

21-6357

No. #19-7803

DISTRICT COURT OF SOUTH CAROLINA
AND
4th CIRCUIT COURT OF APPEALS

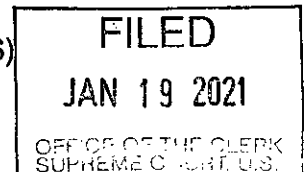
IN THE
SUPREME COURT OF THE UNITED STATES

Kenneth Roshawn Reid — PETITIONER
(Your Name)

ORIGINAL

vs.
Solicitor General — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO



4th Circuit Court of Appeals Vacated and Remanded back to
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)
District Court of South Carolina, but no hearing was given to Mr. Reid
PETITION FOR WRIT OF CERTIORARI

Kenneth Roshawn Reid
(Your Name)

P.O. Box 3900 USP Victorville
(Address)

Adelanto CA, 92301
(City, State, Zip Code)

N/A
(Phone Number)

Main Question for Review: (District Courts Abuse of discretion) Ca'

① CLAIM

When Case[#] 19-7803 was Vacated and Remanded back to the District Court of South Carolina by the 4th Circuit Court of Appeals, justices for reconsideration Should Mr. Reid have been given a fair hearing, chance to secure counsel, opportunity to object to the USPO's Amended Guideline Calculations in accordance to the Fair Sentencing Act of 2010. For or to Count 1.

②

And Since Mr. Reid is eligible for relief under the FSA of 2018 he should have been given the Application of the Fair Sentencing Act of 2010 to Count 1 by his Court Appointed Attorney, the Court.

③

District Court should have brought Mr. Reid back to Court for the resentencing hearing or reconsideration hearing for the Application of the Fair Sentencing Act of 2010 to Count 1 and Not denied Mr. Reid the opportunity to object to the Amended Guideline Calculation, right to secure counsel, or consult with counsel, right to challenge the §3553(a) Sentencing factors that the District Court used to deny Mr. Reid relief.

④

District Court is in error for denying Mr. Reid Application of the law (Fair Sentencing Act of 2010, Denying Mr. Reid the right to be present at the Resentencing hearing given on some unknown date. The Court never gave Mr. Reid "Notice" of a hearing for the Application of Fair Sentencing Act of 2010,

②

QUESTION(S) PRESENTED

- 1) When the 4th Circuit Court of Appeals Vacated and Remanded Case #19-7803 back to the District Court shouldn't the district Court have given Mr. Reid a Fair hearing for resentencing, Notice and brought his body back to Court so he could be present, secured Counsel to represent him in the Application of the "Fair Sentencing Act of 2010" to Count 1.
- 2) By law the District Court cannot deny Mr. Reid the Application of the law (Fair Sentencing Act of 2010) its retroactively Applicable to Count 1, because Mr. Reid was charged with a "Covered offense" under the FSA.
- 3) Since the 4th Circuit Court of Appeals made a decision to Vacate and Remand Case #19-7803 for reconsiderations shouldn't it have given instructions to the District Court to give relief under the FSA to Mr. Reid who was clearly eligible for relief and a full resentencing.
- 4) District Court violated the Mandate rule on Case #19-7803 by denying Mr. Reid FSA Act of 2010 relief, a eligible defendant proper resentencing hearing, relief
- 5) In light of the "Fair Sentencing Act of 2010" Count 1 must be dismissed in its entirety. "Vacated" sentence, conviction on Count 1.
- 6) Mr. Reid had a right to challenge the USPO's Amended Guideline Calculation of Count 1 in accords with the Application of the Fair Sentencing Act of 2010 U.S. v. Building right to object to the Amended Guideline Calculations of Count 1.

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:

RELATED CASES

Alleyne v. United States 570 US 99 (2013)

Apprendi v. New Jersey 466 US __ (2000)

Collins v. United States 415 F3d 312 (2005 4th Cir)

United States v. Boulding

FIRST STEP ACT OF 2018 § 404(a) sec 2-3 Fair Sentencing Act of 2010

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My Question to the U.S. Supreme Court is ?

How can a district Court have discretion to deny the Application of the Law

It's a Law - The Fair Sentencing Act of 2010 - A law is applicable to specific statutes
The statute is the law. The FSA modified statutory penalties for all defendants charged
with 21 USC § 841(b)(1)(A), 21 USC § 841(b)(1)(B), 21 USC § 841(b)(1)(C)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Alleyne v. United States</i> 570 US 99 (2013)	
<i>Apprendi v. New Jersey</i> 466 US — (2000)	
"Fair Sentencing Act of 2010" New Crack Cocaine Law	

