

NO
21-6552
IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021

FILED
NOV 22 2021
OFFICE OF THE CLERK
SUPREME COURT, U.S.

KEITH CARR,

PETITIONER,

v.

WARDEN S. KALLIS,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEAL FOR
THE EIGHTH CIRCUIT
PETITION FOR WRIT OF CERTIORARI

KEITH CARR

#44065-424

FEDERAL MEDICAL CENTER

PMB 4000

ROCHESTER, MN. 55903-4000

PRO SE;

QUESTION PRESENTED;

1. WHETHER AN UNLAWFUL APPLICATION OF AN ENHANCEMENT

PURSUANT TO TITLE 21 U.S.C. 851 AMOUNT'S TO A FUNDAMENTAL

MISSCARRIAGE OF JUSTICE. WHEREAS THE PETITIONER SUFFERS

FROM A SUBSTANTIAL LOSS OF LIBERTY IN VIOLATION OF THE

FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

2. WHETHER THE LOWER COURTS MISAPPLIED THE CRITERIA

PURSUANT TO THE APPLICATION OF 28 U.S.C. 2241, WHICH OPENS

THE GATEWAY TO RELIEF BY CORRECTING THE DEFECT IN APPLYING

AN ENHANCEMENT WHICH DID NOT QUALIFY FOR PURPOSE

OF 21 U.S.C. 851.

LIST OF PARTIES

ALL PARTIES APPEAR IN THE CAPTION OF THE CASE ON THE COVER PAGE.

RELATED CASES

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(c)

STATUTES AND RULES

21 U.S.C. 841(a)(1)

21 U.S.C. 846

21 U.S.C. 843(b)

21 U.S.C. 851

720 ILCS 570/402(c)

28 U.S.C. 2241

SUPREME COURT RULE 10(a)

21 U.S.C. 802 (44) & (57)

(d)

Petitioner respectfully prays that a writ of certiorari issues to review the judgement below.

Opinions below

The opinion of the United States court of of appeals appears in the appendix attached;

The opinion of the district court appears in the appendix;

JURISDICTION

THE DATE ON WHICH THE UNITED STATES DISTRICT COURT OF APPEALS
DENIED THE CASE.7/20/21

REHEARING DENIED ON 9/22/21

UNITED STATES DISTRICT COURT DENIED THE APPLICATION PURSUANT
TO 2241 ON 5/7/21

(e)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment;

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand jury.....nor shall any person be subject for the same offence to be twice put in jeopardy of life limb, nor be deprived of life, liberty, or property, without due process of law (in Part).

(f)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT

DUE PROCESS OF LAW

SIXTH AMENDMENT

A JURY GUARANTEE ON ALL ELEMENTS/FACTS IN WHICH TO INCREASE
A MANDATORY SENTENCE.

(f)

STATEMENT OF CASE

Petitioner was charged in the Northern district of Illinois in a 13 count indictment charges included 21 U.S.C. 841(a)(10 and 21 U.S.C. 846, 21 U.S.C. 843(b) ; 21 U.S.C. 851 was filed as a notice of Enhancement. The 851 specifically cited possession of a controlled Substance under 720 ILCS 570/402(c). Petitioner was convicted by a Jury and was subsequently sentence to 240 monrhs imprisonment.

Petitioner has been in custody since June 7, 2013. Petitioner sought Relief pursuant to a direct appeal and subsequent habeas corpus Petitions, both were denied, this action follows a motion seeking (1)

Relief pursuant to 28 U.S.C. 2241. This action seeking the Supreme

Court review is incumbent upon Supreme court Rule 10 (a), whereas

Petitioner asserts that the lower courts opinion is in direct conflict

With Supreme Court precedent and violates the petitioner Fifth and

Sixth Amendment rights expressed in the U.S. CONSTITUTION.

