

20-8272
No. _____

ORIGINAL

FILED
JUN 02 2021

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

ROBERTO MARTINEZ — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ELEVENTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

ROBERTO MARTINEZ
(Your Name)

FCI DANBURY, 33 $\frac{1}{2}$ PEMBROKE RD.
(Address)

DANBURY, CT 06811
(City, State, Zip Code)

(Phone Number)

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. When a District Court vacates a sentence pursuant to the United States Supreme Court Decision in RUTLEDGE v. UNITED STATES, 116 S.Ct 1246 , 134 L.ed. 2d 419, 517 U.S. 292 (1996). Is a Correction of the Defendants Judgment and Commitment Order required.
2. Does the District Court's failure to correct a Defendant's Judgment and Commitment Order represent a deprivation of life and liberty as defined by the 14th Amendment to the United States Constitution
3. Does the District Court's refusal to correct the Judgment and Commitment order essentially create a double jeopardy? Multiple teirs of government agencies have used and will use this information to deprive Martinez of his Life and Liberty based on a count that was vacated through due process.

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:

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TABLE OF AUTHORITIES CITED

CASES

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UNITED STATES v. Martinez, 84-00499-CR-COHN (S.D.F.L.)

UNITED STATES v. Martinez, 20-14580-BB, (2021, 11th Cir.)

UNITED STATES v. Serra, et al., 862 F.2d 877 (11th Cir. 1988)

UNITED STATES v. Martinez, 02-101137-FF, (11th Cir. 2021)

STATUTES AND RULES

Fed. R. Crim.P. 35

14th Amendment to the UNITED STATES CONSTITUTION

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 _____ 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 April 20, 2021

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).

The following Constitutional and Statutory provisions are involved in this Writ.

The 14th Amendment to the United States Constitution.

"Section 1: All persons born or naturalized in the United States and Subject to the jurisdiction ther or, are citizens of the state where they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; No shal any STate deprive any person of life liberty, or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. CONVICTION, SENTENCE AND DIRECT APPEAL

In 1985, a federal grand jury charged Roberto Martinez with engaging in a continuing criminal enterprise ("CCE"), in violation of 21 U.S.C 848 (Count 3), Conspiracy to import methoqualone, in violation of 21 U.S.C 963 (Count 4), and traveling in interstate and foreign commerce with intent to carry on unlawful activity, in violation of the Travel Act, 18 U.S.C. 1952 and 2 (Count 5).

A jury convicted Martinez on all three Counts in March of 1987. The District Court then sentence Martinez to 35 Years of imprisonment as to Count 3 and five years of imprisonment as to Count 5 to run consecutively to each other, and to other sentences Martinez was serving, for a total of 40 year's imprisonment.

The 11th Circuit Court of Appeals affirmed Martinez's Convictions and sentences on direct appeal. United States v. Serra, et al., 862 F.2d 877 (11th Cir. 1988)

VACATUR OF COUNT 4 (CONSPIRACY-TO IMPORT) ON REMAND

In 1990 Martinez moved for a sentence reduction under Rule 35 (old law). Although he initially sought a discretionary reduction of his sentence, in 1997 he amended his motion to include a double jeopardy challenge based on Rutledge v. United States, 517 U.S. 292 (1996) (holding that a conspiracy to distribute controlled substances is a lesser included offense of a CCE offense). In 2001, the district court denied the motion as untimely and, alternatively on the merits.

Martinez appealed, and in Appeal No. 02-10137, the 11th Circuit Court of Appeals determined that the district court erred in finding the Martinez's Rule 35 (b) motion was untimely. The Appellate Court observed that Martinez's challenge under Rule 35 (b) "sought mercy from the sentencing court and did not challenge the legality of his sentences, and because it is the district court's discretion to grant such a motion" (opinion at 4). The Appeals court did not address the merits of Martinez's motion, noting that "until the district court exercises its discretion, there is nothing before us to review" (id.). Therefore, the Court vacated and remanded "for the district court to address the merits of Martinez's Fed. R. Crim. P. 35 (b) motion" (id at 4-5).

The Appellate Court next considered Martinez's argument that the district court had erred in denying his motion for a sentence reduction under former Rule 35 (a) because his conspiracy -to-import conviction was a lesser included offense to the CCE conviction and therefore illegal under Rutledge. The Government conceded, and the Appeals Court agreed, that Martinez's conspiracy- to-import conviction (Count 4) should be vacated. the appellate court further held that the district court "need not resentence Martinez" because "Martinez was never sentenced on the conspiracy count after the district court found the the conspiracy count merged into the CCE" (Opinion at 6). Ultimately, the Appellate Court remanded to the district court with instructions to "vacate the conspiracy conviction" (id.).

On August 17, 2006, the district court issued its order on mandate. The district court ordered that "Roberto Martinez's Conspiracy Conviction is vacated and Martinez's motion for reduction of sentence under Fed. R. Crim. P. 35 (b) shall be heard on its merits. (DE 1017)

In 2007, after a hearing where Martinez appeared pro se the district court denied his Rule 35(b) motion for a discretionary reduction of his sentence. Martinez Appeals this decision (Appeal No 07-13229), the 11th Circuit Court of Appeals affirmed the district court's order in all respects (DE 1041). In its recital of the procedural history, the Appeals court reiterated that the district court had indeed "vacated Count 4 in 2006. (id at 3).

