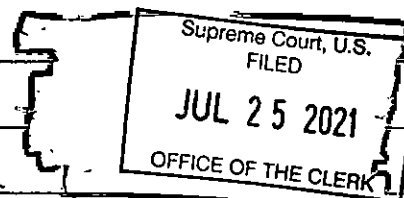


No. **21-5766**
SUPREME COURT of the UNITED STATES

DIONTE DORTCH,
PETITIONER

v
UNITED STATES OF AMERICA

RESPONDENT

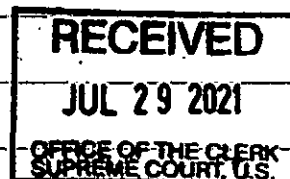


ORIGINAL

ON Petition for a WRIT of CERTIORARI
to the United States Court of Appeals
for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

Submitted PRO SE
by Dionte Dortch



QUESTION PRESENTED

I. WHETHER THE DUE PROCESS CLAUSE AND THE SIXTH AMENDMENT PROTECTS THE ACCUSED FROM A PLEA OF GUILTY TO MATERIAL FACTS OF SIMPLE POSSESSION OF COCAINE AND SIMPLE POSSESSION OF A FIREARM AS PREDICATE ACTS UNDER THE RICO STATUTE.

PARTIES TO THE PROCEEDINGS

PETITIONER IS DIONTE DORTCH, WHO WAS THE PETITIONER-APPELLANT IN THE COURT BELOW.

RESPONDENT IS THE UNITED STATES OF AMERICA, WHO WAS THE RESPONDENT-APPELLEE IN THE COURT BELOW.

STATEMENT OF RELATED PROCEEDINGS

1. UNITED STATES OF AMERICA v. DIONTE DORTCH, No 16CR253
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT
OF NEBRASKA. MR. DORTCH PLEAD GUILTY ON
AND WAS SENTENCED TO 240 MONTHS ON

2. MR. DORTCH PER THE PLEA AGREEMENT DID NOT APPEAL
HIS SENTENCE OR CONVICTION.

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PETITION FOR WRIT OF CERTIORARI

PETITIONER DIONTE DORTCH SEEKS A WRIT OF CERTIORARI TO REVIEW THE JUDGEMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

OPINIONS BELOW

THE JUDGEMENT OF THE EIGHTH CIRCUIT COURT OF APPEALS IS LOCATED AT APPENDIX A. THE DISTRICT COURT OF NEBRASKA DENIED 2255 HABEAS RELIEF THE ORDER IS ATTACHED AS APPENDIX B

JURISDICTION

THE PANEL OPINION AND JUDGEMENT WERE ENTERED ON APRIL 8, 2021. THIS HONORABLE COURT HAS JURISDICTION PURSUANT TO 28 USC 1254

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

THIS PETITION INVOLVES THE FIFTH AND SIXTH AMENDMENTS THAT CRIMINAL DEFENDANTS GUILTY PLEA MUST BE KNOWING AND INTELLIGENT WITH THE ASSISTANCE OF COUNSEL FOR THE DEFENCE.

THE PETITION ALSO INVOLVES THE SIXTH AMENDMENT'S GUARANTEE THAT CRIMINAL DEFENDANTS REPRESENTATION HAS TO BE WITHOUT A CONFLICT OF INTEREST

STATEMENT OF THE CASE

ON JANUARY 27, 2016 THE GOVERNMENT INDICTED DORTCH (THE ONLY 44TH AVENUE CRIP) AND MEMBERS OF THE 40TH AVENUE CRIPS ALLEGING THE 40TH AVENUE AND THE 44TH AVENUE HAD FORMED AN ENTERPRISE THAT SOUGHT TO FINANCIALLY SUPPORT ENTERPRISE MEMBERS.

MR. DORTCH WAS REPRESENTED BY APPOINTED COUNSEL KELLY M. STEENBOCK FILED SEVERAL PRETRIAL MOTIONS TO DISMISS THE INDICTMENT, ALLEGING THE PREDICATE ACTS COMMITTED BY DORTCH DID NOT CONSTITUTE RICO PREDICATE ACTS. THE GOVERNMENT HAD ALLEGED DORTCH MERELY POSSESSED A GUN ON THREE OCCASION AND THE MERE POSSESSION OF COCAINE WERE ACTS DORTCH COMMITTED AS PART OF THE RICO. ALL OF STEENBOCK'S PRETRIAL MOTIONS WERE DENIED.

