

Supreme Court, U.S.

FILED

DEC 07 2021

OFFICE OF THE CLERK

No.

21-7047

IN THE
SUPREME COURT OF THE UNITED STATES

In re: DAREN KAREEM GADSDEN
ON PETITION FOR A WRIT OF HABEAS CORPUS

DaRen Kareem Gadsden, #41948-037, Yazoo City, MS 39194

PO Box 5000
Yazoo City, MS 39194

ORIGINAL

QUESTION(S) PRESENTED

Whether or not the U.S. District Court for the District of Maryland exceeded its authority and/or jurisdiction by punishing petitioner to a (23) twenty-three year sentence in Federal prison for conduct that does not violate any Federal law, regulation or statute.

Whether or not the U.S. District Court for the District of Maryland exceeded its authority by sentencing petitioner to (9) times of (262) two-hundred and sixty-two months each in Federal prison for one Federal offense.

Whether or not the Federal Indictment in criminal case # WDQ-11-0302 in which petitioner is convicted and incarcerated under is multiplicitous in violation of the (5) Fifth Amendment Double Jeopardy clause of the United States Constitution.

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:

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	3
STATEMENT OF THE CASE.....	4-12
SUPREME COURT RULE 20.1 REQUIREMENTS.....	13-14
REASONS FOR GRANTING THE WRIT.....	15-16
CONCLUSION.....	16

INDEX TO EXHIBITS

EXHIBIT A: Certificate of Absence of Records from the
Federal Deposit Insurance Corporation (FDIC)
(3) pages

EXHIBIT B: Freedom of Information act/Privacy Act Reply
Letter from the U.S. Department of Justice
Executive Office for United States Attorney
(2) pages.

EXHIBIT C: Instruction Given to Jury in criminal case
WDQ-11-0302 now CCB-11-0302 PG T-V-1199
(1) page

EXHIBIT D: Federal Indictment in the U.S. District Court
For the District of Maryland Criminal case WDQ-11-302
now CCB-11-0302
(18) pages

EXHIBIT E: Judgement order in the U.S. District Court for
the District of Maryland criminal case WDQ-11-0302
now CCB-11-0302
(6) pages

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
Ball v. United States..... 470 U.S. 856 (1985)	11
Blockburger v. United States..... 284 U.S. 299 (1932)	10
United States V. Adepoju..... 756 F.3d 250 (4th Cir. 2014)	8
Schlup v. Delo..... 513 U.S. 298, 327, 115 s.ct 851, 130 L.ed 805 (1995)	13
Whalen v. United States..... 445 U.S. 684 (1980)	12
U.S. Tax Ct. 2014-10-000	9
STATUTES AND RULES	
18 U.S.S.L.C. §1208A..... Aggravated Identity Theft	4
18 U.S.C. §1344..... Bank Fraud	passim
18 U.S.C. §1349..... Conspiracy to Commit Bank Fraud	passim
18 U.S.C. §1502..... Act Attempted Evidence Tampering	4, 9
28 U.S.C. §2241..... Habeas Corpus	8
28 U.S.C. §2255..... Habeas Corpus	4
Fed. R. Crim. P. 12(b)(3)(B)(ii)..... OTHER	10

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1651(A)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

5th Amendment of the United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

8th Amendment of the United States Constitution

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

STATEMENT OF THE CASE

Petitioner was indicted, tried twice, and sentenced in the U.S. District Court for the District of Maryland, in criminal case number CCB-11-0302, for Conspiracy to Commit Bank Fraud 18 U.S.C. §1349 (Count 1), Bank Fraud 18 U.S.C. §1344 (Counts 2-9), Aggravated Identity Theft 18 U.S.C. §1028(A) (Counts 10-11), and Attempted Evidence-Tampering 18 U.S.C. §1502(c)(1) (Counts 12-13).

Petitioner was sentenced to 262 months imprisonment, \$1,399,000 restitution, \$100 special assessment fee, and 5 years supervised release for each of Counts 1-9 Bank Fraud. Petitioner was sentenced to 24 months imprisonment for Counts 10-11, Aggravated Identity Theft, \$100 special assessment fee, and 3 years supervised release. Petitioner was sentenced to 240 months imprisonment for Counts 12-13, Attempted Evidence-Tampering, \$100 special assessment fee, and 5 years supervised release.

Petitioner filed a direct appeal with the Fourth Circuit Court of Appeals, case 13-4942, in this case on December 11, 2013. This appeal was denied on April 1, 2015.

Petitioner filed a Habeas Corpus motion under 28 U.S.C. §2255 in this case on May 3, 2015, case no. CCB-15-1965. This motion was denied on February 10, 2016. Petitioner appealed this denial on May 26, 2016 in the U.S. Fourth Circuit Court of Appeals. This appeal was denied on June 1, 2016.

