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IN THE
Supreme Court of the United States

JAMES EARL HARPER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I. Questions Presented

1. Whether the Government should have been bound by the provisions of the Plea Agreement as the Petitioner did not breach the provisions contained therein resulting in the Court sentencing the Petitioner to a period of incarceration based upon only those counts he plead guilty to in the Plea Agreement.

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IV. Petition for Writ of Certiorari

James Earl Harper, an inmate currently incarcerated with the Federal Bureau of Prisons at Fort Dix FCI in Joint Base Mdl, New Jersey, by and through Jennifer Haynes Rose, attorney with Law Office of Jennifer Haynes Rose, appointed legal counsel, respectfully petitions this Court for a writ of certiorari to review the judgment of the Fourth Circuit Court of Appeals and the District Court for the Eastern District of North Carolina.

V. Opinions Below

The decision by the Fourth Circuit Court of Appeals denying Mr. Harper's direct appeal is an unpublished opinion entered on or about December 7, 2021 in the case entitled *United States v. James Earl Harper*, No. 20-4335. The initial sentencing order was entered by the Honorable Louise W. Flanagan in case *United States of America v. James Earl Harper*, No 5:17-Cr-00385-FL-1. The Order of the Fourth Circuit Court of Appeals is attached at Appendix ("App.") at 1-6.

VI. Jurisdiction

Mr. Harper's direct appeal to the Fourth Circuit Court of Appeals was denied on December 7, 2021. Mr. Harper invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) and to Supreme Court Rule 13.1, having timely filed this petition for a writ of certiorari within ninety days of the Fourth Circuit Court of Appeal's judgment.

VII. Constitutional Provisions Involved

United States Constitution, Amendment V:

“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 offense to be put twice 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.”

VIII. Statement of the Case

After entering into a Memorandum of Plea Agreement with the United States of America, the Petitioner James Earl Harper pleaded guilty in the Eastern District of North Carolina on June 13, 2018, and was then convicted of two counts of a thirteen count indictment. Petitioner Harper was convicted Conspiracy to distribute and possess heroin, marijuana and cocaine in violation of Title 21, United States Code, Section 841(a)(1), 841(b)(1)(b) and Title 21, United States Code, Section 846 as well as Possession of Firearm in Furtherance of a Drug Trafficking offense on December 29, 2015 in violation of Title 18, United States Code, Section 924(c)(1)(A)(i). Thereafter, on May 16, 2018, the United States of America filed a Motion for Hearing to Relieve the Government of Its Obligation Under the Previously Agreed to Plea Agreement. The District Court conducted a hearing on the Government’s motion on November 12, 2019.

At the hearing, the Government maintained that it should be permitted to withdraw the plea agreement as it suggested that the Petitioner failed to adhere to the constraints of the plea agreement by failing to discuss with its agents certain crimes of which it believed the Petitioner had knowledge. Specifically, the

Government argued that the Petitioner had been presented at an intersection in Rocky Mount, North Carolina at which time a known gang member Tyrone Foreman appeared and allegedly shot another individual. The Government did not allege that the Petitioner was involved in the altercation and murder, but simply that he saw a man that was known for many other violent offenses and the investigators wished for the Petitioner to name Tyrone Foreman as the one that been the one involved in the murder. The District Court granted the Government's motion and allowed the plea agreement to be withdrawn. The Petitioner then was sentenced to all counts of the indictment whereupon the District Court sentenced the Petitioner to sixty (60) months in custody as to Counts 1, 2, 4, 5 and 7 to run concurrently. The Court further sentenced the Petitioner to Sixty (60) months each on County 3 and 6 which were to run consecutively for a total term of imprisonment of One Hundred Eighty (180) months. The Petitioner filed a timely Notice of Appeal. The Fourth Circuit Court of Appeals affirmed the District Court's rulings.

IX. Reasons for Granting this Petition

A. This case is an excellent vehicle for determining a question of federal law.

The question presented requires this Court to make a final determination of the federal law's interpretation of plea agreements. This Court has maintained that the ability of the parties to enter into an agreement is "an essential component to the administration of justice." Santobello v. United States, 404 U.S 257 (1971). Determination of a violation of a plea agreement by the Court includes the interpretation of a plea agreement's provisions through contract law. See United

States v. Ringling, 689 F.3d 349, 252-54 (4th Cir. 1993). The Court’s “analysis of the plea agreement or breach thereof is conducted with greater scrutiny than in a commercial contract,” due to the implication of the “defendant’s fundamental and constitutional rights . . . when he is induced to plead guilty by reason of a plea agreement.” United States v. Lewis, 633 F.3d 262, 269 (4th Cir. 2011) (*quoting United States v. McQueen*, 108 F.3d 64, 66 (4th Cir. 1996)(*emphasis added*))

B.The decision below is wrong.

