

No. 21-6859

FILED
OCT 18 2021

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

Jaquimo Scott — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United STATES Court of APPEALS For 5th Circuit.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jaquimo Scott
(Your Name)
FCI 46200 City medium
P.O Box 5000
(Address)

46200 city, Ms 39194
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

- I. Whether Acceptance of A Guilty Plea Without Establishing A Crime against the United STATES IS A structural Error that Voids the Subsequent Judgment and Sentence.
- II. Whether Petitioners Should have Been granted A Certificate of Appealability As to whether The Error of not Establishing a Crime against the United States in a guilty Plea Proceeding Constitutes a structural Error.

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:

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18 U.S.C. § 922(g)

5th Amendment to U.S. Const.

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 A to the petition and is

☐ reported at _____; 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☒ is unpublished.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 _____; 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☐ is unpublished.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 _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ 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☐ is unpublished.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 July 29, 2021.

☒ 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**:

N/A

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

The FIFTH And SIXth Amendment to the
UNITED STATES Constitution.

18 U.S.C. § 922(g).

STATEMENT OF THE CASE

Mr. Jaguirro Scott, [hereinafter "Petitioner"] was arrested on September 1, 2017 by state authorities for illegal possession of a firearm. Most importantly here Petitioner was named in a federal indictment charging him with a violation of 18 U.S.C. § 922(c).

On June 13, 2018, Pursuant to a written plea agreement, Petitioner pleaded guilty to the one-count indictment charging him with possession of a firearm by a Convicted Felon. On October 02, 2018 the Court sentenced Petitioner to 120 Months (10 years) (emphasis added) the statutory Maximum. See United States vs. Scott No. 3:18-cr-00105-01 (W.D. La 2018). Petitioner pursued a timely appeal. However, his Counsel filed an "Anders Brief" and abandon Petitioner. Petitioner filed a timely Motion to Vacate pursuant to 28 U.S.C. § 2255 arguing

in summary that the district Court committed a structural error by entering judgment and sentence without establishing a crime against the United States. Moreover, because the Court failed to establish a crime against the United States it lacked subject matter jurisdiction. The district Court denied the Section 2255 Motion. Petitioner appealed, however, the Fifth Circuit Court of appeals denied to issue a Certificate of appealability. Therefore, Petitioner comes to this Court requesting a review and to determine whether or not it is a structural error requiring automatic reversal when the district Court failed to establish a crime against the United States during the guilty plea proceedings. Specifically, whether it is a structural error when the Court fails to establish

an admission of guilt to all elements of a Crime against the United States during the Plea proceedings. As discussed below, Petitioner asserts that if the district Court did not establish a Crime against the United States it failed to establish Subject Matter Jurisdiction, committed a basic structural error that requires the Judgment and sentence be vacated. Frankly, here Petitioner was Judge guilty and sentence to to a term of imprisonment for facts that does not constitute a Crime against the United States. Although it may be an inconvenience for the district Court to conduct a proper plea proceeding, the Fifth Amendment demands just that.

REASONS FOR GRANTING THE PETITION

- I. The Circuits have Split as to whether accepting a guilty plea without ensuring the defendant understood the essential elements of the offense to which he plead guilty is a structural error not subject to harmless review.
- II. To Enforce the Basic Constitutional Rights of The Due Process Clause of The Fifth Amendment to the U.S. Const.

Summary of ARGument

This Court is needed to resolve a split among the Circuits as to whether acceptance of a guilty plea in violation of this Court's decision constitutes a structural error. Moreover, the Court is needed to establish that although inconvenient at times the United States Constitution requires due process of law prior to depriving one of his liberty. Moreover, without due process a judgment and sentence must be vacated.

ARGument.

I. The Circuits Have Split As to Whether
A Relat Error is a structural error.

The Fourth Circuit has found that accepting a guilty plea in violation of this

Court's decision in Rehaif v. United States, 139 S.Ct. 2191 (2019) constitutes a structural error and requires automatic reversal. However, as reflected here the Fifth Circuit has come to the conclusion that a Rehaif error is subject to harmless error review. Accordingly this Court is needed to provide uniform decisions among the Circuit Courts.

II. THE FIFTH AMENDMENT'S REQUIREMENT OF DUE PROCESS IS NOT A MATTER OF CONVENIENCE.

The district Courts and Circuit Courts of this Country in the wake of Rehaif supra have come to the conclusion that due process is a matter of convenience. This Court should accept this petition to establish that although Due Process may be inconvenient at times it is essential to this Country's Criminal Justice System.

A.) Due Process Requires Establishment of A Crime Against The United States

Under the due process Clause of the Fifth Amendment the burden of proof rests with the government. i.e. the prosecution must prove beyond a reasonable doubt every element necessary to constitute a crime. See In re Winship, 397 U.S. 358 (1970). However, there is an exception to the requirement that the prosecution prove every element of the crime beyond a reasonable doubt, that is the defendant can waive such a requirement and admit to the crime charged. However, the due process requires that the defendant admit every element of the crime charged. Said another way the defendant must stand before the court on his own accord and admit he committed the crime alleged by the prosecution. Under these circumstances for the plea to be valid it must be made voluntarily

See Brady v. United States, 397 U.S. 742, 750 (1970).

