

ORIGINAL

21-7510
No.

IN THE
SUPREME COURT OF THE UNITED STATES

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SUPREME COURT, U.S.

RAMON LOPEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ of Certiorari To
The United States Court of Appeal
For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Criminal Defendants may use the "recently amended" Compassionate Release Statute [18 U.S.C. Sec. 3582(c)(1)(A)] to reduce or correct an excessive, and/or defective or illegal sentence as an extraordinary or compelling circumstances which could not have been reasonably foreseen by the court at the time of sentencing under the "Other Reasons" criteria set forth by the U.S. Sentencing Guidelines, Federal Bureau of Prisons and/or the Code of Federal Regulations.

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No. _____

In the
Supreme Court of the United States
October Term 2021

RAMON LOPEZ,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

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

To the Honorable Chief Justice and the
Associate Justices of the Supreme Court

The petitioner, Ramon Lopez, proceeding pro se, respectfully petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals is unpublished. However, is reported at 2021 U.S. App. LEXIS 24654, (August 18, 2021) and appears attached hereto as Appendix A. The opinion of the District is unreported but is also attached as Appendix B.

JURISDICTION

The unpublished judgment of the Court of Appeals was entered on August 18, 2021. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254(1) and Rule 10(a) of the Supreme Court Rules. The jurisdiction of the Eleventh Circuit Court of Appeals was invoked under Title 28 U.S.C. Section 1291 and Title 18 U.S.C. Section 3942.

CONSTITUTIONAL, STATUTORY, AND REGULATORY OR
POLICY STATEMENT PROVISIONS INVOLVED IN THE CASE

The Fifth and Sixth Amendments of the Constitution provide in pertinent parts as follows:

U.S. Const. amend V

...nor shall any person be...deprived....of...liberty...without due process of law;

U.S. Const. amend VI

In all criminal prosecutions, the accused shall enjoy the right to...be informed of the nature and cause of the accusation.

18 U.S.C. Sec. 3553(a)

Title 18 U.S.C. Sec. 3553(a), Imposition of Sentence, provides in pertinent parts:

(a) Factors to be considered in imposing a sentence. The Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed shall consider—

- (1) the nature and circumstance of the offense and characteristics of the defendant;
- (2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

- (3) the kinds of sentence available;
- (4) the kinds of sentence and sentencing range established for—

(A) the applicable category of offense committed by the category of defendant as set in the guidelines—

(6) the need to avoid unwarranted sentence disparities among defendant with similar record who have been found guilty of similar conduct, and....

18 U.S.C. Sec. 3559

Title 18 U.S.C. Sec. 3559, Sentencing Classification of Offenses, provide in pertinent parts:

(a) Classification. An offence that is not specifically classified by a letter grade in the section defining it, is classified if the the maximum term of imprisonment authorized is—

- (3) less than twenty-five years but ten or more years as a Class C felony;

(b) Effect of Classification. Except as provided in subsection (c), an offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that, the maximum term of imprisonment is the term authorized by the law describing the offenses.

(c) Imprisonment of Certain Violent Felons.

(1) Mandatory Life Imprisonment. Notwithstanding any other provision of law, a person who is convicted in any court of the United States of a serious violent felony shall be sentenced to life imprisonment if—

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or a State of—

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) Definitions. For purposes of this subsection—

(H) the term "serious drug offense" means—

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

18 U.S.C. Section 3582

Title 18 U.S.C. Sec. 3582. Imposition of a Sentence of Imprisonment Statute provides in pertinent part:

(c) Modification of an Imposed Term of Imprisonment. The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon a motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) [18 U.S.C. sec. 3553(a)] to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 65 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c) [18 U.S.C. Sec. 3539(c)], for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g) [18 U.S.C. Sec. 3142];

and that such a reduction is consistent with applicable policy statements, issued by the Sentencing Commission;.....

21 U.S.C. Sec. 841

Title 21 U.S. C. Section 841 provides in pertinent part:

841. Prohibited Acts.

(a) Unlawful Acts. Except as authorized by this title it shall be unlawful for any person knowingly or intentionally---

(1) to manufacture, distribute, or dispense, or posses with intend to manufacture, distribute a controlled substance or;

(2) to create, distribute, or dispense, or posses with intend to distribute or dispense or posses a counterfeit substance.

