

No. 22-

November Term 2022

IN THE
SUPREME COURT OF THE UNITED STATES

Christian Dior Womack — PETITIONER
(Your Name)

vs.

United States of America — 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

Christian Dior Womack
(Your Name)

U.S.P. Canaan, P.O. Box 300
(Address)

Waymart, Pennsylvania 18472
(City, State, Zip Code)

N/A
(Phone Number)

Question(s) Presented

The notion of miscarriage of justice prohibits a court from disregarding the fact that its opinion rest solely on criminal offenses that a defendant neither pled guilty to, nor was charged with by way of indictment. Here, the Third Circuit inadvertently predicated its determination to affirm Christian Womack's life sentences under the government's legal arguments of contentions of the fact that, Christian Womack pleaded guilty to sex trafficking of a minor by force, and sex trafficking of adults by force. In November 2020, the habeas court relied on the Third Circuit's opinions' facts to deny Christian Womack's challenges of the constitutionality of his conviction and sentence. Recently, the government averred that, Christian Womack neither pled guilty to, nor was charged with the offenses that the Third Circuit affirmed his life sentences under. Following that, Christian Womack moved to recall the Third Circuit's mandate. On October 7th, 2022, the Third Circuit denied his request without issuing an opinion.

Does an appellate court's failure to recall its mandate to amend its opinion — that is predicated on the government's legal argument of inaccurate contentions of facts engender a miscarriage of justice?

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The notion of miscarriage of justice prohibits a court from disregarding the fact that its opinion rest solely on criminal offenses that a defendant neither pled guilty to, nor was charged with by way of indictment. Here, the Third Circuit inadvertently predicated its determination to affirm Christian Womack's life sentences under the government's legal arguments of the contentions of the fact that, Christian Womack pleaded guilty to sex trafficking of a minor by force, and sex trafficking of adults by force. In November 2020, the habeas court relied on the Third Circuit's opinions' facts to deny Christian Womack's challenges of the constitutionality of his conviction and sentence. Recently, the government averred that, Christian Womack neither pled guilty to, nor was charged with the offenses that the Third Circuit affirmed his life sentences under. Following that, Christian Womack moved to recall the Third Circuit's mandate. On October 7th, 2022, the Third Circuit denied his request without issuing an opinion.

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Statement of Jurisdiction

This court has jurisdiction under its inherent powers, and supervisory powers pursuant to 28 U.S.C. §2106. This Court has jurisdiction under the All Writs Act pursuant to 28 U.S.C. §1651(a).

Statement of the Case

This case is pertaining to the court of appeal's decision¹ that is based on the government's legal arguments of inaccurate contentions of facts. And the court of appeals' disregard to address these deep issues,² which are causing Christian Womack to suffer collateral consequences and prejudice.³

In the course of the grand jury proceedings, the grand jury was not presented with the elements of sex trafficking of a minor by force (Count One), and sex trafficking by force (Counts Two and Three). As the indictment reflects, the grand jury did not charge Christian Womack with these offenses.⁴ Despite that, the government, on numerous occasions represented to the district court that Christian Womack was charged with these offenses.⁵ And as a result of that, the district court informed Christian Womack, during critical stages of his criminal proceedings, that he was charged with sex trafficking of a minor by force, and two counts of sex trafficking by force. Eventually, the indictment's charges came into question at the outset of the voir dire proceedings. The district court began by stating that, "the charges that have been brought by way of indictment against Mr. Womack are as follows: Count One charges him with sex trafficking of a minor or by force, that is, sex trafficking by force or of a minor. Count Two charges sex trafficking by force as does Count Three."⁶ The district court then asked the government did the counts charge attempts as well. And that is when the government informed the district court that, "Counts Two and Three charged attempts." Then, the district court

