No. 20-7313

IN THE SUPREME COURT OF THE UNITED STATES

LEONARD GLEN OVERMYER, III, PETITIONER

V.

UNTIED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES

REPLY BRIEF FOR LEONARD OVERMYER TO THE BRIEF FILED IN OPPOSITION

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REPLY ARGUMENT

July 3, 2021

Reply Note -

Due to Co-vid, holiday, and other delays in receiving mail up north, as well as extremely limited resources, I respectfully file this delayed Reply Brief to the delayed filed Brief of the United States in Opposition dated May 28, 2021 and received by me in mid-June. - LGO

REPLY ARGUMENT

1. The disagreements still primarily rely on the arguments made in the initial Petition For Writ Of Certiorari dated February 26, 2021, and to which I feel, despite the Government's Argument, be given precedent. There are, however, certain arguments by the Government to which I will again respond.

As mentioned, the Question(s) Presented included: Whether a Defendant should be allowed to seek a reduction of, or discharge from, an imposed supervised release after being improperly sentenced, and receiving a multitude of Appointed Counsel that at times was ineffective in addressing issues during Court. The Statement of the Case: An improper use of the Concurrent Sentence Doctrine was applied in an appeal to a significant procedural error in improperly calculating the Sporting Purposes Provision of USSG § 2k2.1(b)(c) affecting 5th Amendment rights and resulting in additional confinement (~year) that in turn resulted in extending the over-all time line of imposed probation. Determining the merits of the Appeal would align the findings of various Circuit Courts to be more consistent in applying the Sporting Purpose provisions to give a threshold of clarity which despite the Governments attempt to argue otherwise, does not exist, given the use of the same cases to argue points which ultimately came to different conclusions than what the Government would have us to believe in this case.

I (Overmyer) will also reply that the specific incidents related to this case, differ from the Government's selected, somewhat villainized version, and have been noted in the original Petition. {So would also note that Overmyer has been compliant and exemplary in counseling, ministry, and lawful community aspects both before (no prior criminal history) and after the underlying* case, the present case situation aside.} [*Involved 'used' computer off E-Bay].

Also the Court of Appeals affirmation was based on an improper technicality of the Concurrent Sentence Doctrine, again as previously noted in the original Petition for a Writ of Certiorari dated February 23, 2021.

2. The Government continues to turn the findings that were in favor of the sporting reduction by citing cases such as Prator, 939 F. 2d 844, (9th Cir. 1991); Buss, 928 F. 2d 150 (5th Cir. 1991); Shell, 972 F. 2d 548, 552 (5th Cir. 1992); (P.7) to somehow mean that the denial in the (split-decisioned) Waggoner case 107 F.3d 724, 726-727 (8th Cir. 1997); should mean the same? Yet all those cases resulted in granting the Sporting reduction! Even the Government's Argument (pg 8) still relies on Waggoner, yet they maintain we shouldn't be bound by other judicial district decisions and then give a new meaning behind that (split decision) case that even noted, 'unlawful possession should not be the focus of this type of inquiry.' Also, their citation of the courts confusion at the Remand hearing is in conflict with the same findings of most all the cases used for authority as referenced, as they again cited cases that found for the sporting reduction: Lemieux and Hayford, [No. CR-06-27-B-W]. It deserves noting that both the Government and Defense have used aspects of the Lemieux case to argue their points, thus the conclusion of that case deserves comparable consideration:

United States *v.* Lemieux, 462 F. Supp. 2d 78 (D. Me. 2006)

...

"III. Conclusion

The fact that a person who was prohibited from possessing a firearm was on probation at the time of his firearms possession offense does not necessarily prevent the application of the sporting purpose reduction under U.S.S.G. § 2K2.1(b)(2). If the probation condition that prevented his possession of a firearm is congruent with the federal criminal law prohibiting the same, the condition is superfluous, prohibiting already illegal conduct. Here, the Court has found that Mr. Lemieux is entitled to the sporting purpose reduction and has sentenced him accordingly.

NOTES

[1] The full inventory of the [Lemieux] search included the following prohibited firearms: (1) Mossberg, 30-06 rifle with scope; (2) SKB, 12 gauge shotgun; (3) New England Firearms, 410 gauge shotgun; (4) Savage Arms rifle/shotgun; (5) Winchester, .22 long rifle; (6) Harrington Richardson, 10 gauge shot gun; (7) Taurus, 357 revolver and 6 rounds of live ammunition; (8) Sport Arms, 22 caliber long rifle revolver; and, (9) Savage Arms, 223 caliber 12 gauge over/under gun. Two other firearms were so-called "black powder" firearms. *Govt.* Ex. 6. These weapons do not fit within the statutory definition of "firearm" and are not counted. *See* 18 U.S.C. § 921(a)(3), (a)(16)(C)."

