Docket Number:_____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA	)	
	)	
	)	
v.	)	**On Petition for a Writ of Certiorari**
	)	**to the United States Court of Appeals**
	)	**for the 4th Circuit**
BRADLEY SCOTT WILLIAMS	)	

PETITION FOR A WRIT OF CERTIORARI

Neil Horn, Esq.
Counsel for Bradley Scott Williams
321 Campbell Ave. SW
Roanoke, VA 24016
(540) 345-1662
E-Mail: Neil@NeilHornLegal.com

QUESTION PRESENTED FOR REVIEW

Did the trial court commit error when it calculated the appellant's sentencing guideline base level score using the enhanced "Ice" guideline value under USSG Section 2D1.1(c)(2) instead of the normal methamphetamine base level value under Section 2D1.1(c)(4)?

PARTIES TO THE PROCEEDING

This case is a criminal case first heard in the United States District Court for the Western District of Virginia. The Appellant is Bradley Scott Williams who is represented by Neil Horn, Esq., Attorney at Law. The Appellee is the United States of America which was represented at the U.S. 4th Circuit Court of Appeals by Daniel Bubar, Esq., United States Attorney and S. Cagle Juhan, Esq., Assistant United States Attorney. Counsel for the Appellant was appointed by the District Court and is not a corporate entity requiring disclosure in Rule 29.6.

PRIOR COURT PROCEEDINGS

Appellant was indicted for methamphetamine distribution on October 24, 2018 in Abingdon, Virginia. The District Court case number is 1:18CR0025-027. The case was captioned individually as, United States of America vs. Bradley Scott Williams. Along with the appellant, there were 27 co-defendants named in the original indictment. It was captioned collectively as, United States of America v. Shawn Farris, et al. The appellant was sentenced on December 20, 2019.

After sentencing, appellant filed a notice of appeal. That appeal was heard before The United States Court of Appeals for the Fourth Circuit on September 24, 2021. The case was captioned collectively as, United States of America v. Bradley Scott Williams, Larry Levi Bennett, James Robert Johnson & Shawn Wayne Farris. The appellant's individual case number was 40-4002.

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

CONSTITUTIONAL PROVISIONS:

STATUTORY AND RULE PROVISIONS:

PRIOR ORDERS AND OPINIONS

The District Court held a sentencing hearing on June 27, 2019 wherein the appellant presented his sentencing guideline objections. (Doc. No.s 506, 536 & 573). The District Court took those objections under advisement for more careful consideration and continued the case over for a final hearing. (Doc. No. 573). On October 9, 2019 the District Court filed a written opinion rejecting the appellant's guideline argument and denied his objection. (Doc. No. 782). A final sentencing hearing was held on December 20, 2019. (Doc. No.s 836 & 838).

The Court of Appeals delivered a published opinion on November 23, 2021 affirming the District Court's judgment. That opinion is cited as United States v. Williams, (4th Cir. 2021).

JURISDICTIONAL STATEMENT

The District Court had jurisdiction under 18 U.S.C §3231. The final sentencing order was entered on December 20, 2019. The Court of Appeals had jurisdiction under 28 U.S.C. §1291 and its opinion and judgment were entered on November 23, 2021. This Court has jurisdiction to hear this case under 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves the following constitutional provision, statutes and regulations. In general, the case involves the due process clause contained in the

5th Amendment to the United States Constitution. More specifically, the case involves Sections 2D1.1 (c)(2) and 2D1.1(c)(4) of the United States Sentencing Guideline Manual.

STATEMENT OF THE CASE

The appellant was found guilty of conspiring to distribute and possess with the intent to distribute 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, on February 20, 2019. (Doc. No. 312) A presentence report was ordered, and its initial version was completed and filed on May 13, 2019. (Doc. No. 473). Appellant's counsel filed objections to that report on May 29, 2019. (Doc. No. 506). Appellant's Sentencing Memorandum was then filed on June 10, 2019. (Doc. No. 536). A final version of the pre-sentence report was filed on June 25, 2019. (Doc. No. 564). Said report declined to accept any of the appellant's objections.

