

22-6597

No. _____

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JEREMIAH SHANE FARMER — 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 SEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jeremiah Shane Farmer
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ORIGINAL

QUESTION(S) PRESENTED

Whether the District Court lacked statutory authority under 18 U.S.C. § 1962(d), if Congress intended for a RICO conspiracy to be complete when the agreement is reached, not when each predicate racketeering act is complete?

Whether the District Court lacked statutory authority under 18 U.S.C. § 1962(d), if VICAR murder conspiracy and drug conspiracy constitute separate offenses from RICO conspiracy?

Whether the decision of the United States Court of Appeals conflicts with the Fourth Circuit's decisions in Simmons, Ayala, and Love?

Whether the District Court lacked statutory authority to convict Farmer under 21 U.S.C. § 846, absent the jury finding an agreement to distribute drugs?

Whether Congress intended for an enhanced sentence under 18 U.S.C. § 1963(a) to be calculated under 18 U.S.C. § 1959(a)(1), and not Ind. Code § 35-50-2-9(b)(1)(I), if the Supremacy Clause and Supreme Court precedent required the sentencing court to apply the rule of lenity?

Whether a finding of an agreement to distribute drugs is a jurisdictional or statutory requirement of 21 U.S.C. § 846, that must be met for a conviction?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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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

☐ 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 2022 U.S. App. LEXIS 17812; 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☐ is unpublished.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 CASE NUMBER: 2:15 CR 72-027; 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 C 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 June 28, 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: August 12, 2022, and a copy of the order denying rehearing appears at Appendix C.

☐ 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

Supremacy Clause - Article IV U.S. Const. ... i, 21

18 U.S.C. § 1962(d) ... i, 5, 6, 7, 9, 15

18 U.S.C. § 1959(a)(1) ... i, 13, 14, 17, 19

18 U.S.C. § 1963(a) ... i, 5, 6, 14, 17, 19, 20

21 U.S.C. § 846 ... i, 4, 6, 16, 17, 1

Ind. Code § 35-50-2-9(b)(1)(I) ... i, 17, 19

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STATEMENT OF THE CASE

The Petitioner, Jeremiah S. Farmer, was charged with a RICO conspiracy that resulted in the jury finding that Mr. Farmer's conduct only reached the level of a VICA murder conspiracy, but the District Court convicted Mr. Farmer of a RICO conspiracy.

Also, Mr. Farmer was charged with a drug conspiracy that resulted in the jury finding that Mr. Farmer's conduct only reached the level of distribution or possession with intent to distribute, without finding an agreement to distribute drugs, which is a statutory requirement of 21 U.S.C. §846.

Absent the jury finding an agreement to distribute drugs, the District Court convicted Mr. Farmer for violating 21 U.S.C. §846.

STATEMENT OF THE CASE

At trial, the District Judge overruled objections to Coffman's testimony that was inadmissible under Fed. R. Evid. 404(b), and the inadmissible testimony of Coffman infected the trial with unfairness that had a prejudicial effect on Mr. Farmer.

After trial, the Probation Office calculated Mr. Farmer's base offense level as 43, based on Mr. Farmer's conviction under 18 U.S.C. § 1962(d), even though the jury specifically found that Mr. Farmer's conduct only reached the level of a VICAR murder conspiracy, and not a RICO conspiracy.

After which, the District Court imposed a life sentence on Mr. Farmer under a miscalculated base offense level, and by way of a misapplied enhanced sentence under 18 U.S.C. § 1963(a)

STATEMENT OF THE CASE

On Appeal, the Court of Appeals affirmed the District Court's misapplication of 18 U.S.C. § 1962(d), and 21 U.S.C. § 846, and the Court of Appeals reinforced the government's misapplication of 18 U.S.C. § 1963(a), by way of a mandate.

Also, the Court of Appeals denied Mr. Farmer's petition for a rehearing en banc.

REASONS FOR GRANTING THE PETITION

- (1) It is in the interest of justice for this court to interpret the scope of 18 U.S.C. § 1962(d) to determine the following:
- (1) If Congress intended for a RICO conspiracy to be complete when each predicate ~~act~~ racketeering act is completed;
 - (2) If Congress intended for a conspiracy to violate the RICO statute when the agreement is reached, and if reaching an agreement invariably requires murder;
 - and (3) If VICAR murder conspiracy and drug conspiracy constitute separate offenses from RICO conspiracy?