¹ See Appendix A: Court of Appeals' Opinion at 1 - 3

² See Appendix D: Court of Appeals' ORDER at 1

³ See Appendix C: Habeas Court's Opinion at 1

⁴ See Appendix E: April 25th, 2013 Indictment at 1 - 4

⁵ See Appendix J: Gov't's Opp. Brief To Mr. Womack's Habeas Motion at 14

⁶ See Appendix F: Transcript of VOIR DIRE Proceeding at 3

made its findings of fact, stating, "Okay. Two and Three are attempted sex trafficking and Count One is actual sex trafficking of a minor 'or' by force. Again, these are just charges." Shortly after that, during jury selection, Christian Womack elected to plead guilty to the indictment. The district court promptly directed the government to read the charges of the indictment, and to explain to Christian Womack the nature of the offenses that he was pleading guilty to. The government began by stating that, "on Count One, the defendant is pleading guilty to, and is charged with both 'sex trafficking of a minor' and 'sex trafficking by force'. And, Count Two and Three charges him with attempted sex trafficking by force."⁷ The district court, then, informed Christian Womack of the elements that the government had to meet in order to establish his guilt under these offenses. Following the government's recitation of the evidence,⁸ the Court's Deputy Clerk was directed by the district court to ask Christian Womack to enter his plea: the Court's Deputy Clerk began, stating that, "Bill of Indictment Number 13-206-1 charg[es] you with, Count One, sex trafficking of a minor 'or' by force and attempt....⁴ Counts Two and Three [charge] sex trafficking by force and attempt...." After Christian Womack pleaded guilty to Counts 1 through 3, the district court concluded that the government provided sufficient evidence to support a factual basis to establish Christian Womack's guilt under these offenses. After that, Christian Womack discovered, through the United States Probation Office, that, the district court had convicted him of sex trafficking of a minor by force (Count One), and two counts of sex trafficking by force (Counts Two and Three). With that, Christian Womack moved to withdraw his guilty plea. But, when the district court addressed the motion to withdraw, during the outset of Christian Womack's sentencing hearing,¹⁰ the government remained silent when the district court

⁷See Appendix C: Habeas Court's Opinion citing Plea Colloquy at 10

⁸See Appendix J: Gov't's Opposition Brief To Mr. Womack's Habeas Motion at 14

⁹See Appendix C: Habeas Court's Opinion citing Plea Colloquy at 11

¹⁰See Appendix I: Transcript of Sentencing Hearing at 3

misquoted the offense that Christina Womack actually pleaded guilty to. And, as a result, the district court denied the motion based on its misquotations.

The government did not alert the district court of its error, even though it averred in its sentence memorandum that, Christian Womack was convicted of attempted sex trafficking with respect to Persons Two and Three (Counts Two and Three)". The district court proceeded with sentencing – sentencing Christian Womack to life imprisonment on Counts 1 through 3. Christian Womack filed a timely notice of appeal, arguing that, the district court's sentence was substantively unreasonable.

On April 7th, 2016, the court of appeals (per Hardiman, J.) gave a factual account that, "Christian Dior Womack appeals the district court's judgment of sentence following his pleas of guilty to three counts of sex trafficking by force. And, that a grand jury indicted Christian Womack with one count of sex trafficking of a minor by force, and two counts of sex trafficking of an adult by force."¹² Despite Christian Womack's mitigating factors, the court of appeals held that, Christian Womack's life sentences on the offenses of sex trafficking by force was not substantively unreasonable. Following that, Christian Womack filed a timely writ of certiorari, which was untimely denied.

A year later, Christian Womack filed a pro se motion under 28 U.S.C. §2255 to vacate, set aside, or correct sentence. Christian Womack averred, in his habeas motion that, trial counsel was unconstitutionally ineffective for failing to object to the district court's failure to determine whether he was guilty of "sex trafficking of a minor" 'or' "sex trafficking by force"¹³ – thus Christian