A sentencing hearing was held on June 27, 2019. (Doc. No. 573). After reviewing the evidence presented and hearing the argument of counsel, the trial court took its decision under advisement to further consider the appellant's objections and arguments. (Doc. No. 573). On October 9, 2019, the trial court filed a consolidated opinion deciding the sentencing issues. (Doc. No. 782). In that opinion, the court denied appellant's objection to the purity enhancement, and decided to apply the enhancement to its base level calculation. The enhanced score indicated a range of 235 to 293 months to serve. (Doc. No. 782). On December 20,

2019 a final sentencing hearing was held. (Doc. No. 836). After considering additional evidence and argument, the trial court sentenced the appellant to serve 204 months in prison. (Doc. Nos. 836 & 838). On December 22, 2019, the appellant, by his counsel, filed a notice of appeal. (Doc. No. 842).

REASONS FOR GRANTING CERTIORARI

The appellant, Bradley Williams, contends this Petition should be granted because the trial court abused its discretion by applying the drug purity enhancement under Section 2D1.1(c)(2), hereinafter the "Ice" enhancement, to his guideline calculation. (Doc. No. 782). The enhancement is a factual inference of culpability purportedly supported by objective data. That however is no longer the case. The justification for the "Ice" enhancement's existence is not supported by the government's current empirical data. It is an inference of culpability. If, however, that inference is not supported by objective evidence, then it should be unreasonable to apply. When considered along with the appellant's limited involvement in the criminal enterprise, the choice to apply the "Ice" enhancement in this case was so unreasonable that it constitutes an abuse of the trial court's discretion. The effect of that choice was to establish a guideline score ten times greater than necessary.

The "Ice" enhancement is being increasingly challenged. Section 2D1.1 defines "Ice" as a mixture or substance containing d-methamphetamine hydrochloride of at least 80% purity. (USSG Man. 2016, p. 161). The Section

Commentary claims upward departures are warranted because high drug purity indicates the defendant played a prominent role in the criminal enterprise or was in close proximity to the source of the drugs. (USSG Man. 2016, p. 174). The Comment asserts that drugs of high purity are most often diluted before sale, thereby increasing their volume and allowing a larger quantity to be distributed, which necessarily increasing the criminal culpability of the defendant in the enterprise. (Id.)

While the Commentary's inference appears reasonable on its face, and may have been accurate at one time, current empirical data indicates the opposite is true. Several Federal District Courts have addressed objections to the "Ice" enhancement and made some remarkable findings. In United States v. Tyson Nawanna, CR17-4019-MWB (N. Dist. Iowa, May 1, 2018) and in United States v. Scott Michael Harry, CR17-1017-LTS (N. Dist. Iowa, June 6, 2018) the trial courts found the U.S. Sentencing Commission had no empirical data to justify imposing the harsh 10 to 1 "Ice" enhancement ratio. Both point out that almost all the methamphetamine trafficked and distributed in the United States (relying on the U.S. Drug Enforcement Agency's own data, from 2011 thru 2016) had an average purity of over 80%. Citing to the district court's opinion in United States v. Hartle, No. 4:16cv00233-BLW, 2017 WL 2608221 (D. Idaho 15, 2017), both the Nawanna and the Harry courts concluded that the "Ice" enhancement is no longer an accurate indicator of culpability and cannot justify such a harsh sentencing enhancement.

At least one case in the 4th Circuit contains a similar finding. In United States v. Moreno, No. 5:19cr002, 2019 WL 3557889 (W.D. Va. Aug. 5, 2019) the court conducted a detailed analysis of the "Ice" enhancement. It reviewed a number of sources indicating that 1.) the "Ice" enhancement is divorced from an empirical justification, in favor of policy decisions reflecting Congress's changes to the methamphetamine mandatory minimums, and 2.) the U.S. Department of Justice and the DEA's data shows the average methamphetamine purity in the United States to be greater than 90%. (Id. at p. 4,5,6).

