

No. 20-7181

ORIGINAL

Supreme Court, U.S.
FILED

FEB 04 2021

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Quincy Taylor — PETITIONER

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
United States v Taylor, 2020 U.S.App. LEXIS 33896 (Oct. 27, 2020)

PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

The Statute 18 U.S.C.924 (c)(1)(A) which states:

" Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhancement punishment if committed by the use of a deadly or dangerous weapon or device) , for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime-

DOES

The phrase "in furtherance of" requires the Government to show "some nexus between the firearm and the drug selling operation." (quoting *United States v Frady* , 245 F.3d 199, 203 (2d.Cir. 2001)).

NOTE:

The Fourth Circuit subsequent to the ruling on petitioner's request of a COA on the question of ineffective Assistance of Counsel as it relates to 18 USC 924(c) (1)(A) ruled on this question in *United States v Dye*, 2020 U.S.App. LEXIS 30265 (Sept. 22, 2020).

STATING:

18 U.S.C. 924 (c) provides that any person who, during and in relation to any drug

United States v Dye, States:

"Under 18 USC 924 (c)(1)(A) , the Government is required to show a defendant knowingly and unlawfully possessed a firearm in furtherance of the specified drug trafficking crime (clarifying elements and standard of review). In other words ,18 USC 924 (c) requires the Government to present evidence indicating that the possession of a firearm furthered advanced, or helped forward a drug trafficking crime.

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

United States v Timmons, 283 F.3d 1246 (11th Cir.).	5.
United States vPerex, 2019 US App. LEXIS 14233(11th.)	5.
United States v Perez, 2019 US App. LEXIS 14233 (11th.)	5.
United States vPerez, 2018 US App LEXIS 7913 (10th.)	5.
United States v Bailey, 2020 US App LEXIS 27476 (4th)	6.
United States v Dye, 2020 US App LEXIS 30265 (4th.)	6.
United States v Strayhorn, 737 F.3d 917 (4th)	6.
United States v Stinson, 794 F.3d 418 (4th.)	7.
In re Al-Malaki, 2018 US App LEXIS 26595 (4th)	7.
Bailey v United States, 516 US 137 (1995)	7.
Alleyne v United States, 570 US 99 (2013)	7.

STATUTES AND RULES

18 USC 924 (c)(1)(A)

OTHER

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 Taylor, 2020 U.S.App. LEXIS 33896 (4th Cir. Oct 27, 2020)
- United States v Taylor, 2020 U.S.App. LEXIS 26997 (4th Cir. Aug. 20, 2020)
- United States v Taylor, 2019 U.S.Dist. LEXIS 191503 (S.D. Maryland Nov. 5, 2019).
- United States v Taylor, 2019 U.S.Dist. LEXIS 189033 (S.D. Maryland Oct. 31, 2019).

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Denial of EnBanc Hearing Oct 27, 2020.Fourth Circuit Court of Appeals.

APPENDIX B

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APPENDIX D

Government's Response to the Petitioner's 28 USC 2255 Motion.

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APPENDIX F

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

~~X~~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 2020 U.S.App. LEXIS 33896 _____; 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 _____ 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 Aug 25 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: Oct. 27, 2020, and a copy of the order denying rehearing appears at Appendix A.

☐ 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

Constitutional Amendment 5 - Criminal Actions-Provisions concerning
-Due Process and just compensation issues.

Constitutional Amendment 6 - Rights of the Accused.

Constitutional Amendment 14 - equal Protection.

18 U.S.C. 924 (c)(1)(A)- enhancement for actively employing a
gun in the furtherance of a drug crime.

STATEMENT OF THE CASE

The petitioner sold cocaine on ten occasions between August 24, 2016 and March 16, 2017 to confidential source. These sales averaged \$1,000. dollars to \$1,400. dollars each.

Petitioner was 47 years old without any prior convictions. He was actively employed as a bus driver at the age of 47. In this capacity he was cleared to drive the bus into Federal Compounds.

In the ten controlled buys there was never any indication the Petitioner was carrying a gun. No gun was cited or mentioned in the subsequent government reports.

On April 18, 2017 the petitioner was returning home from work, when several F.B.I. agents greeted him in the parking lot. These agents accompanied him to his apartment where they began a search.

In the living room next to the sofa a plastic storage unit was discovered which contained cocaine. Then 30 feet away they entered a closed bedroom door; walked across the bedroom 15 feet and opened the closet door. There they reached into the pockets of the various clothes. In the overcoat, Jack Bauer, they discovered a gun.

The Petitioner was charged with One Count 21 USC 846 and One Count in violation of 18 USC 924 (c)(1)(A) Possession of a Firearm in Furtherance of a Drug Trafficking Crime. On December 1, 2017 the Petitioner entered a plea of guilty to both counts upon the advice of counsel.

Each of these counts were punishable by a Mandatory 5 year sentence. Petitioner was not informed by counsel of the legal requirements of a 924 (c)(1)(A) indictment. Further, he was not aware of a possible Sentencing Enhancement pursuant to the U.S. Sentencing Guidelines. A reasonable individual would have informed the petitioner that his pleading guilty and asking to have a trial could only produce the same result, that is a 10 year sentence. At trial it would have been relatively easy. Petitioner was not using the gun in furtherance of the drug crime. As a bus driver in Washington DC it is logical he would have a gun. In fact there was no question that he legally possessed a gun.

