22-5630

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

WILLIAM HAROLD WRIGHT, JR.
PETITIONER,
VS.

UNITED STATES OF AMERICA
RESPONDENT.

ON PETITION FOR A WRIT OF HABEAS CORPUS

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF HABEAS CORPUS

WILLIAM HAROLD WRIGHT, JR.

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QUESTION(S) PRESENTED

DID THE DISTRICT COURT ERROR DENYING WRIGHT'S MOTION TO DISMISS

B. Rule. 201

i How The Writ Will Be In Aid Of The Court Appellate Jurisdiction

The writ will be in aid of the court's appellate jurisdiction, to help determine that the jurisdiction of the district court is divested in this case upon two principal grounds; the first relates to matters that the indictment did not "contain the elements of the offenses intended to be charged, and sufficiently apprises the defendant of what he must be prepare to meet", and secondly, in case any other proceeding are taken aginst him for a similar offense, whether the record show with accuracy to what extent he may plead a former acquittal or conviction.

ii What Exceptional Circumstances Warrant The Exercise Of The Court's Discretionary Powers

The indictment failed to state an offense these counts are too vague and general they lack

~~Likewise~~

the Certainty and precision required by the establish rule Of Criminal pleading. Petitioner is being restrained in Violation of the Due Process Clause of the Federal Constitution.

The Constitutionality of the district Court Opinion Was "deliberately erroneous", Which Warrant the exercise Of the Court's discretionary powers. Because of the Constitutional Violations involved, this court decision is of great importants to the public interest in this matter.

iii Why Adequate Relief Cannot Be Obtain In Any other Form or From Any Other Court

Petitioner has exhaustive all avenues and Form and Courts for relief to no avail, this is the Court of last results.

IV The Reason For Not Making Application To The District Court Of The District In Which he is Confined Rule 20.4(a)

The reason petitioner did not File the Writ in the district Court Which he is being Confined, because petitioner has been denied his Fifth Amendment Due Process, to a fair trial, and a impartial judge throughout these proceeding in the lower Courts. Petitioner truely believe Without doubt, the "ends of Justice" Will be better serve in this Court.

LIST OF PARTIES

Judges: Martin
Braum

RELATED CASES

Unknown

TABLE OF CONTENTS
TABLE OF CONTENTS

INDEX TO APPENDICES

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES

CASES PAGE NUMBER

OPINION BELOW

United States V. Wright, 825 App'x 676 (11th Cir. 2020).

United States V. Wright U.S. Dist. LEXIS 67316, (11th Cir. 2017).

JURISDICTION

Wright judgment of Conviction became final on November 10, 2020, When the Supreme Court denied his petition for Certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Fifth Amendment to the United States Constitution provide in relevant part:

No person shall be . . . deprive of life, liberty or property, without due process of law . . . .

The Six Amendment to the United States Constitution provides in relevant part:

In all Criminal prosecution the accused shall have the right to be . . . inform of the nature and cause of the government accusation against him.

I. STATEMENT OF THE CASE AND FACTS

A. Procedure history

On September 28, 2016, a federal magistrate judge issue a warrant for Wright's arrest for Conspiray to distribute one Kilogram or more of heroin, in Violation of 21 U.S.C. § 846 and 841(b)(1)(A)(i). Doc 1 Law enforcement Officers arrested Wright on that same day. Id The magistrate judge appointed attorney Candela to represent Wright. Doc. 5.

On October 4, 2016, a grand jury returned an indictment Charging Wright With Conspiracy to possess intent to distribute and distribution of one Kilogram or more of heroin, in Violation of 21 U.S.C § 846 (Count one) and Six Substantive Counts of possession of heroin With the intent to distribute, in violation of 21 U.S.C. § 841 (Count two through seven). Id.

Sixteen days later, on October 20, 2016, Wright— unhappy with Mr. Candela— retain Timothy Bower Rodrigue to represent him. Doc. 12. The Court granted Mr. Candela motion to withdraw the next day. Doc. 13; Doc. 14. On November 6, 2016, Wright asked the court to remove Mr. Bower Rodriguez Doc. 18. The Court granted the request and appointed Timothy Fitzgerald to represent Wright. Doc. 21.

