No. 20-7723

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Dangelo Davis — PETITIONER
(Your Name)

FILED
MAR 29 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Dangelo Davis
(Your Name)

P.O. BOX 1009
(Address)

Welch, WV, 24801
(City, State, Zip Code)

(Phone Number)

QUESTION (S) PRESENTED

I. DID THE DECISION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ERR WHEN CONCLUDING THAT DAVIS ADOPTED THE GOAL OF FURTHERING OR FACILITATING THE CRIMINAL ENDEAVOR

II. DID THE DECISION OF THE COURT OF APPEAL FOR THE SIXTH CIRCUIT COURT ERR WHEN OVERLOOKING THE RECOMMENDATION OF THE DISTRICT COURT WHICH ERRONEOUSLY RELIED ON THE PRESENTENCING REPORT WHICH MAKES THE RICO CONVICTION INSUFFICIENT

III DID THE DECISION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT COURT ERR WHEN CONCLUDING THAT THE DRUG AMOUNT WAS REASONABLY FORESEEABLE TO DAVIS WHEN RELYING ON THE DISTRICT COURT DRUG ESTIMATE WHICH CLEARLY ERRED WHEN ITS FINDING WAS THE ENTIRE CONSPIRACY WIDE DRUG AMOUNT

IV. DID THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERR WHEN OVERLOOKING THE FACT THAT DAVIS FIFTH AMENDMENT RIGHTS WERE VIOLATED OF DUE PROCESS AND DOUBLE JEOPARDY

LIST OF PARTIES

[X] 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:

The opinion of the United States Court of Appeals for the sixth circuit that is the subject of this appeal also addressed the consolidated appeals of co-defendants and co-appellants DeShaun Tisdale, and Winston Hill. As of this date, the petitioner DAngelo Davis is not aware of any of the above mentioned co-defendant's/co-appellant's filling a petition for writ of certiorari. pursuant to United States Supreme Court Rule 14(1)(b).

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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 ____ 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 November 18, 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

The fifth (5th) Amendment to the united states constitution states in relevant part as follows:

"No Person... Shall be deprived of life, liberty or property, without due process of law... nor shall any person be subject for the same offense to be twice put in Jeopardy of life or limb...

U.S. CONST., amend V

The Sixth (6th) AMendment to the united States in relevant part as follow:

"In all Criminal prosecution, 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...

U.S. CONST., amend VI

Title 18, UnitedStates code, Section 1962(c)

prohibited Activities.

(c) It Shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, Interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity, or collection of an unlawful debt.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 USC 1962 (C) (West 2017)

(d) It Shall be Unlawful for any Person to conspire to violate any of the Provisions of subsections (a), (b), or (c) of this Section.

18 U.S.C 1962 (d) (West 2017)

TO establish a RICO conspiracy violation under 18 U.S.C.S. 1962 (d), the Government must prove that the defendants objectively manifested, through words or actions, an agreement to participate in the conduct of the affairs of the enterprise through the commission of two or more Predicate Crimes. RICO conspiracy requires neither proof of the Commission of an overt act nor proof of an agreement to commit individual predicate acts. A RICO conspiracy thus differs from a regular conspiracy because it may encompass a greater Variety of conduct.

RICO conspiracy - count one

There are five elements to the Charge: (1) the existence of an enterprise; (2) the defendant associated with the enterprise; (3) the defendant knowingly agreed to conduct or participate in the affairs of the enterprise (4) the defendant agreed that either he or another conspirator, would engage in a pattern of racketeering activity involving at least two racketeering acts in furtherance of the enterprise; and (5) the enterprise engaged in, or its activities affected, interstate commerce.

