No. 20-6103

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

FILED
OCT 14 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Curtis Lee Dale — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Eighth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Curtis Lee Dale
(Your Name)

PO Box 10
(Address)

Lisbon, OH 44432
(City, State, Zip Code)

(330) 420-6200
(Phone Number)

QUESTION(S) PRESENTED

- Is a pro-se litigant due a merits determination or adjudication on every claim he presents in his 28 USC. §2255 Motion?

- Is a defendant to be provided copies of inventory documents related to executed search warrants connected to his criminal case?

- Is a defendant to be provided copies of the probable cause affidavits and search warrants executed in connection to his criminal case?

- Is the U.S. District Court for the Southern District of Iowa required to follow the Court's very clear directives in Alleyne v. United States, and United States v. O'Neil, when imposing a mandatory minimum sentence by not using preponderance of evidence when calculating overall drug weight for sentencing purposes?

- Does a pro-se litigant representing himself during trial have a due process right for the government to turn over discovery?

- Does an individual not on the contractual rental agreement regarding a storage unit have standing to challenge the sufficiency of search warrants related to those storage units when that individual has total control and dominion over the storage unit to include the only key to the pad-lock keeping everyone out of the storage unit.

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:

RELATED CASES

TABLE OF AUTHORITIES CITED

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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

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

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at ______________________; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B 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

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

The date on which the United States Court of Appeals decided my case was May 29, 2020.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 29, 2020, and a copy of the order denying rehearing appears at Appendix C.

[ ] 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

Petitioner has a 4th Amendment Constitutional Right 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.

Petitioner has a 5th Amendment Constitutional Right not to be deprived of life, liberty, or property without due process of law.

Petitioner has a 6th Amendment Constitutional Right to competent assistance of counsel.

28 U.S.C.§ 753 (f) states in pertinent part:

... Fees for transcripts furnished in proceedings brought under Section 2255 of this title [28 U.S.C.§ 2255] to persons permitted to sue or appeal informa pauperis shall be paid by the United States out of money appropriated for the purpose of the trial judge or a circuit judge certifies that the suit or appeals is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal.

28 U.S.C.§ 2250:

If on any application for a writ of habeas corpus an order has been made permitting the petitioner to prosecute the application informa pauperis, the Clerk of any Court of the United States shall furnish to the Petitioner without cost, certified copies of such documents or parts of the record on file in his office as may be required by order of the judge before whom the application is pending.

28 U.S.C. § 2255(a):

A prisoner in custody under sentence of the Court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the Court which imposed the sentence to vacate, set aside, or correct the sentence.

STATEMENT OF THE CASE

Petitioner was arrested on June 2, 2016, connected to alleged search warrants being executed by law enforcement regarding storage units and his residence.[1]

Petitioner was charged with- Possession with Intent, and Conspiracy, and proceeded to trial where he represented himself.

After a '3' day trial, on October 5, 2016, the jury returned a verdict of guilty. Petitioner was later sentenced to an upward variance sentence for a total of 25 years in federal prison.

Prisoner did timely file his appeal where he was represented by counsel. After all briefs filed and oral arguments granted, the Eighth Circuit Court of Appeals affirmed the conviction and sentence of the district court on March 19, 2018.

Petitioner, pro-se, timely filed his 28 U.S.C. § 2255 on June, 2019, with the district court, raising numerous grounds for relief to include not being provided any sort of inventory documentation connected to the alleged search warrants executed. Also, attacking the fact that copies of the search warrants were never produced or provided, coupled with the withholding of discovery material, erroneous jury instructions, and sentencing enhancements, along with numerous other things. (Appendix D)

Without issuing a show-cause order to the government, the district court summarily denied Petitioner's § 2255 Motion on November 20, 2019. SEE: Appendix B

Petitioner timely filed his Motion to Alter or Amend Rule 59(e) pointing out to the district court their failure to adjudicate all of Petitioner's claims and other issues they overlooked. SEE: Appendix E

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1. To this day, there have been no inventory documents provided to Petitioner, eventhough they have been repeatedly requested, pre-trial, during trial, and post-trial.