(2)

REASON FOR GRANTING PETITION

Petitioner was indicted by a Grand Jury in the Northern district of

Illinois in a 13 count indictment involving controlled substance

Violations. As previously discussed in the statement of the case a jury

Found petitioner guilty and petitioner was sentenced to 240 months

Based upon a perceived state of Illinois prior conviction. SEE; 720 ILCS

570/402(c). Petitioner like most defendants in the United States face

Insurmountable odds when seeking fairness within the concept of

Federal judicial proceedings. Like most citizens of these United States

Who are guaranteed the fundamental rights to due process and

(3)

The presentment of an indictment. Effective not defective assistance of

Counsel. Petitioner saddled with poor performing counsel, sought to

Appeal a prior conviction used pursuant to 21 U.S.C. 851. Respondents

Sought to use a prior conviction from the State court pursuant to Illinois

Code 720ILCS 570/402(c). The lower courts have inconsistently

Assessed the showing required by 2255 saving clause. Despite

Petitioner never having had an opportunity to show that 2255 was

Ineffective or inadequate. Thus petitioner was deprived of the

Reasonable opportunity to challenge the execution of his sentence

Based upon his actual innocence of the application of 851. Where

(4)

The facts of this case relied upon a prior state conviction which was not

Presented in the indictment and failed to meet the definition as

Required by 21 U.S.C. 802(44)(57). The prejudice which attached was

Petitioner not only suffers from a miscarriage of justice, but the

Deprivation has resulted in petitioner loosing a substantial liberty

Interest of a decade to pursue his life and his liberty. The law as

Applied in this case should have resulted in a 120 month sentence. SEE

FOR SIMILAR VIEWS; PROST V. ANDERSON, 636 F. 3d. 578, 589, (10th

Cir. 2011). The lower courts have failed to define whether the

Availability question has been appropriately addressed. Whereas at the

(5)

Time of sentencing had thee clerk not removed the Notice in which

Respondents were relying upon. Had counsel not pursued a frivolous

Argument by placing blame at the direction of respondents, petitioners

Motion for direct appeal and subsequent habeas proceedings

Challenging the validity of the prior conviction, would have produced a

Different result. Petitioner submits that the lower courts overlooked

His claim of innocence regarding the mandatory sentence in light of the

Fact the prior state conviction resulted in a 12 month probation

Successfully completed by the petitioner, and the fact that the prior

Conviction was based upon the elements of the state code was overly

(6)

Broad and did not meet the definition for purposes of 851 and 21 U.S.C.

802(44)(57). SEE FOR SIMILAR VIEWS; LORENZO V. SESSIONS, 902 F. 3d.

930, 934-35 (9th Cir. 2018). Thus consistent with 851 requirements had

Counsel pursued the right claim, that 402(c) is not a serious drug felony

Offense. ALLEYNE V. UNITED STATES, 570 U.S. 99, (2013). Petitioner

Argued that he had not had an opportunity to adequately argue the

Reasonable doubt standard in which petitioner invoked as his right to

A jury determination related to the factual question presented by

(802)-(44)(57) regarding the minimum mandatory length of sentence, in

Light of the fact that the prior state conviction is overly broad, and

(7)

Clearly did not qualify as a serious drug felony under 21 U.S.C. (802)(57)

Compare: ALMENDAREZ-TORRES V. UNITED STATES, 523 U.S. 224

(1998). Petitioner argument an opportunity to argue that the execution

Of his sentence had been undermined by the removal of the 851

Notice. Defendants throughout this country are dependent upon

Counsel skills and knowledge. STRICKLAND V. WASHINGTON, (1984).

Post conviction defendants are required lacking in skill and knowledge

To correct the incompetence of counsel. The courts defends counsel in-

Competence, as the process in which citizens face cannot appear to

Assert that these learning institutions have failed to adequately prepare

(8)

These aspiring attorney's sufficiently. Thus post-conviction acknowledges the critical fact that a Citizen's insufficiency of legal skills and knowledge leaves in place unlawful sentences that results in decades of lost liberty, so as to project the illusion of justice. This case and many that preceded results in and has resulted in a "fundamental miscarriage of justice, and the promise of fairness and justice have both been deprived and denied.