AT THE SAME TIME, MS. STEENBOCK ALSO REPRESENTED ANOTHER MEMBER OF THE RICO, 40TH AVENUE CRIP GANG MEMBER ANTOINE GAYE.

AT NO TIME, DURING TRIAL PROCEEDINGS DID STEENBOCK INFORM MR. DORTCH OR THE COURT THAT SHE WAS UNDER A CONFLICT OF INTEREST BY REPRESENTING BOTH A 40TH AND 44TH AVENUE CRIPS ALTHOUGH THE INDICTMENT ALLEGED THE TWO GANGS HAD "CLIQUEED UP" TO FORM AN ENTERPRISE, AND BOTH WERE CHARGED WITH EX-FELON IN POSSESSION OF A FIREARM.

IT SHOULD BE NOTED, EX-FELON IN POSSESSION, THE GOVERNMENT ALLEGED AND MR. DORTCH PLEAD WAS IN FURTHERANCE OF THE CHARGED RICO. SEE APP A

The factual basis for the RICO plea of guilty contained two criminal acts- simple possession of cocaine and simple possession of a firearm, that Supreme Court precedence mandates cannot be used as a factual basis in a guilty plea. Render the plea unintelligent?

1 The Government Concedes Error

At the district court, the Government admitted "Dortch further claimed that simple possession of drugs and a firearm are themselves not 'racketeering activity' as defined in the statute." (filing No. 716)

1) Here again, Dortch does not deny that he did in fact possess the drugs and guns as explained in the plea ~~agreement~~. Dortch is correct that those acts are not within the definition of 'racketeering activity' but nobody has ever told Dortch that they were.

Right after conceding, the Government makes the disingenuous "Likewise, the factual basis listed several things that Dortch admitted were done as part of the RICO conspiracy, but there is no requirement that each of those acts must themselves be part of the pattern of racketeering activity."

In other words, the factual basis in a plea agreement, can be an outright lie.

REASONS TO GRANT THIS PETITION

The Eighth Circuit Court of Appeals has refused to find it debatable "what the defendant and [district] judge must have understood as the factual basis of the [Rule 11] plea," DESCAMPS v United States 133 S Ct 2276 (2016), as reflected in the signed plea agreement.

The Constitutional right at the heart of this case, effective assistance during the pre-trial process, is central to our justice system.

Dionte Dortch has plead guilty to a 20 year prison sentence in which he was misled as to which crimes, in his case (simple possession of cocaine and simple possession of a firearm), constituted predicate acts of the charged RICO.

The plea agreement, in itself, can never be fraudulent, perjurious or contain "inaccuracies" that do not put the Government to its proof is among the "vouchsafed basic minimal rights secured by the Due Process Clause, Rideau v. Louisiana 373 US 723, 726 (1963), and since Dortch was represented by counsel the Sixth Amendment protects him.

The district court's avoidance of the Government's concession, nor the Eighth Circuit Court of Appeals

SUMMARY AFFIRMANCE, WEAKEN THIS COURT'S PROTECTION
OF CRIMINAL DEFENDANTS RIGHTS

Although I am now PRO SE AT HABEAS I PLEAD IN THIS
DAY IN AGE WHERE GANG MEMBERS ARE ROUTINELY CHARGED
WITH THE COMPLICATED RICO STATUTE SHOULD NOT BE
BY THE VERY PLEA AGREEMENT ITSELF.

SUMMARY OF ARGUMENT

I. When the accused chooses to plead guilty under the RICO statute, the "factual basis" CAN NOT state the mere possession of cocaine and the mere possession of a firearm, were four of the predicate acts committed through a pattern of racketeering activity.

Petitioner's guilty plea agreement found in the trial record contains a fundamental miscarriage of justice that allowed Petitioner to be convicted for crimes under the RICO statute, that this Court has strictly prohibited the Government from using.

At the first opportunity Petitioner has raised that his lawyer was prejudicially deficient in advising Petitioner to plead guilty to predicate acts that can not form the basis of racketeering activity.