The district court, without directing the government to respond, issued it's "TEXT ORDER" denying Petitioner's Rule 59(e) Motion.

Petitioner timely filed his Application for COA with the Eighth Circuit Court of Appeals. SEE: Appendix E

Without directing the government to respond to Petitioner's COA Application (Appendix F), the Court denied Petitioner's COA Application. SEE: Appendix A.

Petitioner thereafter timely filed his Motion for Panel Rehearing (Appendix G), to the Eighth Circuit Court of Appeals with it being denied on July 29, 2020. SEE: Appendix C

REASONS FOR GRANTING THE PETITION

REASON 1

It is Petitioner's first contention his petition should be granted, if not for any other reason than for the simple fact he "didnot" receive a merits determination on several of the meritorious claims he raised in his 28 U.S.C. §2255 Motion. SEE: Appendix D

Petitioner timely raised this fact in his Motion to Alter or Amend Judgment and/or Relief From a Judgment Order (Appendix E). However, the district court again refused to acknowledge or address Petitioner's claims and denied his Rule 59(e) Motion without comment or a TEXT ORDER.

Petitioner again raised this issue in his Application for COA submitted to the 8th Circuit Court of Appeals. SEE: Appendix F

Again, Petitioner's issue of not being given a merits determination by the district on all the claims he raised in his §2255 were not addressed by the 8th Circuit when they also denied his COA without comment. SEE: Appendix A

This Court made it clear in Gonzalez v. Crosby, 545 U.S. 524, 533-36, 125 S.Ct. 2641, 162 L.Ed. 480 (2005) that the Motion[1] sought only to correct a defect in the integrity of the federal habeas proceedings, then it should be allowed to proceed.

Many district and circuit courts have followed the directive in "Gonzalez". In Peach v. United States, 468 F.3d 1269, 1272 (10th Cir. 2006), the Court held a district court's failure to adjudicate some of the claims raised in his §2255 Motion equates to a flaw in the federal habeas proceedings. Also, SEE: Spitznas v. Boone, 464 F.3d 1213, 1215-19 (6th Cir. 2006) ("we have previously held that an alleged failure to rule represents a true 60(b) claim because it asserts a defendant's claim of a flaw in the integrity of the earlier habeas proceedings").

1. In Petitioner's case, a Rule 59(e) Motion.

Petitioner timely submitted his Rule 59(e) Motion (Appendix E) raising the district court's failure to adjudicate some of his claims raised in his §2255, ie, flaw in the federal habeas proceedings. Yet, without even issuing a show cause order directing the government to respond to Petitioner's 59(e) Motion, the district court simply issued it's TEXT ORDER denying Petitioner's 59(e) Motion without comment.

Rule 59(e) allows a litigant to file a "motion to alter or amend a judgment." The Rule gives a district court the chance "to rectify it's own mistakes in the period immediately following it's decision." White v. New Hampshire Dept. of Employment Sec., 455 U.S. 445, 450, 102 S.Ct. 1162, 71 L.Ed. 2d 325 (1982). In keeping with that corrective functions "federal courts generally have [used] Rule 59(e) only to reconsider [] matters properly encompassed in a decision on the merits." Id, at 451, 102 S.Ct. 1162, 71 L.Ed.2d 325.

In Petitioner's case, the district court did not err and consider his Rule 59(e) Motion as a second successive but miserably failed to address the merits of the Rule 59(e) Motion.

Because of the district court's failure to adjudicate Petitioner's claims in his §2255 and address their failure in his timely filed Rule 59(e) Motion has caused Petitioner to be at this juncture, still without some of his §2255 Motion Constitutional claims being adjudicated on the merits.