FACTS

I. Facts for Ground One: Actual Innocence of Counts 2-4, Bank Fraud, 18 U.S.C. §1344, for the Reason that the Charged Conduct Does Not Violate the Federal Statute

1. During Petitioner's direct appeal, Petitioner requested his attorney to investigate whether or not NetSpend Corporation (counts 2-3) and the Maryland Department of Assessment and Taxation (count 4) were or have ever been federally insured by the Federal Deposit Insurance Corporation (FDIC). The attorney never provided any information on this matter.

2. Lacking any other means to obtain this information, Petitioner, in November of 2014, requested records pertaining to his criminal case, CCB-11-0302, to the U.S. Department of Justice under the Freedom of Information Act/Privacy Act. This request included an inquiry into the record of the federal insurance status of the previously mentioned entities. [See Exhibit B.]

3. Petitioner did not receive any response until late 2019. [See Exhibits A and B.]

4. The records obtained from this request conclusively prove that NetSpend Corporation (counts 2-3) and the Maryland Department of Assessment and Taxation (count 4) are and have never been federally insured by the FDIC. This is contrary to the jurisdictional and essential elements of Bank Fraud, 18 U.S.C. §1344. [See Exhibit A.]

Bank Fraud 18 U.S.C. §1344 Convictions and Sentences on Counts 2-9 violate the Fifth Amendment of the U.S. Constitution Double Jeopardy Clause.

1. In this case the third superseding indictment lays out in detail the scheme to defraud PNC Bank and Bank of America in count

1, Conspiracy to Commit Bank Fraud, 18 U.S.C. §1349.

Counts 2-9, Bank Fraud, 18 U.S.C. §1344, on Page 10 of the Third Superseding Indictment, allege again the same scheme as is alleged in paragraphs 1-18 and 20-44. The only difference is that the overt acts alleged in Count 1 were divided into eight separate Counts without additional allegation. These eight separate Bank Fraud, 18 U.S.C. §1344 counts are not different execution acts of the scheme to defraud; they are overt acts in furtherance of the scheme to defraud already charged in Count 1 of the Third Superseding Indictment.

2. For example, Count 9, Bank Fraud under 18 U.S.C. §1344, in the Third Superseding Indictment, states as follows: that on "September 11, 2010 Gadsden withdrew funds from the Kieth [sic] Daughtry Contracting LLC account at PNC bank ending in 1981 using an ATM located at 1201 Wisconsin Avenue, NW in the District of Columbia." Now compare this previously mentioned act with Count 1, Conspiracy to Commit Bank Fraud 18 U.S.C. §1349, paragraph 43, where the same act is described as, "It was furtherpart of the conspiracy and scheme to defraud that defendant Gadsden on or about September 11, 2010 withdrew \$600 in United States currency directly from the Keith Daughtry Contracting LLC account ending in 1981 using an ATM located at 1201 Wisconsin Avenue, NW in the District of Columbia.

3. Another example is that Count 4, Bank Fraud 18 U.S.C. §1344, in the Third Superseding Indictment states as follows: that on May 19, 2010, Gadsden "Filed articles of organization for the Keith Daughtry Contracting LLC with the Maryland Department of Assessments and Taxation in Baltimore, Maryland." Now compare

the previous mention of an act with Count 1, Conspiracy to Commit Bank Fraud 18 U.S.C. §1349, paragraph 26 where the same act is described as follows: "Keith Daughtry Contracting LLC an entity incorporated in the State of Maryland. This company however existed in name only, Gadsden had registered the entity with the Maryland Department of Assessment and Taxation.

Under penalty of perjury, I, Petitioner DaRen Kareem Gadsden declare and affirm that the foregoing facts are true and correct.



DaRen Kareem Gadsden

October 29, 2021
Date

ARGUMENT

This is an original application to this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. §§2241(c)(2) and (3). The Writ is available for prisoners in the custody of the United States government who are "in the custody for an act done or omitted in pursuance of an act of Congress or an order, process, judgment or decree of court or judge of the United States" and/or "in violation of the Constitution or laws or treaties of the United States." In this case a writ of Habeas Corpus is warranted because Petitioner is in federal custody in violation of the jurisdictional provisions of Article III Section 2 and the double jeopardy and due process provisions of Amendment V of the U.S. Constitution. Petitioner is in the custody of the Attorney General of the United States of America at the USP Yazoo City, P.O. Box 5000 Yazoo City, MS 39194, pursuant to a judgment of the U.S. District Court for the District of Maryland.

A. Argument for Ground One: Actual Innocence of Counts 2-4, Bank Fraud, 18 U.S.C. §1344, for the Reason that the Charged Conduct Does Not Violate the Federal Statute.

