

21-6912

ORIGINAL

No.

FILED
JAN 11 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

Jamar Jones — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEAL FOR SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jamar Jones
(Your Name)

FCI BERLIN
(Address)

BERLIN, N. H. 03570
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- A. WHETHER THERE EXIST A SUFFICIENT FACTUAL BASIS TO ESTABLISH PETITIONER'S PLEA OF GUILTY PURSUANT TO COUNT ONE, WHICH CHARGED A VIOLATION OF TITLE 21 U.S.C § 841 (a)(1), (b)(1)(A) AND 846
- B. WHETHER THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT ERRED WHEN IT DETERMINED THAT COUNSEL FOR THE PETITIONER RIGHTLY CONCLUDED A MOTION TO WITHDRAW HIS PLEA WOULD BE FRIVOLOUS WHEN THE APPELLANT'S FAIR AND JUST REASON TO WITHDRAW HIS PLEA IS THAT HE EXPLICITLY DISAVOWED THE FACTUAL BASIS FOR THE GUILTY PLEA?

LIST OF PARTIES

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

[V] 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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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 A to the petition and is

reported at Nos. 20-3219 & 20-3311; 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 is unpublished.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 is unpublished.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 is unpublished.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 is unpublished.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 OCTOBER 20, 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**:

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

STATEMENT OF THE CASE

The PETITIONER adopts the statement of the case from Counsel of record Anders brief with the following objections: Petitioner denies conspiring to distribute methamphetamine, and in particular, [he] denies ever obtaining 1.5 but less than 4.5 kilograms of Methamphetamine or any amount of methamphetamine.

REASONS FOR GRANTING THE PETITION

The Supreme Court of the UNITED STATES should exercise its discretion in granting this writ of certiorari, because the district court forced the petitioner into pleading guilty to a crime of which he repeatedly denied the factual basis to. The Petitioner was charged in an indictment with Conspiracy to distribute and possess methamphetamine, in violation of Title 21 U.S.C § 841(a)(1), (b)(1)(A) and 846. Federal Rule of Civil Procedure 11, requires that before the district court can accept a guilty plea, it must find a factual basis for the guilty plea. The petitioner disavowed conspiring with anyone to distribute and possess methamphetamine. See Plea TR. 8-10. The district court told petitioner that his factual basis was not enough for the court to accept his guilty plea, but the court would not allow petitioner to withdraw his guilty plea. Id. The district court refused to allow petitioner to explain how he was guilty of dropping off a box of Marijuana at the charge of plea hearing. Id.

At the Sentencing Hearing, when giving the opportunity to address the court, petitioner again notified the court that he never admitted to the factual basis as was charged in his indictment and that the court was forcing him to plead guilty against his will. see sentencing TR. pgs. 42-48, Attached to this writ of Certiorari. In fact, petitioner pleaded with the sentencing court to allow him to show the court his documented evidence that proves he is not guilty of the charge in his indictment to no avail. Id

Thus, this court should grant this petition for writ of certiorari on the basis that the district court never found a factual basis for the crime as charged and because petitioner disavowed the factual basis to which the district court acknowledge was not enough for the court to accept the guilty plea.

ARGUMENT

A. WHETHER THERE EXIST A SUFFICIENT FACTUAL BASIS TO ESTABLISH PETITIONER'S PLEA OF GUILTY PURSUANT TO COUNT ONE, WHICH CHARGED A VIOLATION OF TITLE 21 U.S.C § 841 (a)(1), (b)(1)(A) AND 846

STANDARD OF REVIEW

A defendant's challenge to the factual basis for his guilty plea is usually reviewed for abuse of discretion. UNITED STATES V. BENNETT, 291 F.3d 888, 894 (6th Cir. 2002). However, if the defendant did not object on Rule 11 grounds before the trial court, the defendant must demonstrate plain error. UNITED STATES V. VONN, 535 U.S. 55, 59, 122 S.Ct 1043, 152 L.Ed.2d 90 (2002).

The defendant contends that there exist no factual basis for the guilty plea pursuant to Count One of his indictment that charged a conspiracy to distribute methamphetamine, in violation of Title 21 U.S.C § 841 (a)(1), (b)(1)(A) and 846. The factual basis to validate defendant's guilty plea is lacking, because he explicitly disavowed the factual basis at his change of plea hearing. The problem here centered around whether a firearm was possessed in furtherance of that crime.

