

NO. 20-6374

IN THE
SUPREME COURT of the United States

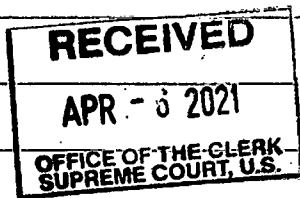
Terrance Nathaniel Brown, Jr.,
petitioner

v.

United States of America

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Fourth Circuit

PETITIONER'S REPLY BRIEF



Terrance N. Brown, Jr.
x Terrance N. Brown, Jr.
Petitioner Pro Se
USP Hazelton
Prisoner No. 21574-084

I. Question Presented

Whether Acquitted Conduct is enough to satisfy a upper variance of 194 months, where a SENTENCE is based soley on the evidence that's produced at sentencing, without any indication that the jury was affected by these Factors For Conviction.

II. Additional Related Proceedings

United States District Court (E.D. Va.):

United States v. Brown, No. 17-cr-180
(Nov. 26, 2019)

United States Court of Appeals (4th Cir.):

United States v. Brown, No. 18-4726
(Nov. 28, 2018)

United States v. Brown, No. 18-4650
(Apr. 26, 2019)

United States v. Brown, No. 19-4894

Reply Brief

Terrance Nathaniel Brown, Jr., A Prisoner,
currently housed at United States Penitentiary
Hazelton, P.O. Box 2000, Bruceston Mills, West
Virginia, 26525. By and through Pro Se
Petitioner, respectfully replies to the government's
Brief in Opposition to the petitioner's writ
of certiorari, docketed before this court as:
No. 20-6374

Opinion Below

The opinion of the court of appeals is not published
in the Federal Reporter but is reprinted at 811 Fed.
Appx. 818.

Jurisdiction

The judgement of the court of appeals was entered
on May 1, 2020. A petition for rehearing was denied
on May 29, 2020 (Pet. App. 1a). The petition for
a writ of certiorari was filed on October 13,
2020. The jurisdiction of this Court is invoked
under 28 U.S.C. 1254(1).

Statement

The whole history and structural break down of the Mad Stone Bloods (MSBs) gang at this point becomes more prejudicial for this Court to consider versus having any substantive value towards what the matter at hand boils down too. Be as though the petitioner was already acquitted on all prior Counts of Racketeering that's in relation to the gang in question, so besides speaking about (MSB) for the sake of familiarizing the Court with the history of how this case was brought about would otherwise just become useless talk on behavior that would be off topic from whats before this Court.

1. The Petitioner can argue that the district Court erred when the Court denied the petitioner's request to cut out all (MSB) language from the Presentence Investigation Report (PSR) for the sake of having to or more so in this case being about to rely on (MSB) alleged conduct to hinder the outcome of sentencing.

When the Petitioner was later tried where venue was appropriate he ultimately was acquitted of this same alleged conduct, but convicted on drug charges in relations to the drug conspiracy on this case,

this district judge chose to grant the petitioner's request to cut out all (MSB) alleged activity from the PSR in which was identical to the way it was written up in this case. By Law, unless a conviction is administered after a trial concludes, then the defendant from said trial is INNOCENT because the Judge and or jury PROVED that said defendant was found NOT GUILTY. Therefore, in this instance, the (MSB) language brought forth with this case are mere Allegations that has no relevance to the actual matter that is before this court.

2. The government contests that Corey Owens was a subordinate of the petitioner's, discrediting the testimony that Corey Owens displayed during the petitioner's sentencing hearing; Stating that he was not a subordinate of the petitioner's nor had he ever seen the petitioner sell drugs. The government pointed out that on cross-examination, Owens had admitted at his own plea hearing that he had conspired with other gang members to distribute 500 grams to two kilograms of cocaine and 80 kilograms to 100 kilograms of marijuana. The question in this sequence becomes, "how is this, Corey Owens recanting his statement"?

The FBI agent testified during this same hearing, stating that, "Corey Owens had previously told him during an interview, (being as though Owens was cooperating with the government, he participated in several interviews for debriefing purposes), Corey Owens has told FBI agent Farr on multiple occasions that he knew nothing about the petitioner's drug activity." *Id.* at 38. ("Mr. Owens said that -- I want to be specific, because he had a very specific way of saying this -- he didn't know anything about "your" drug activity.").