(b) Penalties. Except as otherwise provided in section 409, 418, 419, or 420 [21 U.S.C. Section 849, 859, 860, or 861] any person who violates subsections (a) of this section should be sentenced as follows:

(1)(C) In the case of a controlled substance in schedule I or II,...such person shall be sentenced to a term of imprisonment of not more than 20 years....

U.S.S.G. Section 1B1.13; BOP P.S. 5050.50(2); 28 C.F.R. Sec. 571.61

Relevant parts of the provisions and policy statements of the United States Sentencing Guidelines, [U.S.S.G], the Federal Bureau of Prisons, [BOP Program Statements] and of the Code of Federal Regulations, [C.F.R] are reproduced in Appendix C of this Petition.

INTRODUCTION

Petitioner is incarcerated, proceeding without counsel, and drafting this petition under extreme hardship and limitations, (due to the effect of the Covid-19 pandemic, prison overcrowding, and shortage of staff), which is limiting, or sometimes, causing not access at all to legal research, movements, etc. Therefore, he will keep this petition simple. And respectfully requests leave to incorporate by reference, and/or to adopt any relevant part of the pending Petition(s) of Writ of Certiorari, filed by counsel and amicus, in the cases of Jarvis v. United States, (No. 21-568), United States v. Maxwell, (No. 20-), and United States v. Concepcion, (No. 20-1650) and/or any other pending case, before to this Court at this time, to the extend that such cases may be relevant to the issue at hand in this matter.

STATEMENT OF THE CASE

This case is the sum importance for criminal defendants charged under a Prohibited Act Statute, [841(a)(1)]

but sentenced, under a Penalty Provision, 21 U.S.C. Sec. 841(b)(1)(A-B) of the drug of statute, who they had not charged with and received lengthy, excessive, defective, and/or unlawful sentences, [including life sentence without parole, that even could die imprisoner] not because the crime they committed, (that were not malum in se) but because the misfortune of having: (1) their convictions became final before this Court's "landmark" decision in Apprendi v. New Jersey, 530 U.S. 466 (2000); and (2) been convicted and sentenced if federal courts within the Eleventh Judicial Circuit. Hence, a careful review of the question asked here, "looking at the elimination of the long standing of the inequities among same situated criminal defendants resulting from the Apprendi (and its progenies) decision, and lately from, different interpretation of the applicability of Section 603 of the First Step Act, (FSA) by the federal courts," should be considered.

FACTUAL AND PROCEDURAL BACKGROUND

A. Criminal Proceeding.

1. Petitioner Lopez was charged in April, 1991, by a federal grand jury with conspiracy to posses with intent to distribute...a detectable amount of cocaine in violation of 21 U.S.C. Sec. 846 (Count I), and with possession with intent to distribute...a detectable amount of cocaine in violation of 21 U.S.C. Sec. 841(a)(1), (Count II). App. D.¹

2. In 1993, Lopez was found guilty as charged, (id) by the jury trial, but then sentenced under the above named penalty provision; to concurrent life sentences; a consecutive sixth months term of imprisonment pursuant to 18 U.S.C. Sec. 3147; and to five years of supervised release, (91CR317, DE-246-265). Subsequent direct appeal and petition for writ of certiorari were sought and denied. United States v. Ramon Lopez, (No. 93-5237), 53 F.3d 1285 (11th Cir. 1995); (No. 95-228) 516 U.S. 870 (Oct. 2, 1995).

¹ The charges under the Prohibit Acts, [21 U.S.C. Sections, 846 and 841(a)(1)sought from the grand jury by the government here was not a government oversight, but a clever maneuver from it to avoid the need to proof beyond a reasonable doubt the specific amount to be attributed to each defendant involved in the alleged conspiracy or was responsible off.

² The life sentence imposed upon petition in this case was based upon an erroneous classification of the Offense of Conviction made by the United States Probation Office (USPO) in the Presentence Investigation Report, (PRS) which classified Petitioner's Offense of Conviction as a Class A Felony, App. E. A matter that petitioner has tried to correct for years to at no avail.