A firearm was found in a search of Cal. n - Acevedo's residence, but Calderon - Acevedo's repeatedly disavowed that the firearm was possessed in furtherance of that drug trafficking crime. Therefore, the issue before us is whether the district court erred in determining that there was not a sufficient basis in the record to establish that Calderon - Acevedo's possession of the firearm was in furtherance of his drug trafficking³⁹? See UNITED STATES V. CASTILLO, 406 F.3d 806, 814 (7TH CIR. 2005)

... The district court judge asked Calderon - Acevedo if he agreed with the testimony of Schmidt, and he responded that he agreed "with a certain part of it" ... He elaborated that the weapon did not belong to him, and that "there was no way that it was going to be used to protect any drug operation because it was hidden underneath three boxes of tools wrapped in plastic and news paper. ⁴⁰ Id. at 9 ... The court further explored the matter, asking Calderon - Acevedo "do you admit that you possessed that firearm in relation to the drug trafficking crime of possessing or participating in the conspiracy to possess the methamphetamine?" ⁴¹ Id. at 9-10. The defendant stated "I do admit that". ⁴² Id. at 10. That is as close as the defendant got to establishing a basis for the plea, and the focal point Calderon - Acevedo's argument. The court did not stop there, though. As that bare assertion was at odds with Calderon - Acevedo's earlier statement, the court proceeded to ask him why did he state that the firearm could not have been used in connection with a drug trafficking crime because it was hidden. His response was that he was merely storing it for two days for a person who had asked him to store it. ⁴³ Id. at 12 ... The district court ultimately rejected the plea because there was no indication that he was storing it to facilitate his drug

trafficking activ. is or that the weapon is otherwise used to further that activity." See UNITED STATES V. CALDERON-ACEVEDO, 549 Fed. Appx. 574, 575-76 (7th Cir. 2014) (omissions added)

In petitioner's case sub judice, contrary to that which was before the Court in Calderon-Acevedo is the issue before the district court erred in determining that there was a sufficient basis in the record to establish that petitioner conspired to distribute methamphetamine, in violation of 21 U.S.C § 841 (a)(1), (b)(1)(A) and 846. At the change of plea hearing, the judge asked the following question to which the petitioner answered as follows:

The Court: Did you agree with anyone in this indictment to commit an illegal act?

The Defendant: Yes, I did.

The Court: Who's that?

The Defendant: Adra Armstead.

The Court: What illegal act did you agree to do with Adra Armstead?

The Defendant: I agreed to drop off -- I agreed to sell him some weed.

The Court: sell him some marijuana?

The Defendant : Sir, sir.

The Court : Is that it ?

The Defendant : And Charles Thomas.

The Court : Charles Thomas, all right. What illegal act did you agree to do with Charles Thomas ?

The Defendant : Agreed to drop off a box to him.

The Court : A box ?

The Defendant : A box; and it had methamphetamine inside the box that I dropped off.

The Court : Okay. And you knew that was methamphetamine in the box ?

The Defendant : Before I dropped it off ?

The Court : Yeah.

The Defendant : Not before. But after I dropped it off, I did.

The Court : What's illegal about that ?

The Defendant : I mean, I knew it was contraband in the box.

The court: What'd you think it was?

The Defendant: I thought it was marijuana

The court: Okay. So you didn't know it was methamphetamine then, right?

The Defendant: Not until after I dropped off the box and we had a conversation.

The court: So you didn't do any distribution of any methamphetamine, right?

The defendant: I + was methamphetamine in the box and I dropped the box off. So I'm responsible for taking the box that contained methamphetamine.

The court: That's not enough for me, Mr. Jones. I don't think you want to plead guilty. So I think we'll just end this right here. You read the factual basis in your guilty plea?

The Defendant: I'm reading it right here. Okay. Your Honor, I'm reading the factual basis of the plea right now. Can I explain the factual basis on how I understand my guilt?

The Court: Your deal?

The Defendant: Guilt.

Mr. Blackard: Guilt; Judge

The Court: Guilt, all right. Did you agree with anyone to distribute methamphetamine? That's Yes or No.

The Defendant: I -- Yes, I agreed to drop off a box that had drugs in it.

The Court: Okay. Very good.

The Defendant: I agreed to drop off the box for an individual who told me to drop the box off. Yes, I agreed and I found out it was methamphetamine in the box and I'm responsible for dropping the box off.