Approximately two months later, Wright wrote to the Court to accuse Mr. Fitzgerald of being ineffective. Doc. 37-1. On January 13, 2017, the Court conducted another hearing, where Wright claimed that he had been unable to communicate with his lawyer, complained that his third lawyer had not filed motions, had not reviewed discovery, and did not unerstand the language used in the intercepts." Doc. 42 at 3; see also Doc. 292 at 8-21. The Court asked Mr. Fitzgerald if he could represent Wright or if there had been a fundamental breakdown of communication, and Mr. Fitzgerald responded that he could. Doc. 292 at 22-23.

The Court denied Wright's motion. Doc. 42 Wright sought reconsideration, which the Court denied. Doc. 43.

On March 21, 2017, Wright's attorney filed a motion to dismiss the indictment, arguing that the indictment failed to give adequate notice of the Charges against him. Doc. 65. On April 3, 2017, the United States filed its response in opposition. Doc. 71. The Court denied the motion on May 2, 2017 Doc. 77.

In the 42 days that the motion was pending Wright moved for reconsideration of the Court's denial of his motion to appoint Counsel twice, Docs. 72; Doc 76. The Court denied both motion to dismiss, Wright moved for reconsideration of his motion to appoint new Counsel. Doc. 78. The Court denied that motion. Id.

On June 2, 2017, Wright filed a motion that the Court Construed as a motion to proceed pro-se and referred to the magistrate judge for Faretta hearing. Doc. 79; Doc. 80. The magistrate judge Conduted the hearing on June 6, 2017. Doc. 282.

After Wright rehashed his list of grievances about Mr. Fitzgerald, the Court asked Wright if Wright wanted to continue on with Mr. Fitzgerald or represent himself. Id at 16-17. Wright said that he was "not going to continue on with [Mr. Fitzgerald] under any circumstances." Id. at 16. When asked if he wanted to represent himself, Wright responded that the Court was forcing him to do so. Id. at 16-17. The Court explained to Wright that he was not being forced to represent himself, but that Wright had to choose if he wanted to represent himself or if he wanted Mr. Fitzgerald to represent him. Id at 17.

Wright replied "You're forcing me into this, I'am not going to have him represent me at all. This is not going to happen." Id. Having determined that Wright had elected to proceed pro-se, the Court informed Wright of the charge against him and asked a series of question to conduct the Faretta inquiry. Doc. 282 at 17-22.

A little over one month later, Wright move to appoint Counsel for himself, stating that he had been unable to access the legal material needed to prepare his defense. Doc. 87 Wright said that he did not want Mr. Fitzgerald to represent him because that would be a conflict of interest. Id. at 8, 12.

The Court found "no reason to appoint new counsel", noting that there was no conflict of interest with Mr. Fitzgerald and that Wright was unlikely to cooperate with any counsel give his desire to make his own arguments. Doc. 261 at 13-14; see also Doc. 95 at 2. The Court also found that Wright's complainted about access to the law library was constitutionally insignificant because "a pro-se criminal defendant has no constitutional right of access to a law library material where counsel has been offered." Doc. 95 at n2.

On August 11, 2017, Wright filed a motion to reconsider, Doc 97, and the court held a hearing on August 21, 2017, Doc 262. At that hearing, the parties discuss Wright's difficulty accessing discovery, and the Court asked the United States to provide exhibits and transcript that it intended to use at trial to Wright by September 7, 2017. Doc. 262 at 8-9. The Court denied Wright's motion Doc. 103.

On September 7, 2017, wright Filed another motion to reconsider appointment of Counsel, which the Court denied. Doc. 109; Doc. 111. Less than one month later, Wright filed another motion to appoint Counsel Doc. 117 On October 18, 2017 Wright agreed to have Mr. Fitzgerald represent him again. Doc. 123. Wright filed another pro-se motion to dismiss the indictment Docs. 124, 129.

