NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

RONALD GEORGE WHITEHOUSE

Petitioner

vs.

THE UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Ronald G. Couch
5005 Colleyville Blvd.
Suite 217
Colleyville, Texas 76034
817-514-4918
817- 514-4919 Fax
SBOT No. 04875600
ronaldcouch@juno.com

QUESTION PRESENTED

1. THE PETITIONER OBJECTED TO THE PROBATION OFFICER'S CONCLUSION THAT THIS DEFENDANT WAS RESPONSIBLE TO 10 KILOS OF METHAMPHETAMINE AS A RESULT OF GIVING A RIDE TOA CO-DEFENDANT. WAS THIS REVERSIBLE ERROR?

TABLE OF CONTENTS

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

INDEX TO APPENDICES

TABLE OF AUTHORITIES

CASES

STATUTES & RULES

v.

NO. _____

IN THE UNITED STATES SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 2020

RONALD GEORGE WHITEHOUSE

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH COURT

Petitioner, RONALD GEORGE WHITEHOUSE, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United

States Court of Appeals for the Fifth Circuit holding that there was no reversible error.

OPINIONS BELOW

The unpublished opinion of the Court of Appeals in this cause appears in Appendix A to this Petition. The docket entries of the District Court for the Northern District of Texas, Fort Worth Division appear in Appendix B to this Petition. Various pleadings relating to Issue One appear as Appendix C. Sentencing Excerpts appear in Appendix D relating to Issue One. Portions of the Pre-Sentence Investigation Report appears in Appendix E. Appendix F contains the Fifth Amendment to the U.S. Constitution.

JURISDICTION

The opinion of the Court of Appeals in this matter was filed on April 21, 2021. The Court's jurisdiction is invoked under Title 28, U.S.C. Section 1254(1) and Rule 10 of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution: "No person shall be...deprived of life, liberty, or property without due process of law..."

STATEMENT OF THE CASE

The Petitioner was charged in the Northern District of Texas on October 11, 2019 in a criminal complaint charging the defendant and several others in a one count information for the offense of Possession with Intent to Distribute and to Possess a Controlled Substance in violation of 21 U.S.C Section 846 (21 U.S.C. 841 (a)(1) and (b)(1)(B) alleging that the defendant did knowingly and intentionally possess with intent to distribute methamphetamine, a Schedule II controlled substance. On December 11, 2019, a three count information was filed in the Northern District of Texas. Defendant Whitehouse was named in Count Two of the information along with several other defendants. ROA.24

On February 13, 2020, defendant Whitehouse entered a plea of guilty before U.S. District Judge John R. McBryde to Count Two of the information. The Petitioner entered a plea of guilty to the information and

was adjudged guilty. The plea papers consisted of a Factual Resume and a Plea Agreement. ROA 258

This Petitioner's case along with several other defendants were

transferred to Judge Mark Pittman on May 25, 2020. ROA 5

The Presentence Investigation Report concluded that Whitehouse in Paragraph 25 picked up co-defendant Zavala Quintana, a nephew of co-defendant Quezada, in Amarillo, Texas and drove him back to Fort Worth in Whitehouse's vehicle. The Probation Officer concluded that Whitehouse is responsible to 10 kilos of methamphetamine based on driving Quintana to Fort Worth by concluded that it was reasonably foreseeable to Whitehouse that Quintana was transporting methamphetamine in a bag. The defense objected to para 25. ROA. 292

The defense argued that the alleged 10 kilos was never intercepted, never tested and no one was arrested. The objection also raised the issue as to the age difference between defendant Whitehouse and Quintana that being 39-40 years of age for the defendant Whitehouse and 19 to years old for Quintana in regards to foreseeability.

The Objection argued that Whitehouse's sentence calculation should have started at level 26. ROA. 292

At sentencing, the Judge Pittman overruled the defense's objection.

4.

ROA. 238 The Judge invited the AUSA to respond to the defense's argument but the AUSA only invited the Court to review the details in the government's Complaint which is not evidence. The AUSA did not recite anything from the Complaint. The AUSA did not call a case agent to refute the defenses position or present any documents. The Court noted that age difference was an interesting argument.

The Judge departed downward from the cap of 240 months to 224 based on testimony of a witness but which is not relevant to this appeal. ROA. 251

The Petitioner gave Notice of Appeal on June 19, 2020. ROA. 63

REASONS FOR GRANTING THE WRIT

Whitehouse objected to the PSR (ROA 292) finding on the basis that even if Quintana was carrying anything, it was not intercepted, weighed, tested or photographed. No one was arrested. Nothing was searched. In short, if Quintana was carrying anything, it vanished into the night. Virtually all of Whitehouse's involvement in the conspiracy was based on a five hour drive.

