

20-7150
No. _____

Supreme Court, U.S.
FILED

DEC 16 2020

OFFICE OF THE CLERK

October Term-2020

IN THE
SUPREME COURT OF THE UNITED STATES

Creedell Hubbard — PETITIONER
(Your Name)

vs.
Charles Rifeledge, Warden,
United States of America — 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

Creedell Hubbard
(Your Name)

3337 Highway 144
(Address)

Owensboro, Kentucky 42303
(City, State, Zip Code)

270-685-8466
(Phone Number)

ORIGINAL

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QUESTION(S) PRESENTED

Whether the United States Court of Appeals Erred by the Rule expressed in Apprendi v. New Jersey, 530 U.S. 466, 490 (2000), that my Federal Sentence of 327 months did not exceed the Statute of Maximum Sentence allowed under 18 U.S.C. Section 2113(d).

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

United States v. Hubbard, 919 F.2d 734 (4th Cir. 1990)
United States v. Hubbard, 499 U.S. 969 (1991)
United States v. Hubbard, 210 F.3d 363 (4th Cir. 2000)
In re Hubbard, 825 F.3d 225, 227 (4th Cir. 2016)
Hubbard v. Zych, 747 F.App'x 186 (4th Cir. 2019)
Hubbard v. Rattledge, 747 F.App'x 187 (4th Cir. 2019)
United States v. Hubbard, CA-97-320-120 (E.D.N.C. Aug 3, 1999)
United States v. Wheeler, 886 F.3d 415 (4th Cir. 2018)

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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☒ is unpublished.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 Hubbard v. Rutledge, (W.D. Va. 2019); 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☐ is unpublished.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 September 10, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 18 U.S.C. Section 2113(d) carries a statutory Maximum Sentence of 25 years. Under the United States Sentencing Guidelines would be a top of the guidelines of 300 months.

United States Sentencing Commission's Guidelines November 1, 1987.

STATEMENT OF THE CASE

On April 21, 1989, Cresswell Hubbard was sentenced in the United States District Court for the Eastern District of North Carolina to a term of 387 months imprisonment for violating 18 U.S.C. Section 2113(d) Armed Bank Robbery and carrying a firearm during a crime of violence under 18 U.S.C. Section 924(c). See United States v. Hubbard, 919 F.2d 734 (4th Cir. 1990).

On April 23, 1997, Hubbard filed a motion under 28 U.S.C. Section 2255 to vacate, set aside or correct the sentence imposed by the district court contending, that his sentence was imposed in violation of the law, because it exceeded the statutory maximum authorized by law under 18 U.S.C. 2113(d), (25 years) 300 months under the United States Sentencing Guidelines of 1987. Hubbard's motion under 2255 was denied. See United States v. Hubbard, CA-97-320-130 (E.D. N.C. 1999).

In February of 2015, Hubbard filed a petition under 28 U.S.C. Section 2241, asserting that his sentence was unlawful because it exceeded the statutory maximum and violated the law. Hubbard's Section 2241 was summarily dismissed for lack of jurisdiction. Hubbard appealed the district court's ruling. The Fourth Circuit Court of Appeals remanded the case back to the district court in light of United States v. Wheeler, 886 F.3d 415, 426 (4th Cir. 2018). The district court again denied Hubbard's motion. Date of Ruling Nov. 7, 2019.

On November 9, 2019, Hubbard appealed the district court's ruling to the Fourth Circuit. On September 10, 2020, the Fourth Circuit affirmed Hubbard's Section 2241 petition and the district court's ruling.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit violated the Rule this Court expressed in Apprendi v. New Jersey, 530 U.S. 466, 490 (2000). In Apprendi, the Supreme Court held, Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed Statutory maximum must be submitted to a jury and proved beyond a Reasonable doubt. "The relevant Statutory maximum for Apprendi purposes is the maximum a judge may impose based solely on the facts reflected in the jury verdict."

Hubbard is before this Court, contending that he served an unconstitutional term of imprisonment. And that his sentence of 327 exceeded the statutory maximum allowed by law. Under 18 U.S.C. Section 213(d) authorizes a total sentence of 25 years, Not 27 years and 3 months, under the United States Sentencing Guidelines section 3D1.1

Procedure for determining Offense level on Multiple Counts in a single indictment states: (a) When a defendant has been convicted of more than one count, the Court shall:

- (1) Group the counts resulting in conviction into distinct groups of closely Related Counts by applying the rules specified in Section 3D1.2.

U.S.S.G. Section 3D1-2, states: All counts involving substantially the same harm shall be grouped together into a single group. Counts involve substantially the same harm within the meaning of this Rule:

In Hubbard's case before the Court, the district was required to group all counts involving the bank robbery. In which district court did with the Exception of the Section 924(c) count, which is a consecutive sentence by Statute (60) months. Therefore, if the district court was going to impose an additional 27 months beyond the statutory maximum of 300 months, he was Required by section 5G1.2(d) of the U.S.S.G. to stack one of the other counts to give Hubbard the additional 27 months.

The Concept of "stacking" is derivative of sections 5G1.1 and 5G1.2. Most importantly, please give particular attention to section 5G1.2(d),

which states:

If the sentence imposed on the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the other counts shall run consecutively, but only to the extent necessary to produce a combined sentence equal to the total punishment. In all other respects, sentences on all counts shall run concurrently, except to the extent otherwise required by law.

Therefore, the district court was required by section 561.2(a), to order that one of the other counts, (a portion of) run consecutively in order to reach the total punishment of 327 months plus 60 months for 9AHC. And thus, the Fourth Circuit's ruling that the district court could have stacked other counts but did not, was not harmless and violated Hubbard's Constitutional Rights of serving an illegal term of imprisonment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Creswell Hubbard

Date: December 1, 2020