

No. 22-5701

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

FILED
AUG 28 2022
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Terry Wayne Cope — PETITIONER
(Your Name)

vs.

United States — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Terry Wayne Cope #06887-032
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(Address)

Butner, NC 27509
(City, State, Zip Code)

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(Phone Number)

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Questions Presented

1. Does the precedent that "a defendant's incarceration during the COVID-19 pandemic - when the defendant has access to the COVID-19 vaccine - does not present an 'extraordinary and compelling reason' warranting a sentence reduction" subvert the will of Congress by impermissibly constraining the district courts and also contravene the traditional deference of the courts to the medical health experts in public health?*

Reference: U.S. v Lemons, 15 F.4th 747, 751 (6th Cir. 2021); School Board of Nassau County v Arline, 480 U.S. 273, 287 (1987).

2. Must the district court address all grounds raised in a motion for a reduction in sentence and must it set forth specific findings, supported by evidence other than the crime of conviction when circumstances change?

Reference: Pepper v U.S., 562 U.S. 476, 491 (2011).

* See Appendix A For Supporting Documents/Articles.

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 B 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☒ is unpublished.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☒ is unpublished. (sealed)

☐ 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☐ is unpublished.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

February 10, 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 _____.

I sent my only copy to this Court, so I don't know.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including August 27, 2022 (date) on May 23, 2022 (date) in Application No. _____.

21 A 742.

The jurisdiction of the U.S. Supreme 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. _____.

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

Statement of the Case

The Sixth Circuit found that the district court would have abused its discretion had it granted my motion for a reduction in sentence (compassionate release) because of my five comorbidities¹ during the COVID-19 pandemic because I have been for COVID-19. "We have held that a defendant's incarceration during the COVID-19 pandemic - when the defendant has access to the COVID-19 vaccine - does not present an 'extraordinary and compelling reason' warranting a sentence reduction. Therefore, Cope's argument that the pandemic makes his medical conditions severe enough to merit compassionate release 'is foreclosed by our recent holding in [U.S. v] Lemons' [15 F.4th 747, 751 (6th Cir. 2021)]."

The appellate court also found that the district court did not abuse its discretion in finding that the 18 U.S.C. § 3553(a) factors weighed against my release because of a determination that I "remain a danger to the community." U.S. v Cope, 2022 U.S. App. LEXIS 3804 at *5 (6th Cir. Feb. 10, 2022). But, the district court merely "highlighted" the "extremely serious" nature and circumstances of my offense and my "criminal history."² Id. However, "highlighting" a decades old offense while minimizing the changes in the defendant contravenes the direction of this court. See *Pepper v U.S.* 562 U.S. 476, 491 (2011). Moreover, neither court addressed all of the grounds that I raised, namely the BOP's failure to provide adequate medical care, my physical infirmities and the need to care for my aged parents.

1. Comorbidities are age, obesity, hypertension, immunocompromised, and a cancer victim.

2. My criminal history is Category 2.

Reasons for Granting Petition

The Court should grant the petition simply because a failure to do so will result in many incarcerated individuals with comorbidities in the COVID-19 pandemic becoming infected with the coronavirus or its variants, some of whom will perish and many of whom (approximately $\frac{1}{3}$) will contract "long term COVID". The Sixth Circuit's holding in *Lemons*, *supra*, subverts the will of Congress by restricting the district courts' ability to determine "extraordinary and compelling" reasons warranting a sentence reduction. The holding is an outlier, arbitrary and capricious, and also contravenes the traditional deference of the Court to the "reasonable medical judgments of public health officials." See *School Board of Nassau County v Arline*, 480 U.S. 273, 287 (1987). The premise that "for people living in close quarters,³ vaccines offer relief far more effective than a judicial decree," *Lemons*, *supra*, 15 F.4th at 751, has been tragically undermined by the emergence of variants, some of which evade vaccines.

As long as *Lemons*, *supra*, is the Circuit's precedent, district courts will find their hands tied when considering a prisoner's comorbidities in the COVID-19 pandemic. It is cruel and unusual to subject prisoners to unnecessary exposure to a virus which may be deadly or, more likely, result in a lifetime of disability due to long COVID.

3. The *Lemons* Court stated that inmates face social distancing challenges "perhaps not entirely unlike students in dorm rooms, individuals in medical ~~care~~ and assisted care facilities, and even residents of densely occupied apartment complexes." *Lemons*, 15 F.4th at 751.

The Court should also grant the petition because the Circuit Court's affirmation of the district court's weighing of the 18 U.S.C. § 3553(a) factors does not comport with the Court's holding in *Pepper*, *supra*, particularly where the district court that nothing "changes circumstances surrounding the crimes he is currently serving time for." DE 583, p. 10.

But, "[p]ostsentencing rehabilitation may also critically inform a sentencing judge's overarching duty under § 3553(a) to impose a sentence sufficient, but not greater than necessary to comply with the sentencing purposes set forth in § 3553(a)(2)." *Pepper*, *supra*, 179 L.Ed.2d, p. 214, internal cites and quotations omitted. Here, the evidence clearly shows that I was a model citizen for over 42 years⁴ and that the conduct for which I was convicted occurred during a brief emotionally wrenching period of my life. My postsentencing conduct has likewise been impeccable. There is absolutely no evidence other than my conviction to support the determination that I "remain a danger to the community." "The record as a whole does not show that the Court considered the parties' arguments and had a reasoned basis for exercising its own legal decision-making authority." *Chavez-Meza v. U.S.*, 138 S. Ct. 1959, 1967 (2018).

4. I was a well respected airline pilot for a major airline and a highly qualified Lieutenant Colonel instructor pilot in the Tennessee Air National Guard.

Conclusion

The petition should be granted to ensure that the will of Congress is not subverted by the holding in *Lemons*, supra. Doing so will allow the lower courts the discretion (as Congress intended) to independently determine "extraordinary and compelling reasons" warranting a reduction in sentence.

Granting the petition will also clarify the district court's duty to consider the defendant as he stands before the court when being resentenced, as time and circumstance often change the need for a more punitive sentence.

Respectfully submitted,

Terry Wayne Cope

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Certificate of Service/Mailing

I certify under penalty of perjury that I placed this motion in the prison mailbox with first-class postage affixed. I mailed a copy to the Solicitor General as well.

28 Aug 22

20 Sep 22

Terry Wayne Cope
Terry Wayne Cope