The United States responded, Doc. 130, and the Court denied the motion, stating that Wright had made the same arguments in his previous motion and that this motion was due to be denied for the same reason as before. Doc. 132.

Less than one month after Mr. Fitzgerald's reappointed, wright filed another motion to dismiss Mr. Fitzgerald. Doc. 136; See also Doc. 140. The Court denied Wright's motion to appoint a third attorney for him, but granted Wright's request to have Mr. Fitzgerald removed from the case. Doc. 140. Additionally, the Court found that Wright had not recided his waiver of Counsel and had knowingly and willfully decided to represent himself. Doc. 140 at 3.

Less than three weeks later, Wright moved to appoint Counsel. Doc. 143. The Court denied the motion after holding a hearing. Doc. 147; See also Doc. 267. But, to Wright's concern that he was not able to access his discovery materials, the Court provide Wright with a laptop Computer that he Could use at the Courthouse in the Marshal's Space; directed the Marsal to transport Wright to the Courthouse every monday, Wednesday, and Friday through the anticipated trial date; and appointed David Hardy as Standby Counsel to help Wright access digital discovery and process CJA 21 Voucher. Doc. 148.

Trial began 42 days later, Doc. 176, and on the Second day of trial, the Court appointed Kevin Beck to act as Standby Counsel to assist Wright with trial procedures and the introduction of evidence, Doc. 269 at 97-99. The jury found Wright guilty as Charged. Doc. 202. The Court appointed Mr. Beck as Counsel for Wright's Sentencing and appeal. Doc. 273 at 148; Doc 204 Wright moved to dismiss Mr. Beck prior to Wright's Sentencing hearing Doc. 238.

At the Sentencing hearing, the Court told Wright that Wright was not going to get another lawyer, to which Wright responded, "I do not want Mr. Beck to represent me under any circumstances. Doc 276 at 4. The Court responded," You have two ~~choices~~: Choices: You can represent yourself or you can let Mr. Beck represent you". Id. at 4. Wright maintain that he did not waive his right to Counsel. Id. The Court reluctantly allowed Mr. Beck to Withdraw and grant Wright's motion to appoint Counsel. Id at 7-8.

The district Court continue Wright Sentencing to allow Wright time to prepare. Doc. 276 at 16. At the Continue Sentencing the district Court Sentence Wright to Serve 300 month's imprisonment. Doc. 277 at 57-58; Doc. 251.

B. Statement Of facts

i. The Government False And Misleading Allegations

Wright led a drug trafficking organization Whose member also included Robert Lorenzo Lee, Edward Williams, Earnest Wooten, Joseph Sweet Burts, Dalton Baptiste, and Dexter Kitchens. PSR-12-13. The co-conspirators were responsible for distributing between 18 and 30 Kilogram of heroin from at least 2015 through September 28, 2016 PSR-12. Wright had the heroin Shipped from Los Angeles to pinellas County, Conceal inside household funiture. PSR-12. Wright Would fly to Florida, Where he, and Others, would remove the heroin from the Furniture, Cut It, and repackage it for distribution. Id.

Lee, williams, Burts, and Baptiste Sold and distributed the heroin, while Wooten maintained a Stash house and owned an apartment in St. petersburg, Where member of the drug trafficking organization Cut and repackaged the heroin. PSR-13; Doc. 270 at 203-07; Doc. 271 at 217-22. On three occasions, Kitchens transported the heroin to Alanta, Where Wright met him and took possession of the heroin. PSR-13.

On October 22, 2015, December 10, 2015, February 17, 2016, March 24, 2016, July 6, 2016, Wright provide Lee, Baptiste, and Williams With heroin that the co-Conspirators sold to an Under-Cover Officer. PSR-16-20. The total weight of the heroin across the five transaction was approximately 505 grams. Id.

First and foremost each and everyone of Government Witnesses testimony were "Unreliable", Specifically the Government Star witness Mr. Lee. I.e The record reflects that these witnesses testimony at trial were false and misleading. The record reflects and Supports that each and everyone of the Government witnesses were promise, that the Government will file a Rule 35 motion for substantial assistance for reduction of sentence enexchange for their testimony. Id. at Cross-Examination, and Rule 35 motions.