Considering these important findings, the court observed that the Section 2D1.1(c)(2) enhancement runs a great risk of overstating the offender's culpability, and virtually guarantees automatic application of that enhanced penalty. (Id. at p. 6-8). Agreeing with the district courts in both Harry and United States v. Bean, 371 F. Supp. 3d 46 (D. N.H. 2019), the Moreno court concluded that there is no objective evidence supporting the Sentencing Commission's proposition for having a 10 to 1 "Ice" enhancement. (Id. at p. 6-8).

Keeping these conclusions in mind, it is within the power of a district court to reject Guideline application based on policy disagreements with the Commission. According to the Supreme Court in Spears v. United States, 555 U.S. 261 (2009), a trial court has the right to deviate or reject a sentencing guideline recommendation based on a policy disagreement with the sentencing guidelines. See also Nawanna above, citing to United States v. Beckman, 787 F.3d 466 (8th Cir. 2015). Plainly the trial court had discretion to apply of the "Ice" enhancement, however, the exercise of

that discretion should be tied to some objective empirical evidence indicating that enhancement is still valid.

The trial court, however, chose not to. Its justification focused on the size of the conspiracy, the dangerous nature of methamphetamines, its popularity in usage, the international nature of the criminal enterprises that distribute the drug and the high purities of the drugs seized in the investigation. None of those observations address the fact that the government's own data proves the central justification for assuming a higher culpability, no longer exists. Reliance on the Ice enhancement was therefore fundamentally flawed. Reliance upon it was thus unreasonable and qualifies as an abuse of discretion by the trial court.

In addition to the above arguments, it should be noted that the government produced no evidence showing the appellant was particularly sophisticated, held a high position within the conspiracy, or was involved for a long period of time. In fact, the appellant was involved in the conspiracy for a short amount of time. One important purpose of the Guidelines was to reduce or eliminate unfairness in sentencing. In light of the holdings in Booker and its progeny, it is the appellant's contention that the enhancement is obsolete, is not supported by objective evidence and yields an unfair sentencing result.

In part II. A of its published opinion, the Court of Appeals brushed aside the appellant's "Ice" enhancement argument. The two-paragraph section within its opinion includes no consideration of the lack of empirical data. It simply restates broad factual inferences as being sufficient to justify the trial court's discretion to

apply the enhancement. The Court seemed to give little weight to the fact that other district courts, courts that have closely examined the data, came to the opposite conclusion.

CONCLUSION

In conclusion, the appellant believes his case contains an important issue of law and fact and asks the Court to grant this Writ. Federal district courts across the country have repeatedly found the data used to justify the application of the "Ice" enhancement to be lacking or absent. Applying a factual inference that is not supported by objective data is not only unfair it serves to violate the appellant's right to due process under the 5th Amendment. This is an important issue that has caused district courts to reach opposite conclusions and should be settled by this Court.

This Petition for a Writ of Certiorari should be granted.

/s/ Neil A. Horn
Counsel for Appellant Williams

CERTIFICATE OF COMPLIANCE

1. This Writ complies with the word limitations set out in Rule 33.1. It contains 3037 words, excluding the Appendix;

2. This Writ complies with the typeface and type style requirements because it was prepared by Microsoft Word in Century type print at 12 point size.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 11th day February, 2022, a true copy of this Petition for a Writ of Certiorari was mailed by first-class post to the office of Asst. U.S. Attorney S. Cagle Juhan, Esq., Counsel for the Appellee, at 180 West Main Street, Suite B19, Abingdon, VA 24210, and filed electronically with the Clerk of the Court using the Electronic Filing System, which will send a notification of such filing (NEF) to AUSA Juhan.

/s/ Neil A. Horn
Counsel for Appellant Williams

APPENDIX

Table of Contents

1. **APPENDIX A:** PUBLISHED OPINION by the United States Court of Appeals for the Fourth Circuit, United States v. Bradley Scott Williams, Case No. 20-4002, Dated November 23, 2021.

2. **APPENDIX B:** OPINION AND ORDER by Judge James Jones, United States v. Bradley Scott Williams, 1:18CR00025, Dated October 9, 2019.

3. **APPENDIX C:** United States Sentencing Guideline Manual Sections 2D1.1(c)(2), Section 2D1.1(c)(4) and Guideline Commentary Number 27