The elements of Bank Fraud under 18 U.S.C. §1344 are (1) that the defendant knowingly executed or attempted a scheme or artifice to defraud a federal institution, (2) that he did so with intent to defraud, and (3) that the institution was a federally insured or chartered bank, see United States v. Adepoju, 756 F.3d 250, 255 (4th Cir. 2014).

The federal insurance status of a financial institution

is a jurisdictional prerequisite as well as an element of the substantive crime. See United States v. Silvious, 1991 U.S. App. LEXIS 24901 (4th Cir. 1991).

In this particular case, the entities in question—Netspend (Counts 2-3) and The Maryland Department of Assessment and Taxation (Count 4)—are not and have never been insured by the Federal Deposit Insurance Corporation (FDIC). See Exhibit A. This exhibit conclusively proves that the above entities are not financial institutions as defined in 18 U.S.C. §20 and required by the Bank Fraud statute 18 U.S.C. §1344.

In light of this fact, the charged conduct of Bank Fraud, 18 U.S.C. §1344 recited in Counts 2-4 in the Third Superseding Indictment does not violate the statute, and therefore Counts 2-4 are not federal offenses. As a result, Petitioner is actually innocent of the charged conduct in the above counts.

As per the Bank Fraud statute, 18 U.S.C. §1344, Fourth Circuit law, and Article III, Section I of the U.S. Constitution, the Bank Fraud conviction and sentence for Counts 2-4 must be vacated.

As Counts 10-11, Aggravated Identity Theft 18 U.S.C. §1028A, are predicated on Counts 2-3, Bank Fraud 18 U.S.C. §1344, and Counts 12&13, Evidence Tampering 18 U.S.C. §1512(c)(1), are predicated on Counts 10-11, the conviction and sentence for these counts must be vacated as well.

II. Argument for Ground Two: Bank Fraud 18 U.S.C. §1344 Convictions and Sentences on Counts 2-9 violate the Fifth Amendment of the U.S. Constitution Double Jeopardy Clause

The Fifth Amendment of the United States Constitution states, in the Double Jeopardy Clause, that "nor shall any person be subject

for the same offence to be twice put in jeopardy of life or limb." In this case Petitioner was convicted and punished nine (9) times for one scheme to commit bank fraud against Bank of America and PNC Bank. See Third Superseding Indictment [Criminal Docket #120]. When a defendant is convicted of violating multiple statutory provisions for a single act or transaction, this Court employs the analysis set forth in Blockburger v. United States, 284 US 299 (1932) to determine if the convictions offend the Double Jeopardy clause. Under Blockburger, the test to be applied to determine whether there are multiple offenses or only one is whether each provision requires proof of an additional fact which the other does not. One of the guarantees provided in the Fifth Amendment Double Jeopardy clause of the U.S. Constitution is the protection against the imposition of cumulative punishments for the same offense in a single criminal trial. Courts in the United States may not impose more than one punishment for the same offense in several counts. Reversal is warranted if the defendant actually was convicted on multiplicitous counts and subjected to multiple punishment. Multiplicity is the charging of the same offense in more than one count. See Fed. R. Crim. P. 12(b)(3)(B)(ii).

The statute on Bank Fraud 18 U.S.C. §1344 authorizes prosecution for each execution of a scheme to defraud a financial institution, not each act in furtherance of such a scheme. Here in this case the government charged Petitioner with eight (8) additional acts in furtherance of the same scheme, namely the scheme to defraud Bank of America and PNC Bank. Petitioner maintains that "simultaneous trial" on the asserted multiplicitous Counts 2-9 violated his due process of law as per the Double Jeopardy

clause of the Fifth Amendment and the right to have an impartial jury trial guaranteed by the Sixth Amendment of the U.S. Constitution, rendering his trial fundamentally unfair.

It is impermissible and violates the Fifth Amendment's Double Jeopardy clause to fractionate a single continuous offense growing out of one transaction and involving one period of time into several parts and to denominate each part as separate offenses. These multiplicity errors resulted in Petitioner's conviction and sentencing on nine (9) Bank Fraud 18 U.S.C. §1344 counts including nine (9) concurrent terms of imprisonment, supervised release, restitution, and special assessment fee on nine (9) Bank Fraud 18 U.S.C. §1344 convictions instead of one Bank Fraud 18 U.S.C. §1344 conviction and therefore is prejudicial to Petitioner.

The Supreme Court has stated that "separate conviction, apart from the concurrent sentence, has potential adverse collateral consequences that may not be ignored. For example, the presence of two convictions on the record may delay the defendant's eligibility for parole or result in an increased sentence under a recidivist statute for a future offense. Moreover, the added conviction may be used to impeach the defendant's credibility and certainly carries the societal stigma accompanying any criminal conviction. Thus, the [added] conviction, even if it results in no greater sentence, is an impermissible punishment." Ball v. United States, 470 US 856 (1985). The U.S. District Court for the District of Maryland in this case "exceed[ed] its own authority by imposing multiple punishments not authorized by Congress. It violated not only the specific guarantees against double jeopardy, but also the constitutional principle of separation of power in a manner that

trenches particularly harshly on individual liberty." Whalen v. United States, 445 US 684 (1980). These instant multiplicitous errors are clear, affecting Petitioner's substantial rights. They seriously affect the fairness, integrity, and public reputation of the judicial proceeding.