In 2020 Martinez filed a pro se motion for compassionate release based on the COVID 19 pandemic (DE 1045), which the district court denied because he failed to present "extraordinary and compelling reasons" for release and the 18 U.S.C. 3553(a) sentencing factors weighed against his release (DE 1049). In this opinion the court again referenced the vacated count 4 as a aggravating factor weighing against Martinez. He has appealed this decision however it has not been decided as of yet.

Martinez then filed a pro se motion on November 17, 2020 to "Correct the Judgment and Commitment Order" that is the subject of this writ. at the core of Martinez's Motion to Correct was that the BOP is still listing the Vacated Count 4 on his judgment and commitment order. As such they are using this information to deny his application for home confinement due to the risks presented by; COVID-19, his medical history and increased age. During his incarceration this same Judgment and Commitment order has been used by the Bureau of Prisons, the United States Parole Commission in determining his eligibility for parole under the old law to which he was sentenced. This will also ultimately be used by the probation department in determining the conditions of his supervised release. The district court denied his motion stating that Count 4 has already been vacated and no further action was needed. Martinez then appealed this decision to the 11th Circuit Court of Appeals arguing that the district courts failure to correct the Judgment and Commitment order essential negates the fact that Count 4 was vacated. It will continue to effect his life and liberty for a count that was vacated pursuant to The Supreme Court Decision in Rutledge.

THIS INSTANT CASE

As previously stated Martinez has been incarcerated since 1987. He has recently been granted Parole on this case in July of 2021. The information contained in his Judgement and Commitment Order has been used at multiple points during his incarceration to deprive him of certain liberties such as eligibility for placement in a Federal Prison Camp (the lowest of all prison security levels in the Federal Bureau of Prisons.) This information has been used by the Bureau of Prisons to deny him eligibility for home confinement when the COVID-19 pandemic was ravaging the Federal Prisons especially when his advanced age and medical history place him at a substantially greater risk for catastrophic health consequences if he were to contract COVID-19. The United States Parole Commission has used information found in the Judgement and Commitment Order to deny him parole. In all of these cases the Government Agency/Entity involved specifically noted Counts 3,4 and 5 as aggravating factors in denying Martinez these liberties.

As Martinez begins a short period in halfway house and then his time on federal supervised release this information contained in his Judgement and Commitment Order will be used to limit his freedom and liberties as he interacts with the United States Probation Department. The Judgment and Commitment order also reflects what is reported about a defendant on the National Criminal Information Center (NCIC) Database.

The information contained in a Court's Judgment and Commitment Order follows a defendant throughout their incarceration and supervised release term. In short this information will likely cause law enforcement and court officials

to attribute the same crime twice to Martinez. This is at the very core of concept of double jeopardy.

REASONS FOR GRANTING THE PETITION

Martinez's Conspiracy conviction was finally vacated by the district court after a protracted 9 year process that ultimately resulted in Conspiracy conviction being vacated on order from the 11th Circuit Court of Appeals relying on the United States Supreme Courts decision in Rutledge. By failing to correct their Judgment and Commitment Order the District Court has circumvented this court's decision in Rutledge and kept Count 4 active on Martinez Judgment and Commitment Order. Essentially in the view of any person or government agency reviewing Martinez's record will erroneously believe that he was convicted on Count 4. This goes as far as even effecting not only which Halfway House (Community Corrections Center) a defendant may be eligible for. Additionally it will effect the duration of halfway house a defendant will be eligible.

The information contained in the Judgment and Commitment Order is a trusted, official document from the courts and is relied on for far more than issuing a incarceration order. This document is routinely used by the agencies previously discussed and the court in making decisions that directly effect a defendant's life and liberty.

In Martinez's case this document reflects that he has essentially been convicted of the same crime twice in violation of double jeopardy clause. This information is further used as aggravating and/or justifying reasons to deny Martinez of life and liberty in opposition to the 14th Amendment of the United States Constitution.

Essentially the lower court's erroneously seem to believe that the Judgment and Commitment Order is kept in the bubble of influence of the courts. This is not true. As Martinez has established the information contained in the Judgment and Commitment Order is used by multiple government entities to make decisions that directly effect a defendant's life ad liberty. This information will continue to effect his life and liberty even after he is released from BOP custody, and enters supervised release.

The failure of the district court to remove this vacated Count from the Judgment and Commitment Order represents a direct violation of the 14th Amendment's protection against deprivation of life and liberty without due process. In this case due process found that Martinez was not guilty of this Count. Yet, it is still used to deprive him of life and liberty. In using this information to deny him home confinement and compassionate release this information was used to place his life in immediate danger as related to COVID-19. This is even more substantial when this Court considers that Attorney General Barr specifically Identified FCI Danbury where Martinez is incarcerated as a institution o great concern and ordered the BOP to remove as many at risk inmates (like Martinez) as quickly as possible and place them on home confinement. This decision by the Attorney General was unprecedented, but reflects the great dangers faced by inmates like Martinez.

CONCLUSION

For the above reasons this writ of certiorari should be granted .

Respectfully Submitted,

Roberto Martinez Prose
Roberto Martinez, pro se
BOP# 11493-004
FCI Danbury
33 1/2 Pembroke Rd.

Danbury, CT 06811