STATEMENT OF THE CASE

On January 24, 2019, the Petitioner Dangelo Davis was charged with a fourth Superseding Indictment. Davis was charged with One (1) count of conspiracy under the Racketeering Influenced Corrupt Organizations Act ("RICO") in Violation of 18 U.S.C. 1962(d). [R.366 Fourth superseding indictment]

There were thirteen (13) Co-defendants in the District court and two (2) In the consolidated appeal before the Sixth (6th) Circuit: DeShauntis Dale, Winston hill. United States v. Dangelo Davis, case No: 19-1903, United States court of Appeals for the Sixth Circuit, Slip op. at 1, November 18, 2020 [ ] Davis plead not guilty to Count one (1), and proceeded to trial by Jury.

Davis was an associate of the PlayBoy Gangster Crips, also known as "PBGC," Thirty-third Gangstas," or "Trey Trey Gongstas", [herein after "PlayBoyGangster Crips"]. The PlayBoy Gangster Crips is a national street gang founded in Los Angeles, California, with Smaller "Set" In Cites throughout the United States, Including Detroit, michigan. The base of operation for the Detroit set of PlayBoy Gangster Crips is in north west Detroit; Specifically, the PlayBoy Gangster Crips claim the area of Seven mile Road between Lasher and Evergreen as their territory. The PlayBoy Gangster Crips Operate under the leadership of an "Original Gangster" or "OG". Under the Original Gangster, there are four additional ranks - Original Baby Gangster ("OBG"), Young Baby Gangster ("YBG"), Baby Gangster ("BG"), and Tiny Gangster ("TG"). A number of factors determine a member's rank including, the amount of time an individual has been in the gang and the amount of "Work", or Criminal activity a person commits on behalf of the gang.

References to the trial court records are made by using page identification numbers ["page 10"]

On march,13,2019 trial began before the Honorable Stephen J. Murphy III. At trial, the Government called numerous witnesses and introduced about 266 exhibits. The Government witness Carl pennington AKA "C-Note" testified at Davis trial. Pennington testified that he did not know Davis and Pennington also explain the differences in Crip language. And stated that the members of "PBGC" do not put "CK" together in a word because "CK" means "CripKiller", Pennington further explaned that the word "back" would be spelled "b-a-c-c" in crip language. Yet MR. Davis nickname was "Black".

Two other key Government witnesses also testified. Dawon Taylor A.K.A. "J-9", and Devante Crokett A.K.A. "T.B.K". Amongst the testimony of Dawon taylor he testified about the PlayBoy Gangster Crips Oranizational Structure, of the gang an its member's, Taylor also admitted that he brought Davis around in "2015". Taylor also testified to numerous incident's, two in particular which occurred on January 31, 2017 which involved an attempted Shooting during an alleged burglary, and on march 17, 2017 which two prostitutes were robbed. Taylor testified that on the day of January 31, 2017 Davis was picked up, But Davis did not get out of the truck and taylor testified about march 17, 2017. Taylor admitted that he went inside of the Red Roof Inn alone and that Davis had nothing to do with the robbery of the two prostitutes on march 17, 2017. Taylor however, testified that Davis held rank in the "PBGC" gang which was an "TG" ["Tiny-Gangster"] and that Davis Sold marIJuana at the Sunoco gas station on 7mile and Braile and on Trinity

Devante Crokett A.K.A "T.B.K." testified also about the incident that occurred On January 31, 2017. Crokett Stated that he was the driver on that Day and that he picked Davis up, and drove around to Stout Street and was shot at. Crokett admitted that Davis never got out the truck. Crokett however, testified that Davis held rank in the gang, which was a "TG" ["Tiny - Gangster"] and that Davis sold mariJuana at the gas Station on 7mile and Braile, and on Trinity.

