion Slip pg 9-11) and see Justice Alito's dissenting opinion (pgs 22-23)

Fortunately, the defendant Haymond was afforded direct appeal, if not the lower courts would have barred him from utilizing this Court's Rule of statutory interpretation. That is, if he was required to present in collateral review.

In Hill's case, he like thousands of others were prosecuted decades ago, they are required to present their arguments on collateral review; during the era Hill was prosecuted the courts were interpreting crimes and penal statutes under the statutory rules set forth by *McMillan v Pennsylvania* 477 U.S. 89 (1984) and *Harris v United States* 536 U.S. 545 (2002).

The Rule was "Any fact" that increased a defendant's mandatory minimum" was a sentencing factor, rather than a distinct, aggravating crime. However, in 2013, this Court overruled this Rule of statutory interpretation, see *Alleyne* 570 U.S. 99, 103 (2013).

Nevertheless, the lower courts have mistakenly conflated the two distinct rules set out by this Court, into one rule; that is, the lower courts only acknowledge *Alleyne*'s New Rule of constitutional law, therefore, in a sense, the Rule of statutory interpretation do not exist.

This mistake by the lower courts have led to the dismissal of thousands upon thousands of collateral attacks. Consequently, federal prisoners who were prosecuted during the era of *McMillan* + *Harris*, have been unable to take advantage of this Court's Rule of statutory interpretation.

The problem that Hill is describing is more severe than a mere split between the circuit courts, as required by Rule 10 of this Court's Rules. That is, because all of the Court of Appeals across the country have mistakenly conflated the two distinct rules into one rule, A New Rule of constitutional law.

And it is well established that prisoners cannot use a new Rule of constitutional Law on collateral review. This mistake by the lower courts have welded the prison door shut, and behind those doors remain prisoners who are illegally convicted or sentenced for crimes that they were never charged and convicted of.

This Court should grant certiorari in this case in order to clear up the confusion that has not only caused prisoners to be deprived of their fundamental rights, but also in order so that these now old prisoners can get the relief required by Justice.

Alleyne's Rule of statutory interpretation is distinct from this Court's new Rule of constitutional Law. And it is well established that statutory Rules can be used on collateral review. Without this Court stepping in and saying what the law is, thousands of inmates will continue to unjustly suffer for crimes that they have not been afforded due process of law.

CONCLUSION

Hill prays that this court grant his request for Writ of Certiorari

The petition for a writ of certiorari should be granted.

NATHAN HILL 10251-045

Respectfully submitted,

N Hill

Date: August 19, 2020