Whereas Petitioner has preserved this instant Double Jeopardy claim in pretrial motion via Fed. R. Crim. P. 12(b)(3)(B)(ii), [Criminal Docket #147] and was actually convicted on multiplicitous counts and is currently subjected to multiple punishments, the instant case calls for an exercise of this Court's equitable powers.

SUPREME COURT RULE 20.1 REQUIREMENTS

I. THE WRIT WILL BE IN AID OF THE COURT'S JURISDICTION

- A) If the court declines to exercise its jurisdiction under 28 U.S.C. 1651(A) petitioner will be unable to get redress for violations of his rights under the Fifth (5th) and Eighth (8th) amendments of the United States Constitution.
- B) This writ is also in aid of this court because the inferior courts below have erroneously made the decision not to address a claim of actual innocence of a crime of conviction on the merits.

II. EXCEPTIONAL CIRCUMSTANCE WARRANT EXERCISE OF THE COURT'S DISCRETIONAL POWER

- A) The inferior courts below have denied petitioner actual innocence claim that is supported by physical critical evidence that was not presented at trial without addressing the merits. These denials are contrary to the precedent set by this court in Schulp V. Delo.
- B) The United States District court for the District of Maryland was not authorized to adjudicate nor sentence petitioner.

III. ADEQUATE RELIEF CANNOT BE OBTAINED FROM ANY OTHER FEDERAL COURT OR IN ANY OTHER FORMS

- A) At this stage in this case on the issue petitioner has filed every conceivable motion, petitioning the federal system offers, to no avail. The inferior courts have denied this claim of actual innocence without addressing the merits.

Petitioner desperately needs this court to review this pl-

eading to see whether the United States District court for the District of Maryland exceeded its authority by punishing petitioner with a lengthy prison sentence for offenses that do not violate any federal law, rule or statute.

IV. REASON FOR NOT MAKING APPLICATION TO THE DISTRICT COURT OF THE DISTRICT IN WHICH PETITIONER IS HELD

A) Petitioner has filed an application in the district in which he is being held. The application has been denied without addressing the merits of the actual innocence claim.

REASONS FOR GRANTING THE PETITION

In this case and on these instant issues, petitioner filed a 28 U.S.C. 2241 Habeas Corpus in the United States District Court Southern District of Mississippi, the district in which he is being currently held.

In this petition, using Schlup V. Delo, 513 US 298, 327, 115 S.ct 851, 130 L. ed 809 (1995) as a vehicle, petitioner's claim of actual innocence regarding counts 2-3 Bankfraud, 18 U.S.C. 1344, against Netspend Corporation and counts 4 Bankfraud, 18 U.S.C. 1344, against the Maryland Department of Assessments and Taxation. This claim was supported by critical physical evidence that was not presented at trial (Exhibit A). This evidence is so strong that if the jury in this case would have been presented with this evidence, in no way would a jury acting reasonably have voted guilty on these 3 counts, and no jurist could have confidence in the outcome of these guilty verdicts.

The U.S. District Court's denial of these claims is contrary to well settled case law set by this court in Schlup v. Delo, 513 U.S. 298, 327, 115 S.ct 851, 130 L. ed 809 (1995) which states that a petitioner is entitled to have his constitutional claims heard on the merits of his actual innocence claim, if supported by reliable evidence not present at trial. In this case, the evidence is very reliable as it came from the U.S. Department of Justice via the Freedom of Information Act/Privacy Act. (See Exhibits A and B.)

The U.S. District Court for the District of Maryland was not authorized by the U.S. Congress, nor does it have jurisdiction to adjudicate count 2-4 Bankfraud, 18 U.S.C. 1344, nor to punish petitioner for (23) twenty-three years, for conduct that does not violate the bankfraud statute nor any other Federal statute, law, or regulation.

This is a violation of petitioner's (5) Fifth Amendment right to due process, and to liberty and his (8) Eighth Amendment right to be free of cruel and unusual punishment of the United States

Constitution...

B.) The federal indictment criminal case #WDQ-11-0302, now CCB-11-0302, is multiplicitous in violation of the (5) Fifth Amendment Double Jeopardy clause of the United States Constitution.

This is the court of last resort and the last opportunity Petitioner has for redress regarding these issues presented. Petitioner is just asking for a fair and just merit review on the issues stated herein.

CONCLUSION

The petitioner's writ of Habeas Corpus should be granted.

Respectfully submitted,



Date: November 30, 2021