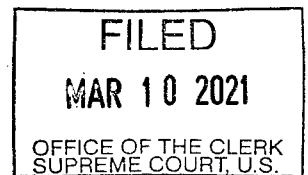


IN THE
SUPREME COURT OF THE UNITED STATES
October Term 2020
No. 20-8008

ERIC CHRISTOPHER CONN,
Petitioner,
- against -

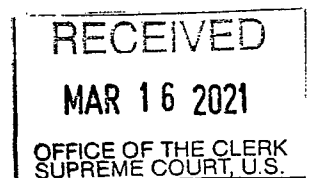
UNITED STATES OF AMERICA,
Respondent

ORIGINAL



PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Eric Christopher Conn
#20834-032
Federal Correctional Institution
Hazelton
P.O. Box 5000
Bruceston Mills, W.V. 26525



QUESTION PRESENTED

Whether an individual released on bond under the Bail Reform Act is in "custody" so as to trigger conspiracy to escape for a "walk away."

PARTIES

The Petitioner is ERIC CHRISTOPHER CONN, a prisoner at the Federal Correctional Institution - Hazelton in Bruce ton Mills, West Virginia. The Respondent is the United States of America.

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Cases.

Reno v. Koray, 515 U.S. 50, 60 N. 4, 132
L. Ed. 2d 46, 115 S. Ct. 2021 (1995)

United States v. Baxley, 982 F. 2d, 1265,
1269-70 (9th Cir. 1992)

DECISIONS BELOW

The decision of the United States Court of Appeals for the Sixth Circuit is cited as *Conn v. United States*, 2020 U.S. App LEXIS 32452 (6th Cir., Oct. 4, 2020) and a copy is provided as Appendix B to this petition (A.). The order of the United States District Court for the Eastern District Kentucky is cited as *United States v. Conn* 2020 U.S. Dist LEXIS 17812 (E.D. Ky., Jan 31, 2020). A copy is provided as Appendix C to this petition (A.).

JURISDICTION

The Judgement of the United States Court of Appeals for the Sixth Circuit was entered on October 14, 2020, and a copy of that decision is provided at Appendix A to this petition (A.). An Order denying a petition for rehearing is provided at Appendix D to this petition (A). Jurisdiction is conferred by 28 U.S.C. Section 2255.

STATUTORY PROVISION INVOLVED

This case involves 18 U.S.C. Section 751(a):

(1) that the defendant escaped or attempted to escape;
(2) from the custody of the Attorney General or his or her appointed agent, from a facility or institution where the defendant was confined at the direction of the Attorney General, from custody by virtue of the process issued under the laws of the United States by any court, judge or Commissioner, or from the custody of an officer or employee of the United States pursuant to lawful arrest; and that custody was based on arrest on a felony charge or conviction of any offense.

STATEMENT OF THE CASE

The petitioner pled to the charges involving a highly-publicized case concerning Social Security Fraud. Petitioner was released on bond under the Bail Reform Act with the conditions that he was on home confinement and wear an ankle monitor. Petitioner removed the ankle monitor and left the United States. Petitioner was found in a Pizza Hut in La Ceiba, Honduras and returned to the United States. The petitioner was indicted on charges of escape and failure to appear in Court. Petitioner subsequently pled to the charges of conspiracy to escape, conspiracy to defraud the United States, and conspiracy to retaliate against a witness all in violation of 18 U.S.C. Section 371. Petitioner, almost 58 years of age at the time, received a combined sentence of 27 years of federal incarceration.

Petitioner filed a pro se motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. Section 2255 ("2255 motion") on September 20, 2019. Petitioner inter alia, raised the issue that Counsel rendered ineffective assistance by advising petitioner to

plead to conspiracy to escape notwithstanding his not being in "custody" at the time of his "walking away." The district court denied petitioner's 2255 motion and denied petitioner a certificate of appealability. Petitioner, subsequently, sought a certificate of appealability from the Court of Appeals which was denied. Petitioner sought rehearing en banc from the Court of Appeals which was denied. Petitioner now seeks a writ of certiorari from this Court.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of 18 U.S.C. Section 751(a). The district court had jurisdiction pursuant to 28 U.S.C. Section 2255.

REASONS FOR GRANTING WRIT

A. Conflicts With Decisions of Other Courts

The holding of the courts below that a person may still be in custody as long as there is some restraint upon his or her complete freedom,¹ is directly contrary to the holding of another federal circuit. See United States v. Baxley 982 F.2d 1265, 1269-70 (9th Cir. 1992). The court in Reno v. Koray, 515 U.S. 50, 60 N.4, 132 L.Ed.2d 46, 115 S. Ct. 2021 (1995), while examining another statute, cited a Bureau of Prisons ("BOP") program statement² which provided that a defendant may not be prosecuted for escape when the defendant is released under the Bail Reform Act.

¹ In an apparent inconsistency, the district court stated in a March 5, 2019, order "the transcript is not necessary to establish whether [petitioner] was in custody ... [T]he record is replete with documents and other items evidencing that [petitioner] was not detained." (A.).

B. Importance of the Question Presented

This case presents a fundamental question of the interpretation of the term "custody" under 18 U.S.C. Section 751 (a). The question presented is of great public importance because it affects those released on bond,³ and those assigned to a halfway house as part of their sentence or supervised release later charged

² The most recent version of that program statement only recites the holding of Koray to justify the BOP's policy regarding time credit for pretrial. Thus, it is unknown whether the BOP's position remains the same. See U.S. Dept. of Justice, Bureau of Prisons Program Statement No. 5880, 28 (1997).

³ The ninth circuit Court of Appeals in Baxley suggested there are different fundamental concerns that arise on a pretrial personal recognizance release, where the aim is to ensure the defendant appears for trial, as contrasted with the situation where a convicted inmate is assigned a halfway house as part of his or her sentence of supervised release. See Baxley, 982 F.2d at 1269.

with escape or conspiracy to escape for a "walk away."

The misunderstanding of the term "custody" is well elucidated by the district court's order dated March 5, 2019 finding that the petitioner was not in custody (A.). Subsequently, the same held that the petitioner was in custody (A.).

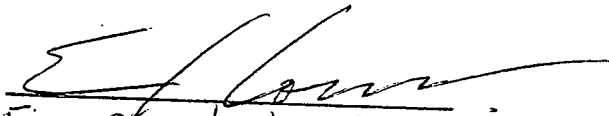
The Court below seriously misinterpreted the term "custody" under 18 U.S.C. Section 751(a). The Court failed to distinguish between pretrial release on bond, with or without conditions, and post-conviction custody. It is a criminal offense for a defendant released on bond to fail to appear before a court as required by conditions of release, but it is not an escape under 18 U.S.C. Section 751(a). The Court should correct the misinterpretation and make it clear that a defendant may not be prosecuted for escape or conspiracy to escape under 18 U.S.C. Section 751(a) when the defendant is released under the Bail Reform Act.

CONCLUSION

For the foregoing reasons, certiorari should be granted in this case.

This the 9th day of March, 2021.

Respectfully submitted,



Eric Christopher Conn

Inmate No. 20834-032

Federal Correctional Institution

Hazleton

P.O. Box 5000

Bruce ton Mills, WV 26525