¹¹See Appendix H: Gov't's Sentencing Memorandum at 12, footnote 3

¹²See Appendix A: Court of Appeals' Opinion at 1 - 2

¹³See Appendix C: Habeas Court's Opinion at 10

¹⁴See Appendix E: April 25th, 2013 Indictment at 1 - 4

¹⁵See Appendix B: Gov't's Reply to Mr. Womack's Request for Sanctions at 1 - 4

Womack's admissions of guilt were not made knowingly, intelligently, and voluntarily. And that, the district court, also, failed to inform Christian Womack of the possible penalties he faced by pleading guilty. Christian Womack averred further in his habeas motion,¹⁴ that, trial counsel was constitutionally ineffective for failing to move for dismissal of the defective April 25th, 2013 indictment. He argued vigorously that, the grand jury did not consider all of the elements of "sex trafficking of a minor by force" (Count One), and "sex trafficking by force" (Counts Two and Three).¹⁵ In response to Christian Womack's claim that, trial counsel was constitutionally ineffective for failing to object to the district court's failure to determine whether he was guilty of "sex trafficking of a minor" 'or' "sex trafficking by force." The government quoted the plea colloquy, stating that, during the plea colloquy, it stated that the petitioner was pleading guilty on Count One to both sex trafficking of a minor and by force.... And, that Counts Two and Three charged sex trafficking by force.¹⁶ On November 6th, 2020, the habeas court denied these claims, stating, in support of its decision, that, a more detailed recitation of the facts is set out in the opinion of the United States Court of Appeals for the Third Circuit affirming the petitioner's sentence on direct appeal.¹⁷ Following that, Christian Womack filed a motion to the habeas court, requesting it to sanction the government's attorneys for misrepresenting the facts within its opposition brief. Without delay, the government responded in opposition, averring that, the government has never misrepresented to the Court that Counts Two and Three of the indictment charged sex trafficking. And that, the Court is aware that, the defendant was charged with sex trafficking of Minor 1

¹⁴ See Appendix J: Gov't's Opposition Brief To Mr. Womack's Habeas Motion at 13

¹⁵ See Appendix C: Habeas Court's Opinion at 1

¹⁶ See Appendix B: Gov't's Reply to Mr. Womack's Request for Sanctions at 1 - 4

¹⁷ See Appendix D: Court of Appeals' ORDER at 1

(Count One), and attempted sex trafficking of Person 2 and Person 3 (Counts Two and Three).¹³ With that, Christian Womack moved to have the court of appeals recall its mandate and amend its opinion in accordance with the facts of the record. The court of appeals denied that request without issuing an opinion,¹⁴ despite the intervening developments that show the government's confessions of error.

Summary Argument

Under the established principles of fairness, the interest of the public, and the integrity of the judicial process — when a litigant is subject to the continuing coercive power of the government in the form of imprisonment, the nation's legal traditions reflect a certain solicitude for his rights, to which the important public interest in judicial efficiency and finality must be accommodated. Here, the government forfeited its interest in the finality of the opinion below, because it knowingly based its legal arguments on inaccurate contentions of fact in order to prevail on the merits. Precisely that, the district court's sentence was not substantively unreasonable because Christian Womack pled guilty to, and was charged with sex trafficking of a minor by force, and two counts of sex trafficking by force. The court of appeals agreed. On page 1 of the court of appeals' opinion, it states that, Christian Womack pleaded guilty to one count of sex trafficking of a minor by force, and two counts of sex trafficking of adults by force. 18 U.S.C. §1591. And, on page 3 of its opinion, it states that, in April 2013, a grand jury indicted Christian Womack with one count of sex trafficking of a minor by force and two counts of sex trafficking of an adult by force. But, as the evidenced record reflects, that is factually incorrect. Now, in the government's response to Christian Womack's request for sanctions against its attorneys, it changed its position to, Christian Womack was charged with and pleaded guilty to sex trafficking of Minor 1 (Count 1), and attempted sex trafficking of Person 2 and Person 3 (Counts Two and Three). The facts here are extremely unusual, but the principle is not: under Lawrence and Stutson, the government's change of position warrants the reconsideration of the court of appeals, because the government prevailed below on facts that it no longer supports. Therefore, this Court should grant Christian Womack's petition for certiorari, vacate the judgment of the Court of Appeals, and remand the case for further proceedings.

Argument

A. The Court of Appeals dismissed its responsibility to address the government's misstatements that were made during the direct review proceedings,²⁰ in which it rested its judgment on — thus giving this Court supervisory power to review.

This Court is charged with supervisory functions in relation to proceedings in the federal courts. *McNabb v. United States*, 318 US 332 (1943). Here, during the direct review proceedings, the government injected inaccurate facts into these proceedings, which engendered a miscarriage of justice. Therefore, the court of appeals abused its discretion when it denied Christian Womack's motion to recall the mandate. An "abuse of discretion review is not toothless; and it is entirely proper for a reviewing court to find an abuse of discretion when important factors...are 'slighted'." *Gall v. United States*, 552 US 38 (2007). Such, as here, where the court of appeals did not adequately consider the important facts, the government used misrepresentations within its jurisdiction to obtain a favorable judgment. Most importantly, Christian Womack is suffering collateral consequences from these proceedings. Mainly that, the habeas court adhered to the court of appeals' opinions' facts to deny Christian Womack's challenges to his unconstitutional conviction and sentence — causing him to suffer severe prejudice. See (Appendix C: at 1). Thus, the court of appeals' opinion has effectively tainted Christian Womack's habeas proceedings. And, as a result of that, he does not have any adequate means to attack his unconstitutional conviction and sentence, while the court of appeals' opinion stays intact, causing him to languish in prison without any recourse. Accordingly, the notion of fairness and the interest of justice calls for this Court to utilize its supervisory power to grant Christian Womack relief from this injustice.