B. Relevant Post Convictions Proceedings.

2. In April 1997, Petitioner Lopez, filed a pro se motion to vacate, reduce, or set aside sentence pursuant to 28 U.S.C. Sec. 2255 ("2255 Motion") alleging inter alias, ineffective assistance of counsel by failing to investigate/challenge the indictment, (91CR317/97CIV1422, DE-318). Thereafter, Lopez retained counsel which, among others, sought: discovery, to supplement the 2255 motion with an Apprendi claim; reconsideration of the denial of the 2255 Motion; Requests for Certificate of Appealability (COA) before the district and appellate court; and Petition for Certiorari and Rehearing. (97CV1422 DE 345-391); United States Court of Appeals, (No. 00-11074, 11th Cir. 2000); Supreme Court, (No. 01432) 535 U.S. 1035 (2002) reh. den., 536 U.S. 951 (2002).

3. On February 12, 2018, Petitioner, through counsel, moved for Sentencing Reduction pursuant to 18 U.S.C. Sec. 3582(c)(2) and U.S.S.G. Amendment 782, which the Government opposed, and the Court denied because, although the amendment effectively reduced Lopez's base offense level, his sentence range of life imprisonment [due to the enhancements] remained unchanged, (91CR317/DE 467-471).

4. On April 15, 2019, Petitioner Lopez requested Reduction in Sentence, (RIS) to the Prison Warden, in accordance with Section 603 of the First Step Act, ("FSA") and Federal Bureau of Prisons, (BOP) Program Statement (PS) 5050.50(2)(a) effective January 17, 2019, based upon his age, time served, the non-violent nature of his offense of conviction, and other compelling circumstances, (i.e., the illegality of the overseas "sting" drug operation orchestrated by United States Customs Agents, (USCA) that resulted in the drugs charges against him, as well as of the illegality of the life sentences imposed upon him in light of the Apprendi decision) which could not reasonably have been foreseen by the court at the time of sentence. (91-CR317/DE 472 at 8, Exh.,A)³ The Warden denied the request on June 25, 2019, allegedly because the Petitioner's reasons, given in support of the request for RIS, did not meet the minimum criteria for a Compassionate Release/Reduction in Sentence set forth in BOP, P.S. 5050.50. (91CR317/DE 472 at 8, Exh. C).

5. On October 19, 2019, Petitioner submitted for filing his Motion for Reduction in Sentence, ("RIS

³ The Request also provide evidence of rehabilitation efforts, of a tentative release plan with its options, family support and letters of prison staff supporting Petitioner's release. (Id).

Motion") pursuant to "amended" 18 U.S.C. Sec. 3582(c)(1)(A)(i), seeking an order to have his life sentence reduced to time served or to a term of years, based upon Section 603 of the First Step Act of 2018 ("ESA"), U.S.S.G. Section 1B1.13. Cmt. (n (D)), and BOP Program Statement 5050.50(1)-4(c), where he explained the reasons supporting such. (91CR317/DE 472 at 11-14). Which the Court promptly addressed, ordering: the government to provide a response to Petitioner's RIS Motion; and to the Federal Public Defender Office (FPDO) its position on the issue at hand, on or before November 20, 2019, (91CR317/DE/473-474). Who timely follow up with their respective pleadings, in support or in opposition, (91CR317/DE-475-477).⁴ Thereafter, the District Court order Petitioner Lopez to provide a "new" release plan and any additional relevant medical record, which the Federal Public Defendant provided in its own⁵ (91CR317/DE-478-479).

6. On January 23, 2020, the District Court denied Petitioners' RIS Motion, without addressing "his other reasons" "Other Elderly Inmates" claim, (id at fn. 4) and/or simply stating that Petitioner's Apprendi claim was not appropriate on Motions for Compassionate Release. (91CR317/DE-481 at 2-3). Thereafter, the Federal Public Defender filed an appeal on behalf of Petitioner Lopez, (91CR317/DE-482).

C. The Appellate Proceeding and Appellate's Court Decision

7. On June 8, 2020, the Federal Public Defender, submitted its Initial Brief on behalf of Lopez, seeking oral argument and to review the lower court's denial of Petitioner Lopez's Request for Compassionate Release as such denial amount to an abuse of discretion and error of law. (Initial Brief of Appellant, Case No. 20-10389, 11th Cir.). The government responded on July 6, 2020 with its own brief "echoing" the District Court's finding that "Lopez's Apprendi Argument was inappropriate in the context of Post Judgment 3582(c)(1)(A) Motion for Early Release," (Brief of Appellee at 16). However, it submitted a second brief, [allegedly to clarify its position concerning the issues raised in the Appellant's Brief] which basically contained the same claim above mentioned. (Appellee' "Second" Brief at 20).

