20-6961

No. ______

In the Supreme Court of the United States

Supreme Court, U.S.
FILED
DEC 03 2020
OFFICE OF THE CLERK

Christopher Scott Pfoff,
Petitioner,

vs.

United States of America,
Respondent.

On Petition for a Writ of Certiorari to
US Court of Appeals for the Eighth Curcuit

Petition for Certiorari

Dated: 12/3/20

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Questions Presented for Review

1) Can criminal proceedings be brought on an indictment if the indictment on Court record is not signed by an attorney for the government?

2) Can a plea deal stand if defense Counsel admits to threatening defense in order to get him to accept the deal, and if defense was being denied medications during the hearing?

3) Can the Court pass judgment if it recognizes that affidavits on record were not served?

4) Can the Court deny an evidentiary hearing if the occurrences under dispute occurred outside the Courtroom and the only evidence is government's responses and submitted affidavits?

5) Should the Court justify its determinations when issues at question are not clearly defined by Statute?

6) Can an indictment Charge an individual with both violating and attempted violation of a statute when an indictment only states the violation aspect?

7) Can the Federal Courts claim jurisdiction when no direct effect on interstate commerce occurred?

List of Parties in Court Below

The caption set out above contains the names of all the parties.

List of Directly Related Cases

- US v Pfoff, No. 18-cr-00074-SRN-KMM-1, US District Court for the District of Minnesota. Judgment entered December 21, 2018;

- US v Pfoff, No. 19-cv-02893-SRN, US District Court for the District of Minnesota. Judgment entered May 20, 2020;

- Pfoff v US, No. 20-1615, US Court of Appeals for the Eighth Curcuit. Judgment entered July 14, 2020;

- Pfoff v US, No. 20-2118, US Court of Appeals for the Eighth Curcuit. Judgment entered July 14, 2020.

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Citations of Opinions and Orders

The decision of the US District Court for the District of Minnesota on Petitioner's Section 2255 motion is not officially reported, but available at 2020 US Dist. LEXIS 87915 and is also set forth in Appendix B.

The Opinion of the US Court of Appeals for the Eighth Circuit is unreported, but set forth in Appendix A.

The Opinion of the US Court of Appeals for the Eighth Circuit on Petitioner's petition for rehearing is not officially reported, but available at 2020 US App. LEXIS 29814 and is also set forth in Appendix C.

Jurisdictional Statement

The judgment of the US Court of Appeals for the Eighth Circuit was entered on July 14, 2020. Petition for Rehearing was denied on September 17, 2020. Jurisdiction of this Court is involked under 28 USCS 1254(1).

Constitutional Provisions and Statutes involved

5th Amendment, United States Constitution, provides:

No person shall be held to answer for a Capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of the law; nor shall private property be taken for public use, without just compensation.

6th Amendment, United States Constitution, provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense.

The Statute under which Petitioner was prosecuted was 18 USCS 2251(a) & (e), which provides:

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform

Code of Military Justice), or under the laws of any State relating to aggrivated Sexual abuse, Sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but is such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any Organization that violates, or attempts or Conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in Conduct that results in the death of a person, shall be punished by death or imprisonment for not less than 30 years or for life.

The Statute under which Petitioner seeks relief is 28 USCS 2255, which is provided in Appendix D.

Statement of Case

Petitioner was arrested on March 1, 2018 and brought before the Court on March 5, 2018. On April 3, 2018 an indictment was filed, charging one Count of Production of Child Pornography. On May 22, 2018, Petitioner entered a plea of guilty. Judgment was issued on December 21, 2018 of 360 months imprisonment. A pro se motion to vacate under 28 USCS 2255 was filed on November 12, 2019. On December 5, 2019 a motion for a 60 day extension of time to file a response was filed by the government and granted. The government filed a response on February 13, 2020. On February 26, 2020 the Courts denied the motion to vacate the judgment. Petitioner's pro se response to the government's response was timely filed on March 16, 2020. On March 20, 2020 a pro se notice of appeal was filed. On March 31, 2020 the District Court filed an order seeking authorization to the Appellete Court to remand the case pursuant to Rule 60(a), which was granted. On April 3, 2020, the order denying the motion to vacate was vacated and a supplemental briefing was ordered to be submitted. On April 8 and 14, 2020, petitioner's former Counsel submitted affidavits to the Court, but failed to serve them on the ~~petitio~~