STATUTES AND RULES	
First Step Act of 2018 Section 404 (a) section 2-3's	
<u>Fair Sentencing Act of 2010</u> — statutory Law	
Created by Congress, legislature	
21 USC § 841 (b)(1)(A)	
21 USC § 841 (b)(1)(B)	
21 USC § 841 (b)(1)(C)	
21 USC § 846	
21 USC § 841 (a)(1)	

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 #19-7803; 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 #19-7803; 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 NA; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the NA 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 Sept 30, 2020 the first time it was vacated and remanded
and the District Court denied me on some unknown date

☒ 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIRST STEP ACT OF 2018 Section 404(a) Section 2-3's
"FAIR SENTENCING ACT OF 2010"
Which is statutory law

All Petitioner wants in this case is an Application of the New Crack Cocaine laws - Fair Sentencing Act of 2010 since it is retroactively Applicable to Count 1 - See Count 1. This Court can Appoint Counsel or Order the Appeals Court to Vacate sentence on Count 1 in its entirety Order the Appeals Court give Mr. Reid a fair sentencing hearing, Counsel Appointed to represent him fairly. He is eligible Statutorily eligible for relief.

(On Remand of case #19-7803)

Bottom line is - Mr. Reid didn't get to attend the resentencing hearing for the Application of the Fair Sentencing Act 2010 to Count 1 neither did Counsel Consult with him at all, Mr. Reid didn't get a fair resentencing hearing for case #19-7803 and District Court violated his procedural due process by not allowing Mr. Reid presence at the hearing that was held on some unknown date.

There was no notice of a resentencing hearing sent to Mr. Reid at all to USP Victorville nor was there a Suppeana from the Courts or U.S. Marshals service to pick Mr. Reid up for transfer back to the District Court of South Carolina for resentencing/reconsideration hearing on Remand of case #19-7803

STATEMENT OF THE CASE

On Sept 30, 2020 Case #19-7803 was Vacated and Remanded back to the District Court of South Carolina by the Fourth Circuit Court of Appeals (per curiam). But the District did not bring Mr. Reid back to Court by way of Supremea they left him in USP Victorville in Federal Prison and didn't allow him to attend the resentencing hearing at all and denied him relief based on § 3553(a) Sentencing factors which was the same reason the district Court had denied Mr. Reid relief prior to the case 19-7803 being Vacated and Remanded by the 4th Circuit Court of Appeals Justices Diaz, Wynn, Motz which was the ruling of the whole Appeals Court. Upon Remand of the case Mr. Reid was not allowed to participate in the resentencing proceedings at all. Mr. Reid was denied the procedural due process by the Courts. The lower Court never gave Mr. Reid a chance to Object to the USPO's "Amended Guideline Calculations" of Count 1 which were erroneous, fabricated. Mr. Reid's Court Appointed Attorney Katherine E. Eratt refused to consult with Mr. Reid at all and Abandoned him totally even after case #19-7803 was Vacated and Remanded Mr. Reid's Counsel still did not contact him or his family who were trying to reach out to her over the phone. Mr. Reid's sentence was Vacated but the District Court did not send the U.S. Marshals to get Mr. Reid from USP Victorville California so he never got his day in Court.

REASONS FOR GRANTING THE PETITION

- 1) Mr. Reid was charged with a "Covered offense" in Count 1
- 2) Mr Reid is eligible for relief, he is statutorily eligible §404(a)
- 3) The Fair Sentencing Act of 2010 is law, Statutory law
- 4) The statutory penalties (Charged in Cant 1) were changed by legislature Congress by an act in accords with the United States Constitution itself.
- 5) Mr. Reid deserves a full resentencing hearing
- 6) Mr Reid was sentenced under an Unfair Sentencing disparity and unfair Crack Cocaine laws that targeted African Americans only
- 7) Without the Jury finding a drug Quantity the USPO clearly made up the "Amended Guideline Calculation" for Cant 1
- 8) The District Court violated Blakely v. Washington by imposing a statutory maximum sentence for a violation of federal Criminal statute 21 USC § 841(b)(1)(C) when without a drug quantity finding by the Jury "On Jury Verdict Form to Justify a 20 year statutory maximum sentence.
- 9) There was No drug Quantity finding by the Jury to drive the sentence
- 10) There was No drug Quantity finding by the Jury under 2D1.1(c) to trigger a violation of the statute charged in Cant 1 or to trigger mandatory minimums for a violation of 21 USC § 841(b)(1)(A), (b)(1)(B) or (b)(1)(C), The Fair Sentencing Act of 2010 is Applicable to Cant 1.
- 11) District Court's wrongfully convicting and unlawfully sentencing Mr. Reid for a violation of a federal Criminal statute (21 USC § 841(b)(1)(C) that Mr. Reid was not indicted for or charged with in his federal Grand Jury Indictment Violated the fifth Amendment Clause right to a federal Grand Jury Indictment, Sixth Amendment right to trial by Jury.
- 12) Because Cant 1 only charged federal Criminal statute 21 USC § 841(b)(1)(A), (b)(1)(B) Not 21 USC § 841(b)(1)(C)
- 13) Because the Sentence violates Alleyne, Apprendi and is unlawful, illegal (11)

