

NO. 21-5930

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

ALBERT M. RANIERI--Petitioner
vs.
WARDEN, F.C.I. LORETTA--Respondent

FILED
OCT 04 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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

ALBERT M. RANIERI
FCI LORETTA
PO BOX 1000
CRESSON, PA 16630

QUESTIONS PRESENTED

- 1) Is the VWPA the controlling law regarding payment of the Order of Restitution in the underlying criminal action and is the Ex Post Facto Clause of the Constitution being violated by the Federal Bureau of Prisons?

- 2) Is the MVRA the controlling law regarding payment of the Order of Restitution in the underlying criminal action and is 18 USC 3613(b) ambiguous resulting in the Petitioner being punished for 47 years when his plea agreement says his punishment will be for 30 years?

LIST OF PARTIES

All parties appear in the caption of the case on the
cover page.

JURISDICTION
28 USC 1254(1)

The date when the United States Court of Appeals decided your case.
• Order issued September 23, 2021.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Coady v. Vaughn, 251 F. 3d 480, 485 (3d Cir. 2001).

Lovander v. United States, 358 U.S. 169 3 L. Ed. 2d 199, 79 S. Ct. 209 (1958).

Simmons v. Himmelreich, 136 S. Ct. 1843, 1848, 195 L. Ed. 2d 106 (2016).

United States v. Hardy, 707 F. Supp. 2d 597, 502 (W.D. Pa. 2010).

United States v. Holmes, 193 F. 3d 200, 1999 U.S. App. LEXIS 24290 (3d Cir. 1999).

United States v. Martin, 788 F. 2d 184, 1986 U.S. App. LEXIS 24489 (3d Cir. 1986).

United States v. Seligsohn, 981 F. 2d 1418, 1992 U.S. App. LEXIS 32183 (3d Cir. 1992).

Rule 11(b)(1)(K)

Mandatory Victims Restitution Act

Victim and Witness Protection Act

STATEMENT OF THE CASE

REASONS FOR GRANTING THE PETITION

Petitioner is incarcerated at FCI Loretto, PO Box 1000, Cresson, PA 16630. Petitioner pled guilty December 3, 2002 and was sentenced April 17, 2003 in the United States District Court in Western New York--Rochester to a term of 360 months with 5 years of supervised release for violation of 18 USC 1962(d).

Petitioner understood restitution was required to be ordered as part of his plea for the homicide of Anthony Vaccaro under Section 3663A. The sentencing court asked the AUSA about restitution at the plea hearing for the Vaccaro homicide. See plea hearing transcript, page 33, lines 22, 23, 24, 25; page 34, lines 1-2. This is at Exhibit 1A. Petitioner included the sentencing transcript to show there was no mention of what authority the sentencing court used to order restitution at Petitioner's sentencing hearing. See Exhibit 1B.

The AUSA brings up restitution again at Exhibit 1A, page 37, lines 24-25; all of page 38, to page 39, lines 1-2. In this part of the plea hearing the AUSA and the sentencing court talk about how the Court could possibly order restitution for the armored truck robbery on June 26, 1990 known as the AMSA robbery without identifying what authority restitution would be ordered under. The name of the armored truck company was Armored Motor Service of America (AMSA). Not only was the sentencing court unsure if it was going to order restitution for the armored truck robbery, Petitioner had no clue restitution was possibly going to be ordered until that moment at the plea hearing. The attorney of

record told the Petitioner, right in court, to just say yes when questioned by the Court.

At the plea hearing the attorney of record said, "I think that there's a broad range of authority; some of it's mandated, some of it's discretionary." See Exhibit 1A, page 38, lines 16-17.

Through discussion over the years Petitioner has had with other inmates, Petitioner learned about the VWPA and MVRA. Petitioner has read Rule 11(b)(1)(K) and feels the sentencing court never informed Petitioner what authority the sentencing court was using to order restitution for the AMSA robbery going to Loyd's of London and Armored Motor Service of America.

On March 7, 2018 Petitioner filed a BP-8½ asking when his obligation to pay restitution would end. See Exhibit 2A. The response from the BOP was Petitioner has an obligation to pay restitution for 20 years after his release from prison.

On March 11, 2018 petitioner filed a BP-9 appealing the decision of the 8½. See Exhibit 2B. The response from the Warden was the same as the response on the 8½.

On April 12, 2018 Petitioner filed a BP-10 appealing the Warden's decision. See Exhibit 2C. The Regional Director's response said Petitioner's obligation to pay restitution expired on February 17, 2047 at which time Petitioner will be 83 years old. This seem like an awfully long time to be punished.

On May 24, 2018 Petitioner filed a BP-11 appealing the Regional Director's decision. See Exhibit 2D. The Central Office agreed with the Regional Director.

Petitioner filed a Petition under 28 USC 2241 with a brief in support on November 19, 2018 arguing his obligation to pay restitution to Armored Motor Service of America for \$12,500 and Loyd's of London for \$7,401,931 should end 20 years from the entry of judgment. See Exhibit 3.

The U.S. Attorney's office argued that the restitution order in Petitioner's case was under the MVRA and that the case should be dismissed because Petitioner is obligated to pay restitution for 20 years after he is released.