1. The District Court should have denied the Government’s Motion and not rescind the plea agreement allowing the Petitioner to be sentenced in accordance to the Plea Agreement.
2. The facts as presented at the hearing do not warrant a determination that the Petitioner breached their responsibilities according to the plea agreement terms.

Investigators testified that they “believed” the Petitioner was present as the same location at the time of the murder of Raymond Brown by Foreman and they required his testimony to convict Foreman of murdering Brown. Petitioner maintained during all investigation of the murder of Raymond Brown that he was not present at the time of the murder and did not witness who was responsible for the murder. Petitioner Harper did not breach the contract terms of the Plea Agreement as he was truthful during his interviews and he adhered to the terms of the agreement by discussing only information of which he knew of crimes. Harper was unwilling to stipulate that he had witnessed a crime and as such the

Government intentionally sought to force the Petitioner to testify accordingly by seeking to charge him with crimes of narcotics and weapon violations.

When determining whether a Plea Agreement is valid and the Defendant's actions in adhering to the four corners of the plea agreement contract, a court should "not 'hesitate to scrutinize the government's conduct to ensure that it comports with the highest standard of fairness.'" United States v. Vaval, 404 F.3d 144, 152 (2d Cir. 2005) (*quoting* United States v. Lawlor, 168 F.3d 633, 637 (2d Cir. 1999)). The Government had negotiated in bad faith with the Petitioner during the negotiation of the plea agreement. Prior to the Petitioner being charged with any federal offense, he had denied to the Government that he knew of any information that would be beneficial during the prosecution of the murder of Raymond Brown. The Government then charged the Petitioner and following the entry of the plea agreement, sought to have him change his prior testimony and claim that the person the Government had as a person of interest in the crime was in fact the one that committed the murder. The Petitioner was charged with federal drug charges and a plea agreement was entered into solely to test the Petitioner and require him to change all his prior statements to that which the Government wanted him to say. Rather than listen to the Petitioner's statements that he had been making since the investigation began, the Government was seeking any advantage to have him state their version of the crime.

Under any version, changing of his statement further placed the Petitioner in a situation where he would be admitting to additional crimes that were unrelated to

the charges he had plead guilty. The Constitutional rights of the Petitioner were not waived when he signed the Plea Agreement, and he should not be compelled to make statements about crimes that were not part of the immunity provision with the plea agreement. The Plea Agreement did not waive the Petitioner's Fifth Amendment rights against self-incrimination regardless of its provisions requiring the Appellant to discuss crimes that he had knowledge or to which he may have been tangentially connected. In the instant case, as there was no immunity for crimes of violence. Even if the Government's hypothetical interpretation of the facts were true, the fact that the Petitioner communicated with the alleged murderer following the murder and did not provide information to police regarding the alleged murderer, Petitioner could have been facing charges against him for conspiracy as well as accessory after the fact. The plea agreement did not nor should it remove the Petitioner's request to not speak about the alleged murder. As such, the Government's motion should not have been granted.

As the Government's motion should not have been granted, the Court should not have sentenced the Petitioner to all charges located within the Indictment. Rather, the Plea agreement should have remained intact with the Petitioner being sentenced to only those two charges in which he pleaded guilty. This would have removed the consecutive sentences he received for two 924(c) counts which would have only been one such offense.

X. Conclusion

The Petitioner did not breach the Plea Agreement as written and agreed to by the parties. Petitioner had not changed his testimony regarding his knowledge of an alleged murder of Raymond Brown since prior to any charges being brought against him. Despite this, the Government acted in bad faith and sought charges against Petitioner to require that he make a change in his statement despite the fact that the Government had no identifiable evidence that Petitioner ever lied about his knowledge. The Government should have been bound by the plea agreement which would have prevented the Court from sentencing him to all charges as they were set forth in the Indictment and instead follow the plea agreement.

The Petition for Certiorari should be granted.

Respectfully Submitted,
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