8. On August 4, 2020, the Federal Public Defender submitted its Reply Brief of Appellant, arguing that:

None of those pleadings, however, addressed Lopez's other reasons under the criteria set forth by Sec. 1B1.13(D) U.S.S.G., and BOP Program Statement 5050.50(4)(c) Other Elderly Inmates, sought by Petitioner in his RIS Motion. (91CR317/DE 472 at 1).

Petitioner was unable to provide his own release plan, explain some changes in such, and/or assist the Public Defender with its because he never received the Court's Order asking for such due to an unexpected transfer to other prison, days after mailing his RIS Motion to the Court.

(1) the catch-all provision of U.S.S.G. Sec. 1B1.13, cmt. (n1. (D)) allows for the district court to grant relief for any reason it deems extraordinary and compelling; and (2) a district court may determine that extraordinary and compelling reasons, warranting relief under 18 U.S.C. Sec. 3582(c)(1)(A), existed based on injustices created by a subsequent change in the law. (Reply Brief of Appellant at 6-9).

9. On April 23, 2021, the government, "belatedly conceded," [under Rule 28(j), FRAP] that Petitioner Lopez was eligible for early relief under 18 U.S.C. Sec. 3582(c)(1)(A) because his hypertension may increase the likelihood of severe Covid-19. (Appellee's April 23, 2021, Rule 28(j) letter to the Eleventh Circuit Court of Appeals Clerk, Case No. 20-10389 AA).

10. On August 18, 2021, a three judge panel of the Eleventh Circuit Court of Appeals, in charge of the Petitioner's Appeal, affirmed the District Court's denial of Petitioner's Compassionate Release Motion, in light of United States v. Bryant, 996 F.3d 1243 (11th Cir. 2021) which held that U.S.S.G. Sec. 1B1.13's catch-all "other reasons" provision provides discretion only to the BOP to develop other reasons (outside of age, medical condition, and family circumstances) warranting compassionate release, not district courts. App. A at 4. No request for rehearing or rehearing in banc was sought by the Federal Public Defender. (Id.).

REASONS FOR GRANTING THE WRIT

11. This case presents fundamental questions of interpretation of a federal criminal statute and its repercussions when applied or used to seek a reduction of sentence, (RIS) under the First Step Act, FSA) of 2018, and 18 U.S.C. Sec. 3582(c)(1)(A) which result in conflicting law, a continuation of impermissible sentencing disparities and an erosion of criminal defendant's equal protection and due process of the law, afforded to them by the United States Constitution. Therefore, review of the Eleventh Circuit's decision in this case it is urgently needed to resolve the existing conflicts of interpretation and application of "relevant law" among different circuits courts in order to eliminate the inequities and disparities endure by some "same" situated criminal defendants that have their cases pending or denied by district courts, within the Eleventh Judicial Circuit now foreclosed by such Circuit Court of Appeals after its decision, United States v. Bryant, 996 F.3d 1243 (11th Cir. 2021).

12. First and Foremost, to give some type of justice or afford deserved equal and due process of law to cases where life or other draconian, or invalid sentences were imposed pursuant the then "Mandatory

"Sentencing Guidelines" of where the offense level was calculate based upon court's finding by preponderance evidence, that have been ruled unconstitutional more than a decade ago. See, e.g., Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348 (2000); Alleyne v. United States, 570 U.S. 99, 133 S. Ct. 2151 (2013); United States v. Booker, 543 U.S. 220, 125 S.Ct. (2005). Most Specifically, in cases (like in this one) where the petitioner here, sought reduction in sentence., based upon [his layman opinion] that his Apprendi Claim, failed within the language or criteria set forth by the Bureau of Prisons, (BOP) in Program Statement 5050.50(1) stating that:

"[T]he Bureau uses....18 U.S.C. Sec. 5382(c)(1)(A) in particularly extraordinary or or compelling circumstances which could not reasonably been foreseen by the Court at the time of sentencing."