The record reflects on cross examination when Wright asked each and everyone of the Government's witnesses did anyone promise you anything for your testimony and the Witnesses Saided "no" ("the Government as well as the Court knew that the answer Should have been "yes".

The Government nor the district Court did anything to Correct these witnesses False and misleading testimony.

It Can be hardly daubted that the district Court did not know that these Witnesses were testifying Falsely. The district Court is Obligated and must read each and everyone of the alleged Co-Conspirators "plea agreement" in "Open Court" before acepting their plea to ensure that they unstand What they are agreeing to and to ensure that their Constitutional rights is not being Violated. The plea agreement Clearly Stipulated the terms and the promises of the Government Rule 35 motion, for Substantial assistance.

A Conviction based on false testimony is unconstitutional. See Illinios V. Napue and its progeny.

ii Wright Sentencing

The probation Officer determined that Wright had a total Offense level Of 40 and a Criminal history Category of I. PSR-129. After overruling Wright's Ojections, the Court determined that Wright's advisory guideline range was 292 to 365 months imprisonment, Doc. 277 at 49-50. The Court Sentence Wright to Serve 300 months on Count one, 240 months on Count two through Four, and 300 months on Count five through Seven, all Concurrently. Id. at 55-58.

III Wright Four Appeals

Wright appeal his Conviction and 300 months Sentence. Wright Challenge (1) The indictment failed to provide adquate notice of the Charge against him (2) Wright did not knowingly and Voluntiaryly waive his right to Counsel. (3) Variance (4) the application of a Sentencing enhancement base on his co-conspirators possession of a firearm. Appeal No. 18-12678.

The Eleventh Circuit affirmed Wright's Convictions and Sentence. United States V. Wright, 825 F. App'x 676 (11th Cir 2020). With no respect to Wright's arguments about the indictment, the Eleventh Circuit found that Wright's indictment was sufficient as to the conspiracy charge even though it did not specify a location narrower than the Middle District of Florida and elsewhere, and did not list his co-conspirators by name, or place the conspiracy within any time frame. And lacked a statement of the facts and circumstances. Id. at 679-680.

II. Summary of The Arugment

Wright first contends that the indictment failed to state an offense, and provide adequate notice of the charge against him. This indictment clearly lacked a statement of the facts and circumstances that would inform the accused of the specific offense with which he was charged. And when it does not protect him to double jeopardy.

A. Argument(S)

The district court denial of petitioner motion to dismiss was flawed in several respect these unreasonable denial must be reverse, as a matter of law". This indictment is Clearly "defective" upon its face.

Upon principle Which may be Consider well settle in this court it Can have no right to issue this Writ as a means of reviewing the judgment of the Circuit Court simple upon the ground of error in it proceeding; "but if it Shall appear that the Court had no jurisdiction to render the judgment which it gave, and under Which the petitioner is held a prisoner, it is within the power and it will be the duty of this Court to order his discharge."

Petitioner Contends that the indictment Failed to provide adequate notice of the Charge against him. Specifically, he argued that the indictment Clearly lacked a statement of the facts and Circumstances that would inform the accused of the Specific offenses, with which he were Charged. And when it did not protect him to double jeopardy. The indictment failed to allege sufficient facts to facilitate the proper preparation of a defense and to ensure that petitioner was prosecuted

On Facts presented to the Grand Jury.

Every ingredient of which the offense is composed must be accurately and clearly alleged. The indictment must set forth reasonable particularity of time, place and circumstances.

To pass constitutional muster, an indictment must be sufficiently specific to inform the defendant of the charge against him and to plead double jeopardy in any future prosecution for the same offense. United States V Yonn, 702 F.2d 1341, 1348 (11th Cir 1983). More specifically, an indictment is sufficient if it alleges, (1) essential element of the Charge offense (2) notifies the accused of the Charges and (3) enable the accused to rely upon a judgment enter under the indictment as a bar against double jeopardy. United States. V. Jordan, 582 F. 3d 1239, 1245 (11 th cir 2009).