The Court: All right. Sentencing court's discretion within statutory range... See Plea Tr. 8-10

The petitioner, as did in the case of Calderon-Acevedo, explicitly disavowed the factual basis for the guilty plea. The judge in the petitioner's case sub judice, as in the Calderon-Acevedo's case, acknowledge that there was no factual basis

for the guilty & 2. "That's not enough for me, Mr. Jones. I don't think you want to plead guilty. So I think we'll just end this right here". Plea Tr. 9. However, the judge did not end the proceedings — there. The petitioner asked the judge several times to allow him to explain his guilt, but the judge failed to allow petitioner the right to be heard. "Did you agree with anyone to distribute methamphetamine? that's yes or no. I -- yes, I agreed to drop off a box that had drugs in it." Okay. Very good. Id at 10. The judge never allowed petitioner to explain his guilt, and he never at any point during or after the change of plea hearing admitted to distributing methamphetamine.

In Calderon-Acevedo, the court of Appeals affirmed the district court's decision not to accept his guilty plea, because it lacked a factual basis. See Calderon-Acevedo, 549 F.3d Appx. at 576

In petitioner's case sub judice, contrary to the court in Calderon-Acevedo, the judge found a factual basis for the defendant's guilty plea even though he explicitly disavowed the factual basis with a clear reason.

IN SUM, this court should over turn petitioner's conviction for an insufficient factual basis for the guilty plea.

FOOTNOTE 1

At petitioner's sentencing hearing, when given the opportunity to address the court, he specifically told the court, which did not allow him to explain his guilt at the change of plea hearing though he never admitted the factual basis for the conspiracy to distribute and possess methamphetamine. He pleaded with the sentencing court to allow him to present documented evidence that would prove his innocence, but the court dismissed his plea to the court. See Sentencing TR. pgs. 41-48. , attached to this writ of certiorari.

ARGUMENT

B. WHETHER THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT ERRED WHEN IT DETERMINED THAT COUNSEL FOR THE PETITIONER RIGHTLY CONCLUDED A MOTION TO WITHDRAW HIS PLEA WOULD BE FRIVOLOUS WHEN THE APPELLANT'S FAIR AND JUST REASON TO WITHDRAW HIS PLEA IS THAT HE EXPLICITLY DISAVOWED THE FACTUAL BASIS FOR THE GUILTY PLEA ?

STANDARD OF REVIEW

A Court may permit a petitioner to withdraw a guilty plea if he has a "fair and just reason" for doing so, but such permission is not mandatory. United States v. Wallace, 276 F.3d 360, 366 (7th Cir. 2002). A fair and just reason exist when the Petitioner shows that his plea was not entered into knowingly and voluntarily. I.d. We review for clear error a district courts factual findings about the existence of a fair and just reason. I.d. But we review the ultimate decision to grant or deny withdrawal for abuse of discretion. United States v. Carroll, 412 F.3d 787 (7th Cir. 2005) (internal citation omitted).

In Petitioner's Case sub judice, he contends that the district court abused its discretion for not permitting him to withdraw his guilty plea on the basis that the district court's factual findings to accept the guilty plea was insufficient, *inter alia*.

At Petitioner's sentencing hearing, the district court afforded Petitioner an opportunity for allocution. The Petitioner at such time moved to withdraw his guilty plea. Sent. Tr. 15, App. 42. The Petitioner gave the district court several valid reasons as to why the court should have allowed him to withdraw his guilty plea. Sent. Tr. 16, App. 43, sent. Tr. 17, App. 44 and sent. Tr. 18, App. 45. Among those valid reasons was that he never admitted the factual basis at the change of plea hearing and that all he was guilty of, was agreeing at the direction of another person, to drop off a box of marijuana. Sent. Tr. 17, App. 44. The plea colloquy is as follows:

The court: What did you think it was?

The Defendant: I thought it was marijuana.

The court: Okay. so you didn't know it was methamphetamine then, right.

The defendant: Not until after I dropped off the box and we had a conversation.

The court: That's not enough for me, Mr. Jones. I don't think you want to plead guilty. So I think we'll just end this right here. You read the factual basis in your guilty plea? See Plea. Tr. 9

basis in your guilty plea?

just end this right here. You read the factual
you want to plead guilty. So I think well

"The court: That's not enough for me, Mr. Jones. I don't think
you want to plead guilty for the plea.

never satisfied that there is a factual basis for the plea.

have not entered a judgment upon Petitioner's plea because it
plea colloquy. As referenced, herein, the district court should

In Jones cause of action sub judice, pursuant to his plea

to which the defendant has pleaded guilty. ID.

charged in the indictment or information of an offense included therein
that the conduct which the defendant admits constitutes the offense

satifies the requirements of Rule 11(f) when he "determine[s]"

With this definition in mind, we have held that a district judge
indictment, he is admitting guilty of the substantive crime". . . .

not simply stating that he did the discrete acts described in the
not charge. . . ("By entering a plea of guilty, the accused is

an indictment and his waiver of the right to a jury determination
admission of guilty of a substantive crime as charged in

our precedent makes clear that this language refers to a defendant's
admission of guilty of a substantive crime as charged in

By its plain terms, the Rule applies only to a "plea of guilty".

