

22-5062

ORIGINAL

No. 1-21-cv-01654

Appeal No. 21-3209

IN THE

FILED
JUN 28 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

SUPREME COURT OF THE UNITED STATES

ZACHARY CHAMBERS — PETITIONER
(Your Name)

vs.

WARDEN ALLENWOOD FCI — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Zachary Chambers, Reg. No. 67028-066

(Your Name)

Low Security Correctional Institute-Allenwood, P.O. Box 1000

(Address)

White Deer, PA. 17887

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

1. Whether *Rehaif v. United States*, 139 S. Ct. 2191 (2019), renders invalid the imposition of Petitioner's sentencing enhancement for possession of a firearm during commission of a drug trafficking offense, under U.S.S.G. Manual § 2D1.1(b)(1), and/or, whether a change in statutory interpretation that does affect the sentencing Guidelines implicates the safety-valve clause of § 2255.
2. Whether a Habeas Corpus statute, 28 U.S.C. § 2241 grants district courts authority to review a claim that Petitioner's sentence is invalid, when current precedent foreclosed the claim at the time of Petitioner's prior Habeas Corpus motion, but an intervening Supreme Court precedent changed the construction of the statute and the new statutory interpretation applies retroactively.

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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 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 is unpublished.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 is unpublished.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 is unpublished.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.

JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was May 5, 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

1. The Fifth and Sixth Amendments of the U.S. Constitution.
2. United States Sentencing Guidelines Manual § 2D1.1(b)(1).
3. 28 U.S.C. § 2241.
4. 28 U.S.C. § 2255(e).
5. 18 U.S.C. § 922(g)(1).
6. 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Zachary Chambers, a federal prisoner incarcerated in Pennsylvania, appeals pro se from order of the U.S. Court of Appeals for the Third Circuit, and U.S. District Court for the Middle District of Pennsylvania, dismissing his petition for writ of habeas corpus under 28 U.S.C. § 2241, and which, the Third Circuit summarily affirm the District Court's order, under 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. See Appendix A & B, Judgements of the District Court and Third Circuit.

Following a jury trial in the United States District Court for the Eastern District of Pennsylvania in 2013, Chambers was convicted of conspiracy to distribute 5 kilograms or more of cocaine, 280 grams or more of crack cocaine base, and marijuana, in violation of 21 U.S.C. §§ 841(a)(1) and 846; and attempted possession with intent to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and 846, and 18 U.S.C. § 2. The District Court sentenced him to 330 months imprisonment followed by five years supervised release. The Third Circuit affirmed the conviction and sentence on direct appeal. See United States v. Chambers, 587 F. App'x 22, 26 (3d Cir. 2014).

In 2015, Chambers filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, claiming ineffective assistance of counsel and withholding of evidence by the prosecution. The District Court denied his motion, but the Third Circuit granted Chambers a certificate of appealability and remanded the matter for an evidentiary hearing on one of the claims. Following that hearing, the

District Court again denied Chamber's motion, and the Third Circuit declined to issue him a certificate of appealability. See United States v. Chambers, No. 17-3358 (3d Cir. Jan. 18), 2018 WL 11395021, cert. denied 139 S. Ct. 435 (2018).

In September 2021, Chambers filed the aforementioned § 2241 petition, which he claimed that a change in law brought about by Rehaif v. United States, 139 S. Ct. 2191 (2019), renders invalid the imposition of a sentencing enhancement for possession of a firearm during the commission of the offense for which he was convicted. See U.S. Sent'g Guidelines Manual § 2D1.1(b)(1)(U.S. Sent'g Comm'n 2012). The District Court dismissed the petition for lack of jurisdiction, finding that it could not entertain the § 2241 petition because § 2255 was not inadequate or ineffective remedy for Chambers to challenge his detention. Chambers timely filed a notice of appeal and a response to the Third Circuit of notice of possible summary action.

The Third Circuit had appellate jurisdiction pursuant to 28 U.S.C. § 1291, and exercised plenary review over the District Court's legal conclusions and reviewed its factual findings of Chambers petition for clear error. The Third Circuit found, Chambers "appeal fails to present a substantial question, and will summarily affirm the District Court's judgement," (noting, "we find it unnecessary to decide whether a change in statutory interpretation that does affect the Sentencing Guidelines might ever implicate the safety-valve clause of § 2255."). See Appendix A, Order.

