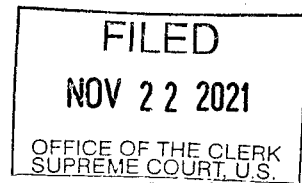


NO
21-6552
IN THE

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2021



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.

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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 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).

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 months 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

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.

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

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

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 losing 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

Time of sentencing had the 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

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

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

These aspiring attorney's sufficiently. Thus post-conviction acknow-
Leding the critical fact that a Citizens 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

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:

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 enhancement of the mandatory minimum of imprisonment that petitioner 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, APPENDI 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 [] offense on a particular occasion. COMPARE; Sedima, S.P.R.L.V. IMREX CO., 473 U.S. 479, 489 (1985). The facts overlooked was the fact the prior conviction carried [12] months of probation. 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

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

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

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

#44065-424

FEDERAL MEDICAL CENTER