Mr. Reid must be given a full resentencing hearing and by law the Court must afford him Application of the Fair Sentencing Act of 2010 Law to Count 1 and dismiss Count 1 in its entirety, real release prisoner #11483-171 Kenneth Roshaun Reid from unlawful Custody in the F.B.O.P.. A district Court doesn't have discretion to deny a person a federal Law when he is eligible (statutorily eligible) just because of the governments allegations against him or her. "FSA of 2010 is a Law" that modified the statutory penalties for the exact crime/Law that Mr. Reid is charged with in Count 1 (See Count 1) 21 USC § 841 (b)(1)(A), 21 USC § 841 (b)(1)(B) § 846, § 841(a)(1) are the only federal Criminal statutes charged in Count 1.

CONCLUSION

Court GRANT "WRIT" Vacate Sentence, Conviction Count 1, 4
Dismissal of Count 1 in its entirety

The petition for a writ of certiorari should be granted. Order lower Court to give Mr. Reid a resentencing hearing and to Apply the FSA of 2010 to Count 1 and Dismiss it.

Respectfully submitted,

Kenneth R. Reid

Date: 6/20/21

The U.S. Supreme Court should exercise discretionary review of Case #19-7803 to inquire why the District Court refused to give an eligible defendant relief under the "Fair Sentencing Act of 2010" when it is clearly the Law, Law of the Land by which was created by legislature for specific defendants such as Kenneth Rodman Reid who was convicted of Count 1 "A Covered offense"

21 USC § 841(b)(1)(A), 21 USC § 841(b)(1)(B), § 846, § 841(a)(1) a Conspiracy involving 50 grams or more of crack cocaine and 500 grams or more of cocaine. This is the Specific Conspiracy Crime, the specific "agreement" charged in Count 1. The District Court knew that the Jury's failure to find Mr. Reid guilty of the 50 gram element of Count 1 that it could not impose a sentence based on a violation of the federal Criminal statutes charged in Count 1. So the District Court decided to impose an illegal sentence on Count 1 and base it on a violation of federal Criminal statute 21 USC § 841(b)(1)(C) which was a federal Criminal statute that Mr. Reid was not charged with or indicted for in Count 1. Mr. Reid received a 20 year sentence for this unfounded violation. Even though the Jury did not find him guilty of "No drug quantity at all". See Verdict Form

This case deserves discretionary review because a Citizen of the United States has been framed with a crime and sentenced for a crime that he was not charged with in his federal Grand Jury Indictment.

The district Court wrongfully convicted and unlawfully sentenced Mr. Reid for a violation of a federal Criminal statute that was not charged in his federal Grand Jury Indictment violating the 5th Amendment clause of the United States Constitution. An Error like this affects the substantial rights of Mr. Reid and the integrity of the judicial system to leave a man in prison for 17 years for a crime he was sentenced for illegally.

The U.S. Supreme Court must have a conscience as to a human being's Liberty interest being unlawfully taken by a lower Court who ignored all Circuit Case precedent, All U.S. Supreme Court law decisions that have evolved in Mr. Reid's favor over the past 17 years such as *Alleyne v. United States* 570 US 99 (2013), *Apprendi v. New Jersey* 466 —, — (2000) FAIR SENTENCING ACT OF 2010, *Blakely v. Washington*, . Even when a higher Court such as the 4th Circuit Court of Appeals Vacated and Remanded Mr. Reid's Case #19-7803 and Remanded Mr. Reid's sentence on Count 1 the District Court refused to even give Mr. Reid a resentencing hearing at all. Which is unheard of for any Case that gets Vacated and Remanded. The lower Court/District Court did not show any "respect" for the 4th Circuit Court's decision to Vacate and Remand Case #19-7803. To blatantly disregard giving Mr. Reid the Application of the "Fair Sentencing Act of 2010" law is discrimination to him because the same District Court gave relief to his Co-defendant Samuel Larell Anderson who pled guilty to Count 1 of the federal Grand Jury indictment on the same Case who is similarly situated as to Mr. Reid. The same Court refused to give Mr. Reid a hearing under the same law (Fair Sentencing Act of 2010) even when he filed a Pro-se motion to the Fourth Circuit Court of Appeals that was Vacated and Remanded #19-7803. Mr. Reid's Court Appointed Counsel Katherine E. Evatt from Parks N. Small's Public Defenders office in Columbia SC, Abandoned her client Mr. Reid and refused to communicate, consult or even speak to his family members. She also refused to object to the USPO's Amended Guideline Calculations under the Fair Sentencing Act of 2010. Mr. Reid seeks justice from his unjust, unjust sentence, wrongful conviction, unlawful sentence on Count 1