REASONS FOR GRANTING THE PETITION

Petitioner argues, a change in statutory interpretation that does affect the Sentencing Guidelines implicates the safety-valve clause of 28 U.S.C. § 2255(e). Notably, 28 U.S.C. § 2241 grants district courts authority to review a claim that Petitioner's sentence is invalid, when current precedent foreclosed the claim at the time of Petitioner's prior Habeas motion, but intervening Supreme Court precedent changed the construction of the statute and the new statutory interpretation applies retroactively. See Jones v. Hendrix, No. 21-847 (S. Ct. May 16, 2022).

A. Jurisdiction: Under Dorsainvil and its progeny, 'the Court had jurisdiction to entertain the initial Habeas Corpus, because Petitioner alleged: (1) "his actual innocence, (2) as a result of a retroactive change in substantive law that negates the criminality of his conduct, and (3) for which he had no other opportunity to seek judicial review." See Bruce v. Warden Lewisburg, 868 F.3d 170, 180 (3d Cir. 2017); also see, In re Dorsainvil, 113 F.3d 245, 251-52 (3d Cir. 1997) ("where no other avenue of judicial review available for a party who claims that s/he is factually or legally innocent as a result of a previously unavailable statutory interpretation, we would be faced with a thorny constitutional issue").

Here, Petitioner argues that he falls within the Dorsainvil exception, because (1) he's actually innocent of being a convicted felon and possessing an firearm during a drug trafficking conspiracy, in light of the new statutory interpretation of the recent U.S. Supreme Court decision in Rehaif v. United States, 139 U.S. 2191 (2019), and (2) because he did not have an earlier opportunity to seek judicial review, since the decision in Rehaif came after the denial of the Petitioner's section 2255 petition on March 14, 2016.

"If a petitioner show's that a § 2255 motion is inadequate or ineffective to test the legality of his detention... he may resort to a § 2241 to challenge the validity of the conviction or sentence." See Brown v. Mendez, 167 F. Supp. 2d, 723, 726 (M.D. Pa. 2001); also see, Bruce v. Warden Lewisburg USP, 868 F.3d 170, 178 (3d Cir. 2017)(the savings clause of 28 U.S.C.S. § 2255 permit a prisoner to challenge his detention when a change in statutory interpretation raises the potential that he was convicted of conduct that the law does not make criminal).

B. Petitioner is actually innocent of the two level enhancement under U.S.S.G. § 2D1.1(b)(1), since his status didn't prohibit him from target practicing at a shooting range during the period of a drug trafficking conspiracy.

The enhancement under U.S.S.G. § 2D1.1(b)(1) was erroneously imposed, based on hearsay testimony that lacked sufficient indicia of reliability and fell short of the preponderance of evidence standard.

Until Rehaif, District Court's has construed § 922(g)(1)'s scienter component to require that the indictment allege and the evidence show the defendant knew he was in possession of a gun. See, e.g. United States v. Huet, 665 F.3d 588, 596 (3d Cir. 2012); United States v. Higdon, 638 F.3d 233, 239-40 (3d Cir. 2011). But § 922(g) was meanwhile construed not to require proof the defendant knew he had previously been convicted of a felony punishment by imprisonment for a term exceeding one year (or occupied another status disqualifying him from possessing a gun). Higdon, 638 F.3d at 239-40.

In Rehaif, the Supreme Court squarely rejected this construction. Instead, the Court concluded, § 922(g) requires the government to "proves both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm." 139 S. Ct. at 2200. Writing

for the majority, Justice Breyer noted the "ordinary presumption in favor of 'scienter,'" 139 S. Ct. at 2195, whereby criminal statutes will not be construed "to imposed criminal liability on persons who, due to lack of knowledge, did not have a wrongful mental state," Id. at 2198.

Finally, the Rehaif majority appealed to fundamental fairness. Possessing a gun, it 'noted, can be an "entirely innocent" act. 139 S. Ct at 2197. If a defendant lacks knowledge of the facts and circumstances making the possession unlawful, he may well also "lack the intent needed to make his behavior wrongful." Id. Section 922(g)(1) might then unfairly apply, for example, "to a person who was convicted of a prior crime but sentenced only to probation" and is unaware the offense could have been punished by imprisonment of more than one year." Id. at 2198.

Petitioner argues, although the question presented in Rehaif was one of statutory construction, the decision has profound constitutional significance for persons presently enduring criminal punishment pursuant to U.S.S.G. § 2D1.1(b)(1). Because knowledge of relevant disqualifying status is essential to guilt, the Fifth and Sixth Amendments' fair trial guarantees require that this mens rea be alleged in the indictment and, if not admitted, proved beyond a reasonable doubt to the satisfaction of a jury. See Apprendi v. New Jersey, 530 U.S. 466, 490 & n.15 (2000).