And an indictment is sufficient if it tracks the Statute under which the accused is Charge and provides a statement of the Facts and circumstances that provide "notice" of the Offense. United States V. MC Nair, 605 F.3d 1152, 1186 (11th Cir) cert. denied 562 U.S. 1270, 131 S. Ct. 1600, 179 L. Ed. 2d 499 (2011).

UNITED STATES V. Cecil, 608 F. 2d 1294 (9th Cir 1979)

Appellants were Convicted of Conspiracy to import large quanities of marijuana and With the intent to distribute the marijuana. Appellants Challenge their Conviction base on the suffiency of the indictment. On appeal, the Court reverse the Conviction, holding that the indictment Failed to Contain Sufficient Facts to accord appellants with adequate notice of the of the Charges against them and to ensure them their prosecution would proceed on the basis of facts present to the grand jury. This indictment Clearly lacked a statement of facts and Circumstances that would inform the accused of the specific offense with Which they were Charged. An that it was therefore, insufficient to sustain the Conviction. See Hamling V. United States, 418 U.S. at 117-18 94 S. Ct. 2887

UNITED STATES V. Soldano, 626 F. Supp 384 (11th Cir 1986)

Dismiss the indictment because Count 1 neither name any co-defendant nor identifies any other person with whom Soldano allegedly Conspired with. Count 1 only alleges that Soldano Conspired " with person known and unknown to the grand jury: According to Soldano, these allegations are insufficient to Satisfy Six Amendment's requirement that Soldano be informed with reasonable specificity of the nature of the charge against him; and likewise fails to protect him against double jeopardy.

Likewise, Soldano argued that the absence of a Sufficiently Specific allegation as to the time frame of the Conspiracy render this count insufficient and Subject to dismissal. Count 1 Stated that it existed " from an unknown date until on or about late April 1983".

In reviewing the specificity of the essential element alleged in Count 1, it appears that this Count does not identify Wright's alleged Co-Conspirators. See Ramos, 666 F.2d at 474. It further appears that the indictment does not set forth the timespan; "from an unknown date, which was at least in 2015, through on or about September 28, 2016 . . . ." See Marable, 578 F.2d 1294, 1297 (9th Cir 1979) ("open ended" time frame consider insufficient).

See also Yonn, 702 F.2d at 1348, n.6. It appears that the lack of these allegations cause Count 1 to be deficient such that the necessary essential element are not set forth. See Yonn at 1348. To be Constitutionally Sufficient, Count 1 must allege sufficient, and specific facts that apprise the defendant of the charge against him so that he can intelligently prepare his defense, and it must supply him with sufficient facts to plead former jeopardy in a subsequent proceeding for the same offense. Russell v. United States, 369 U.S. 749, 763-4 L. Ed. 2d 240, 82 S. Ct. 1038 (1962); Hamling v. United States, 418 U.S. 87, 41 L. Ed. 2d 590, 94 S. Ct. 2887 (1974).

Failure {626 F. Supp 386} to comply with either of these Constitutional Consideration render the indictment defective and Subject to dismissal, Wright contends that Count 1 was to Vague to satisfy his Six amendment guarantee to be informed of the government accusation against him. Russell V, United States, 369 U.S. 749, 761 82 S. Ct. 1038, 1045, 8 L. Ed. 2d 240, 249 (1962).

The present indictment is a rather Unproductive document. Aside from tracking the language of the pertinent statute in setting out the element of the offenses with which petitioner were charged, the indictment make only one specific allegation concerning the conspiracy. It States that the Conspiracy occurred in the Middle District of Florida and elsewhere. The indictment failed to State any other facts or circumstances pertaining to the conspiracy or any overt acts in furtherance thereof.

More importantly, the indictment failed to place the conspiracy within any time frame. The language beginning ("from an unknown date, Which Was at least in 2015, through on or about September 28, 2016") is a "open ended beginning date". Insufficient, a necessary "element" of the offense is not included.