U.S. 29, 38, 133 L.Ed. 2d 271, 116 S.Ct. 356 (1995)

a factual basis for the plea. See, Liberto v. United States, 516

plea without making such inquiry as shall satisfy it that there is
of a plea of guilty, the court should not enter a judgment upon such

Determining accuracy of plea. Notwithstanding the acceptance
"did Petitioner ever admit the factual basis for the guilty plea.

plea hearing, during the plea hearing, or after the plea hearing

factual basis for Petitioner's guilty plea. At no point before the

The district court acknowledged that there was an insufficient

The Defendant: I'm reading it right here. Okay. Your Honor, I'm reading the factual basis of the plea right now. Can I explain the factual basis on how I understand my guilt?" see plea TR. pg. 9

The district court expressed that the factual basis admitted to by Jones was not enough for the court, but the court nonetheless entered judgment upon Jones plea in violation of Federal Rule of Criminal Procedure 11(f).

According to Jones' indictment, the factual basis that he had to plead guilty to establish his guilt was that he conspired to distribute methamphetamine. However, Jones admitted to conspiring to distribute marijuana. *Id.*, lines 8-10. Hence, the district court did not find that Jones stated he did what was charged in his indictment.

⁶⁶ The basis for the court of Appeals' decision was its prior statement in *Cordova-Perez* that "[t]he plea agreement and the [guilty] plea are inextricably bound up together." 65 F.3d at 1556 (internal quotation marks omitted). This statement, on its own, is not necessarily incorrect. The guilty plea and the plea agreement are "⁶⁶bound up together" in the sense that a rejection of the agreement simultaneously frees the defendant from his commitment to plead guilty. See Rule 11(e)(4). And since the guilty plea is but one side of the ⁶⁶plea agreement, the plea is obviously not wholly independent of the agreement. United States v. Hyde, 520 U.S. 670, 677, 137 L.Ed. 2d 935, 117 S.Ct. 1630 (1997).

In Jones' cause of action sub judice, the district court held that, "⁶⁶[i]n that testimony, Jones admitted under oath he

"Was a leader and supervisor of the conspiracy to distribute and possess with the intent to distribute methamphetamine."⁹⁹

... Even though Jones denied knowledge of delivering methamphetamine in one instance, these sworn admissions support the district court's finding that he was not innocent of a conspiracy to distribute methamphetamine.⁹⁹ See Final Judgment of the United States Court of Appeals (Final Judgment), pg. 3, paragraph 1.

The testimony that the district court referenced was the actual plea agreement that was drafted by the prosecutor. The district court's final order stated that "Jones denied knowledge of delivering methamphetamine in one instance" was in reference to the guilty plea. Jones' plea agreement and guilty plea are bound together in the sense that a rejection of the agreement simultaneously frees "Jones from his commitment to plead guilty."¹⁰⁰ As noted by the Appeals Court in its final order, "Jones denied knowledge of delivering methamphetamine in one instance," meaning, the one instance of which he was charged in his indictment. Therefore, Jones' rejection of the agreement in that one instance "simultaneously" freed Jones from his commitment to plead guilty. However, the Appeals Court treated Jones' plea agreement and guilty plea wholly independent. Since Jones' counsel raised no objection to the trial court's deficient practice under Rule 11 and Jones' Appellant Counsel raised no objection against Jones for wanting to argue the deficiency of his guilty plea before the Appeals Court, this court should reverse Jones' conviction on writ of certiorari. See United States v. Vonn, 535 U.S 55, 67, 152 L. Ed 2d 90, 122 S. Ct. 1043 (2002)

In sum, the lower courts erred for me, allowing Jones to withdraw his guilty plea, because he never admitted to the factual basis of conspiring to distribute and possess methamphetamine as charged in his indictment.

CONCLUSION

The petition for a writ of Certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James Jones". The signature is fluid and cursive, with a horizontal line underneath it.

Date: January 06, 2022