Importantly, Petitioner contends that the two level enhancement under U.S.S.G. § 2D1.1(b)(1) doesn't apply to him in light of Rehaif, and actually raised objection to such enhancement at the sentencing on August 12, 2013. See Sentencing Tr. Id. at 5:19-23, Appendix C. Pursuant to United States Sentencing Guidelines § 2D1.1 (b)(1), "if a dangerous weapon (including a firearm) was possessed, increased by 2 levels," when involving "Unlawful Manufacturing, Importing, Exporting, or Traf-

ficking (including Possession With Intent To Committ these Offenses); Attempt or Conspiracy.

Consequently, the government sought the two level enhancement under § 2D1.1(b)(1) at Petitioner's sentencing, by relying on evidence of his possession of an firearm [provided] by "American Shooters Range" for target practicing, to ultimately infer Petitioner use that weapon to further a drug trafficking conspiracy while at the range. See Tr. Id. at 7-18. Additionally, the government argued that Petitioner was a prohibited 'felon from possessing a firearm, which the Court agreed. See below:

"Your Honor, under paragraph 141 of the presentence investigation report, Mr. Chambers plead guilty to carrying a firearm on a public street, and possession of a firearm with an altered serial number. Because of that conviction, he is a prohibited felon and therefore cannot possess a firearm: Id. at 16:13-18; also see, "he was sentenced to 6 to 23 months." Id. at 18:1-3; also. THE COURT: "23 months would have to be -- would satisfy federal law because its more than a year." Id. at 18:15-16.

Petitioner argues, the government did not meet its burden by a preponderance of evidence, however, attempted to infer Petitioner possessed a dangerous weapon during the drug trafficking conspiracy, to justify enhancement under § 2D1.1(b)(1) which was erroneously applied in light of Rehaif.

Conversely, Petitioner argues that at the time of this indictment, he was not a convicted felon, because the prior convictions mentioned by the government were for misdemeanor offenses, as argued by petitioner's attorney. See Tr. Id. at 18:8-10. More importantly, Petitioner was sentenced to 6 to 23 months home confinement with immediate parole at the sentencing, clearly demonstrating that he was not sentenced to imprisonment. The petitioner contends that his possession of a firearm provided by American Shooter's Range for target practice was an "entirely innocent act." Rehaif, at 2197. Moreover, Petitioner "lacked the intent needed to make his behavior wrongful," and "to impose criminal liability, due to his lack of knowledge and did not have a wrongful mental," would unfairly apply under § 2D1.1(b)(1). Rehaif, at 2198. Because the Petitioner served a probationary sentence, he did not know his status as a prohibited person,

and the § 2D1.1(b)(1) enhancement unfairly applies, like in Section 922(g)(1) cases, for example, "to a person who was convicted of a prior crime but sentenced only to probation" and is unaware the offenses could have been punished by imprisonment of more than one year. Id. at 2198. For all of these reasons, Rehaif construed § 922(g) to require the government to prove "that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it." Id. at 2194. In this case, the government did not prove Petitioner's status.

Failure to honor the rule in Rehaif in older prosecutions stripped Petitioner of a whole series of fundamental constitutional rights under the Fifth and Sixth Amendments. These include the right not to "be held to answer" for a serious federal offense except upon charges found by indictment of a grand jury. U.S. Const. amend. V; See Stirone v. United States, 361 U.S. 212 (1960). Also abridged is the right "to be informed of the nature and cause of the accusation." U.S. Const. amend VI; See Fed.R.Crim.P. 7(c)(1)(providing that indictment or information must state "the essential facts constituting the offense charged"). A conviction unsupported by proof beyond a reasonable doubt likewise deprived the Petitioner of due process of law. U.S. Const. Amend V; Jackson v. Virginia, 443 U.S. 307, 318-19 (1979). Finally, denying the defendant opportunity to contest essential facts at trial infringes the right to have a jury determine whether the presumption of innocence has been overcome. U.S. Const. amend. VI.

The record here leaves no room for dispute that the case was indicted and tried in derogation of the rule announced in Rehaif, and that as a result, Petitioner was deprived of due process, as well as the fair trial guarantees of the Fifth and Sixth amendment. Petitioner argues, the U.S. Supreme Court has jurisdiction to review and his request for writ of certiorari, pursuant to 28 U.S.C. § 1257(a), and in light of the new construction of 18 U.S.C. § 922(g)(1).

