

No. 21-6926

ORIGINAL

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Willie Wilcher — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Willie Wilcher #13387-104
(Your Name)

FCC Coleman Medium, P.O. Box 1032
(Address)

Coleman, Florida 33521
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

Whether the Lower Courts had jurisdiction to even decide the Petitioner's case, based on *Rehaif v. United States*, 139 S. Ct. 2191 (2019). And the government never proved nor verified that Petitioner knew he could not possess ammunition and that the jury never proved the four elements required to the jury based on Rehaif's requirements to the jury. And Rehaif is retroactively applicable to Petitioner's Title 28 U.S.C. Section 2255(f)(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:

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N/A

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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 "B" 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☒ is unpublished.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 "A" 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☒ is unpublished.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☐ is unpublished.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 10/26/21.

☒ 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

Fifth Amendment to the United States Constitution

Sixth Amendment to the United States Constitution

Title 18 U.S.C. § 922(g)(1)

Title 28 U.S.C. § 1254(1)

STATEMENT OF THE CASE

Petitioner was arrested in 2016 for possession of Ammunition under § 922(g)(1), not for a firearm, but for ammunition. Petitioner proceeded to trial, and was convicted and sentenced to 30 years in a Federal prison for Ammunition that he never knew he could not possess. Petitioner has exhausted all of his remedies to the Lower Court, and now proceeds to the United States Supreme Court based on this writ of Certiorari.

REASONS FOR GRANTING THE PETITION

Petitioner understands that this Honorable Court does not have to accept this case, because this U.S. Supreme Court has discretion as to what cases it wants to accept and what cases it does not wish to accept. However, Petitioner is asking this Honorable Court to accept this writ of Certiorari based on *Rehaif v. United States*, 139 S. Ct. 2191 (2019), because he is actually innocent of his Title 18 U.S.C. § 922(g)(1) offense, based on the recent United States v. Rehaif, *supra*, decision.

Argument One

Whether the Lower courts had jurisdiction to even decide the Petitioner's case, based on *Rehaif v. United*, 139 S. Ct. 2191 (2019). And the government never proved nor verified that Petitioner knew he could not possess ammunition and that the jury never proved the four elements required to the jury based on Rehaif's requirements to the jury. And Rehaif is retroactively applicable to Petitioner's Title 28 U.S.C. § 2255(f)(1).

Petitioner states to this Honorable Court that he is actually innocent of his Title 18 U.S.C. § 922(g)(1) offense, because he never knew he could not possess ammunition and that it was against the law to possess ammunition. Also, the jury never heard all four required elements for Petitioner's § 922(g)(1) offense, as is required under *Rehaif v. United States*, 139 S. Ct. 2191 (2019).

According to Title 18 U.S.C. § 922(g)(1), it is unlawful for a convicted felon to possess a firearm or ammunition, but that is only subsection "g." The 18 U.S.C. § 922(g)(1) statute has no nons rea requirement but derives the mens rea requirement from 18 U.S.C. § 924(a)(2) which applies the term "knowingly." In 18 U.S.C. § 922(g) and § 924(a)(2), there are four (4) elements and (1) firearm element.

In the past the government, in its jury instructions, has stated that they only had to meet the possession element to convict a defendant of violating 18 U.S.C. § 922(g) and § 924(a)(2). The Supreme Court held that to counsel a defendant of violating § 922(g) and § 924(a)(2), the government has to prove all (4) elements read in the statute. The term "knowingly" is read and must be applied to all the subsequent listed elements of the crime, therefore, violating a defendant's Fifth Amendment and Sixth Amendment rights to due process and his Sixth Amendment rights to the 4 prongs, elements to the jury, in violation of *Rehaif, supra*, violates the Petitioner's Sixth Amendment rights to a SEE ATTACHED.

ATTACHMENT: Willie Wilcher

Reasons for Granting the Petition CONTINUED (PAGE 1 of 4)

jury determination beyond a reasonable doubt, especially when the jury was never given all of the elements and/or prongs required in *Rehaif, supra*, in which it is stated above.

Petitioner is therefore serving an unconstitutional conviction and sentence, for which he is actually innocent of, according to *Rehaif, supra*.

The government itself violated the Petitioner's Fifth Amendment rights to due process of law, and his Sixth Amendment right to the four required elements and prongs to the jury by stating that the jury was only required to meet one element, other than the four (4) required elements under *Rehaif, supra*.

