

21-7462 **ORIGINAL**

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
MAR 17 2022
OFFICE OF THE CLERK

John MOSES Burton IV — PETITIONER
(Your Name)

vs.
United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States District Court for the Eastern District of Virginia
Docket(s) 4:16-cr-00071-AWA, 4:19-cv-00112-AWA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

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QUESTION(s) PRESENTED

1. With a statute of limitations having a rationale to shield a person from having to defend against prosecution when the ability to mount a defense degraded due to basic facts obscured or lost through the passage of time with accordance with Toussie vs. United States, 397 U.S. 112 (1970); should the same argument apply to these other non-capital offenses that have an exemption because of 18 U.S.C. §3299?
2. Considering that word meanings matter in accordance with Atlantic Cleaners and Dryers vs. United States, 286 U.S. 427 (1932); should the government consider the nuance of the grammatical semantic importance of the boolean conjunctions embedded within the statute 18 U.S.C. §3299 before depriving a defendant from a statute of limitations defense?
3. Differentiating from Musacchio vs. United States, 577 U.S. 237 (2016), which prohibits introduction of a statute of limitations defense for the first time on direct appeal; should the similar standard apply when omission of a statute of limitations defense was not initiated by the defendant's direction but rather a consequence of Ineffective Assistance of Counsel [28 U.S.C. §2255] aspect of Strickland vs. Washington, 466 U.S. 668 (1984), because introduction did not occur until request of collateral review?

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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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

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished. 21-7284, Court of Appeals for the Fourth Circuit

The opinion of the United States district court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished. 4:16-cr-00071-AWA-RJK-1; 4:19-cv-00112-AWA

United States District Court for Eastern Virginia

[] 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 22 February 2022.

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

title 18, United States Code section 3299

Due Process clause(s), U.S. Constitution, Amendments 5 and 14 sec 1

Speedy Trial clause, U.S. Constitution, Amendment 6

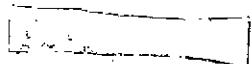
title 18, United States Code, Chapter 110

STATEMENT OF THE CASE

This case consists of Ineffective Assistance of Counsel for not raising the pretrial motion for a Statute of Limitations defense in part because of the nuance and questionable language of statute 18 U.S.C. §3299 with the usage of boolean conjunctions 'AND' along with 'OR' illustrating the disguising meaning that the statute requires an element of kidnapping of a minor in the defendant's historical record.

The historical record of this case consists of an initial consultation with Federal Public Defender Mr. Colgan. The conversation consisted of a statute of limitation defense that he subsequently disregarded as not plausible. Due to this interaction, the defendant accepted a conditional plea agreement under the advice of counsel pertaining to a Motion to Suppress after local law enforcement conducted the warrantless seizure of a cellular phone which did not produce the object of their investigation but rather non-relevant data of consenting adults.

The federal indictment was not issued until September 2016, over eight (8) years from the offense and over five (5) years from the seizures by local law enforcement. Even though the case was not reviewed under collateral attack, because the search was conducted two years prior to the Riley v California, 573 U.S. 373 (2014) decision, the Eastern District of Virginia opinion that the violating seizure was protected by the pre-



Riley decision with a Good Faith Exception under United States v. Leon, 468 U.S. 897 (1984). This disregards the void of any illegal conduct either on the cellular phone or a direct nexus between the phone and the residence, from which contraband was discovered.

After the district court denied the Suppression Motion, we asked for review by the Fourth Circuit of Appeals [17-4524, 756 Fed Appx 295 (2018)]. The Fourth Circuit upheld the district court's decision with the additional explanation that local law enforcement may violate the Fourth Amendment when they relied upon Exigent Circumstances along with the fruits of the poisonous tree by Kentucky v. King, 563 U.S. 452 (2011). I requested a Writ of Certiorari and was denied [18-8518 (2019)].

Upon Certiorari denial, I filed a Motion of Ineffective Assistance of Counsel (28 U.S.C. §2255) concerning multiple issues. Enclosed is the section specific to this issue of the Statute of Limitations. The §2255 motion was denied along with the Certificate of Appealability.

I sought review from the Fourth Circuit to issue the Certificate of Appealability on its own. Enclosed also is a copy sent to the Fourth Circuit.

The three arguments pertaining to the controversy of 18 U.S.C. §3299:

- (1) The statute is unconstitutional as it applies a violation to a person's Due Process (Fifth and Fourteenth Amendments) and Speedy Trial (Sixth Amendment) rights cited within the United States Constitution.;

- (2) The articulation with how the linguistic nuance from a careful reading conveys the importance for the conjunction 'AND' with its distinguishing characteristics of the conjunction 'OR' within the same statute. The statute's requirement of an abduction of a minor to have been conducted during a defendant's criminal history to invoke the statute.
- (3) The Congressional intent of the law, as explained in the Reasons for Granting the Petition.