²⁰ The Supreme Court views late changes of position by the government with some skepticism, out of a concern that post litigation interpretations may be the product of unfair or manipulated government litigating. *Stutson v. United States*, 516 US 193 (1996).

B. The Court of Appeals' reluctance to utilize its permissible authority to recall its mandate, amounts to furthering the miscarriage of justice committed by the district court – warranting this Court's review.

When a federal court of appeals...recalls its mandate to revisit the merits of an earlier decision...the court abuses its discretion unless it acts to avoid a miscarriage of justice. *Calderon v. Thompson*, 523 US 538 (1998). Here, had the court of appeals revisited its opinion, it would have discovered that it adjudicated the merits of the claims under the government's misinformation. Thus, the court of appeals would not have abused its discretion by recalling its mandate to vindicate itself from the unforeseen furtherance of the district court's miscarriage of justice. Because, as it appears, the sentencing record does not explicitly state the offenses that ~~the district~~ court sentenced Christian Womack under. Therefore, it is apparent that the court of appeals relied on the government's inaccurate statement of the offenses, and the district court's judgment of the commitment's misquoted offenses²¹ – of the actual offenses that Christian Womack pleaded guilty to. To support that point, Christian Womack points to the portion of the plea colloquy that actually outlines the offenses that he agreed to plead guilty to. Seemingly, the lower courts overlooked these important factors, that the government now supports. Because, had they reviewed that part of the record, it would have been discovered that, Christian Womack pleaded guilty to both "sex trafficking of a minor" 'and' "sex trafficking by force" (Count One), and "attempted sex trafficking by force" (Counts Two and Three)²². And not, the offense(s) "sex trafficking of a minor by force," and "sex trafficking of adults by force," which he is currently serving life imprisonment under, respectively. Recently, in a related²³

²¹ See Appendix K: Judgment and Commitment Order at 1

²² See Appendix C: Habeas Court's Opinion at 10

²³ See Appendix B; Government's Reply To Christian Womack's Request For Sanctions at 3

pleadings, the government changed its position of the offenses that Christian Womack was charged with and pleaded guilty to.

The government also stated that, Christian Womack conceded that, during his guilty plea colloquy, he pled guilty to attempted sex trafficking as to Counts Two and Three. In light of that, it is clear that the government misquoted the plea colloquy record during the habeas pleadings. The government's change of position thus refutes the judgment of commitment's embodied adjudicated guilty offenses that have been repeatedly used to deny Christian Womack relief from his unconstitutional sentences, that were secured in violation of his Fifth Amendment right to be held only to answer crimes brought by way of presentment or indictment. See U.S. Const. Amend. V. In the end, Christian Womack moved to have the court of appeals correct its record in order to avoid the furtherance of this miscarriage of justice. However, the court of appeals denied that request, allowing its prejudicial opinions' facts to remain in existence — leaving Christian Womack to suffer another day of injustice. As a result of that, Christian Womack prays to this Court for relief.

C. The government's mischaracterization of the record, and improper treatment of the facts — amounts to fraud on the court.

Throughout the criminal proceedings and direct review, the government had knowledge that the grand jury did not consider the elements of sex trafficking of a minor by force (Count One), and sex trafficking by force (Counts Two and Three). Thus, the government was fully aware that the April 25th, 2013 Indictment did not charge Christian Womack with these offenses. Therefore, the moment that the government represented and supported the inaccurate offenses, it effectively misled the courts. The government's misleading information to the court of appeals, caused it to accredit the district court's findings in the

See United States v. Scripps, 961 F.3d 626 (3d Cir. 2020)

offenses that Christian Womack never pled guilty to. These deep issues remain ongoing because of the government's inappropriate treatment of the facts.