Therefore, Petitioner received no "real notice" of the statute of the charge against him regarding possession of only ammunition, and not possession of a firearm. Petitioner was uninformed of the elements of the charged offense against him by the lacking of all four (4) required prongs and elements to the jury. Petitioner therefore had a totally incomplete understanding of the charge against him. Petitioner's indictment was therefore defective because the government was not required to prove all four of the elements, in which it is mandated under *Rehaif, supra*.

In light of *Rehaif*, Petitioner is actually innocent of his
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Reasons for Granting the Petition CONTINUED (Page 2 of 4)

§ 922(g)(1) offense. His indictment is invalid, faulty, and insufficient under Federal Rules of Criminal Procedure 7(a). Congress' use of language such as "in and affecting" rather than "was and affected" in § 922(g)(1) is obviously purposeful. Petitioner's indictment was not plain and concise, but lacking the four (4) required elements to the jury, and it did not charge the Petitioner with "knowingly" committing the four (4) subsequent elements, thereby making the indictment invalid and violating the Petitioner's Fifth Amendment rights and Sixth Amendment rights to due process of law, and to the required four prongs and elements to the jury required under Rehaif. It was mandatory for the government to give the jury all four (4) elements, to the jury, and because the government did not, in which was mandatory under Rehaif, *supra*, the court is and was without jurisdiction to impose a thirty (30) year sentence on the Petitioner, in violation of his Fifth and Sixth Amendment rights. United States v. Hocking Valley R. Co., 210 F. 535, 538-39 (6th Cir. 1914); Carper v. Ohio, 27 Ohio St. 572, 575-76 (1875); Commonwealth v. Hindu, 101 Mass. 209, 210 (1869).

There was no trial evidence in this case, that the Petitioner ever knew that he could not possess ammunition. Petitioner simply never knew that he could not possess ammunition, nor was this ever proven at trial.

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Reasons for Granting the Petition CONTINUED (Page 3 of 4)

The failure to allege a crime is a jurisdictional defect. *Izumieta*, 710 F.3d 1176, 1179 (11th Cir. 2017); and *Hubbert*, 909 F.3d 335, 342-44 (11th Cir. 2018). See also, *McIntosh*, 704 F.3d 894, 902-03 (11th Cir. 2013).

It was never proven in this case that Petitioner never knew he was a person that was barred from possessing ammunition or that he belonged to a category of prohibited people who could not possess ammunition. Therefore, Petitioner is actually, factually and legally innocent of his sentence and conviction. *Davis v. United States*, 417 U.S. 333-346 (1992); *Horse v. Bell*, 548 U.S. 517-522 (2006); *Bousley v. United States*, 523 U.S. 614-620 (1998); *Bailey v. United States*, 516 S. Ct. 137 (1995); *Schlup v. Delo*, 513 U.S. 295 (1995); and *Glover v. United States*, 531 U.S. 198-201 (2001). Counsel wasn't ineffective in not bringing a Reheaf claim on Petitioner's behalf because Reheaf did not exist at the time of the Petitioner's trial, and therefore, Counsel could not have been ineffective because Counsel could not predict the fortune of Reheaf coming. Petitioner is therefore being actually innocent of his conviction and sentence based on all of the above stated reasons.

Petitioner also wishes to inform this Honorable Court that the lower courts are mistaken when they state that Petitioner is

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Reasons for Granting the Petition CONTINUED (Page 4 of 4)

not eligible for a Rehearsal claim. Petitioner is and was eligible for a Rehearsal claim, because of the filing of Petitioner's first § 2255 (f)(1) motion/petition for which he filed on time and within one year of the Rehearsal decision, based on a substantial change in the statute and the law. Petitioner pursued this claim one year within the Rehearsal claim. *Dobb v. United States*, 545 U.S. 353-357 (2005); and *Richardson v. United States*, 526 U.S. 813-817 (1999).

Petitioner requests a remand of his sentence and conviction based on all of the above stated reasons in this writ of certiorari.

Units of reason would stipulate that this case deserves further encouragement and that Petitioner's Fifth and Sixth Amendment rights were violated. *Slack v. Daniels*, 539 U.S. 473-484 (2010); *Miller-El v. Cockrell*, 536 U.S. 322-332 (2004); *Barefoot v. Estelle*, 463 U.S. 880-895, n.1 (1983); and *Buck v. Davis*, 137 S. Ct. 759 (2017).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

William Wilchy

Date: 12/1/2021