ARGUMENT;

- 1) Whether an unlawful application of an enhancement Pursuant to Title 21 U.S.C. 851 amounts to a (9)

Fundamental miscarriage of justice. Whereas

The petitioner suffers from a substantial loss

Of liberty in violation of the Fifth Amendment

To the United States Constitution:

Petitioner has been deprived of a fundamental guarantee of "due

Process" based upon procedures, that have undermined his

Individual right to competent counsel. Presentment of elements in

The indictment of facts used to increase petitioners minimum-

Mandatory sentence. As a result of clear constitutional errors in this

Case, and procedural road-blocks design to undermine relief it can

Not be said that justice has progressed. ACT of 1820; Compare:

(10)

Murray's Leese V. Hoboken Land and Improvement Co., 59 U.S. (

18 How.) 272-76-77, 280 (1856), Davidson V. City of New Orleans,

96 U.S. 97 (1978); Powell V. Alabama, 287 U.S. 45 (1932). The criteria

Pursuant to 851 requires respondents to put the petitioner on Notice

Prior to sentencing of the prior conviction to be used to seek en-

hancement of the mandatory minimum of imprisonment that peti-

tioner will serve. As previously stated petitioner was subject to a 120

month term of imprisonment. Here errors occurred as a result of

respondents moving from the docket the Notice that respondents had

filed . Despite the record, discussing an error, the true error in this case

Is that petitioner received a mandatory minimum sentence of twenty (

20) years of imprisonment based upon a prior conviction which failed

to meet the definition found in 21 U.S.C. 802(44)(57). The district court

neglected to consider that under then Supreme Court precedent

petitioner was entitled to an reasonable doubt standard on the

element utilized for purposes of 851 enhancement. Petitioner in

objecting to the Illinois language stated that the Code was overbroad

, and failed to meet the definition of a serious drug felony. Courts in the

Seventh Circuit considering the same agreed that 720 ILCS 570/402(c)

did not meet the definition of serious drug felony. The lower courts also

neglected to consider that the conviction used had only resulted in a

term of 12 months of probation, in which petitioner had also

successfully completed. SEE ALLEYNE, 570 U.S. 99, APPRENDI V. New Jersey, 530 U.S. 466, (2000). Petitioner objected to the factual

questions presented by 802(44) and (57). Petitioner invoked the

protections as found in the constitution at the Fifth and Sixth

Amendment. Whereas any fact which increases the Minimum man-

datory sentence be submitted to a jury and found by a jury . SEE FOR

SIMILAR VIEWS; NIJHAWAN V. HOLDER, 557 U.S. 29, 32, (2009)(

holding that an statutory term describing a prior offense "referred not

to a generic crime but to the particular circumstances in which an

offender committed an offense on a particular occasion. COMPARE;

Sedima, S.P.R.L.V. IMREX CO., 473 U.S. 479, 489 (1985). The facts over-

looked was the fact the prior conviction carried 12 months of proba-

tion. The prior conviction based upon 720 ILCS 570/402(c) was not

reviewed under the appropriate standard in which to qualify it for

purpose of 851 enhancement. As a result petitioner was not presented

with an opportunity to correct the fundamental defect in the pro-

cedures used in part to the removal of the Notice of the 851 filed by

respondents in this instant matter.

2. Whether the lower courts misapplied the correct standard pursuant to the application of 28 U.S.C. 2241, which opens the gateway to providing relief for a sentencing enhancement, which did not qualify for purposes of 21 U.S.C. 851 where petitioner is actually innocent..