The Honorable Judge Story says, the indictment must charge time and place and nature and circumstances of the offense with clearness and certainty, so that the party may have full "notice" of the charge, and to be able to make his defense with all reasonable knowledge and ability. 2 Story Const. § 1785.

The fact that an indictment may have tracked the language of the statute will not render it valid if it fails to allege an essential element of the offense or the minimum facts required to fulfill the purpose of an indictment. C.f. United States v. Keith, 605 F.2d at 464; United States v. Curtis, 506 F.2d 985, 990 (10th Cir 1974) (holding that the indictment's failure to identify with any particularity the nature of the alleged scheme to defraud render the indictment fatally defective.

According to the view taken of these Caunts the question is not Whether it is enough in general, to describe a statutory offense in the language of the Statute, but Whether the offense has been describe at all. The Statute provides for punishment those Who Conspired " To Conspiring to distribute a Kilogram or more of heroin in Violation of 21 U.S.C. § 846 and 841(b)(1)(A)(i) possession of heroin Within intent to distribute " as Well as Six (6) Substantive Caunts alleging aiding and abetting posession of heroin With intent to distribute.

These Caunts in the indictment charge in Substance that the intent in the case was to posses heroin with intent to distribute. There is no "Specification" of any "particular scheme" to Conspired or possession With intent to distribute.

The language is Vague and indefinite, allegations of the Kind are not Sufficient to inform the accused in a Criminal prosecution of the nature and Case of the accusation against him, Within the meaning of the Six Amendment of the Constitution.

This inquiry must focus upon whether the indictment provides " the substantial safeguard " to criminal defendant that indictment are designed to guarantee. Russell V. United States, 369 U.S. at 73 82 S. Ct. 1038. Pursuant to this purpose, an indictment must furnish the defendant with a sufficient description of the charge against him to enable him to prepare his defense, to ensure that defendant is prosecuted on the basis of facts presented to the grand jury. To enable him to plead jeopardy against a later prosecution and to inform the court of the facts alleged. So that it can determine the sufficiency of the charge. Russell V. United States, 369 U.S. at 763, 768 n. 15, S. Ct. 1038; United States V. Keith, 605 F. 2d at 464; United States V. Pheaster, 544 F.2d 353, 360 (9th Cir 1976). cert denied, 429 US 1099, 97 S. Ct. 1118, 51 L. Ed 2d 546

To perform these function the indictment must set forth the element of the offense charge and contain a statement of the facts and circumstances that will inform the accused of the specific offense with which he is charged. Hamling V.

United States, 418 US 87 117-18 94 S. Ct. 2887 41 L. Ed. 2d 590 (1974).

Without doubt the first and second of these preliminary Criteria was insufficiently met by the indictment in this cause. Since the indictment failed to set the Conspiracy within any time frame, Clearly lacked a statement of the facts and Circumstances, failed to identify the alleged Co-Conspirators, and Specify a Specific location, Middle District of Florida and Elsewhere. "Vague and Overbroad" See Russell V. United States, 369 US at 73 82 S. Ct. 1038.

It can hardly be doubted that the petitioner was not sufficiently apprise of what he must be prepare to meet. And was not fully protected from being put in jeopardy for the same offense.

Where guilt depend so crucially upon such a specific identification of facts, our cases have uniformly held that an indictment must do more than simply repeat the language of the Criminal Russell V. United States, 369 US at 74 82 S. Ct. 1038.

Petitioner relies upon this Court decision in United States V. Cruikshank and its progeny for the assertion that an indictment must state the offense with reasonable particularity of time, place and circumstances, 92 US 542, 558, 23 L ed 558 (1875).

It is an elementary principle of criminal pleading, that where the definition of an offense whether it be at common law or by statute, include generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition; but it must state the species it must descend to particulars." United States V. Cruikshank, 92 US 542, 558, 23 L ed 588, 593.