Also, during this same hearing, the Judge asked the prosecutor, that if they're were anything in Corey Owens signed statement of Facts that said he was dealing drugs with Terrance Brown? *Id.* at 50; Prosecutor responds with: ("I don't think so, Your Honor. It says that he was combining, conspiring, confederating with other MSB members. I don't believe it says Terrance Brown. It just references other MSB members, Your Honor.").

Not to mention at this hearing, the Judge discussed with Corey Owens the fact that he didn't remember if he had ever met Corey Owens before? *Id.* at 10-11. ("Have we met before, Mr. Owens? I don't think so.").

For this judge to turn around in less than a hours time saying, that "he found Corey Owens statements to be incredible and in contrast with the statements that he made when he pled guilty in this case";

§ HOW WAS COREY OWENS BEING INCON-
SISTENT AT STATING THAT HE DIDNT KNOW
ANYTHING ABOUT THE PETITIONER'S DRUG ACTIVITY?

3. The government also pointed out that the district court dismissed without prejudice, for lack of venue, the two section 1959(a) (3) and two Section 924(c) Counts; but the government "FAILED" to mention that, when this specific ruling was issued, the petitioner had already been acquitted on these same Counts in question, Per Rule 29 motion of acquittal, By this same Court.

The Petitioner had put in a Rule 29 Motion for acquittal on all 6 Counts alleged against him, after all the evidence was presented to the jury and as a result, the Court granted his motion as to those 4 VICAR Counts for reasons such as Invalid venue, being as though those crimes were alleged to have been committed in the Eastern District of Virginia but was instead heard in the Western District.

Only two out of the petitioner's 6 Counts

was sent back with the jury, even though the jury was never instructed by the Court to unhear the evidence about the newly acquitted Charges, or even that the defendant in question, no longer was charged with those Counts but on the contrary, the petitioner was actually ORDERED by the Court, TO NOT speak to the jury about being acquitted on those Counts during Closing Argument. The jury was under the impression throughout the whole 4 week trial that the petitioner was charged with 6 Counts, but only two was sent back to the jury without explanation to why this had changed.

The district Court posted a Memorandum, stating that, "the petitioner had gotten those 4 Counts dismissed without Prejudice, a week after the jury trial was over and the petitioner was already Found guilty For Drug Conspiracy. BY LAW, these Counts were no longer this Courts concern to have made a second opinion on, be that these charges were no longer with this Court after the Rule 29 hearing concluded.

The petitioner appealed this Act by this Court and when it came time for the Fourth Circuit to rule on this matter, they came to agreement that,

since the petitioner eventually got acquitted on these
 4 Counts after a second trial, then the outcome
 of a decision wouldn't affect the petitioner, [But]
 in all actuality, the petitioner was held in jeopardy
 when he faced trial for a second time with those
 same VICAR COUNTS. (AFTER BEING ACQUITTED FOR
 THEM). [The Supreme Court has stated that,
 "every procedure which would offer a possible
 temptation to the average man as judge... Not
 to hold the balance nice, clear and true between
 the state and the accused, denies the latter
 due process of law." Murchison, 349 U.S. At
 1.36 (quoting Tumen v. Ohio > 273 U.S. 510,
 532, 71 L. Ed. 749, 758, 475, Ct. 437
 > 50 ALB 1243.)) The Fact of the matter is
 this, if the Petitioner was acquitted on Charges
 For purposes of INVALID VENUE then By Law
 these charges should NOT have played a role
 in the petitioner's sentencing, being as though these
 charges weren't never supposed to had been heard
 in this Court in the First Place. Therefore, violating
 the petitioner's due process by relying on these
 charges to advocate the sole reason on how he came up with
 the sentence the Court enforced upon the petitioner.