Petitioner filed for Pro Se Habeas Corpus petition to the United States

District court for the District of Minnesota, pursuant to 28 U.S.C. 2241

To challenge the application of an enhancement of petitioner's federal

Sentence based upon an invalid state prior conviction. SEE FOR SIMILAR

Views, Alexander V. Northern Bureau of Prisons, 419 App'x 544,

545, (6th Cir. 2011); Lofton V. United States, 920 F. 3d. 572, 2019,

(8th Cir. 2019). Petitioner submits the lower court in overlooking the

essential argument as to being actually innocent reached a contrary

decision in conflict with Supreme Court precedent. SEE BOUSLEY V.

UNITED STATES, 523 U.S. 614, 118 s. Ct. 1604, 140 L. Ed. 2d. 828 (1998

), Allen V. Ives, 950 F. 3d. 1184, (9th Cir. 2020). SEE; DESCAMPS V.

UNITED STATES, 570 U.S. 254, 133 s. Ct. 2243, 195 L. Ed. 2d. 438

(2013). Mathis V. United States, 136 S. Ct. 2243, 195 L. Ed. 2d. 604, (

2016). Alleyne V. United States, 570 U.S. 99, 107-08, 133 s. Ct. 2151

(16)

186 L. Ed. 2d. 314 (2013)(stating any fact that increases the mandatory

Minimum sentence is an element of the offense, if an element of the

Offense is not established petitioner is necessarily innocent of that

Offense. SEE; UNITED STATES V. GEOZOS, 870 F. 3d. 890, 896, (9th

Cir. 2017).Brown v. Caraway, 719 F. 3d. 583, 588, (7th Cir. 2013)

(petitioner due to the confusion over the notice removal never had

An unobstructed opportunity to test the legality of his detention with-

In the meaning of the savings clause. Because 851 was not challenged

As an indivisible state Coded statute, petitioner never had an

Opportunity to show that 720 ILCS 402(c), that his conviction for a

(17)

For a predicate offense under 720ILCS 402(c) was not a controlled

Substance offense within the meaning of 802 (44) and (57). As a

Result petitioner is actually innocent of the increased mandatory

minimum/element of his sentence and petitioner had the lower

courts not applied a contrary determination which conflicted with

established precedent of the Circuit, petitioner would have been

eligible for habeas relief under 2241. SEE; BAILEY V. UNITED STATES,

516 U.S. 137M 116 S. Ct. 501, 133 L. Ed. 2d. 472 (1955). As a result

Of respondents removing the Notice of their intent, and relying upon

The State Code of Illinois, 720ILCS570 402(c), Respondents undermine

(12)

Their obligation as prescribed by 851(c) prohibiting the petitioner to

Show that petitioner had not been convicted of a "controlled

Substance offense as defined within the meaning of 802(44)(57).

Despite the lower courts misapprehending that the Supreme Court

Clarified the divisibility analysis for criminal statutes. SEE; TAYLOR V.

UNITED STATES, 495 U.S. 575, 110 S. Ct. 2143, 109 L. Ed. 2d. 607, (

1990). Compare: Lester V. Flournoy, 909 F. 3d. 708, 712, (4th Cir. 2018).

United States V. Wheeler, 886 F. 3d. 415, 429, (4th Cir. 2018. Cert

Denied, 139 S. Ct. 1318, 203 L. Ed. 2d. 600 (2019), HILL V. MASTERS,

836 f. 3D. 591, 600, (6TH Cir. 2016) Begay V. United States, 553 U.S. 137,

128 s. Ct. 1581, 170 L. Ed. 2d. 490 (2008)

Conclusion;

Petitioner respectfully request that a Writ of Certiorari issue on his

Claim that the lower courts misapplied established precedent of

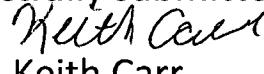
The Supreme Court in its analysis related to 2241 as presented

In petitioner request for relief from a mandatory minimum sentence

In which petitioner is actually innocent of that sentence.

Dated this 15th day of November 2021

Respectfully submitted,


Keith Carr

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FEDERAL MEDICAL CENTER