The Government rested its case on march 26, 2019 and on march 28, 2019 after a two week trial Dangelo Davis was found guilty on count 1 Violation of 18 U.S.C 1962(d) RICO Conspiracy. On July 18, 2019 the district court denied the defendant's Rule 29 motion for Judgment of Acquittal [R. 488, 439]. On August 5, 2019 Dangelo Davis was Sentenced to 144 months of Imprisonment On count 1 of the fourth Superseding Indictment

B

In Davis Breif to the United States Court of Appeals for the Sixth (6th) circuit Davis argued that there was insufficient evidence to support the conviction on RICO Conspiracy were the Jury acquitted mr. Davis on both predicate acts which did not Show an agreement. Davis also contended that the Court of Appeals Should find that the Government failed to Show that the petitioner Davis Satisfied the Reves "Operation or mangement test. Davis argued that the fourth Superseding Indictment Violated his Fifth and Sixth amendment Rights to the United States Constitution were the Government did not mention a drug amount. Davis contended that he was not a leader in the PBGC and that there was no evidence presented at trial of a drug arrest, nor and agreement to sell any Drugs.

On direct appeal, the three-Judge Panel of the Sixth circuit United States court of Appeals affirmed Davis's Conviction in a opinion dated November 18, 2020. The panel concluded that the district court followed the Presentencing Report (P.S.R.) that recommended an offense level of 30 for the based on Davis's racketeering Conspiracy Conviction, and noted that the district court followed recommendations without relying on counts for which the jury acquitted Davis.

The panel also concluded that federal agents learned that the gang moved between a half a pound and a pound of marijuana every day, which would result in hundreds of kilograms to be sold between 2014 and 2017, when davis played an active role in the gang. Trial testimony revealed a well-oiled dealing operation. The Court of Appeals found its finding for the district court's drug amount to be reasonably estimated.

C.

The petitioner Davis now seek review from the UNITED STATES SUPREME COURT for the following reasons: 1. First; the court of appeals err when deciding that the district court followed recommendation without relying on counts for which the Jury acquitted the petition Davis of. 2. Secondly; the Court of Appeal over looked the fact that the district court exceeded Davis's Relevant conduct. 3. Third; the Court of Appeals overlooked the fact that the Government never showed and agreement on how Davis adopted any Goal or futhered or facilitated any criminal endeavor. 4. And finally was Davis (5th) fifth amendment of the Constitution violated by the double Jeopardy Clause.

REASONS FOR GRANTING THE PETITION

1. DID THE DECISION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ERR WHEN CONCLUDING THAT DAVIS ADOPTED THE GOAL OF FURTHERING OR FACILITATING THE CRIMINAL ENDEAVOR

In its opinion, the United States court of Appeals for the sixth (6th) circuit noted that the Petitioner Davis actively participated in robberies to make the gang's money. Davis held rank in the gang, and regularly participated in gang meetings, and even paid dues. Davis was "Jumped in" to the gang and openly advertised his membership whether on facebook or elsewhere. The panel concluded that the Jury had plenty of reasons to find that Davis advanced the gang's interests.

The court of Appeals concluded that Davis argued that the Jury acquitted him on multiple predicate acts. The court of Appeals then noted true enough, a substantive RICO charge requires the Government to prove "two or more predicate acts." Citing Salinas, 522 US at 65; 1962(c). The courts then noted, the statute, namely " the interplay between subsection (c) and (d) [,]" " doe not himself commit or agree to commit the two or more predicate acts requisite to the underlying offense". Salinas, 522 U.S. at 65. The court of appeals stated Davis is that actor while the Jury might have acquitted him of the underlying predicate acts for a substantive RICO conviction, they could still find him guilty of RICO conspiracy.

Davis argues that the RICO conspiracy conviction should be vacated on the basis that there was insufficient evidence to support the conviction. Davis contends that the panel failed to show how davis agreed to personally commit two predicate acts or agreed to participate in the conduct of the enterprise with knowledge and intent that other members of the conspiracy would commit at least two predicate acts in furtherance of the enterprise.

The Panel concluded that the Jury heard ample evidence of Davis efforts to facilitate illegal gang activities. The panel noted that the Jury had plenty of reasons to find Davis advanced the gang's interest's.

The Jury found Davis guilty of RICO conspiracy 1962(d). However, It is mere speculation as to what the Jury found Davis guilty of when the general verdict revealed that Davis was found, "Not Guilty" for the assault on E.H.; and "Not Proven" for the robbery of D.T. and S.S. [R.435 Page ID 3374]. Further there was no special questions mentioned about any drug amount. The district court instructed the Jury time and time again that it is not illegal to be a member of the PlayBoy Gangster Crips. The Jury though appears to have relied on an impermissible verdict under law.