4. Now as for how Ms. Sami Cilek, United States Probation Officer, came up with the petitioner's Sentencing Guidelines: Ms. Cilek adds 500 grams to 2 Kilos of cocaine equivalent to 100 to 400 Kilos of marijuana, 80-100 Kilos of marijuana, all based on Corey Owens statement of Facts that was never presented to the jury. Ms. Cilek also used Anthony Days trial testimony, that Day sold the petitioner 40 ounces of marijuana, equivalent to 1,134 grams of marijuana; she also used the 19.6 grams of marijuana that the petitioner had on his person when he was arrested, which happens to be the only physical evidence that the government presented against the petitioner through the course of a 4 week trial, (19.6 grams of marijuana). The 10.5 grams of cocaine that's equivalent to 2,100 grams of marijuana, was taken out by the Court at sentencing, see. Id. at 62-63 ("I'm going to disregard paragraph 123"). This adds up to 1,154 grams of marijuana without Corey Owens weight being attributed to the petitioner.

Even though the government argued that the petitioner should be held accountable specifically for Corey Owens marijuana. (During Sentencing). see. Id.

at 49. ("Its just what Special Agent Farr did. I think that, based on some of the evidence that you've heard today, the Court should hold Defendant Brown responsible for the drug distribution activities of Corey Owens, specifically the marijuana.").

The Judge still adopted the presentence report in its entirety, therefore exposing his hand. The whole process before this district Court was Pre Meditated, the (PSR) was Pre-Written before trial even begun, the Defendants were expected to be found guilty for Rico Conspiracy being that they were tried in front a jury of people 6 hours away from where they're from and being that this wasn't the outcome, the Judge was going to sentence the Pro se Defendant to 240 months regardless and wish to have had the power to sentence him to longer so in addition to 20 years in prison, the judge also added 5 years probation therefore going over Statue being as though the defendant would be doing more then 20 years Statue Max.

Argument

The government recites United States v.

Abbas, 560 F.3d 660, 667 (2009); see Fed. R. Crim. P. 52(a) ("Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded."). This case is just that; Granted my 6th Amendment rights; I have the right to be judged by a jury of my peers, meaning that the jury's decision should be determined by the evidence that was observed by said jury during trial. See Medley, F. 3d, No. 18-4789, 2020 WL 5002706, the Court stated that to [affirm on the governments position], would Force us to stray too far beyond our Article III powers" and "usurp the role of both the grand and petit juries and engage in inappropriate judicial Fact Finding." Id.

- 1.) That's exactly what happened in this case, the jury had never heard from Corey Owens, Nor did they have the opportunity to review Owens Plea agreement. The jury hadn't heard anything about the petitioner and Owens drug dealings from Anthony Day nor Adriene Williams during trial, that ordeal was brought up for the first time by agent Farr during sentencing. NOTHING

connected to Cory Owens was affected nor considered by the Jury when they decided to Find the petitioner guilty on drug Conspiracy.

a. To take the government's position would essentially be a violation of due process and deprive petitioner of his rights to have jury CONFIRM any element as important to his sentence, especially when it triggers a 194 month upward variance. Clearly this is not a harmless error.

2. On page 15 of the government's Brief in Opposition, the government states that, "the petitioner contends (Pet. 7) that the Court of appeals misapplied its own precedent (which even the dissent did not question) governing harmless-error review of guidelines-calculation errors." But on page 10 of this Brief, the government Acknowledges Judge Thacker's dissent, with respect to petitioner's sentence, "Judge Thacker would not have found any potential guidelines-calculation error harmless, and would have remanded "for resentencing so that adequate factual findings can be made on the record with regard to petitioner's

purported responsibility for Owens drug weight.

a. Though government contends that based on its statement at sentencing, the Court would have given petitioner the same sentence regardless of the guidelines finding, it has NOT shown nor even embraced an argument showing that said sentence would "remain reasonable", if guidelines issue were resolved. US v. Gomez-Timenez, 750 F.3d 370, 382. (4th Cir. 2014)

Conclusion

For the foregoing reasons, Mr. Terrance Nathaniel Brown, Jr., respectfully requests that this honorable United States SUPREME Court issue a writ of certiorari to review the judgement of the Fourth Circuit of Appeals.

DATED this 29th day of March, 2021.

Respectfully Submitted
 x Terrance N. Brown, Jr.
 Terrance N. Brown, Jr.
 Petitioner Pro se