

No. **21-7343**

Supreme Court, U.S.
FILED

FEB 19 2022

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

HARRY HUESTON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

PETITION FOR WRIT OF CERTIORARI

Harry Hueston
Reg. No. 24910-083
Federal Correctional Institution
Otisville
P.O. Box 1000
Otisville, NY 10963

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SUPREME COURT, U.S.

QUESTIONS PRESENTED

- I. WHETHER IT WAS ERROR FOR THE SECOND CIRCUIT TO DENY HUESTION THE RIGHT TO FILE AN APPEAL OR COA WHEN TIMELINESS WAS THE RESULT OF FACTS BEYOND HIS CONTROL?

LIST OF PARTIES

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

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PETITION FOR WRIT OF CERTIORARI

Harry Hueston, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The panel opinion of the Court of Appeals is unpublished and included in Hueston's Appendix (Pet. App.) at A. The opinion of the district court's denial is unpublished and is included in Pet. App. at B.

JURISDICTION

On March 19, 2020, this Court entered an order automatically extending the time to file any petition for certiorari due on or after that day to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing. The effect of that order was to extend the deadline for filing a petition for certiorari to February 22nd, 2022. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The Fifth Amendment (1791) establishes the requirement that a trial for a major crime may commence only after an indictment has been handed down by a grand jury; protects individuals from double jeopardy, being tried and put in danger of being punished more than once for the same criminal act; prohibits punishment without due process of law, thus protecting individuals from being imprisoned without fair procedures; and provides that an accused person may not be compelled to reveal to the police, prosecutor, judge, or jury any information that might incriminate or be used against him or her in a court of law.

The Sixth Amendment (1791) provides several protections and rights to an individual accused of a crime. The accused has the right to a fair and speedy trial by a local and impartial jury. Likewise, a person has the right to a public trial. This right protects defendants from secret proceedings that might encourage abuse of the justice system, and serves to keep the public informed. This amendment also guarantees a right to legal counsel if accused of a crime, guarantees that the accused may require witnesses to attend the trial and testify in the presence of the accused, and guarantees the accused a right to know the charges against them.

STATEMENT OF THE CASE

BACKGROUND:

Hueston was arrested for his participation in a violent, armed Hobbs Act Robbery in which he and his co-conspirators forced their way into the apartment of a drug dealer in order to steal money and drugs. While in the apartment, Hueston's co-conspirator threatened their victim's daughter and toddler-age by holding a firearm to each of their heads while Hueston and a second man beat their father in front of them. Hueston fled the apartment after hearing sirens, and was caught running from the scene. The Plea Agreement and Sentencing on March 12, 2015, Hueston plead guilty pursuant to a plea agreement (the "Plea Agreement") to Count One, conspiracy to commit Hobbs Act robbery in violation of 18 U.S.C. § 1951.

As outlined in the Plea Agreement, Hueston's stipulated Guidelines Range was 151 to 188 months' imprisonment. Under the terms of the agreement, Concepcion waived his right to file a direct appeal from, or to litigate under 28 U.S.C. § 2255 and/or § 2241, any sentence at or below Hueston's stipulated sentencing guidelines sentence of 151 to 188 months' imprisonment. This provision was "binding on the parties even if the Court employs a Guidelines analysis different.

Hueston also agreed that should his conviction be vacated for any reason, that "any prosecution . . . not time barred by the applicable statute of limitations on the date of the signing of the agreement (including any counts that the Government has January agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against defendant." Id. at. 6. During his plea allocution in front of Your Honor, Hueston acknowledged that he understood the waivers in his plea agreement, and that he was satisfied with the representation of his counsel. Hueston was sentenced on September 30, 2015. At sentencing, the Court took into

account Hueston's two prior convictions for crimes of violence, one for Attempted Robbery in the First Degree and one for Attempted Robbery in the Second Degree (the "Prior Convictions"), and imposed a sentence of 180 months' imprisonment, which was within the Stipulated Guidelines range. The final judgment of conviction issued that same day. No direct appeal was taken.

SUMMARY OF THE ARGUMENT

Hueston is entitled to Due Process the relevant precedent—most notably the controlling authority of the Second Circuit's *Monsanto* decision—demonstrates that as a matter of due process (based on particular exigencies), due process requires a post-seizure hearing in the court of appeals. *Monsanto*, 924 F.2d at 1193-98. Under the *Mathews* factors, the movants have a due process right to be heard because, as *Mathews* itself emphasized, "the fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

DISCUSSION

On or about September 14, 2016, Hueston filed a motion in the Southern District of New York to vacate his sentence pursuant to 28 U.S.C. § 2255. Hueston argued, in essence, that this sentence must be vacated as a result of a "Johnson issue" that was not available at the time of his sentence. See Petition at 5. Presumably, Hueston is referring to the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015) ("Johnson"), which held that the residual clause of the Armed Career Criminal Act's ("ACCA") definition of "violent felony" is void for vagueness. Hueston argued that Johnson's invalidation of ACCA's residual clause has the effect of invalidating the residual clause of Section 4B1.2(a) (the "career offender Guideline") of the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") and, therefore, his Prior Convictions do not qualify as crimes of violence, and thus should not have served as the basis for a Guidelines enhancement.

On November 19th, 2019, the district court denied Hueston's motion and declined to issue a certificate of appealability.

With More Than 3"00,000- Prisoners Locked Down. Prisoners struggle to get their medical records and the necessary document for exhaustion of remedies. Inmates are locked in their cells 21 hours, relying on in-person, confidential meetings with staff (i.e., counselors, case managers, unit officers, or lawyers) is extremely difficult, although not impossible. The law library is closed no copy machines are available to make duplicate copies, the commissary is often closed, thus, making stamp purchase impossible, and untimely mailing services, all of these circumstances making the exhaustion of Administrative Remedies nearly impossible. See, *Carmona v. U.S. Bur. of Prisons*, 241 F.3d 629,634 (2d. Cir. 2001)(while prior to filing a habeas corpus petition under § 2241 "federal prisoners must exhaust their administrative remedies [w]hen however, legitimate circumstances beyond the prisoner's control preclude him from fully pw-suing his administrative remedies, the standard we adopt excuses this failure to exhaust"). Even under these circumstances Hueston was able file his petition for appeal as instructed.

As instructed by the court of appeals and in accordance the rules under Federal Rule of Appellate Procedure. Hueston filed a motion to file out of time, correct errors, recall the mandate, and reinstate the appeal. See attached documents.

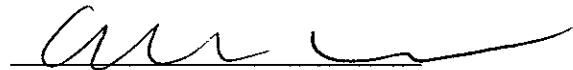
Hueston asserts that he had "good cause" for missing the filing deadline, because among other things he had unsuccessfully "made various attempts with federal correctional officers in the Special Housing Unit to file his motions and because he had been "denied access to postage stamps during the time in which he was required to file his motions and replies.

The court of appeals denied his motion after following all the court's instructions; and did not address whether Hueston had shown "good cause" for the out-of-time motions or delays in his reply. The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. See, *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Hueston was denied that right.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Harry Hueston', written over a horizontal line.

Harry Hueston, pro-se

DATED: February 17th, 2022