It is unknown what the Jury relied on in its consideration of count one, but the possibilities for confusion in conspiracy trials have often been described. See Krulewitch v. United States, 336 U.S. 440, 445-458 (1949) Justice Jackson concludes his opinion stating:

Although a reversal after four trials is, of course, regrettable, I cannot overlook the error as a harmless one. But I should concur in reversal even if less sure that prejudice resulted, for it is better that the crime go unwhipped of justice than that this theory of implied continuance of conspiracy find lodgment in our law, either by affirmance or by tolerance. Few instruments of injustice can equal that of implied or presumed or constructive crimes. The most odious of all oppressions are those which mask as justice." 336 U.S. at 457-8.

The district court relied on the entire conspiracy wide drug amount at sentencing which violated the petitioner Davis's due process rights. The government's witness Dawon Taylor admitted that he brought Davis around in "2015". Taylor's testimony establish that Davis scope started in "2015". The district court judge at sentencing relied on the (P.S.R.) which held Davis accountable to the entire drug amount. The district court judge error when it sentenced the petitioner Davis base on a quantity of marijuana which was not found by a jury or was proved beyond a reasonable doubt and not admitted by him.

By the district court relying on the entire conspiracy wide marijuana amount at Davis's sentencing violated due process. "A criminal defendant has a due process right to be sentenced based on accurate information. See United States v Tucker, 404 U.S. 443, 447 (1972).

Moreover, the cooperating government witness Dawon Taylor admitted in his testimony that Davis had nothing to do with the assault on the two prostitutes on march 17, 2017. More Problematic is that Taylor Statement was reliable about the marijuana being Sold; but when he testified that Davis had nothing to do with the prostitutes this is being overlooked.

The district court made several erroneous determinations. The district court's first erroneous determination was the drug amount.

In order to hold a defendant accountable for the acts of others under U.S. Sentencing Guidelines manual 1B1.3(a)(1)(B), a district court must make two particularized findings; (1) that the acts were within the scope of the defendant's agreement; and (2) that they were foreseeable to the defendant. This rule was made to provide adequate protection against the possibility that a less culpable, small time seller of drug will be caught up in the sweep due to the acts of an co conspirator.

The panel overlooked the drug quantity determination noting that the Federal agents learned that the gang moved between half a pound and a pound of marijuana everyday, which would result in hundreds of kilograms between 2014 and 2017, when Davis played an active role in the gang.

Davis contends that the record is devoided of any evidence that the Petitioner Davis agreed to facilitate or futhering any drug sales, drug distribution, or any drug profits. Nonetheless, Davis argues that there was insufficient evidence to prove that he agreed to commit or facilitate with anyone to distribute marijuana.

RICO conspiracy is not a conspiracy to commit the alleged predicate racketeering acts; rather, a RICO conspiracy is a conspiracy to participate in the affairs of an enterprise through a pattern of racketeering activity.

Where the evidence establishes that each defendant, over a period of years committed several acts of racketeering activity in futherance of the enterprise's affairs, the inference of an agreement to do so is unmistakable.

One issue that has arisen in caselaw occurs when the jury has convicted a defendant of a RICO conspiracy offense by a general verdict (or if the defendant pleads guilty to a RICO conspiracy offense), and it cannot determine which specific predicate acts the defendant agreed would be committed in futherance of the conspiracy. In such circumstances, the circuits are split as to what standard of proof - preponderance of the evidence or beyond a reasonable doubt - is required for the sentencing court to determine the agreement to the commission of a specific racketeering act. The Supreme court will find that there was insufficient evidence to establish Davis adopted any goal of futhering or facilitating the criminal endeavor.