Petitioner filed a response in opposition. Petitioner pointed out that even if the order is under the MVRA there is still a problem with their argument. See Exhibit 4, page 14, paragraph 2, lines 3-5.

Title 18 USC 3613(b) says, "The liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release of imprisonment of the person ordered to pay restitution." The word "or" where it says, "20 years from the entry of judgment or 20 years after the release," is used to indicate an alternative. Examples: sink or swim, black or white, night or day, dead or alive. "Absent persuasive indications of the contrary, we presume Congress says what it means and means what it says." See Simmons v. Himmelreich, 136 S. Ct. 1843, 1848, 195 L. Ed. 2d 106 (2016).

The courts, while construing an ambiguous criminal statute that sets out multiple or inconsistent punishment, should resolve the ambiguity in the favor of the more lenient punishments. See Lovander Ladner v. United States, 358 U.S. 169,

3 L. Ed. 2d 199, 79 S. Ct. 209 (1958). "A policy of lenity will be applied and the less harsh meaning of a criminal statute will be adopted where neither the wording of the statute nor its legislative history points clearly either to the harsher or to the less harsh meaning." "When Congress leaves to the judiciary the task of imputing to Congress the undeclared will, the ambiguity should be resolved in favor of lenity."

The Third Circuit Court of Appeals has determined that a restitution order is to be imposed for each crime under the "act" that is in effect at the time of the crime. See United States v. Holmes, 193 F. 3d 200, 1999 U.S. App. LEXIS 24290 (3d Cir. 1999); United States v. Seligsohn, 981 F. 2d 1418, 1992 U.S. App. LEXIS 32183 (3d Cir. 1992); and United States v. Martin, 788 F. 2d 184, 1986 U.S. App. LEXIS 24489 (3d Cir. 1986).

All of the defendants in the above three cases are just like Petitioner's case. There are crimes under two restitution acts and if restitution has been ordered under the MVRA to Armored Motor Service of America and Loyd's of London this is an ex post facto violation according to the Third Circuit Court of Appeals.

If restitution for Loyd's of London is under the MVRA then the sentencing court should have ordered restitution for the whole loss of \$10,833,842.53. The AUSA who responded to the petition filed in the District Court said the sentencing court could apportion the loss among the defendants and cited United States v. Hardy, 707 F. Supp. 2d 597, 502 (W.D. Pa. 2010).

Petitioner agreed with the AUSA except for Petitioner is the only

defendant in this case therefore the sentencing court was mandated to order full restitution of \$10,833,842.53 if the order is under the MVRA, however, the sentencing court ordered restitution for \$7,401,931 to Loyd's of London.

Whichever act restitution was ordered under, restitution was to start immediately ordered by the sentencing court, and it has been over 20 years that Petitioner has been paying and feels the restitution order has expired no matter what act it is under.

The District Court of Western Pennsylvania ruled it had no jurisdiction to hear the case. See Exhibit 5.

The District Court has jurisdiction which Petitioner pointed out in Exhibit 4, page 2, first paragraph, under JURISDICTIONAL STATEMENT. Petitioner cited Coady v. Vaughn, 251 F. 3d 480, 485 (3d Cir. 2001).

Petitioner filed an appeal with the Third Circuit Court of Appeals. The Court ruled it had no jurisdiction and said Petitioner was not clear, unambiguous, and unequivocal in giving his consent to let the Magistrate hear the case. See Exhibit 6.

Petitioner filed a motion for reconsideration to which the Third Circuit Court of Appeals denied with no explanation. See Exhibit 7.

Petitioner's argument is when the robbery happened the lesser twenty year statute of limitations, VWPA, was on the books. Because the question hinges on the ex post facto claim the call should go in favor of the Petitioner under the rule of lenity.

Petitioner should have received a decision on the merits of his habeas corpus petition to avoid passing on, unnecessarily,

on undecided constitutional question.

In Porter v. Zook, 803 F3d 694 (4th Cir. 2015), the Court of Appeals remanded the case to the district court for a decision on all issues presented in the habeas corpus petition. The Court stated, "Ordinarily, a district court order is not 'final' until it has resolved all claims."

As it stands Petitioner has been sentenced to 30 years of incarceration with an additional 17 years of punishment added on outside of his plea agreement.

Petitioner with the inability to pay could result in the suspension of his right to vote, continued court supervision, or even reincarceration.

It seems fundamentally unfair for Petitioner to be told, after years of incarceration, he faces years of additional punishment, until he's 83 years old, before the liability ends so he can get all of this behind him and try and move on with the rest of his life.

CONCLUSION

WHEREFORE, the Petitioner, Albert M. Ranieri, pro se, does humbly ask this Honorable Court to GRANT this Petitioner for a Writ of Certiorari for all of the above reasons and any which the Court may consider sua sponte regarding the Federal Bureau of Prisons' interpretation of the statutory law and their Program Statements which affect this issue, finding that the VWPA is the controlling law regarding payment of the Order of Restitution in the underlying criminal action and that the Ex Post Facto Clause

of the Constitution is being violated by the Federal Bureau of
Prisons' position in this matter.

Dated: October 3, 2021

Respectfully submitted,

Albert M. Ranieri

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