I am asking the U.S. Supreme Court to Contact the lower 4th Circuit Court of Appeals, and District Court of South Carolina and find out why Mr. Reid didn't get a resentencing hearing for Case #19-7803 and find out why his Court Appointed Attorney never consulted with him on Remand of Case #19-7803. And find out why his Court Appointed Attorney Katherine E. Evatt Abandoned him and did not move for the Application of the Law/Fair Sentencing Act of 2010 and apply it to Court 1. And I ask that the U.S. Supreme Court inquire as to why the District Court did not give Mr. Reid his day in Court. And also find out why the District Court did not bring Mr. Reid's body back to the District Court on Remand of Case #19-7803. And I ask the U.S. Supreme Court to find out why Mr. Reid wasn't allowed to participate in the resentencing hearing given by the District Court on some unknown date. The U.S. Supreme Court must investigate the lower Courts refusal to give a eligible defendant the law. The Fair Sentencing Act of 2010 applies to all crack cocaine offenders period. The records of the district Court was fabricated, there are a lot of mistatements of law and facts made by the government and also allegations of crimes and murder that Mr. Reid did not commit at all. The governments "star witness" Patrick Simpson was diagnosed with Anti-social personality disorder which means he was a "psycopathic", "psycopath". The government used a psycopathic liar to testified against Mr. Reid for a murder that Patrick Simpson committed himself. Now on appeal the District Court is using Patrick Simpson's allegations against Mr. Reid to deny Mr. Reid relief under §3553(a) sentencing factors.

Mr. Reid never committed murder, never solicited murder or encouraged it
Mr. Reid never gave Patrick Simpson no pistol, never told him to Kill anyone
but this was the governments false allegations

Mr. Reid was Acquitted of Murder in Cant S

XII. Statement of the Case

Provide a **concise** statement of the case containing the facts material to the consideration of the question(s) presented; you should summarize the relevant facts of the case and the proceedings that took place in the lower courts. You may need to attach additional pages, but the statement should be concise and limited to the relevant facts of the case.

XIII. Reasons for Granting the Petition

The purpose of this section of the petition is to explain to the Court why it should grant certiorari. It is important to read Rule 10 and address what compelling reasons exist for the exercise of the Court's discretionary jurisdiction. Try to show not only why the decision of the lower court may be erroneous, but the national importance of having the Supreme Court decide the question involved. It is important to show whether the decision of the court that decided your case is in conflict with the decisions of another appellate court; the importance of the case not only to you but to others similarly situated; and the ways the decision of the lower court in your case was erroneous. You will need to attach additional pages, but the reasons should be as concise as possible, consistent with the purpose of this section of the petition.

XIV. Conclusion

Enter your name and the date that you submit the petition.

XV. Proof of Service

You must serve a copy of your petition on counsel for respondent(s) as required by Rule 29. If you serve the petition by first-class mail or by third-party commercial carrier, you may use the enclosed proof of service form. If the United States or any department, office, agency, officer, or employee thereof is a party, you must serve the Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D. C. 20530-0001. The lower courts that ruled on your case are not parties and need not be served with a copy of the petition. The proof of service may be in the form of a declaration pursuant to 28 U. S. C. § 1746.

Certificate of Service

I swear under the penalty of perjury that the foregoing is true and correct to the best of my knowledge under the laws of the United States; Title 28 USC § 174.6

Signature: Herminio R. Reid

Relief Sought

I'm asking for the US Supreme Court Order, the 4th Circuit Court of Appeals to Order the District Court to give Mr. Reid a full resentencing hearing and the Application of the Fair Sentencing Act of 2010 to Count 1 and dismiss Count 1 in its entirety because the sentence is unlawful in light of a Application of the Fair Sentencing Act of 2010 to Count 1 because there was no drug quantity element findings by the JURY at all. Therefore it would be impossible for Mr. Reid to violate the federal Criminal statutes that were actually charged in Count 1 which were 21 USC § 841(b)(1)(A) and 21 USC § 841(b)(1)(B). In light of the FSA of 2010's Application reveals that in order to violate or trigger the mandatory minimum of 21 USC § 841(b)(1)(A) the Jury must find 280 grams or more of crack cocaine and to violate or trigger the mandatory minimum of 21 USC § 841(b)(1)(B) the Jury must find 50 grams and In light of Alleyne v. US 570 US 99 (2013) Drug Quantities are Elements now not just sentencing factors. Mr. Reid's 240 month Sentence on Count 1 is unlawful. There is no Legal Justification for the 240 month Sentence on Count 1 without a Drug Quantity-Element finding by the JURY.