

21-7773
IN THE
SUPREME COURT OF THE UNITED STATES

ERIC MIDDLEBROOK - Petitioner

v.

UNITED STATES OF AMERICA - Respondent

ORIGINAL

Supreme Court, U.S.
FILED

MAR 03 2022

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On Petition for a Writ of Certiorari to
United States Court of Appeals for the Seventh Circuit
Case No. 21-1246

PETITIONER FOR WRIT OF CERTIORARI

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SUPREME COURT, U.S.

QUESTION PRESENTED

1. Does punishing an individual with both a statutory penalty that requires a mandatory consecutive prison term and a Guideline Range enhancement for the same instant criminal offense violate the Double Jeopardy Clause of the United States Constitution?

Answer: YES.

-or-

2. More specifically, is the sentence enhancement under U.S.S.G. § 2D1.1(b)(14)(B) unconstitutional?

Answer: YES.

-and-

3. Did the Court below err in not considering the constitutionality of applying U.S.S.G. § 2D1.1(b)(14)(B) when deciding Petitioner's Direct Appeal?

Answer: YES.

STATEMENT OF THE CASE

1. Mr. Middlebrook pleaded guilty without a plea agreement to possession with intent to distribute methamphetamine on a premises where children were present in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A).
2. Because his drug possession occurred on a premises where children were present, Mr. Middlebrook was subject to a mandatory consecutive prison term under 21 U.S.C. § 860(a).
3. At sentencing, the District Court, in determining Mr. Middlebrook's Guideline Range and ultimately his prison sentence, applied three enhancements to Mr. Middlebrook's baseline Offense Level:
 - a) firearm possession, U.S.S.G. § 2D1.1(b)(1),
 - b) maintaining a drug house, U.S.S.G. § 2D1.1(b)(12), and
 - c) possessing drugs on a premises where children were present, U.S.S.G. § 2D1.1(b)(14)(B).
4. Based upon this calculated Guideline Range, Mr. Middlebrook was sentenced to a total prison term of 240 months (180 months under § 841(b)(1)(A) plus 60 months consecutive under § 860(a)). (Note: unpublished decision)
5. Mr. Middlebrook appealed.
6. Mr. Middlebrook's court-appointed attorney filed a Motion to withdraw accompanied by an Anders Brief.
7. Mr. Middlebrook filed a Supplemental Appellant's Brief arguing that the District Court's "double counting" of his offense conduct was impermissible and thus, led to an unreasonable sentence.
8. Mr. Middlebrook's appeal was denied on November 2, 2022. Appendix A.
9. Mr. Middlebrook filed a Petition for Rehearing. This petition was denied on November 15, 2022. Appendix B.

REASONS FOR GRANTING THE PETITION

The United States Sentencing Guidelines ("U.S.S.G.") clearly state that enhancements, adjustments, and determinations may be added or applied cumulatively in determining the Defendant's Guideline Range, even when the same offense conduct triggers different enhancements, adjustments, and/or determinations. U.S.S.G.

§ 1B1.1 com. note 4 reads in relevant part:

...Absent an instruction to the contrary, enhancements under Chapter Two, adjustments under Chapter Three, and determinations under Chapter Four are to be applied cumulatively. In some cases, such enhancements, adjustments, and determinations may be triggered by the same conduct...

Federal Courts have consistently affirmed this type of "double counting" as permissible, as in United States v. Vizcarra, 668 F.3d 516, 517 (7th Cir. 2012), the Circuit authority relied upon by the Court below in this case.

However, Mr. Middlebrook's case presents a distinctly different type of double counting... double counting in a manner that resulted in Mr. Middlebrook being punished cumulatively for the same offense conduct in a manner that violates the Double Jeopardy clause of the Fifth Amendment of the U.S. Constitution.

First, Mr. Middlebrook was punished by 18 U.S.C. § 860a. This statute leaves no discretion to the District Court but to impose a consecutive prison term upon the Defendant, as was done in this case. The offense conduct that triggered this statute was Mr. Middlebrook's possession of methamphetamine in a premises where children reside.