Even though it is charged with the duty to ensure that the facts cited to the courts are correct, and that they are not basing its legal arguments on false contentions of fact. But, that was not done here. The government relinquished that duty, and by doing so, it placed the lower courts under a firm misleading impression that, Christian Womack was charged with and pleaded guilty to sex trafficking of a minor by force, and sex trafficking by force. The government's egregious conduct thus amounts to fraud on the court — offending the notions of fairness and justice.

D. On the facts of this case, the government cannot prevail — because the district court did not have the jurisdiction to convict and sentence Christian Womack under non-formal offenses. None exists.

Finally, "'prosecution', as Blackstone used the term, referred to instituting a criminal suit, by filing a formal charging document — an indictment, presentment, or information — upon which the defendant was to be tried in a court with power to punish the alleged offense." See *Rothgery v. Gillespie Cnty.*, 554 US 191, 221 (2008). Here, Christian Womack was charged by way of indictment on Count One with "sex trafficking of a minor" 'or' "sex trafficking by force," and Counts Two and Three charged "attempted sex trafficking by force." Therefore, the district court did not have the authority to convict and sentence Christian Womack to the offenses "sex trafficking of a minor by force" (Count One), and "sex trafficking by force (Counts Two and Three). Because none of these offenses were brought by way of indictment against Christian Womack. Blackstone defined an "indictment" as a written accusation of one or more persons of a crime or misdemeanor, preferred to, and presented upon oath by, a grand jury. *Id.* at 554 US 220. Furthermore, where [there] [is] no indictment found ...there [is] no criminal prosecution. See *Commonwealth of Virginia v. Paul*, 148 US 107 (1893). Thus, and with Blackstone as the guide,

the district court lost jurisdiction once it dismissed the formally charged offenses. Put another way, at the outset of these criminal proceedings, the district court had jurisdiction of both Christian Womack and the offenses formally charged. But, it lost that jurisdiction following its dismissal of the formally charged offenses that commenced these criminal proceedings. As a result of that, Christian Womack's conviction and sentence on the non-formal offenses of sex trafficking of a minor by force and sex trafficking by force, is and was void ab initio. In *United States v. Cotton*, 535 US 625 (2002), this Court held that, "offenses that are 'infamous crimes' which, under the Fifth Amendment, 'must' be prosecuted by indictment or information." As indicated earlier, the formal charging document — indictment, gives the district court the power to punish the defendant on the alleged offenses. Without that, the district court lacks power to do so. And, that is precisely what happened here. This inquiry thus confirms that the court of appeals furthered this miscarriage of justice, when it affirmed Christian Womack's life sentences on the non-formal offenses — that the district court did not have jurisdiction to render judgment on. Had the court of appeals entertained Christian Womack's motion to recall the mandate, it would have discovered that the district court not only lacked jurisdiction, but that its affirmation of the non-formal offenses, had contributed to the furtherance of the district court's miscarriage of justice. Under these circumstances, it was imperative under the interest of justice to recall the mandate, because it seriously undermines the court of appeals' fairness, integrity, and the public's interest of the judicial proceedings. For these reasons, supervisory review by this Court is warranted.

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Christian Dior Womack,
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v.

United States of America,
Respondent,

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

Reasons For Granting The Writ

The government has conceded to the fact that, Christian Womack neither pleaded guilty to, nor was charged with the offenses of sex trafficking of a minor by force and sex trafficking of adults by force. Under the false impression that Christian Womack was charged and pleaded guilty to these offenses, the Third Circuit determined that his life sentences were not substantively unreasonable. The Third Circuit's denial to recall its mandate and amend its opinion — thus conflicts with the notions of fairness, and this Court's decision in *Lawrence v. Chater*, 516 US 163 (1996), and its progeny.

Conclusion

The problem presented to this Court goes to the core of this institution's functioning process — truth-seeking. The government's obstruction of that process, has hindered the lower courts' ability to administer justice properly.

Today, Christian Womack asks this Court to review the evidenced records, and documents carefully. This Court will see that, Christian Womack's assertions of what he claims to be the truth, are self-evident.

Christian Womack asks this Court to grant his petition for certiorari, vacate the judgment below, and remand for further consideration under the new developments. Alternatively, Christian Womack asks this Court to administer any and all other relief that may be appropriate-in accordance with the spirit of the law.

Dated: 11/30/2022

Respectfully submitted,

C. Womack

Christian Dior Womack