II DID THE DECISION OF THE COURT OF APPEAL FOR THE SIXTH COURT ERR WHEN OVERLOOKING THE RECOMMENDATION OF THE DISTRICT COURT WHICH ERRONEOUSLY RELIED ON THE PRESENTENCING REPORT WHICH MAKES THE RICO CONVICTION INSUFFICIENT

The panel noted that Davis argued that the district court relied on acquitted crimes to sentence him. But he fails to identify what conduct the district court improperly relied on. The presentencing Report recommended an offense level of 30 based on Davis's racketeering conspiracy conviction and two specific offense characteristics. The panel even noted that the district court followed that recommendation without relying on counts for which the Jury acquitted Davis. The court of appeals noted that Davis's 144 month sentence falls squarely in the recommended guidelines range based on his participation in the racketeering conspiracy, for which the Jury found him guilty. Even if that were not the case, trial court may rely on acquitted conduct in sentencing criminal defendants. Citing United States v. White, 551 F.3d 381, 386 (6th cir. 2008)(en banc).

The Jury found Davis guilty of Count One RICO conspiracy 1962(d). The Jury however, did not specify which of the predicate acts they found that Davis had committed. To show a pattern of racketeering activity conspiracy, a defendant need not personally agree to commit two predicate acts. Rather he need only known about and agree to facilitate in the scheme. The Jury acquitted Davis of "Assault" and "Robbery" however, at sentencing the district court relied on the PreSentencing Report (PSR) which calculated acquitted conduct -- the "Robbery" and uncharged conduct -- the drug trafficking. The district court even noted that Davis would not be "held to the evidence or convicted on robberies that were done or drugs that were sold before he joined the conspiracy." [R.590 at 26].

Nevertheless, acquitted conduct may be used at sentencing if the sentencing court find the conduct has been established by a preponderance of the evidence. United States v. Watts, 519 U.S. 148, 157. 117 S.Ct 633, 136 L. Ed 2d 554 (1997).

The panel stated that the district court followed recommendation without relying on counts for which the jury acquitted Davis. That's false, the panel seemed to overlook that this "robbery" predicate act that the Presentence Report (PSR) recommended, which the district court adopted is in fact the same "robbery" that the jury acquitted Davis on. Further, base upon testimony from Dawon Taylor who admitted in his testimony that the Petitioner Davis had nothing to do with the robbery of the two prostitutes on march 17, 2017. [R. 542 Page ID 5349-5356].

In devising a sentence, a judge must refrain from considering impremissible factors. United States v. Rayyan, 885 F.3d 436, 440 (6th cir 2018). However, "[N]o limitation shall be placed on the infomation concerning the "background", "character", and "conduct" of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence". 18 U.S.C. 3661. Accordingly, the realm of impermissible factors is limited. See United States v. Robinson, 898 F.2d 1111, 1115 (6th cir. 1990) (noting that a sentencing judge's inquiry is largely unlimited but that sentence imposed on the basis of material mis information ... may violate due process"). (citations omitted). The Presentence Report (PSR) was devoid of any evidence that Davis committed the robbery. Futher the record before the court, of the Sixth Circuit did not reveiw the constitutionality of the district's sentence. The court of appeals for the Sixth circuit denied the petitioner due process by considering unreliable infomation that was demonstrebly made just to substain a conviction.

III. DID THE DECISION OF THE COURT OF APPEALS FOR THE SIXTH CIRCUIT COURT ERR WHEN CONCLUDING THAT THE DRUG AMOUNT WAS REASONABLY FORESEEABLE TO DAVIS WHEN RELYING ON THE DISTRICT COURT DRUG ESTIMATE WHICH CLEARLY ERRED WHEN IT'S FINDING WAS THE ENTIRE CONSPIRACY WIDE DRUG AMOUNT

THE Court of Appeals for the Sixth Circuit, in its opinion noted that the district court did not clearly err. Federal agents learned that the gang moved between half a pound and a pound of Marijuana everyday, which would result in hundreds of kilograms between 2014 and 2017, when Davis played an active role in the gang. Trial testimony revealed a well-oiled dealing operation. The appeals court finding for the drug amount to be reasonable estimate.