REASON 2

Petitioner, to this day, has not been provided with a copy of the alleged search warrants or any sort of inventory or logging documents related to the property seized during the execution of the search warrants and Petitioner's arrest related thereto. Petitioner has been inculcating from day one attempting to obtain copies of those documents as the district court record indicates along with appendices[2] attached hereto. Yet, through Petitioner's entire judicial process, he has not been provided with copies of these basic documents as required by the rules of court, and statutes[3]. SEE: Appendix I T.T. pg. 296, 297, 298

It has been Petitioner's position that the reason the government, or the district court have failed to provide copies of the alleged search warrants and inventory documents of property seized, is because they simply do not exist[4]. There has to had been something wrong because appointed Defense Counsel claims he can not, and will not provide copies without authorization from the government. The district court has successfully avoided turning the documents over thus far. In fact, currently Petitioner has his Motion for Production of Inventory of Property pending in the district court. Fed.R.Civ.P., Rule 41(f)(1)(D) mandates upon request that the Court shall provide copies of the inventory documents attached and returned to the Court along with the search warrants. SEE: Appendix H

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2. SEE: Appendix D, Pg. 10-11; Appendix E, Pg. 2-3; Appendix F, Pg. 8-9; and Appendix H Appendix I pg. 296-298
3. SEE: Rule 41(f)(1)(D); and 18 U.S.C. § 3500(b)
4. Or the documents are so inadequate they will not stand the legal scrutiny if challenged.

As of filing this Petition, Petitioner has not received any response from the Court regarding his Motion (Appendix H) docketed on August 10, 2020, as number in the district court.

Petitioner has a 4th and 5th Amendment Right to due process of law before there can be a loss of property and/or liberty. That simply has not happened in Petitioner's case.

Petitioner's property was searched allegedly with legitimate search warrants and inventory of the seized property taken, but law enforcement, the government, nor the district court have ever produced copies of the documents, eventhough the documents have been repeatedly requested since pre-trial to date. The aforementioned absolutely violates Petitioner's Constitutional Rights.

REASON 3

Appellate Counsel's gross incompetence does equate to a Sixth Amendment violation, where Petitioner received a significantly enhanced sentence.

The district court grossly erred in sentencing Petitioner for more controlled substance than was found by jury, which Petitioner braght forth this claim in his §2255 Motion (Appendix D) that Appellate Counsel was incompetent for failing to properly raise the sentencing issue on direct appeal, which significantly raised his overall sentence.

Sentencing Counsel properly objected to Petitioner's minimum mandatory sentence being enhanced by drugs not found by the jury. SEE: Appendix J at Pg. 2-3, Line 18; and Pg. 6, Line 11 through Pg. 8, Line 14.

Eventhough Sentencing Counsel made his objection known to the Court using the preponderance of evidence standard regarding the additional drug weight, the Court went ahead and imposed the enhanced sentence. SEE: Appendix J at Pg. 32, Line 3-11.

Appellate Counsel badly mishandled Petitioner's direct appeal which caused the 8th Circuit Court of Appeals to deny Petitioner's relief. SEE: Appendix K

Petitioner raised the issue in his §2255 Motion (Appendix D at Ground 2), however, the district court's explanation of how it was legally allowed to impose the enhanced upward variance sentence in it's §2255 denial is inconclusive and legally insufficient. SEE: Appendix B at Pg. 9-10

This Court made clear in United States v. Alleyne, 570 U.S. —, 133 S. Ct. 2151, 186 L.Ed.2d 314 (2014), "... a jury must find beyond a reasonable doubt any fact which increases a mandatory minimum sentence." Id. at 2155.

It is ironic this Court took corrective action in another case also out of the Southern District of Iowa with the exact same set of facts as Petitioner's. SEE: O'Neil v. United States, 571 U.S. 801, 134 S.Ct. 223, 187 L.Ed.2d 3 (2013).

This Court in "O'Neil" remanded to the district court because the jury found the petitioner guilty of at least 28 grams, but less than 280 grams of cocaine base.[5] However, at sentencing the Judge found by preponderance of evidence, the petitioner was responsible for 2.5 kilograms of cocaine base which significantly increased his mandatory minimum sentence. SEE: United States v. O'Neil, 549 Fed. Appx. 595 (8th Cir. 2014).

In Petitioner's case, the jury found him guilty of 28 grams or more, but less than 280 grams. Yet, the Judge, by preponderance of evidence, derived at 1487 grams and contributed it to Petitioner's Sentence. SEE: Appendix J.

