

No. 20-6469

ORIGINAL

Supreme Court, U.S.
FILED

NOV 16 2020

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

HECTOR Valentine — PETITIONER

(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Hector Valentine

(Your Name)

FCI Allenwood Medium
P.O. Box 2000

(Address)

White Deer, PA, 17887

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the Third Circuit's Erred in not addressing conduct has been rendered non-criminal by an intervening Supreme Court Decision "Mathis v. United States"
2. Whether the Third Circuit's Erred in not addressing actual innocence claim of career offender challenge or statute of conviction in the drug amount challenge due to plea agreement Double Waiver provision.

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:

1. United States of America
2. Hector Valentine

RELATED CASES

United States v. Folk, 954 F.3d 597, 604 (3d Cir. 2020) (cert. placed on docket Oct. 13, 2020 No. 20-5983),

Shepherd v. Krueger, 911 F.3d 861, No. 17-1362, 2018 WL 6787494, at 1 (7th Cir. Dec. 26, 2018).

Braswell v. Smith, 952 F.3d 441 (2020 U.S. App. Lexis 6806 No. 19-6200 4th Cir. Jan. 28, 2020).

Chazen v. Marske, 2019 U.S. App. Lexis 27142 (7th Cir. Sept. 9, 2019).

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OTHER

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 A 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 is unpublished.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 B 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 is unpublished.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 22, 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: Sept. 15, 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

5th Amendment Rights to be Deprive
of Life or Liberty.

STATEMENT OF CASE

ON July 2, 2019, District Court Dismissed.
(Doc.1) for lack of Jurisdiction. (Appendix B).

ON July 8, 2019, a timely Notice
of Appeal was filed. See (Appendix D).

ON June 22, 2020 the Judgement
was Affirmed by the Court of Appeals For The
Third Circuit. See (Appendix A).

ON Sept. 15, 2020 Petition For Rehearing
with suggestion by Panel and was denied. See
Appendix (C).

Whether the Third Circuit's Erred
in not addressing conduct has been
rendered non-criminal by an intervening
Supreme Court Decision "Mathis v. United States"

Petitioner will support his reason in why

Third Circuit erred in not addressing conduct has

been rendered non-criminal by an intervening Supreme

Court decision. At this time Petitioner follow

under other circuit court opinion that show a

split and address the challenge. See (Brown v.

Caraway, 719 F.3d 708, 710 (7th Cir. 2013); See (Wheeler v.

U.S., 806 F.3d 415, 2018 U.S. App. Lexis 7756 No. 16-6073

4th Cir. March 28, 2018); See (Shepard v. Krueger, 911

F.3d 861, No. 17-1362, 2018 WL 6787494, at *1 (7th Cir.

Dec. 26, 2018) (electing to bypass procedural hurdles

(2)

"regarding a Mathis-based claim on § 2241 petition where the petition" can be resolved most simply on the merits").

Furthermore Petitioner contentions also is directed in other opinion's which has not been addressed by this court. When turning to the record of pre-Booker and post-Booker claims being challenge on the merits, The record is sound by lower court decision, that the [Beckles v. United States] ruling is inapplicable in a challenge on non-violence prior conviction as in Petitioner case at hand.

Therefore Petitioner will continue to stress the importants of why other precedents

(3)

in these ruling, to why Petitioner rely on Mathis v.

United States, 136 S.Ct. 2243 (2016), to meet

the challenge in the intervening change in law. See

(Lester v. Flournoy, 909 F.3d 708, 710 (4th Cir. 2018);

See (Hill v. Master, 836 F.3d 591, 593 (6th Cir. 2016);

See (Allen v. Ives, 950 F.3d 1184; 2020 U.S. App. LEXIS 15652

No. 18-3501 9th Cir. Feb. 24, 2020).

Now upon these circuit split's decisions,

and the record before us it would be establish that

Petitioner has met the hindsight to address non-

Criminal challenge under intervening Supreme Court decisions

as such as [Mathis v. United States].

Wherefore Petitioner Mr. Valentine is requesting

this Court to Reverse and Remand 3rd Circuit Court of Appeals
decision. (4)

Whether the Third Circuit's Erred in not addressing actual innocence claim of Career offender challenge or statute of conviction in the drug amount challenge due to plea agreement Double Waiver provision.

Petitioner will proceed in a relevant sister circuit opinion, to explain why the government can elect not to enforce an appeal waiver and instead have Petitioner contest his claims on the merits.