App. C at 6. As it is clear that the illegality of the life sentence imposed by the sentencing court in October 13, derived from an unforeseen judicial error at the time of such an sentence. Which squarely comply with BOP's criteria as to when compassionate release statute may be used, puts Petitioner's argument, not entirely in contradiction with Bryant's, and therefore, renders the lower courts' decisions here erroneous. and subject to remand, and/or vacatur.

13. Secondly, having in consideration that other lower courts (including from the Eleventh Judicial Circuit has found that sentencing errors may constitute an extraordinary and compelling circumstances warranting early release. See, e.g., United States v. Fields, 2021 U.S. Dist. Lexis 150218, ____ F. Supp. 3d ____ (D.N.H. 2021) (citing various cases, including United States v. Cano, 2020 U.S. Dist. LEXIS 239859 (S.D. Fla. 12/6/20) and noting that the court granted compassionate release where the defendant claimed that the court erred in sentencing him to life imprisonment. Id. at *28. Additionally, when other federal courts have found that "Sentencing Reductions" authorized by statute [like in this case] differ from habeas proceedings, as indicated by the Supreme Court in Danforth v. Minnesota, 552 U.S. 264, 270-281, 128 S.Ct. 1029 (2008) (explaining that the rule established in Teague v. Lane, 489 U.S. 288, 109 S. Ct. 1060 (1989) was meant to "apply only to federal courts considering habeas corpus petitions challenging state-court criminal convictions"). Thus a retroactivity determination under the Teague "speaks only to the context of federal habeas," and not beyond it. See also, United States v. Hardnett, 417 F. Supp. 3d 725, 741-42 (E.D. Va. 2019); United States v. Mack, 2019 U.S. Dist. LEXIS 122653 at *38 (D.N.J. 2019)(Noting that Apprendi and

Alleyne, apply yo sentence reductions under the "FSA"). Moreover, having in consideration that; the challenge to the duration of the sentence imposed here relates to an unlawful and invalid sentence where well established jurisprudence have implied that may exist an inherent or constitutional right of the convicted person to be conditionally release because an invalid sentence or the duration of such "may create an extraordinary and compelling circumstances. See, e.g., United States v. Gutierrez, 2019 U.S. Dist. Lexis 96796 at *7 (D.N.M. 2019)(quoting Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U. S. 1, 7, 99 S. Ct. 2100 (1979), and noting that "there is no constitutional or inherent right of a convict person to be conditionally release before the expiration of a valid sentence"); United States v. Andrews, 2021 U.S. App. Lexis 260089, ____F.4th____, (3rd Cir. 2021)(holding that "the duration of a lawfully imposed sentence dos not create an extraordinary and compelling circumstances"). Therefore, implying that the duration of an unlawful or invalid sentence could be subject to a different outcome.⁶

14. Accordingly, to allow the decision of the Eleventh Circuit to remain in effect here, will defeat the purpose of the First Step Act, and of the "amended Compassionate Release Statute, that was to provide some type of a "safety valve" or release where injustices or judicial errors were committed, and/or where the circumstances of the case no longer warranted imprisonment. Or the need to mitigate the inequities caused after the non-retroactive change in the law or to correct excessive and unwarranted long sentences (expressly for non violent crimes) demand so. Or could run awful with this Court's decision in Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2021 (2011)(discussing the severity of life without of parole sentences for non-homicide offenders as unconstitutional or unacceptable).⁷

15. Since, without guidance from this Court, (on an issue that appears to be of first impression before this Court) the inequities, disparities, etc., enunciated here will continue forever; as criminal defendants illegally sentenced before Apprendi, will continue incarcerate beyond the expiration of the legal portion of their sentences, (deserved for the crime charged and found guilty for). This Court should intervene,

⁶ Petitioner was unable to find cases more on point relating to this argument, (or even completing this petition in typing format) because he has been kept in his cell 24/7 on quarantine since December 31, 2021 to this date, due to a new Covid-19 Outbreak at his housing prison.

⁷ Petitioner was unable to explain more about this case due to the same reasons stated above.

for once to put an end to such injustice and give a clear clarification to the lower courts as to how to proceed in this instances.

CONCLUSION

Based upon the foregoing, this petition should be granted.

Respectfully submitted,

on this January 13, 2022.

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