Of course, when a sentencing court finds by preponderance of evidence[6] a defendant's mandatory minimum sentence should be increased, it runs afoul of Alleyne v. United States, 570 U.S. —, 33 S.Ct. 2151, 186 L.Ed.2d 314 (2014), which requires a jury to find beyond a reasonable doubt any fact which increases a mandatory minimum sentence. Id. at 2155.

Therefore, Petitioner specifically requests this Court to take corrective action in his case out of the Southern District of Iowa, just like it did in the "O'Neil" case also out of the Southern District of Iowa. It is as if the Southern District of Iowa did not get the message sent in the "O'Neil" case, maybe they will get it should this correct Petitioner's sentence relying on "Alleyne".

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5. Just like the Petitioner's instant case at bar.

6. Not found by the jury.

REASON 4

In the Petitioner's underlying criminal investigation and trial, there was an un-surmountable amount of law enforcement and government misconduct. Petitioner's 5th Amendment Rights were violated by the involved law enforcement officers and government prosecutors.

Special DEA Agent Bump testified that he obtained an electronic survellance search warrant for Dale's cell-phone to use it as a location device. Yet to date, no search warrant has been produced or given to Petitioner (T.T. Pg. 45-62).

The same applies to GPS device attached to Petitioner's vehicle by Agent Bump (T.T. Pg. 45, Line 18-24). To date, no-one has provided or produced copies of these alleged warrants, eventhough they have been repeatedly requested.

It has always been Petitioner's contention that law enforcement never had probable cause to obtain warrants for his cell-phone to use as a location device or the GPS device, and that is exactly why the government refuses to turn over copies of the related warrants and probable cause affidavits. Petitioner can not reiterate to this Court enough on how badly his due process rights have been violated by the government's mis-conduct and continual cover-up by refusing to provide Petitioner with copies of the warrants, probable cause affidavits, or just simple basic discovery materials. This type of mis-conduct can not go un-checked.

see: Appendix I (T.T. Pg. 104, 105, 110, and 131)

In the interest of judicial economy, Petitioner directs the Court to his Motion to Alter or Amend (Appendix E at Pg.10). Petitioner has provided the pertaining Trial Transcript page cited in Appendix E. SEE: Appendix I

Petitioner, pro-se at trial, inartful as it may have been, did establish that no-probable cause exists to obtain the warrants (SEE: Appendix E at Pg.10; and Appendix I). Hence, the very reason the government and district court refuse to turn over copies of the signed warrants and probable cause affidavits.

REASON 5

It is Petitioner's contention that he has due process rights that protect him from law enforcement and the government from failing to follow clearly established statutes and rules of the Court before the loss of property or liberty take place. As the Court records establish, there was an overwhelming amount of law enforcement and governmental misconduct.

The DEA knowingly used a retired dog to conduct a free air sniff at the storage unit to obtain probable cause for the search warrant. SEE: Appendix D at Pg. 17. See: Appendix I T.T. Pg. 210 - 212

As Petitioner has previously stated in Reason 4, law enforcement, the government, nor the district court have ever produced a copy of the probable cause affidavits, search warrants, or inventory documents related to the search warrants. However, the trial transcripts support the retired drug dog, "Jargo's" free air sniff was used as probable cause to obtain the search warrants. SEE: Appendix J at Pg. 60, Line 25. See: appendix I T.T. pg. 426-427

Again, in the interest of judicial economy, Petitioner directs the Court to review his Motion to Alter or Amend (Appendix E) along with the Trial Transcript Pages cited therein. SEE: Appendix I T.T. pg. 210-212

Knowingly using an un-certified, retired K-9 for probable cause to obtain search warrants does infact equate to due process violations. This is especially true when the government uses it's power to keep the warrants and probable cause affidavits from the pro-se Petitioner, preventing him from challenging the documents and process used therein.

REASON 6

Again, Petitioner has certain due process protections related to the loss of property and liberty that have been grossly violated by law enforcement, the government; and lower courts related to the search of the storage units related to his underlying criminal case.