Furthermore, the appeals court overlooked the fact that the record is devoid of any evidence that the petitioner Davis conducted or participated in any drug distribution, which distinguishes him from the other co-defendants. However, a criminal defendant may be sentenced based upon quantities of drug attributable to other members of a conspiracy, provided the district court finds that those quantities were known or were reasonably foreseeable to the defendant. The problem here is that the government exceeded Davis scope of the conspiracy by holding Davis responsible for the drug amount of the entire conspiracy. Trial testimony from DaWon Taylor revealed that Taylor brought Davis around in "2015". The (PSR) err when using the entire conspiracy wide drug amount from 2014-2017.

In Corrado, the Sixth circuit summerized this Standard, explaining:

The underlying acts of racketeering in a RICO conspiracy are not considered to be Objects of the conspiracy, but simply conduct that is relevant to the central Objective - participating in a criminal enterprise. The existence of relevant conduct is determined at Sentencing by a preponderance of the evidence. United States v. Corrado, 227 F.3d 528, 541 (6th Cir. 2000).

Further, an offense like relevant conduct is a specific term applicable to a concept with specific legal consequences that are very distinct from the legal consequences flowing from relevant conduct. It is well established that the priciple of Statutory construction that is when congress enacts a statute using a phrase that has interpretation, among other differences (Scope, in furtherance, reasonably foreseeable) between the defendant's offense and relevant conduct. Relevant Conduct is a consideration under the Sentence Guideline that is used to determine the Guideline range in a given case by looking at the conduct beyond the elements in the offense of conviction, Relevant conduct does not affected and certainly cannot increase, the statutory pealties attached to an offense of conviction.

Davis assert that there was obvious error that seriously affected both his Substantial rights and fairness, integrity, or public reputation of Judical proceeding. (quoting United States v. Courtright, 632 F.3d 363, 371 (7th cir. 2011)). Davis contends that the hearsay Statement's from Dawon Taylor and Devante Crokett, as well as facebook images was the only evidence that implicated the petitioner Davis in any drug trafficking. The Fourth Superceding Indictment is devoid of any predicate acts showing that Davis conducted or participated in any drug sales, or getting arrested with any drugs. The Panel clearly erred when noting that Davis helped the gang by Selling mariJuana and Prescription drugs. The Panel relyed on the facebook images from the Sentencing memorandum. The memorandum contended that Davis Joined the PBGC's at least as early as "2012." The memorandum Stated that Davis also advertised and sold drugs using the Internet. The Government the displayed images of Codeine Cough Syrup and packaged mariJuana. The Problem here of which is being over looked is the images of the alleged Codeine cough syrup and packaged mariJuana images were tooking in 2012 before Davis Joined the conspiracy. Taylor's testimony revealed that he brought Davis around in "2015". Even the Addendum to the presentence Report ("Paragragh 18")"(added Statement that the defendant Joined the PBGC as early as 2015). Yet Davis's drug quantity was improperly estimated when the district court relyed on the presentence Report (PSR) which held Davis accountable for the entire conspiracy wide mariJuana amount from 2014-2017.

A defendant's relevant conduct does not include conduct of members of a conspiracy prior to the defendant Joining the conspiracy, even if the defendant knows of that conduct (e.g., in the case of a defendant who Joins an ongoing drug distribution conspiracy knowing that it had been selling two kilograms of cocaine per week, the cocaine sold prior to the defendant Joining the conspiracy is not included as relevant conduct in determing the defendant's offense level).

When a RICO conspiracy is charged the defendant must be linked to an Individual predicate act by more than hearsay alone before a Statement related to that act is admissible against the defendant under Rule 801 (d)(2)(E). United States v. Tellier, 83 F.3d 578, 580-81 (2d Cir. 1996). However, the petitioner Davis was not linked to any drug trafficking predicate act in the Fourth Superseding Indictment.