Petitioner filed a 28 USC 2255 with the District Court claiming ineffective assistance of counsel and "actual innocence".

A conviction under 924 (c)(1)(A) requires the prosecution to prove that the firearm was used in furtherance of the drug-trafficking crime. This requires "the prosecution [to] establish that the firearm helped further, promoted, or advanced the drug trafficking. *United States v Timmons*, 283 F.3d 1246, 1252 (11th Cir. 2002). However, "the presence of a gun within the defendant's dominion and control during a drug trafficking offense is not sufficient by itself to sustain a conviction." *id.* at 1250, See also *United States v Perez*, 2019 U.S.App. LEXIS 14233 (May 14, 2019, 11th Cir.).

924 (c)(1)(A) is not satisfied if defendant's possession of a weapon "is coincidental or entirely unrelated to the (drug) offense. *United States v Perez*, 2018 U.S.App. LEXIS 7913 (10th Cir.).

To obtain a 18 USC 924 (c)(1)(A) conviction based on a conviction possession of a weapon the government has to prove a viable theory as to how the gun furthered the drug possession or distribution (e.g. used to protect the drug dealer or the drugs), and present specific , nontheoretical evidence to tie the gun and drug crime together. *United States v Thomas*, 979 F.3d 809 (Apr.14,2020, 7th.Cir.)

There must be easy and quick access to the weapon. *United States v Swan*, 2020 U.S.App.LEXIS 30738 (10th. cir.)

The weapon must be brandished in furtherance of the drug crime. *United States v Bailey III*, 2020 U.S.App. 27476 (2d. Cir.) , *United states v Muskett*, 2020 U.S.App.LEXIS 25883 (2d. Cir.)

The Fourth Circuit recently rule on a case with sustain these legal conclusions. *United States v Dye*, 2020 U.S.App. LEXIS 30265 (4th. Cir. Sept. 22,2020). The government has to present a viable theory as to how the possession of the weapon further, aided the furtherance of teh drug crime.

The Dye case was reported after the District court denied the Petitioner's 2255 Motion and after the Fourth Circuit denied the issuance of a C.O.A. prior to this decision. However, the en banc decision of the Fourth Circuit was post this decision.

Further, there were previous decision that donot support the District Court denial of the 28 USC 2255 and the Fourth Circuit Court of Appeals decision to deny the C.O.A. The goverment must show a defendant used or carried a firearm and he did so during and in relation to a drug trafficking crime or crime of violence. *United States v strayhorn*, 737 F.3d 917 (4th. Cir.),cert. denied

134 S.Ct. 2689, 189 L.Ed. 2d 229 (2014); quoted in United States v Stinson, 794 F.3d 418 (4th. Cir. 2015); see also In re Al-Malaki, 2018 U.S.App. LEXIS 26595 (4th.Cir. 2018)

The Supreme Court addressed this precise situation that existed with the Petitioner. In Bailey v United States, 516 U.S. 137, 116 S.Ct. 501, 133 L.Ed.2d 471 (1995). The court held that the government must prove active employment of a firearm in order to convict a defendant for using a firearm under 924 (c)(1). See also , Alleyne v United states , 570 U.S.99, 133 S.Ct. 2151, 186 L.Ed.2d 314 (2013); stated brandishing is an element of 924 (c).

The government in the Petitioner's case should have sought an enhancement under USSG 2K2.2 1(b)(6)(B); which addresses the question of -if a firearem is found in close proximity to the drugs. (even the question of close proximity is arguable).

The District Court committed plain error in denying the Petitioner's 2255 motion, the appellate court committed error denying the C.O.A.

REASONS FOR GRANTING THE PETITION

The Petitioner was a 47 year old black man driving a bus in Washington, DC. He had no criminal record. This occupation is inherently dangerous in any city let alone Washington, DC. It is entirely reasonable he would own a weapon.

At no time did the government ever allege the weapon was illegal. This is in itself strange.

Yes, the Petitioner sold cocaine. Certainly, he was not a major dealer, if one could even label him a dealer. Ten controlled buys netted approximately \$10,000.

His weapon was not brandished, used in furtherance of the drug deal. No mention, no reference to, no presence in ten controlled buys. This is evidence that the weapon was not connected to the sale of the drugs.

Petitioner's weapon was not kept so it was available to the Petitioner. Imagine a buyer entering the living room of the

Petitioner's apartment and buying cocaine. Suddenly, imagine the Petitioner requires a gun. He must get up walk accross the living room, open the bedroom door, cross the bedroom, open the closet door, and then reach into the pcoket of his overcoat and then return to the living room. If he indeed required a gun that amount of time probably resolted in his death.

Petitioner's counsel ignored the fact , advised the Petitioner to enter a plea of guilty, a five year mandatory minimum. He faced a five year mandatory minimum for the drugs. The total is then 10 years. Without the 924 charge the guidelines were 41 -46 months. Why would counsel do this. Going to trial would not produce a

a greater sentence.

The case law does not support this conviction . A serious violation of Constitutional law has occurred which has resulted in a draconian sentence for the Petitioner.

When the petitioner filed for Compassionate Release the Government responded it made a tacit admission that the Petitioner was not guilty of the 924 charge.

The Appellate Court denial of COA is pure error.

CONCLUSION

Issue an Order to the Fourth Circuit Court of Appeals to issue an Order granting a C.O.A. or whatever this court deems appropriate.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Quincy Gaylon

Date: 2/24/21