It must be knowingly and intelligently given. See

Henderson v. Morgan, 426 U.S. 637 (1976). And

Most importantly before the Court obtains Jurisdiction to impose Judgment there must be a factual basis established by the Court that a Crime was Committed.

Specifically, the defendant must admit freely that he committed acts with facts that meet all of the elements of a Crime against the United States.

Most importantly, then and only then is the requirement under the due process Clause that the government shoulder the burden of proof waived.

In this case, this Court interpreted 18 U.S.C. §

922(g) to have a mens rea element in Rehaif v.

United States 139 S. Ct. 2191 (2019). Therefore, to

remove the government of its burden of proof in regard to a violation of 18 U.S.C. § 922(g)

there must be a factual basis where the

the defendant admits on his own accord he had a guilty mind at the time of the offense. In other words he must admit he "Knowingly" committed a crime against the United States. However, the Courts below have come to the conclusion the due process clause ("fundamental fairness") is suspendable as a matter of convenience. In other words, it would simply be too much trouble to hold the government to its burden of proof, thus, the Courts are relieving the government of that burden under the harmless error doctrine. The trouble is to undermine the basic structure of fundamental fairness of our Criminal Justice System "Due process" can never be considered harmless. Accordingly, this Court is needed to confirm Due process is not suspendable as a matter of convenience.

B.) The Due Process Requires The District Court Establish Subject Matter Jurisdiction

The due process clause of the United States Constitution requires the Federal district Court to establish a Crime against the United States either by a Jury finding every element of the Crime was committed beyond a reasonable doubt or alternatively the defendant admit every element voluntarily as a requirement to establishing the power to act and impose judgment and sentence. In other words, the due process clause requires the district Court to establish Subject Matter Jurisdiction. Because federal Courts are of limited Jurisdiction, a case presumably lies outside the Jurisdiction of the federal Courts unless proven otherwise. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994).

As. Subject matter Jurisdiction involves a Court's Power to hear a Case, it Can never be Waived or Forfeited. United States v. Cotton, 535 U.S. 625, 630 (2002). The Court is obligated to determine Sua Sponte whether it has Subject Matter Jurisdiction Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006) (Andry Federal Courts have an independent obligation to determine [Jurisdiction] absence of a Challenge from any Party). See also Fed R. Civ. P. 12(h)(3)(C) ("if the Court determines at anytime that it lacks subject matter Jurisdiction the Court must dismiss the action")

Federal Rules of Criminal procedure 11 requires a district Court taking a guilty plea to Make Certain that the Factual Conduct admitted by the defendant is sufficient as a matter of law to establish a violation of the statute which he entered his plea - thus establish a Crime against

the United States and thus, Jurisdiction. United States v. Trejo, 610 F.2d 308, 313 (5th Circuit) see also United States v. Reaser, 418 F.3d 466, 470 (5th Cir 2005) ("finding a district Court cannot enter a Judgment of Conviction based on a guilty plea unless it is satisfied that there is a factual basis for the plea.") This requirement ensures Subject Matter Jurisdiction under 18 U.S.C. § 3231 "the district Court shall have original Jurisdiction, ... of all offenses against the United States." In summary, and other words, fundamental fairness requires a federal Court to establish Subject matter Jurisdiction by requiring the factual basis of the plea establish a crime against the United States absent any challenge from any party. Moreover, the rules governing such requires the Court to abandon the prosecution at any time if the Court determines that it does not have Jurisdiction.

Turning to this Case, this Court in Rehain instructed the district Courts below that it had been passing Judgment on and imprisoning thousands without Subject matter Jurisdiction. At least one Circuit has accepted the Cold hard reality i.e., such a fact undermines the structural integrity of our entire Criminal Justice system by omitting the due process Clause. See. United States v. Gary, 954 F.3d 198 (4th Cir 2020). However, many others as evidence in this Case has attempted to undermine the structural integrity of our Criminal Justice system taking the stance that although the Court sentenced to a term of imprisonment on a set of facts that is not even a Crime against the United States as interpreted by the Supreme Court. Moreover, in doing so removed the burden of proof from the government. The Court finds such a violation of integrity harmless because the Court

determines that although you were not proven guilty of a Crime beyond a reasonable doubt. Furthermore, although you did not intelligently admit you committed a Crime against the United States, the Court will forego basic protections of the U.S. Criminal Justice System and find that you did because frankly it's just too inconvenient to do otherwise. Accordingly, this Court is needed to preserve the integrity of the due process Clause of the U.S. Const.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jacqueline S. Smith

Date: 12/16/2021