Second, Mr. Middlebrook was punished again by U.S.S.G. § 2D1.1(b)(14)(B) which "mandated" (The Circuit Court's word) the District Court to add 2 levels to Mr. Middlebrook's base offense level for possession of methamphetamine in a premises

where children reside... precisely the same conduct that triggered his penalty under § 860a.

Moreover, the District Court erred in calculating Mr. Middlebrook's Guideline Range by enhancing his baseline offense level by those 2 levels. In other words, Mr. Middlebrook received a baseline offense level from Chapter Two of x for possessing methamphetamine at a premises where children reside, and he received the enhancement from Chapter Two for possessing methamphetamine at a premises where children reside... effectively being punished twice for the same offense conduct.

This scenario differs distinctly from the scenarios permitted by § 1B1.1 comment. 4 because a baseline offense level is being added cumulatively to an enhancement for the same offense conduct. While the language of § 1B1.1 explicitly permits enhancements, adjustments, and determinations for the same offense conduct to be added cumulatively, there is no mention of base offense levels, so it cannot be presumed from the text of the U.S.S.G. that enhancements can be added to baseline offense conduct levels when both rely on the same offense conduct and that conduct already triggered a mandatory consecutive sentence.

In fact, this exact scenario is prohibited in other sections of the U.S.S.G. Take for example Commentary Note 4 for § 2K2.4 "Use of a Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes," which reads, in part:

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to enhancement under § 2K1.3(b)(3) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct covered by these enhancements because of the relatedness of

JURISDICTION

The dates on which the highest state court decided my case were December 13, 2018, which appears at Appendix A and July 14, 2020, which appears at Appendix E.

Several different petitions and motions were filed with the Illinois Supreme Court after each of these decisions. The Orders are found at Appendices C, D, G, H and K.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. § 844(h), § 924(c), or § 929(a).

The commonality between § 844(h), § 924(c), and § 929(a) is that they all require a consecutive sentence of imprisonment, a commonality that they share with § 860a. Thus, the Sentencing Commission sought to avoid the scenario where an enhancement would be applied based upon the same offense conduct that resulted in a mandatory consecutive sentence of imprisonment by statute, as is the case here. The Commission prohibited such double counting to avoid Double Jeopardy.

In Brown v. Ohio, 432 U.S. 161, 53 L. Ed. 2d 187, 190, 97 S. Ct. 2221 (1977), this Court held:

The Fifth Amendment double jeopardy guarantee... serves principally as a restraint on courts and prosecutors; the legislature remains free under the double jeopardy clause to define crimes and fix punishments, but once the legislature has acted, courts may not impose more than one punishment for the same offense...

Here, the legislature acted to define Mr. Middlebrook's crime and fix punishment through 21 U.S.C. § 860a. Thus, the District Court acted impermissably when it imposed an additional punishment for the same crime by adding an enhancement for the same offense conduct, violating Mr. Middlebrook's constitutional guarantee against double jeopardy.

The Circuit Court failed to analyze this argument in its decision, instead either incorrectly applying Vizcarra which, as detailed, applies to a distinctly different "type" of double counting, or by improperly broadening the scope of Vizcarra without providing any analysis or reasoning. Thus, the Circuit Court's denial of Mr Middlebrook's appeal should be reversed, and this case should be remanded to answer the question presented.

Ultimately, this double jeopardy violation resulted in an incorrectly calculated Guideline Range, and thus a procedurally unreasonable sentence. See Gall v. United States, 552 U.S. 38, 128 S. Ct. 586, 169 L. Ed. 2d 445, 449 (2007). Thus, when all is said and done, Mr. Middlebrook's sentence should be vacated, and he should be resentenced without the unconstitutional enhancement.

CONCLUSION

This Petition for a Writ of Certiorari should be GRANTED.

Respectfully Submitted,

Date: 3-1-2022


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