petitioner. On April 17, 2020, the government filed a supplemental brief. On April 30, 2020, Petitioner filed a pro se response to governments supplemental brief, as well as notified the Court of the failure of government to serve former Counsel's affidavits. The Courts mailed a copy of the affidavits on May 4, 2020. On May 19, 2020 the Courts denied the motion to vacate. On May 26, 2020, Petitioner filed a pro se response to the filed affidavits. On June 1, 2020, Petitioner filed a pro se notice of appeal. On July 14, 2020, the Court of Appeals denied a certificate of appealability. A petition for panel rehearing was denied on September 17, 2020.

Argument

1. The Courts cannot pass judgment without a signed indictment on Court record.

Since the authority to enforce the law remains solely within the Executive branch, the purpose of affixing the attorney for the government's signature is to indicate that he is joining with the Grand Jury and is giving the Courts authority to see the Case, therefore, without his signature no criminal proceedings can be brought on the indictment. See US v Wright, 365 F.2d 135 (7th Cir. 1966). The discretionary power to refuse to sign an indictment is a neccessity in order to maintain a separation of powers between the 3 branches of government. See Prosecution for Contempt of Congress of an Executive Branch Official Who has Asserted a Claim of Executive Privilege, 8 Op. O.L.C. 101 (1984). This separation of power is necessary in order to protect the public against possible abuses of power. See US v Sampson, 245 F. Supp. 2d 327 (1st Cir. 2003). Since the separation of powers is at the heart of the Constitution, the Supreme Court must act to maintain their separation. See Buckley v Valeo, 424 US 1 (1976).

The need for a signed indictment on Court record is beyond dispute. Fed. R. Crim. P. 7(c)(1) Clearly states that an indictment must be signed by an attorney for the government. This is not just a procedural technicality, and absense of a signature is fatal. See US v Cox, 342 F.2d 167 (5th Cir. 1965). Furthermore, if there is no Signature from an attorney for the government, there is no indictment. See US v Okoro, 207 F. Supp. 2d 578 (5th Cir. 2002).

The fact stands that there was no signed indictment filed with the Courts in my case. The government openly admits that it has never filed a signed indictment and the Court recognizes that it does not possess a signed indictment. Since the record fails to prove its existance, the Court must accept the assertion that there is no signed indictment as fact. See Vicory v Taylor, 338 F.2d 954 (10th Cir. 1964).

It is important for the government to enter documents into public record and maintain full transparency, to do otherwise would allow for greater abuses of power and for Corruption to more easily spread. To withhold documents that are required to be a part of public record is a clear violation of 5 USCS 552.

The signed indictment must be a part of the Court record in order to act upon it. Since Fed. R. Crim. P. 7(c)(1) is a Court rule, it is intended to be followed within Court record. Also, since the signature is what gives the Courts power to act, the Courts are powerless to act without that Signature in their records. Furthermore, this case has progressed to a Civil case and 28 USCS 2249 clearly states that a certified copy of the indictment is required to be on record. Also, all papers entered into the record must be signed by an attorney or removed from the record. See Fed. R. Civ. P. 11.

The Courts clearly violated Federal Statutes, Court Rules, Supreme Court precedent, and the 5th Amendment of the US Constitution when making its determination to proceed with Court proceedings without a valid indictment on record. The judgement and sentence cannot stand and the Supreme Court must act in order to prevent further blatant infringements on Constitutional rights.