In Bourjaily V. United States, 483 U.S. 171 (1987), declared that determining the admissibility of a Statement of a coconspirator is solely a matter for the court, Under Rule 104(a), and that the court in making its determination must apply the more probably true then not true (preponderance) Standard of proof.

The Sixth Circuit appeals court erred when finding the drug amount to be reasonably estimated. The panel noted that Federal agents learned that the gang move between half a pound and a pound of marijuana every day, which would result in hundreds of Kilograms between "2014" and "2017". However, the court of Appeals overlooked that Taylor brought Davis around in "2015". [R.542 Page ID 5349-5350]. Further, at Davis's Sentencing hearing, among other explanations, it reasoned that Davis got involved in gang activity by Selling drugs, and the district court found that Davis had knowledge of the gang's drug dealing distribution as demonstrated by the body of evidence on facebook and through othe testimony. [R.590 at 13]. The district court however, even acknowledged that Davis would not be "held to the evidence or convicted on drugs that were sold before he Joined the conspiracy". [R. 590 at 26]. Davis Due Process Rights were violated when the district court relyed on the entire conspiracy wide drug amount. There was no sufficient indicia of reliability to Support the [PSR] Probable accuracy about the drug trafficking. This err is not harmless Davis humbly ask this honorable Supreme Court to (GVR) Grant, Vacate, Remand to the district court so that the court may conduct an evidentiary hearing to consider evidence that was presented by the government in relation to the drug amount. If this Honorable Court review the drug quantity the proper estimate would be 100-400 Kilograms of marijuana, not 400-700 Kilograms.

IV. DID THE DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERR WHEN OVERLOOKING THE FACT THAT DAVIS FIFTH AMENDMENT RIGHTS WERE VIOLATED OF DUE PROCESS AND DOUBLE JEOPARDY

To establish the existence of RICO conspiracy, the government is required to prove only the existence of an agreement to violate RICO's Substantive Provisions. Thus, the government necessarily has to establish that the defendant agreed with his criminal associates to form the RICO enterprise, and agree to associate himself with the enterprise, and agree to commit two predicate acts in furtherance of a pattern of racketeering activity in connection with the enterprise, In contract, a defendant's conviction on a Substantive RICO Count requires proof, not of an agreement to violate the Substantive RICO, Sections, but actual proof that he associated himself with the enterprise and Committed at least two predicate acts in connection with the conduct of the enterprise. The Significant distinction between the proof required to establish the RICO conspiracy and the underlying substantive RICO Offense belie a Claim that a conviction Under RICO conspiracy could violate the double Jeopardy Clause

The Jury found that Davis did not commit the "Assault" on E.H., on January 31, 2017. The Jury also found that Davis did not participate in the "Robbery" of the two prostitutes. [R.435 Page ID 3374]. However the Jury still found Davis guilty of RICO CONSPIRACY 1962(d).

However under Section 1962(d), there is no requirement that the defendant "himself committed or agreed to commit the two predicate acts requisite for a substantive RICO offense under 1962(c).

In order to be guilty of RICO conspiracy, a defendant must either agree to [personally] commit two predicate acts or agree to participate in the conduct of the enterprise with knowledge and intent that other members of the conspiracy would commit at least two predicate acts in futherance of the enterprise.

At Davis sentencing the district court Judge relied on The (P.S.R.) PreSentencing Report to determine davis's sentence. The (P.S.R) used acquitted and uncharged crimes when determining Davis's two predicate acts. The district court Judge relied on that Davis got involved in gang activity by selling drugs and . . . going along to rob prostitutes. The court of Appeals over looked that this same "Robbery" that the Judge used was the same "Robbery" that was acquitted by the Jury. The panel claimed that the district court followed recommendation without relying on counts for which the Jury acquitted Davis. The district court relied on the robbery of the prostitutes that was not found by a preponderance of evidence which makes the Rico conspiracy convict insufficient.

