

No. 21-8148

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Frank H. Bynes Jr. — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

FILED

JUN 07 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ON PETITION FOR A WRIT OF CERTIORARI TO

Eleventh Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Frank H. Bynes Jr. # 22607-021
(Your Name)

FCC Coleman-va, P.O. Box 1031
(Address)

Coleman, FL 33521
(City, State, Zip Code)

N/A
(Phone Number)

RECEIVED

JUN 15 2022

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

May A Physician Alledged to have Prescribed controlled Substances outside the usual course of Professional Practice be convicted of Unlawful distribution under 21 usc 841(a)(1) regardless of whether he "reasonably believed" or Subjectively intended" that his prescriptions fall within that course of Professional Practice?

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:

RELATED CASES

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APPENDIX B	<u>U.S.D.C., S.D. GA, 4:18-cr-00153-LGW-CLR-1</u> <u>Judgment Feb. 14th, 2020</u>
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STATUTES AND RULES

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OTHER

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

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A 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☒ is unpublished.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 United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ 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☐ is unpublished.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.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Controlled Substance Act (CSA)

STATEMENT OF THE CASE

A Federal grand Jury charged Petitioner Doctor Frank H. Byrnes Jr. with 39 counts of Violation of the Controlled Substances Act 21 USC 841 by dispensing controlled substances outside the scope of his professional practice, hereinafter referred to as the "CSA", and eight counts of Healthcare Fraud (18 USC 1347). Appellant rejected a Guilty plea offer and proceeded to trial on October 17th 2019 which lasted for three days. The Jury found him guilty on sixteen of the seventeen counts of the Superseding Indictment filed on April 3rd 2019, acquitting him of Count Eleven. By final written Judgment entered on February 14th 2020, Dr. Byrnes received a total term of Imprisonment of 240 months. This sentence represented 240 months each on the CSA counts one thru ten and twelve thru fourteen to be served concurrently, and 120 months on the remaining Healthcare Fraud counts (15) fifteen thru (17) (seventeen), to be served concurrently with each other and all other counts. Dr. Byrnes was acquitted by the Jury of count Eleven. Dr. Byrnes filed a notice of appeal on Feb. 18th 2020.

Counsel caused to be filed an Appeal to the Eleventh Circuit on 11/01/21 under Anders v. California, 386 U.S. 738 (1967) and the conviction and sentence was affirmed on 3/30/22. The Petitioner caused to be filed and F.R.A.P. 35 and 40, Rehearing and Rehearing en banc which was denied on 5/27/2022. It then under F.R.A.P. 41 filed a Motion for Stay of Mandate Pending the filing of a petition for Writ of Certiorari to the U.S. Supreme Court on the Question presented is Kenn v. U.S., NO. 20-1410. Sup. Ct. Mar. 21st 2022 (Argued) and granted cert. on Nov. 5th, 2021

REASONS FOR GRANTING THE PETITION

The U.S. Supreme Court in Ruan v. US, 20-1410 on Nov. 5th, 2021 granted Certiorari and Argued the Question on March 1st 2022. Petitioner Doctor Byrnes argues that none of the other circuits have endorsed the Eleventh Circuit's standard regarding the "good faith defense" available to physicians charged under the CSA and therefore, "[A]ll it takes to convict a physician under the CSA is a finding he prescribed controlled substances 'outside generally accepted medical standards. The Second, Fourth, and Sixth Circuit have a good faith defense that the gov. can overcome by proving that the 'physician did not reasonably believe that his prescriptions fell within professional norms. Then in the First, Seventh and Ninth, petitioner contends that the gov. may overcome a good faith defense upon proving that the defendant 'physician subjectively intended a prescription to exceed professional norms. Petitioner tells the Court that each of the circuits to have addressed the good faith issue allow a physician to present at least some evidence of subjective good faith intent as a defense. Whether the Eleventh Circuit is right to reject a good faith defense when it comes to relevant conduct for alleged violations of the CSA is currently before this Court in Ruan. Petitioner denies violating the CSA and was not allowed as in Ruan to provide a 'good faith defense', subjectively. I request A grant of the Petition for Writ of Certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frank H. Reynolds

Date: 6/7/2022