2. A coerced plea cannot stand.

It is long standing that coercion deprives a plea of its validity. See Waley v Johnston, 316 US 101 (1942). The Courts have found that coercion is not consistent with due process and a judgment and sentence imposed on a plea deal gained through coercion cannot stand. See Euziere v US, 249 F.2d 293 (10^{th} Cir. 1957). Furthermore, the Supreme Court has found, specifically, that a plea deal obtained by threats of more criminal charges from prosecution cans deprive a plea deal of its voluntariness and is, therefore, void. See Machibroda v US, 368 US 487 (1962). Also, threats passed to the defendant through defense Counsel from the prosecution makes a plea deal involuntary. See Matthews v US, 533 F.2d 900 (5^{th} Cir. 1976). On a timely application, the Court must vacate a plea of guilty shown to have been obtained or given through fear. See Heideman v US, 281 F.2d 805 (8^{th} Cir. 1960).

Not only have I allerted the Courts that I was threatened into pleading guilty, my former defense

Counsel has submitted multiple affidavits stating that he personally transmitted threats from the prosecution to me, and that these threats had a drastic effect on me and was the reason that I plead guilty. Furthermore, the government does not deny that I was threatened and the Courts openly acknowledges that I was threatened in order to get a plea deal.

The plea deal has become a major component of today's Court proceedings. The plea deal allows individuals to be processed through the judicial system more quickly and efficiently, but requires them to waive their Constitutional rights. It is for this reason that it is required to make sure that the plea deal is entered voluntarily. See Fed. R. Crim. P. 11. Failure to do this would undermine the rights and liberties that our Constitution demands.

The Courts were notified that my plea deal was not voluntarily entered into, but still refused to vacate the plea, in clear error of Fed. R. Crim. P. 11. This refusal undermines Court precedent for the Supreme Court as well as all Curcuit Courts. To allow people to be threatened and intimidated into giving up their Constitutional rights Cannot be allowed to happen.

3. A plea deal entered without full mental clarity Cannot stand.

When considering whether to accept a plea deal the Courts should take into consideration any drugs or medications the defendant has recently taken, and when allerted to new medications, or alterations in medication, the Court has an obligation to inquire into the defendant's mental competency. See US v Damon, 191 F.3d 561 (4th Cir. 1999). Failure to do so is not a harmless error. See US v Parra-Ibanez, 936 F.2d 588 (1st Cir.) remanded 951 F.2d 21 (1st Cir. 1991).

In open Court, I stated to the judge that I was on new medications and that I was being denied my daily prescription by the Marshalls, which has been shown to negatively affect Cognition. Throughout the plea hearing the judge had to repeatedly prompt me for answers and repeatedly attempted to get my attention, further showing the negative Cognitive effects of the Marshalls refusal to give me my prescription. My Counsel, despite being present, has sworn in his affidavit that he was never even aware of me being on a new prescription, yet alone being denied my daily medication. Since the judge and I had a conversation about this fact in open court, it is impossible to believe that an affective Counsel would have been unaware of the Court proceedings.

The Court should never have accepted a plea after being allerted to problems with medications, expecially after having to repeatedly get the attention of the defendant.

Also, after being notified that my Counsel was unaware of interactions between the judge and I in open Court, the Courts should never have found my Counsel effective. The Courts have unabashedly violated Fed. R. Crim. P. 11 and the 6^{th} Amendment of the Constitution as well as undermined the fairness, integrity, and public reputation of judicial proceedings.

4. The Courts cannot deny anyone the right to respond to submitted affidavits.

During a 2255 habeas corpus proceeding, the judge has the discretion to order supplemental material in order to gain a better understanding of the facts. See R. Gov. S. 2255 P. 7. Although the judge has the discretion to order or allow materials to be entered, they must give the party against whom the materials were submitted an opportunity to admit or deny their correctness. Id at (c). The language of this rule makes it clear that this is non-discretionary. Also, if an affidavit is admitted in a 2255 habeas corpus case, any party has the right to respond to them. See 28 USCS 2246. The language of this statute makes it clear that this is non-discretionary. This is due to the importance of the adversarial process in judicial proceedings. If a case is dismissed and the adversarial process has been abridged, the dismissal needs to be vacated. See Burton v G.A.C. Finance Co., 525 F.2d 961 (5th Cir. 1976). Furthermore, a petitioner does not need to demonstrate their need for filed documents, if the documents are not served the judgment must be vacated. See Thompson v Greene, 427 F.3d 263 (4th Cir. 2005). To prevent any party from being a participant in the decision making process is a clear violation of due process. See Marshall v Jerrico, Inc., 446 US 238 (1980).