"[A] Sentence may be substantively unreasonable when the district court selects the sentence arbitraily, bases the sentence on impermissable factors, fails to consider pertinent 3553 (a) factors or give an unreasonable amount of weight to any pertinent factor." United States v. Brown, 547 F3d 592, 594 (6th cir. 2008) (Citing United States v. Borho, 485 F.3d 904, 908 (6th cir. 2007)).

"Under the Sixth Amendment, any fact that exposes a defendant to greater potential sentence must be found by jury, not a judge." See Cunningham v. California, 127 S.Ct. 856, 863-64 (2007).

The essential Sixth Amendment inquiry is whether a fact is an element of the crime. When a finding of fact alters the legally prescribed punishment so as to aggrevate it, the fact necessarily forms a constituent part of a new offense and must be submitted to the jury. It is no answer to say that the defendant could have received the same sentence with or without that fact. It is obvious, for example, that a defendant could not be convicted and sentenced for assault, if the jury only finds the facts for larceny, even if the punishment prescribed for each crime are identical. One reason is that each crime has different elements and a defendant can be convicted only if the jury found each element of the crime of conviction. (Thomas, J., Joined by Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

The Petitioner Davis final contention is that his sentence should be vacated pursuant to Blakely v. Washington, ____ US ______, 159 L.Ed.2d 403, 124 S.Ct 2531 (2004), where the supreme court struck down a washington state sentencing

Proceeding in which the Judge imposed punishment that the Jury Verdict alone did not allow. Under Blakely the court explained that a Sentence may be imposed by a Judge if it is based solely on the "facts reflected in the Jury Verdict or admitted by the defendant." ____ US at ______, 124 S.Ct at 2537. (emphasis in original).

Here the Jury returned a unanimous Verdict for count one (RICO conspiracy 1962(d)) the Verdict form reflected a guilty Verdict as to the Petitioner Davis. But the Jury found that the Petitioner Davis was not responsible of the two Predicate acts in the special questions posed to the Jury. (R 435 Verdict).

Since this part of the Verdict form is a general Verdict, there is no way of Knowing which two Predicate acts the Jury relied on for the defendant's Conviction. It is mere Speculation as to what the Jury found the Petitioner guilty of in this case. More Problematic is the Verdict form offers no guidance about the Marijuana drug amount.

A RICO conspiracy conviction can be sustained only if there is evidence sufficient to prove the defendant agreed that Someone would commit two Predicate act's. United States v. Driver, 535 F.3d 424 (6th cir. 2008). In Driver, the Court of Appeals for the (6th) Sixth Circuit, reversed a RICO conspiracy conviction against the defendant, a member of the Outlaw Motorcycle Club "(OMC)", Finding that he only Committed one Predicate act of the drug conspiracy, reversing his Conviction on the Second predicate act of Violating the travel Act.

In doing so, this court held the evidence elicited at trial was sufficient beyond a reasonable doubt that Defendant Driver Joined in the drug conspiracy. However, this court reversed finding there was not sufficient evidence for the Jury to conclude beyond a reasonable doubt that Driver Violated the Travel Act.

This case is immediately distinguishable in the sence that the Jury did not convict the petitioner Davis of either of his two predicate acts. The Government even struck two predicate acts at the begining of Davis's trial on Davis's behalf, Leaving only (3) predicate acts to proceed with.

To prove a RICO conspiracy charge, it is necessary to show that the defendant committed two predicate acts himself or agreed to conduct an enterprise affairs through a pattern of racketeering activity and that the agreement would have violated RICO if the intended outcome had been achieved.

At the petitioner Davis sentencing hearing, the district court Judge fact finder was that Davis got involved in gang activity by selling drugs and .... going along to rob prostitutes. And by the district court Judge relying on the robbery of the prostitutes Violated Davis's due process and the double Jeopardy Clause.

"The guanantee of due process is found in the (5th) fifth Amendment to the Constitution, which states no person shall ... be deprived of life, liberty, or property without due process of law". The fifth (5th) Amendment to the Constitution states that no person shall be subject for the same offense to be twice put in Jeopardy of life or limb.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Dangelo Davis

Date: 03-13-21