An indictment not frame to apprise the defendant " with reasonable certainty, of the nature of the accusation against him... is defective, althrough it may follow the language of the statute," United States V. Simmons, 96 US 360, 362, 24 L ed 819, 820. In an indictment upon a statute, it is not sufficient to set forth the offense in the words of the statute; ... unless those words of themselves fully, directly and expressly, without any "uncertainty or ambiguity" set forth all the elements necessary to constitute the offense intended to be punish..., " United States V Carll, 105 US 611, 612, 26 L ed 1138 " Undoubtedly the language of the statute may be used in the general description of an offense, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged.

Without doubt these basis principle of fundamental fairness retain their full vitality under modern concept of pleading and specificity under Rule 7(c) of the Federal Rule of Criminal Procedure, is illustrated by many recent federal decision. United States V. Hess, 124 US 483, 487, 31 L ed 516, 518, 8 S. Ct. 571. See also Pettibone V. United States, 148 US 197 202-204, 37 L ed 419, 422, 423, 13 S. Ct. 542.

In Criminal Cases prosecuted under laws of the United States, the accused has the Constitutional right "to be informed of the nature and Cause of the accusation." Amed. VI. In U.S v. Mills, 7 Pet. 142, this was Construed to mean, that the indictment must set forth the offense "With Clearness and all necessary Certainty, to apprise the accused of the Crime with which he stand Charged;" and in US v. Cook, 17 Wall. 174, 21 L. ed 539, that "Every ingredient of which the offense is Composed must be accurately and Clearly alleged.

The object of the indictment is, first, to furnish the accused with such a description of the Charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and second, to inform the Court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusion of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place and circumstances.

The Constitution or laws of Congress:
Leaving it to the pleader to Specify the "particular scheme" to Conspired to posses with intent to distribute, Which had been alleged, in order to give the accusation that Certainty Which the rules of Criminal pleading every where require in an indictment but the pleader in this case overlooking any necessity for any such "Specification", and making no attempt to comply with the rules of Criminal pleading in that regard, describes the "Supposed offenses" in terms much more "Vague" and indefinite than those employed in the Act of Congress.

Reasonable Certainty is require in Criminal pleading, that the allegations in question fails to comply with that requirement. Accused person, as a matter of Common justice, ought to have the Charge against him set forth in such terms that may readily understand the nature and Character of the accusation, in order that he, when arraigned, may know What answer to make to it, and that he may not be embarrassed in conducting his defense; and the Charge ought also be laid in such terms that if the party accused is put to trial, the Verdict and Judgment may be pleaded in bar of a second accusation for the Same offense.

Argument II

The Aiding and Abetting Counts is Legally Insufficient

Wright Contends that the Conspiracy Count are Legally insufficient because it do not State a Criminal Offense and do not give him adequate "notice" of the alleged Scheme to Conspired.

Wright argues that the allegations of Conspiracy in the aiding and abetting Counts are insufficient because they do not present the essential element of Conspiracy and do not notify him of the Charge to be defended against. Count 2-7 aiding and abetting provide no factual allegations whatsoever regarding the Scheme to Conspired, and do not incorporate any of the allegations of Conspiracy, in the aiding and abetting Counts.

The allegations of Conspiracy in the aiding and abetting Counts are insufficient because they provide absolutely no factual detail regarding the scheme to Conspire. As we have previously noted, for an indictment to be legally

Sufficient, it must notify the accused of the Charge to be defended against. The indictment must Contain "a plain Concise, and definite Written Statement of the essential facts Constituting the Offense Charged. Fed. R. Crim. P. 7(c) (emphasis added). Even when an indictment "track the language of the Statute, it must be accompanied With Such a Statement of the Facts and Circum-stances as will inform the accused of the Specific offense, Coming under the general description, with Which he is Charged." United States V. Bobo, 344 F.3d 1076, 1038 (11th cir 2003) (citing Russell V. United States, 369 U.S. 749, 765, 82 S. Ct. 1038 1048-49, 8 L. Ed. 2d 240 (1962).