The Court ordered supplemental material, including an affidavit from my former Counsel (of which he submitted 2 affidavits). I was not served a copy of the affidavits that my former Counsel submitted. After allerting the Court of this fact, the Court mailed me copies of the affidavits, but never gave me the opportunity to respond to them. Instead the judge stated in her opinion that it was not necessary to get a response from me, clearly violating 28 USCS 2246 and R. Gov. S. 2255 P. 7(c), as well as denying me the opportunity to participate in the adversarial process. Also, it is important to note that this is the second time that this judge has attempted to prevent me from being a part of the adversarial process by denying me the right to respond to submitted documents; the first time resulting in the vacating of the judgment and the ordering of the supplemental materials in question. This pattern of activity shows clear judicial bias.

A leading feature in the American Judicial System is the adversarial process. To abridge or deny this process would create distorted conceptions of facts that would go unchallenged, creating an unfair and biased judicial system that would not care about fairness or the truth. Therefore, it must be protected in order to maintain a free and just society.

5. An evidentiary hearing is required in this case.

When deciding whether to hold an evidentiary hearing, the Courts must decide if the issues presented are definitively answered by Court record or not. One factor that is taken into consideration is submitted affidavits. Despite this, affidavits, alone, cannot decide contested issues of fact. See Scott v Estelle, 567 F.2d 632 (5th Cir. 1978). Whenever disputed issues of fact remain, an evidentiary hearing must be held. See Machibroda v US, 368 US 487 (1962). Also, any time matters relate to occurrences outside the courtroom, an evidentiary hearing is appropriate. See Watson v US, 493 F.3d 960 (8th Cir. 2007).

The Courts denied me an evidentiary hearing when the issues in question occurred outside the courtroom and the only evidence on record is the government's responses and affidavits. Furthermore, the Court ordered Supplemental material to be submitted from the government and my former Counsel despite both having already made a statement on the issues highlighted for the Supplemental review and the issues occurred outside the courtroom, making an evidentiary hearing more appropriate.

The evidentiary hearing is important in maintaining the adversarial process of the Courts. Also, since the Courts do not appoint Counsel in 2255 proceedings until the evidentiary hearing, see R. Gov. S. 2255 P. 8(c), to unduly deny an evidentiary hearing would equate to denial of Counsel and a violation of the 6th Amendment of the Constitution. If the Courts are continued to be allowed to make judgments solely on the affidavits of one person, then it would allow biased and distorted, or erroneous, Conceptions of fact to determine the outcomes of judicial proceedings, creating a biased and unjust judicial system.

C. Courts need to justify their reasoning.

When deciding if somebody has violated 18 USCS 2251, it is required that the videos are determined to contain sexually explicit material. The definitions of the chapter describe sexually explicit material as actual or simulated sexual contact, or lascivious exhibition of the genitalia. Lascivious exhibition of the genitalia is not defined by any statute, but all Courts seem to agree that it constitutes more than mere nudity. See US v Miller, 829 F.3d 519 (7th Cir. 2016).

When a determination is left to the Courts as to whether an action violates a statute, the deciding factors need to be stated in the Court's opinion, to do otherwise would violate the due process clause of the 5th Amendment. See Aberdeen & R.R. Co. v US, 565 F.2d 327 (5th Cir. 1977). If the report is incomplete and does not give another Court enough of a basis to either agree or disagree with its findings or interpretations, the order must be set aside for violating the fundamental principles of due process. See Citizens to Preserve Overton Park v Volpe, 401 US 402 (1971).

The Court has stated that the videos constitute sexually explicit material, but does not give any basis for its findings. The Court has stated that it could use any factors it deems relevant to make this determination, but refuses to explain these factors, preventing me from being able to argue against their viewpoint and also preventing any other Court from agreeing or disagreeing with this determination. Since my argument is also an argument of actual innocence, the argument cannot be disregarded without stating the factors that contributed to its determination.