Importantly, the rules announced in Rehaif are retroactively applicable to cases on collateral review because Bousley v. United States, 523 U.S. 614, 118 S.Ct. 1614, 190 L.Ed.2d 828 (1988), in combination with Bailey v. United States, 516 U.S. 137, 116 S.Ct. 501, 133 L.Ed.2d 472 (1995) necessarily "logically dictate[s] the retroactivity of the new rule[s]." Additionally, because Rehaif's rules are retroactively applicable new rules of statutory law, 28 U.S.C. §2255(e), not [§ 2255(h)], governs Petitioner's claims for relief.

Moreover, rules announced in Rehaif are retroactively applicable to cases on collateral review because they are new rules of substantive law. This Court has declared that "new substantive rules generally apply retroactive." Welch v. United States, 136 S.Ct. 1257, 1264, 194 L.Ed.2d 387 (2016). In fact, this Court has explained that "[a] conviction or sentence imposed in violation of a substantive rule is not just erroneous, but contrary to law, and as a result, void." Montgomery v. Louisiana, 577 U.S. 190, 136 S.Ct. 718, 731, 193 L.Ed.2d 599 (2016).

Petitioner argues, this appeal presents a substantial question as to whether the District Court erroneously imposed U.S.S.G. §2D1.1(b)(1) gun enhancement, and subsequently abused its discretion in §2241 proceedings by denying relief, "in light of Rehaif's new substantive rules of statutory interpretation. Petitioner may use §2241 to raise claims that a sentence has been misapplied by showing: "(1) a case of statutory interpretation, (2) that is retroactive, and (3) that the misapplied sentence presents an error that is sufficiently grave to be deemed a miscarriage of justice or a fundamental defect." Hill v. Masters, 836 F.3d 591, 595 (6th Cir. 2016); also see In re: Dorsainvil, 119 F.3d 245 (3d. Cir. 1997); Bruce v. Warden, Lewisburg USP, 868 F.3d 170, 178 (3d. Cir. 2017) (holding, "an intervening change in statutory interpretation runs the risk that an individual was convicted of conduct that is not a crime, and that change in law applies retroactive in cases on collateral review, he may

seek another round of post-conviction review under 28 U.S.C. §2241").

Here, Petitioner argues that the gun enhancement imposed under §2D1.1(b)(1) was misapplied at sentencing and presents an error sufficiently grave to be deemed a miscarriage of justice or a fundamental defect, due to Rehaif's new statutory construction. In order for §2D1.1(b)(1) to have applied to Petitioner, the Government had the burden proving Petitioner personally possessed the weapon by showing "that a temporal and spatial relation existed between the weapon, and the drug trafficking activity" involving appellant.

Notably, the Government argued at Petitioner's sentencing hearing that 2D1.1 is applicable because he furthered a drug trafficking conspiracy based on his possession of a firearm at a shooting range, and that Petitioner was a convicted felon prohibiting him from possessing a firearm. The District Court agreed with the Government on the latter, although clearly erroneous in light of Rehaif. Whether the Petitioner possessed a dangerous weapon is a factual finding that should be reviewed for clear error. See United States v. Ruiz, 621 F.3d 390, 396 (5th Cir. 2010).

Conversely, Petitioner argues that the Government's contention fails for two reasons: First, the weapon used by Petitioner was the property of "American Shooters Range" and was returned upon completion of target practice at the range.¹ Thus, no temporal and spatial relation existed between the weapon provided to Appellant by the shooting range for practice, and the drug trafficking conspiracy. It was clearly improbable that the firearm was connected to Petitioner's drug trafficking offense after the Government established his possession.

Footnote 1: Petitioner acknowledges that "when another individual involved in the commission of an offense possessed the weapon, the Government must show that the defendant could have reasonably foreseen that possession." Id. However, statements and testimony made by Petitioner's co-conspirator at sentencing were not credible, and "lack sufficient indicia of reliability" resulting in the District Court giving Petitioner "the benefit of the doubt over co-conspirators testimony, with respect to the drug quantity attributed to Petitioner.

See Ruiz, 621 F.3d at 396; U.S.S.G. §2D1.1(b)(1); United States v. Napolitan, 762 F.3d 397 (3d. Cir. 2014).

Second, Petitioner did not have the prohibited status making his possession of the firearm at the shooting range unlawful, which was an "entirely innocent act." Rehaif, at 2197. Importantly, because Petitioner was not a convicted felon, and only had two (2) prior misdemeanor convictions for which he served a term of probation, Petitioner "lacked the intent needed to make his behavior wrongful" at the shooting range." Id.