MOREOVER Petitioner has sworn if he had known simple possession of cocaine and simple possession of a firearm were not predicate acts in the RICO, he would have proceeded to trial.

The habeas court "paid lip service to the principles guiding issuance of a CDA" TENNARD V DRETKE 542 US 274, 283 (2004), in that reasonable jurist could find

that A plea agreement with a defective factual basis constituted ineffective assistance as it would be debatable amongst reasonable jurist.

The plea agreement factual basis included:

- 1). BEING IN SIMPLE POSSESSION OF COCAINE ON 10/28/2014
- 2). BEING IN SIMPLE POSSESSION OF A FIREARM ON 2/7/2009
- 3). BEING IN SIMPLE POSSESSION OF A FIREARM ON 4/23/2015
- 4). BEING IN SIMPLE POSSESSION OF A FIREARM ON 12/21/2011

Reasonable jurist would find being in mere possession is not a predicate act under the RICO statute to which Petitioner plead guilty. SEE 18 USC 1962 (d).

The plea agreement supports a COA as "ANY EVIDENCE" showing the plea was based upon a faulty premise that simple possession of cocaine or a firearm established predicate acts under RICO

As this Court stressed in Miller-El the threshold nature of the COA inquiry would mean very little if appellate review were denied because a defendant did not convince a judge, or three judges that Petitioner would prevail is almost besides the point when as here the Court is confronted with a blatant violation of due process in the record

IN WHICH THE ACCEPTED UNDER RULE 11, PLEA AGREEMENT CONTAIN A FACTUAL INACCURACY THAT MISLEAD PETITIONER INTO BELIEVING SIMPLE POSSESSION OF COCAINE OR A FIREARM QUALIFY AS PREDICATE CRIMINAL ACTS UNDER THE RICO STATUTE.

THE DEFECTIVE PLEA AGREEMENT WARRANTED FURTHER REVIEW THAT PETITIONER'S ALLEGATION "SET UP AN EXTRAORDINARY SITUATION," ACKERMAN V. UNITED STATES 340 US 193, 199 (1950) IN WHICH ANY REVIEWING COURT COULD TRANSPARENTLY DETERMINE BASED UPON MATERIAL FACTS 1 THRU 4 OF SIGNED PLEA AGREEMENT, THAT THE DEA WAS NOT ENTERED INTO KNOWINGLY AND INTELLIGENTLY IN LIGHT OF THE UNREBUTED TESTIMONY OF PETITIONER THAT HE WOULD HAVE CHOSEN TO PROCEED TO TRIAL IF HE HAD KNOWN SIMPLE POSSESSION CRIMINAL ACTS DID NOT QUALIFY AS PREDICATE CRIMES UNDER THE RICO STATUTE.

A. THE DISTRICT COURT IMPROPERLY SIDESTEPED THE CLAIM. THE HABEAS COURT IMPERMISSIBLY AVOIDED ADDRESSING THE IMPLICATIONS OF A PLEA AGREEMENT WHICH UPON ITS VERY FACE ESTABLISHES A DUE PROCESS VIOLATION AS IT QUALIFIES "MERE POSSESSION AS A PREDICATE CRIME UNDER THE RICO STATUTE

AS STATED EARLIER THE PLEA AGREEMENT IS DEFECTIVE AS IT LIST MERE POSSESSION FOUR TIMES AS PREDICATE ACTS, THE "RIGHT

to effective assistance of counsel is a bedrock principle in our justice system.

It should be a matter of concern whenever a fraudulent plea agreement criminalizes conduct that the Supreme Court has determined does not qualify under the specifically charged RICO Statute, undermines the integrity of both the Petitioner's RICO Statute conviction and the criminal justice system overall.

CONCLUSION

For all of the foregoing reasons, Petitioner's 2255 motion should have been granted once the Government conceded the plea agreement contained a material misrepresentation of fact - that simple possession of cocaine and a firearm qualified as predicate acts under the RICO Statute. At a minimum, reasonable jurist could conclude, which means a COA must issue. This Court's review is necessary to maintain public confidence in the Courts.

Respectfully submitted this 3rd day of July 2021

LSI Dionte Dortch

Dionte Dortch