Appellate Counsel in Petitioner's case failed to properly argue this issue on direct appeal or to recall the 8th Circuit Court of Appeals mandate in United States v. Dale, No. 17-1505, after this Court's decision in Byrd v. United States, 138 S.Ct.

54, 198 L.Ed.2d 780 (2018). "Byrd", which was decided by this Court shortly after the 8th Circuit affirmed the conviction and sentence, does clarify the matter of third parties having standing to challenge the sufficiency of the search warrant or probable cause connected thereto.

This Court made clear in "Byrd" that it was well established that a person need not always have a recognized common law property interest in the place searched to be able to claim a reasonable expectation to privacy in it. Id. "Byrd", 138 S.Ct. 1518 (2018).

Furthermore, "one of the main rights attaching to property is the right to exclude" and "one who owns or lawfully possesses or controls property will in all likelihood have a legitimate exception of privacy by virtue of the right to exclude". SEE: Rakes v. Illinois, 439 U.S. 128, 58 L.Ed.2d 387, 99 S.Ct. 421 (1978)(as quoted in Byrd).

As the Petitioner's affidavit supports, attached to his §2255 Motion (Appendix M) (Appendix D at Pg. 25, and Exhibit V), Petitioner had complete dominion and control over the storage units along with the key, hence did exclude others from the storage units. "Rakes", Id.

The district court absolutely used a double standard when determining whether Petitioner had standing related to the storage units. For instance, the district court found that Petitioner personally maintained the premises, ie. storage units, for purposes of drug trafficking, no matter whose name was on the lease.

Furthermore, the district court stated at sentencing:

The Court: "Well what's more possessory for a storage locker than the key? What is more possessary?" SEE: Appendix J at Pg. 9, Line 23-24

Also, at sentencing the Court laid a foundation for standing by stating:

The Court: "... and finally, maintaining a premises, that's what this case is about. That's entirely what this was about was maintaining a premises for the purposes of storing and distributing drugs. Yeah, it was rented in the name of someone that had to connect to the place, because he was in Chicago, but it was Mr. Dale that had the key..." SEE: Appendix J at. Pg. 12, Line 4-10.

So after the district court made it's ruling pretrial, Petitioner did not have standing to challenge the search warrants, thereafter, the sentencing hearing made the Petitioner's point that he did in fact have standing.

In the district court's §2255 denial, it appears to claim even if Petitioner did establish standing, it would not matter because of the exclusionary rule found in United States v. Leon, 468 U.S. 897 (1984). SEE: Appendix B at Pg. 7-8.

It is amazing to Petitioner that the district court relies so heavily on the probable cause affidavits connected to the search warrants (Appendix B at Pg. 8), but for whatever reason refuses to make them available to Petitioner to this day.

As shown, Petitioner had standing to challenge the search warrants, but was denied that opportunity in the district court because of it's erroneous ruling, and because of Appellate Counsel's incompetence, Petitioner did not receive a full merits determination by the 8th Circuit.

REASON 7

Petitioner's most basic and fundamental rights to a fair trial and due process of law were violated by the government's refusal to turnover the government's discovery before Petitioner's trial commenced. Nor at any point, was the government's discovery turned over to the Petitioner.

To this day, eventhough Petitioner has been inculcating in attempting to obtain the government's discovery to include copies of the grand jury transcripts, search warrants, probable cause affidavits, chain of custody documents, inventory documents related to the search warrants, law enforcement 302's, etc., etc., none have been produced.

Without Petitioner's basic fundamental due process rights being protected and forced to trial without anysort of the government's discovery being provided, Petitioner's pro-se efforts at trial were destined to fail from the beginning. This issue was raised in Petitioner's § 2255 (Appendix D at Pg. 11 and 20), but was not addressed by the district court in it's denial order (SEE: Appendix B) and relates to Reason 1

These outrageous due process violations caused a tragedy of errors which allowed Petitioner to wind up convicted.

CONCLUSION

Because of the overwhelming amount of law enforcement and governmental mis-conduct, it hascaused Petitioner's due process rights to be violated tragically during their investigation, and before & during trial.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Curtis L. Ohl

Date: Sept. 28th 2020