As a result thereof, Section 922(g)(1) and §2D1.1(b)(1) unfairly applied to Petitioner: "who was convicted of a prior crime but sentenced only to probation" and is unaware the offense could have been punished by imprisonment of more than one year." Id. at 2198.

Because Petitioner's possession of the firearm at the range was an "entirely innocent act," and since the district court did not explain the basis for its decision that the two level firearm enhancement applied, this Court should conduct a de novo review. See United States v. Zapata-Lara, 615 F.3d 388, 390 (5th Cir. 2016) ("whatever facts found are legally sufficient to support the enhancement, is reviewed de novo.").

Recently, in a similar circumstance aforementioned by Petitioner, the Fifth Circuit remanded a case back to the District Court for resentencing without the §2D1.1(b)(1) gun enhancement. See United States v. Sinclear, No. 20-10495 (5th Cir. Oct. 28, 2021). There, the Fifth Circuit reasoned, "(1) the district court did not explain the basis for its decision that the two-level firearm enhancement applied to Sinclear, (2) it is not clear whether the district court determined that Sinclear personally possessed the firearm, or that one of Sinclear's un-indicted co-conspirators possessed it during the commission of the offense, and (3) [w]e do not need to determine whether Sinclear personally possessed the weapon or whether a co-conspirator

possessed it and the possession was reasonably foreseeable to Sinclear, because we cannot be sure what rationale the district court had in mind to support the enhancement, based on its limited statement." Id.

Petitioner argues, there was not enough in the record to support the firearm enhancement based on his possession at the shooting range. See Mayer v. City of Chicago, 404 U.S. 189, 194 (1971) (Due process requires that a "record of sufficient completeness" be provided so that a defendant can demonstrate that a prejudicial error occurred). As a result, this Court "cannot be sure what rationale the district court had in mind to support the enhancement, based on its limited statement." Sinclear, Id.

Consequently, "facts considered at sentencing must generally be proved by a preponderance of the evidence." United States v. Watts, 519 U.S. 148, 156, 117 S. Ct. 633, 136 L.Ed.2d 554 (1997). However, in this case it was clearly improbable that the weapon from the [shooting range] was accessible to Petitioner's drug trafficking offense, and so, this Court should grant writ of certiorari, in light of the new construction of 18 U.S.C. § 922(g)(1), pursuant to Rehaif. As Petitioner points out, the District Court relied upon other standards of law under § 922(g)(1) to apply the enhancement under § 2D1.1(b)(1), and the District Court's standards has been undermined by the Supreme Court's decision in Rehaif.

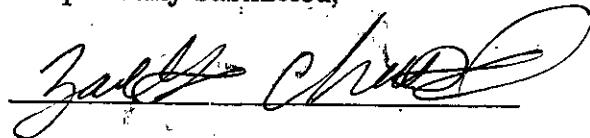
Lastly, Petitioner argues, the Third Circuit had jurisdiction under 28 U.S.C. § 1291 in reviewing the District Court's denial of his petition under 28 U.S.C. § 2241, as it "exercises plenary review over the District Court's legal conclusions and apply a clearly erroneous standard to its finding of facts." See O'Donald v. Johns, 402 F.3d 172, 173 n.1 (3d Cir. 2005); also see, United States v. Friedland, 83 F.3d 1531, 1542 (3d Cir. 1996). Notably, Third Circuit LAR 27.4 and I.O.P. 10.6 allows the Court to summarily affirm

when it is clear that no substantial question is presented by the appeal. See United States v. Baptiste, 223 F.3d 188, 190 n.3 (3d Cir. 2000). However, the decision in Rehaif presented a substantial before the Third Circuit, which was relevant at that time. Petitioner is actually innocence of violating 18 U.S.C. § 922(g)(1) and § 2D1.1(b)(1), because he did not have the prohibited status to make his possession of a firearm at a shooting range criminal to support the District Court's imposition of the 2 level enhancement under the U.S. Sentencing Guidelines. Moreover, the decision in Rehaif came long before Petitioner filed his § 2241 Habeas Corpus Petition. The Court should have applied 'Rehaif new construction to invalidate the enhancement under § 2D1.1(b)(1), in support of the record at sentencing on August 12, 2013.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Zal M. Chishti". The signature is written in a cursive style with a horizontal line underneath it.

Date: June 28, 2022