It is well established that district courts must consider the extent to which a larger drug enterprise is reasonably foreseeable to defendants involved in small or isolated transactions. See, e.g. United States v. Mickens, 926 F. 2d 1323, 1332(2d Cir. 1991), cert. denied, __U.S, ____, 112 S. Ct. 940, 117 L. Ed. 2d 111(1992); United States v. Edwards, 945 F.2d 1387, 1394(7th Cir. 1991), cert. denied, ____U.S. ___, 112 S. Ct. 1590,

118 L. Ed. 2d 308 (1992); United States v. North, 900 F, 2d 131,134 (8th Cir. 1990), *see* U.S.S.G Section 1B1.3.

In United States v. Mitchell, 964 F.2d 454 (5th Cir. 1992) the Court remanded for resentencing as it could not conclude that on the facts established in the record the full extent of the conspiracy was reasonably

foreseeable to the defendant. The Court stated at "….. there is only the barest evidence that Mitchell had a relationship with Cook and Weber and there is no indication of the regularity of his purchases, the amounts he purchased, or the length of time he had been associated with his suppliers." In this case, there was no information concerning the length of time Whitehouse knew Quintana. In fact the best evidence presented at sentencing was that Quintana was a stranger to Whitehouse. Also, the undersigned represented to the Court that at the time of the ride with Whitehouse, Quintana was 19 or 20 years of age which information he received from the Probation Officer on the day of sentencing. Whitehouse would have been 38 or 39 years of age. The undersigned would submit that it is less foreseeable that a younger person would have such a large quantity of drugs in his possession as opposed to the reverse.

In U.S. v. Davenport, 1994 U.S. App, LEXIS 42884, citing Mitchell, the Court vacated the sentence based on the fact that the record was devoid of evidence that she (defendant) could have foreseen either the type of the drug or the quantity. See also, U.S. v. Evbuomwan, 972 F2d. 3d 70 (5th. Cir. 1993)

Also, in United States v. Waters, 885 U.S. 1266 (5th Cir. 1989) the

Court remanded as the district court was required to make a finding of the amount that defendant knew or should or have known or foreseen was involved. Id. at 1273. See also, United States v. Thompson, 944 F2d 1331(7th Cir. 1991)(district court must make a determination of amounts that were reasonably foreseeable to defendants). at 1343-44.

In this case, a meaningful hearing would have at minimum the testimony of the case agent, or 302s or testimony from Quintana or some other witness to establish the relation between Quintana and defendant Whitehouse, if any. Instead the AUSA merely read paragraphs from the criminal Complaint to the Court. ROA 236 Once the dispute is raised, which it was by the objection to the PSR, the Court is required to resolve the dispute, which the Court failed to do. U.S. v. Puma, 937 F.2d 151, 159-180(5th Cir. 1991); U.S. v. Bone, 1996 U.S. App. LEXIS 43180; U.S. v.

Foy, 28 F. 3d 464, 1994 U.S. App. LEXIS 19763 ; U.S. v. Sherbak, 950 F.2d 1095 -1992 U.S. App. LEXIS 160.

The Court of Appeals for the Fifth Circuit concluded in its opinion that the Petitioner did not refute the conclusions of the PSR as to the drug quantity allegedly transported by the Appellant. The Petitioner raised the issue by his objection to the PSR conclusions but the trial Court denied the

Petitioner a hearing on this objection. An exchange between the Court and the Assistant District Attorney on the record is *not* a hearing. The Petitioner was denied Due Process.

In it's Opinion, the lower court cited U.S. v. Barfield, 941 F.3d 757 (2019). In Barfield, the Court concluded that there was sufficient indicia of reliability in the drug calculation based mostly on Barfield's post arrest admission relating to quantities. at 763. Petitioner in this case made no such statements and the record is devoid of any mention of 10 kilos attributable to the Petitioner until the PSR was published. The Court in Barfield, cited U.S. v. Elwood, 999 F.2d 814 (1993) which Court stated in it's opinion that, "bald, conclusionary statements do not acquire the patina of reliability by mere inclusion in the PSR".

Whitehouse was entitled to a factual hearing on his PSR Objection which he did not receive.

CONCLUSION

For reasons set forth above a Writ of Certiorari should be issued to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in this matter.

Dated: September 16, 2021.

Respectfully submitted,

_s/RONALD G. COUCH
RONALD G. COUCH
Attorney for Petitioner

RONALD GEORGE WHITEHOUSE

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

RONALD GEORGE WHITEHOUSE

Petitioner

vs.

THE UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMITATIONS

I, Ronald G. Couch, hereby certify that the Petition for Writ of Certiorari in the above-captioned case contains 2067 words excluding the parts of the petition that are exempt by Rule 33.1(d).

Respectfully submitted,

/s/RONALD G. COUCH
RONALD G. COUCH
Attorney for Petitioner
5005 Colleyville Blvd.
Suite 217
Colleyville, Texas 76034
SBOT 0475600
817-514-4918
ronaldcouch@juno.com