I now bring forth these arguments to this Court pertaining the exemption for a statute of limitations for the chapter 110 offense that I was convicted, despite the fact the offense is clearly included in §3299. I seek review of the Fourth Circuit and District Court's decision not to grant a Certificate of Appealability. And present these Constitutional, linguistic grammar, and Congressional intent to your attention for final arbitration.

consenting adults of legal age. This realization limits the nexus from legitimate private images of consenting adults to the contraband elements recovered and prosecuted from the hardware stored at the residence.

I seek this Honorable Court to consider a per curiam opinion, either consider the merits of the nuance grammatical semantic meaning of a carefully read statute of limitation exemption (18 U.S.C. §3299) or remand the case back to the Fourth Circuit Court of Appeals for issuance of a Certificate of Appealability. This would enable the Fourth Circuit to consider an opinion prior to this court from weighing on the matter at hand along with if was Ineffective Assistance of Counsel defined in Strickland v. Washington, 466 U.S. 668 (1984).

The three arguments pertain to the controversy of statute 18 U.S.C. §3299:

1. The statute is unconstitutional as it violates a person's Due Process [Fifth and Fourteenth Amendments] and Speedy Trial [Sixth Amendment] rights cited within the United States Constitution;
2. The articulated grammatical semantic nuance that conveys the importance of the conjunction 'AND' contained within the statute along with distinguishing it with the conjunction 'OR' written in the same sentence. The context requires an abduction of a minor [18 U.S.C. §1201] to be accompanied in the defendant's criminal history for the applicability of exempting the statute of limitations; and
3. The Congressional intent of the law as citing its historical record below.

The law that introduced 18 U.S.C. §3299 was the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 120 Stat. 587 (2006). The namesake to the bill was because of

the 1981 abduction and murder of Adam John Walsh (age 6). Adam's severed head was found in a canal nearly 100 miles from his Florida home. The rest of his remains [body] has yet to be located. Thus, no arrests or convictions for this abduction or murder. The sad fate of Adam Walsh is not lost on this court, however, the fact without a body, forensically, remains no definitive proof of the full extent of Adams ordeal including if he suffered any sexual trauma or denigration.

A confession was put forth by Mr. Otis Toole. He died in prison from unrelated charges in 1996 prior to justice being served for Adam's disappearance. The Hollywood Police Department in Broward County, Florida closed Adam's case officially listing Mr. Toole as the killer despite his recanted confession and not being able to defend against these allegations. The historical facts with Adam's case along with the inclusion of 12 other named [Jacob Wetterling, Megan Nicole Kanka, Jetseta Gage, Jessica Lansford, Christy Ann Fornoff, Polly Klass, Jimmy Ryce, Carlie Brucie, Amanda Brown, Elizabeth Smart, Molly Bish, and Samantha Runnion] abduction victims illustrate the importance why the element of 18 U.S.C. §1201 is an essential aspect to apply this statute [§3299].

The Adam Walsh Act along with the Sex Offender Registration and Notification Act (SORNA) were combined and superseded a previous bill, the Children's Safety Act of 2005, H.R. 3132. The Adam Walsh Act and SORNA utilized the same Congressional Report [Congressional Report, H.R. Rep. No. 109-218 (2005)] to

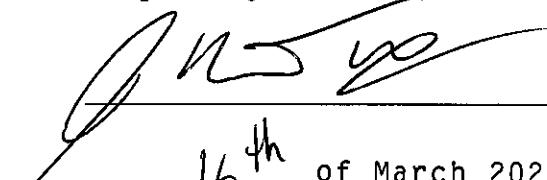
explain Congressional intent along the Congressional Record, Vol. 152 (2006). In that report, there were not any mention of an explanation for the reasoning for inclusion of removing the statute of limitations from such defendants [18 U.S.C. §3299]. Without documentation from Congress, the historical facts from above cited case(s) illustrate the true nature of Congress. Upon careful review of the grammatical semantic boolean language utilized by Congress, cases similar to Adam's with an abduction, the government has the ability to prosecute without a statute of limitation. But for those who did not have such an incident in their criminal history, the 'AND' requirement prohibits the application of §3299 for partaking of the offenses opposite of the abduction requirement.

Your foreseeable decision affects a smaller subset of defendants with the government delaying indictments beyond this five (5) year threshold because most defendants are prosecuted within the first few years from when the offense occurred. This would ensure the text of the Constitution is followed when dealing with the Statute of Limitations for these stale non-capital offenses even if repulsive in nature.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: 16th of March 2022