The above-mentioned inventory of the Lemieux case is a significant difference from the Overmyer case of three encased hunting rifles, (one antiquated, never fired in life-time, and misidentified by the Government three times before destroyed by them), stored amongst sporting gear according to Michigan Hunting Regulations 312.10(h); and yet the insinuations by the Government should lead us to believe a jury of reasonable citizens would reach a different conclusion for Overmyer? The Government then even notes "...'this Court typically leaves questions of Guidelines interpretation to the Sentencing Commission..." but then omits their footnote #7 in the same Lemieux case:

"Footnote; [7] The Government's reliance on *Waggoner* is misplaced. *Waggoner* distinguished the case where the person is prohibited from firearms possession: But, Waggoner's special condition of probation was not only that he refrain from hunting with a firearm — that would have been superfluous to the general condition that he obey all laws, including § 922. Rather, Waggoner was prohibited from all "hunting activity", which would include activities such as hunting with a bow and arrow, or enlisting friends or customers to shoot migratory birds that he could then illegally mount and sell. Waggoner violated this special condition. *Waggoner,* 103 F.3d at 727."

As noted in the Court of Appeals Reply Brief For the Sixth Circuit No. 19-2448, July 28, 2020, and paraphrased in later context: The Government conflates unlawful possession of a firearm with unlawful use... Notwithstanding the Government's attempt to suggest that the District Court took into consideration other purposes for possessing the hunting rifles, no such finding was made. The District Court's decision was based on a conclusion that if possession is unlawful, no use can be lawful. That interpretation of the guideline provision has been repeatedly noted in the several cited cases, as well as many others, as incorrect because it is a misinterpretation and misapplication of the statue. If any felon, supervised or not, is in possession of a firearm for "lawful hunting purposes," or otherwise, that would still be considered unlawful possession, so if the Court were to hold that "lawful possession" is a needed threshold for felons to receive a deduction, then the § 2K2.1(b)(2) is rendered a nullity because

no felon could benefit under this standard. Additionally, the Government conceded that Mr. Overmyer "possessed the firearms for sporting purpose or collection" (R.19, Government's Sentencing Memorandum at 2, Page ID# 74). Therefore, turning back to the lawful use portion of the statue, the Government does not provide any evidence that Mr. Overmyer's potential use of a demonstrated generational family hunting rifle was not 'soley' for hunting purposes. In fact, the District Court recognized and stated that "[t]here is no assertation that [Mr. Overmyer] unlawfully discharged or otherwise unlawfully used the firearms or ammunition." (R. 36, Sentencing Transcript at 8, Page ID # 164). Therefore, Overmyer satisfied all the elements of the guideline provision because possession was 'soley' for hunting purposes and there was no unlawful use or discharge, and qualified for a base level sentencing reduction that would have placed the guideline range significantly lower than the 18 to 24 months.

3. - Quote: "Whenever I hear anyone arguing for slavery, I feel a strong impulse to see it tried on him personally." - Abraham Lincoln, - Unquote.

It is astonishing that the Government continues to ignore the impact of an additional year of incarceration to the over-all collateral time lines! By claiming there was "no practical effect on the petitioner's sentence" - completely over-looks the additional year of incarceration. In United States v Johnson, 529 U.S. 53, 60, 120 S. Ct. 1114, 1119 (2000), the Supreme Court emphasized that "[t]here can be no doubt that equitable considerations of great weight exist when an individual is incarcerated beyond the proper expiration of his prison term." Had the guidelines been scored properly, the advisory range for Overmyer would have been 2 to 8 months. (R. 18, PSR, Addendum at 2, Page ID #71). The 18 month sentence exceeded this range by up to 10 to 16 months. A time that cost a re-entry career opportunity for employment, his house, belongings, health, the loss of several family members, including mother, and affected his son's life that continues to leave them

both homeless to this day. A favorable review of the appeal would be compelling evidence that an injustice occurred in the sentencing process.

Furthermore, in Johnson, the Supreme Court indicated that excess time served could be considered in deciding whether to terminate supervised release. (529 U.S. at 60, 120 S. Ct. 1114 at 1119). A favorable ruling would provide grounds for a request of terminating or modifying remaining supervised release under 18 U.S.C. §§ 3553 and 3583 based on the "conduct of the defendant released and the interest of justice." Aside from the before mentioned misuse of the concurrent sentencing doctrine, the issues the Government attacks over considering ineffective counsel are done without ever addressing any of the underlying concerns. I would invite a reading of the actual Court transcript proceedings from the fall(?) of 2019 and of February 2020, to demonstrate an example of the confusion and misuse. Most of the issues in question have already been noted in the original Petition of February 28, 2021 however, at no point in the later was I (Overmyer) given the opportunity to speak of the concerns I had other than through the Court appointed counsel? Also the Government's three "Ordinarily" reasons and questions of 'posture,' being addressed by the THREE legal counsel that put together their arguments, (vrs a layman filing for a Writ of Certiorari with no legal help and extremely limited resources), should at least be given an "unordinary" consideration for review.

Conclusion:

For these and the many reasons previously cited, the Petition For A Writ of Certiorari deserves your 'unordinary' consideration and should be granted.

Respectfully submitted.

Leonard Overmyer  July 3, 2021