If the Courts are allowed to make rulings without stating the factors that contributed to its findings, than the Courts would not be able to create legal precedence. Also, the Courts would be given the power to make biased or illogical rulings with little or no oversight possible.

7. An indictment needs to plainly state all aspects of the charges.

One of the primary purposes of an indictment is to notify the defendant of all aspects of the charges they will face. See US v Boston, 718 F.2d 1511 (10th Cir. 1983). Also the indictment should be stated in a way that would allow it to support a conviction, on its own, without going further. See US v Cruikshank, 92 US 542 (1876). For these reasons, it is required to state an indictment in clear and unambiguous language. See Fed. R. Crim. P. 7(c)(1). If an indictment uses conjunctive language, only, to charge an individual of violating a statute that is couched in disjunctive language, the indictment fails to comply with plain wording requirements. See US v Trinastich, 354 F. Supp. 54 (8th Cir. 1973).

The indictment states that I was charged with Production of Child Pornography. After submitting an argument that the videos in question do not amount to child pornography, the government stated that I was indicted with both production and attempted production of child pornography. When I questioned the validity of that statement, the Court responded that the statute states that anyone who violates or attempts to violate the statute could be charged. Since an individual cannot plead guilty to elements not stated in the indictment, see US v Crockett, 812 F.2d 626 (10th Cir. 1987), the ability of the statute to charge an individual is irrelevant. Also, since production and attempted production have different evidentiary requirements, as well as different defense strategies, the indictment must reflect that an individual is being charged with both. Furthermore, since "or" is a disjunctive conjunction, more is required in the plain wording of the indictment to reflect being charged with that aspect of the Statute.

If Courts are allowed to alter the charges based on your defenses, it will become impossible to mount a defense against any charge. Also, if the Courts are allowed to add aspects of the charges that are not clearly stated in the indictment, then the indictment will become meaningless.

8. The Courts did not have jurisdiction to see this case.

The Constitution gives Congress the power to regulate interstate commerce, but does not permit Congress to use a relatively trivial impact on commerce as an excuss for broad general regulation. See Maryland v. Wirtz, 392 US 183 (1968). When deciding whether an activity violates interstate commerce it is important to evaluate the entirety of the situation through a case-by-case inquiry. See US v Lopez, 514 US 549 (1995). There is no single concept of interstate commerce that can be applied to every federal statute. See McLeod v Threlkeld, 319 US 491 (1943). Also, the power of Congress to regulate matters relating to interstate commerce ceases when commercial intercourse ends. See Carter v Carter Coal Co., 298 US 238 (1936).

The government has stated that since the cellular telephone that I used to record the videos has been manufactured outside the US, it affects interstate commerce enough to justify federal regulation. My argument is that My argument is that since interstate commerce was not initiated by myself, nor was I a participant, this effect is too trivial an effect to warrent federal regulation. Since the interstate commerce ended with Verizon, I had no effect on interstate commerce whatsoever.

When evaluating this argument it is important to recognize the total scope of the global market and the US's reliance on imported goods, particularly computerized goods. Also, it is important to evaluate if the purchase of the device was motivated by criminal activity or not.

Congressional power may not be extended as to embrace effects upon interstate commerce so indirect and remote that it would effectively obliterate the distinction between what is national and what is local. See NLRB v Jones & Laughlin S. Corp., 301 US 1 (1937). Since all cellular telephones are manufactured outside the US, you are effectively taking away the States abilities to punish this crime, creating a centralized government, which the Constitution is clearly against. Furthermore, you are taking away powers and rights that belong to the States, in clear violation of the 10th Amendment of the Constitution.

Conclusion

The Courts judgment has violated Federal Court Rules, Federal Statutes, and the US Constitution. The Courts have also disregarded its own precedent, the precedent of other Curcuits, and Supreme Court precedent when making its ruling. It is, therefore, of paramount importance that the Supreme Court review the case at hand.

Date: 12/3/20

Respectfully Submitted,

Christopher Pfaff

Christopher Pfaff, pro se

Appendix A

Appeallete Court's Decision

(2 pages)