See (Shepherd v. Krueger, 911 F.3d 861, No. 17-1362, 2018

WL 6787494, at 1 7th Cir. Dec. 26, 2018) (electing to

by pass..... procedural hurdles regarding a Mathis-

based § 2241 petition where the petition "can be

resolved most simply on merits."); See (Braswell v.

Smith, 952 F.3d 441; 2020 U.S. App. Lexis 6806 No.

19-6200 4th Cir. Jan. 28, 2020) (cites US v.

Poindexter, 492 F.3d 263, 271 (4th Cir. 2007), noting

the government can elect not to enforce an

appeal waiver and instead contest the merits

of a defendant's argument.); See (Chazens v. Marske,

2019 U.S. App. Lexis 27142 (7th Cir. Sept. 9, 2019).

However, this Court can follow the same

standard to not enforce an otherwise valid waiver

if, "to do so would result in a miscarriage of justice."

See (Adams v. US, 814 F.3d 178, 182 (4th Cir. 2016),

or where there is an illegal sentence... involving

fundamental issues. See (Copeland v. US, 707 F.3d 522,

530 (4th Cir. 2013); See (Allen v. Ives, (No. 18-35001)

9th Cir. Feb. 24, 2020). Petitioner claims constitute

a right to liberty. See *Hicks v. Oklahoma*, 447 U.S. 343, 346, 100 S.Ct. 2227, 65 L.Ed. 2d 175 (1986). On this point, the Supreme Court should rely on *United States v. Folk*, 954 F.3d 597, 604 (3d Cir. 2020), which in Folk decision circuit court highlighted, *Bullard v. US*, 937 F.3d 654, 659 (6th Cir. 2019), perhaps in an attempt to find some ambiguity in Folk holding.

The record is shown to rely on multiple other circuit opinions in Folk opinion. But Bullard however, only further highlights the problem Folk identified with forcing prisoners to bear sentences that are no longer mandatory. Just as in Valentine case at hand. The Supreme Court

Should further rely on this case. See (*Wooten v. Cavley*, 677 F.3d 303, 307 (6th Cir. 2012) (hold in part, that a petitioner may use a 2241 petition upon existence of new interpretation. Petitioner will continue to direct his challenge to a circuit opinion which supports the same argument. See (*Braswell v. Smith*, 952 F.3d at 451; 2020 U.S. App. Lexis 6806 No. 19-6200 4th Cir. Mar. 4, 2020); See (*Huesco v. Barnhart*, 948 F.3d 324, 341, 355; 2020 U.S. App. Lexis 23229 (6th Cir. 2020)).

Furthermore the Supreme Court caselaw *Alleyne v. United States*, 133 S.Ct. 2151, 186 L.Ed. 2d 314 (2013). Comes forth to challenge the one unit prosecution under § 841 (a)(1) to address why the statute of conviction is inapplicable.

in Petitioner case at hand. Because the government cannot meet any one time that Valentine possessed over 280 or grams of Crack cocaine. Therefore Petitioner will follow, rely on these supporting caselaws. See (US v. Gonzalez, 420 F.3d 111; (2d Cir. 2005); also (McHale v. US, 175 F.3d 115; (2d Cir 1999) [reinstate Direct Appeal]).

Then the record before Petitioner transfer out of Second Circuit upon the facts government argued the court did not have jurisdiction. See (US v. Valentine, No. 18-2643 2d Cir. Nov. 15, 2018) (Second Circuit delivered a opinion in regards to the Career Offender can proceed on 28 U.S.C. §§ 2241).

Moreso Petitioner is directed to further rely on the facts that the district court cited

two state drug convictions as predicate

offenses for the career offender enhancement

2d Cir. 12-3328 (Direct Appeal), Doc. 50 (Appendix)

9 + 53.

Petitioner Therefore respectfully requests
that the Court Grant Certiorari or Reverse and
Remand back to Third Circuit Court of Appeals to
address Statute of conviction change and Career
Offender challenge on the merits as Mr. Valentine
is actually innocent.

REASONS FOR GRANTING THE PETITION

Petitioner provide split in circuits
and this issue has not been addressed
in the Supreme Court for Decades.

Wherefore Mr. Valentine prays Honorable
Supreme Court Judges Reverse and Remand
Third Circuit Court of Appeals Decision,

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Victor Valentine

Date: 11-18-20