The Conviction on aiding and abetting Counts Cannot Stand because the allegations of Conspiracy in those Counts are legally insufficient and we do not know Whether the jury relied on those legally insufficient allegations in Convicting on the aiding and abetting Counts. See Griffin V. United States, 502 US. 46, 59, 112 S. Ct 466 474, 116 L. Ed. 2d 371 (1991). The need for express incorporation arises because factual allegations are being transplanted in their entirety informing the meaning of other allegations that are not already in the other Counts.

Each Count of an indictment must be regarded as if it were a Separate indictment and must Stand on its own Content without dependence for its Validity on the allegations of any other Count not expressly incorporated. United States V. Huff, 512 F.2d 66, 69 (5th Cir.1975)(Citation omitted). The Government is correct that the Validity of an indictment is determined from reading it "as a whole", Jordan, 582 F.3d at 1245; United States V Diwan, 864 F.2d 715, 719 (11th Cir 1989); Markham, 537 F.2d at 192. But that does not mean factual allegations in one Count are somehow automatically incorporated into other Counts. To the Contrary, Counts have explained that when allegations in one Count are incorporated into another Under Fed. Rule. Crim. P. 7 (c), Such incorporation must be express.

Davis V. United States, 357 F.2d 438, 440 n. 2 (5th Cir. 1966); United States V. Redcorn, 528 F.3d 727, 734-735 (10th Cir 2008)(there is no need to look beyond the borders of a particular Count to determine What offense is charge; indeed, it generally improper to do so except where a Count incorporates other allegations expressly, as permitted by Federal Rule of Criminal Procedure 7(c)(1) United States V. Knowles, 29 F.3d, 947 952 (5th Cir. 1994) ("While it is true that an allegation made in one Count of an indictment may be incorporated by reference in another Count of the indictment, we have held that any such incorporation must be expressly done.") (internal citation omitted); United States V. Miller, 774 F.2d 883, 885 (8th Cir. 1985) (Citing Huff and Concluding that each Count of an indictment "must stand on its own, and cannot depend for its validity on the allegations of any other Count not specifically incorporated") (internal quotation marks and citation omitted); United States V. Fulcher, 626 F.2d 985, 988, 200 US App. D.C. 121 (D.C. 1980) (Citing Huff and concluding that one Count cannot by osmosis" the allegations of another Count).

The rule requiring express incorporation by reference is especially important in this case, where it is not at all apparent from the face of the indictment that the facts of the Cospiracy Count overlap with the facts of aiding and abetting Counts. The aiding and abetting Counts (Counts two through seven) do not stand on their own content and do not expressly incorporate any allegations about the Scheme to Conspired from the Conspiracy Count. These Counts is insufficient "as a matter of law".

It is settle law that one cannot be "merely" Convicted of aiding and abetting.

Reason for Granting the Writ

Because of this court decision in United States V. Cruikshank and its progeny, Which "overruled" the Court of Appeals decision that affirmed the Conviction, which the court of Appeals is "directly" in "Conflict" with, which render the Court of Appeals previous decision that affirmed the Conviction "demonstrably wrong".

CONCLUSION

This Court decision in Cruikshank V, United States overruled the Court of Appeals decision that affirmed the conviction, petitioner respectfully asks this Honorable Court to adjudicate this Writ Constitionally With this Circuit and the U.S. Supreme Court precidents. And Vacate the Conviction and discharge the prisoner in light of United States V. Cruikshank and its progeny, 92 US 542 558, 23 L ed 558 (1875).

Petitioner respectfully asks that he be allowed to respond to the Attorney - General response.

Respectfully Submitted,

WILLIAM HAROLD WRIGHT, JR.

Pro-se / Litigant
Counse Of Record
District of Florida
Mc Kean FCI
P.O. BOX 8000
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Date: September 6, 2022.

CERTIFICATE OF SERVICE

I Hereby certify that an original of the foregoing has been furnish to the United States Supreme Court 1 1st N.E Washington D.C. 20543-001 and a Copy to the Solicitor General Of the United States Room 5616 Department Of Justice, 950 Pennsylvania Ave. N.W Washington D.C 20530-0001, by Regular U.S Mail this 23rd day of

WILLIAM HAROLD WRIGHT, JR