

United States Supreme Court

8/19/20

CASE No. 19-1197

United States of America

v.

Quentin A. Sheller

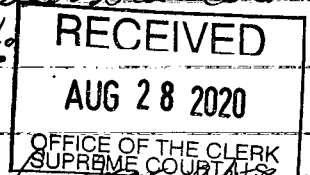
Cal. No. 11-CR 20706

Cv. No. 15-CV 13727

Motion For Petitioner

Directing THE CLERK of this Court to file
PETITIONER'S Petition For CERTIORARI REVIEW
OUT-OF-TIME

Now comes, PETITIONER QUENTIN SHELTER in pro se capacity
SEEKING CERTIORARI REVIEW in the above REFERENCE case
number and under the following in support:



Initially, PETITIONER had a deadline of ~~NOVEMBER 16, 2019~~ to file for CERTIORARI REVIEW, but at the institution
PETITIONER is being housed at due to various institutional
lockdowns PETITIONER had very limited access to law library
and was not in possession of his legal material, the time
period of NOVEMBER 8, 2019 thru February 21, 2020, SEE Attached

me disallowed from petitioner's case manager at the institution.
Petitioner should not be denied as unfairly for
something he had no control over. From February 21, 2020
until May 20, 2020 would be petitioner's 90 day
window to file for ^(write) certiorari, if excused for the
institutional lockdowns. Petitioner is asking the
Honorable Court to grant this motion. If petitioner will
supposed to cite case law in this motion he's asking the
court to excuse him because the institution is under a
COVID-19 modified schedule and movement is barely any.

Certificate of Service

Quentin A. SHERER, pro se, does hereby declare pursuant to
the penalty of perjury 18 U.S.C. § 1746

Date: 8/19/2020

Quentin A. Sherer

Quentin A. SHERER, pro se

Reg. No. # 42673-060

U.S. Penitentiary Big Sandy

P.O. Box 2008

Texas, TX 75824

No. 19-1197

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

QUENTIN SHERER,

Petitioner-Appellant,

V.

UNITED STATES OF AMERICA,

Respondent-Appellee.

FILED
Sep 17, 2019
DEBORAH S. HUNT, Clerk

O R D E R

Before: BATCHELDER, STRANCH, and LARSEN, Circuit Judges.

Quentin Sherer, a federal prisoner, petitions pro se for rehearing of this court's order, entered May 8, 2019 that denied his motion for a certificate of appealability to appeal a district court judgment denying his motion to vacate his sentence, filed under 28 U.S.C. § 2255.

Upon consideration, the court concludes that it did not act under any misapprehension of law or fact in issuing its order. *See* Fed. R. App. P. 40(a).

Accordingly, we **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT

Wm. L. Hunt

Deborah S. Hunt, Clerk

No. 19-1197

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 08, 2019
DEBORAH S. HUNT, Clerk

QUENTIN SHERER,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ORDER

Quentin Sherer, a federal prisoner, petitions for a certificate of appealability to appeal a district court judgment denying his motion to vacate his sentence under 28 U.S.C. § 2255.

In 2012, a jury convicted Sherer of armed bank robbery and using a firearm in a crime of violence. He was sentenced to 240 and 300 months of imprisonment, respectively, to run consecutively. We affirmed the judgment, rejecting Sherer's claims of a Speedy Trial Act violation, insufficiency of the evidence, and unreasonableness of the sentence. The evidence against Sherer and his co-defendant included that the two were known associates who called each other over twenty-five times in the ten days leading up to the robbery, that the co-defendant's DNA was found in the abandoned stolen car used in the robbery, that both defendants' DNA was found on clothing discarded near the car with dye from a dye pack on it, and that the car was stolen from and abandoned in the neighborhood where both defendants lived. Finally, one of the robbers was described as being 5'3" and left-handed, which matches Sherer's characteristics.

This motion to vacate raised twelve claims of ineffective assistance of trial and appellate counsel. The government filed a response and Sherer filed a reply as to two of the claims. The district court denied the motion on the merits. Sherer now petitions for certification of the two claims he argued in his reply below.

In order to receive a certificate of appealability, Sherer must demonstrate that reasonable jurists could debate whether his motion should have been resolved in a different manner. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). In order to raise a meritorious claim of ineffective assistance of counsel, Sherer must show that his counsel's performance was deficient and that his case was prejudiced. *See United States v. Davis*, 306 F.3d 398, 422 (6th Cir. 2002).

Sherer argued that counsel should have objected to the testimony of an FBI agent that the bank surveillance videos showed that the defendants were carrying firearms. Sherer argues that the FBI agent was not an expert in video or photograph analysis. Reasonable jurists could not debate the district court's rejection of this claim because the witness was a certified firearms instructor with twenty-four years of experience as an FBI agent. His testimony identified both firearms' models by their characteristics, including the slides, muzzles, thumb safeties, recoil spring packs, and trigger guards. He testified that the guns were not airsoft guns, as argued by Sherer, because they would have an orange tip or be clear plastic and would have a much smaller barrel. Moreover, co-defendant's counsel thoroughly cross-examined the witness, Sherer did not indicate any additional questioning that was needed, and Sherer's counsel made the argument in closing that the guns were not real. Sherer also argued that counsel should have introduced a report from the FBI firearms and tool mark unit that was inconclusive as to whether the weapons were functional. Reasonable jurists could not debate whether the failure to introduce inconclusive evidence prejudiced the result of the trial.

In his other claim, Sherer argued that counsel should have hired a private investigator to locate an alibi witness. He claims that, at the time of the robbery, he was meeting with a landlord to negotiate a lease for his girlfriend. The claim was unsupported by affidavits from either the girlfriend or the landlord. The district court found that, in light of the overwhelming incriminating evidence, Sherer could not demonstrate prejudice from the failure to locate this alleged witness. Reasonable jurists could not debate the resolution of this claim, because the likelihood of presenting convincing testimony that, three years earlier, at the exact time of the robbery, Sherer had met with the alleged witness is outweighed by the physical evidence of guilt discussed above.

No. 19-1197

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Accordingly, the application for a certificate of appealability is **DENIED**.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written above a horizontal line.

Deborah S. Hunt, Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**