REASON FOR GRANTING THE PETITION

2. In this case, the United States Court of Appeals interpreted RICO conspiracy as "criminalizing, in relevant part, conspiring to conduct or participate, directly or indirectly, in the conduct of an enterprise's affairs through a pattern of racketeering activity."¹ 2

3. "To prevail at trial on a charge of RICO conspiracy, the government must show (1) an agreement to conduct or participate in the affairs (2) of an enterprise (3) through a pattern of racketeering activity."² 2

1. Doc. 102 at 10-11

2. Doc. 102 at 11

REASON FOR GRANTING THE PETITION

4. The court of Appeals description of what the government must show to prevail on a charge of RICO conspiracy misrepresents the plain-text of 18 U.S.C. § 1962(d), because reaching an agreement to participate in the affairs of an enterprise does not invariably require a pattern of racketeering activity.

5. Put differently, an agreement to participate in the affairs of an enterprise can be made, without a murder being committed, and in regards to this case, the government never established that Farmer made an agreement with another member of his enterprise to murder Lowry and Siegers.

REASON FOR GRANTING THE PETITION

6. In the Court of Appeals description of the Lowry and Siegers murder, the court stated that "Farmer believed [that] Lowry and Siegers were snitching on the gangs activity."³

7. If no other member of Farmer's enterprise shared his belief, then there was no conspiracy to murder Lowry and Siegers, which means that Farmer took it upon himself to act based on his belief, and VICAR murder punishes those willing to commit violent crimes in order to bolster their positions within BICO enterprises.

3. Doc. 102 at 4

REASON FOR GRANTING THE PETITION

8. As to RICO conspiracy, no agreement was found by the jury, instead "the jury specifically found Farmer murdered Lowry and Siegers while committing or attempting to commit gang activity." ⁴

9. In *United States v. Simmons*, 11 F. 4th 239, 258 (4th Cir. 2021), the Fourth Circuit explained that "a conspiracy to violate the RICO statute is complete when the agreement is reached, not when each predicate racketeering act is completed." ¹¹

4. Doc. 102 at 8-9

REASON FOR GRANTING THE PETITION

10. Thus, a RICO conspiracy would have been complete in this case, if Mr. Farmer would have agreed with another person in his enterprise to kill Lowry and Siegers, but the jury did not find such an agreement.

11. In *United States v. Ayala*, 601 F.3d 256, 265-66 (4th Cir. 2010), the Fourth Circuit held that VICAR murder conspiracy constitutes a separate offense from RICO conspiracy.

12. Also, in *United States v. Love*, 767 F.2d 1052, 1062 (4th Cir. 1985), the Fourth Circuit held that drug conspiracy constitutes a separate offense from RICO conspiracy.

REASON FOR GRANTING THE PETITION

13. Congress intended VICAR murder, and drug conspiracy to constitute separate offenses from RICO conspiracy, because each offense targets conduct that the other does not.

14. RICO conspiracy requires an agreement to commit multiple racketeering acts, a requirement not shared by the other offenses.

15. By contrast, VICAR murder requires a murder, while drug conspiracy requires an agreement to distribute drugs, requirements not present for RICO conspiracy.

5. See 18 U.S.C. § 1959(a)(1) (VICAR murder);
United States v. Kellam, 568 F.3d 125, 139
(4th Cir. 2009) (drug conspiracy)

REASON FOR GRANTING THE PETITION

16. Congress placed each offense in a separate Code section from RICO conspiracy and provided each offense with its own penalties.⁶

17. Each statute is directed at a separate offense.

18. RICO conspiracy targets those engaged in organized crime generally.

19. VICAR murder punishes those willing to commit violent crimes in order to bolster their positions within RICO enterprises.

6. See 18 U.S.C. § 1963(a) (RICO penalties); 18 U.S.C. § 1959(a)(1) (VICAR murder penalties); and 21 U.S.C. § 841 (drug conspiracy penalties)

REASON FOR GRANTING THE PETITION

20. Drug conspiracy aims to deter an agreement to distribute drugs.

21. Farmer's base offense level was determined to be 43, based on his conviction under 18 U.S.C. § 1962(d), but since the lower courts never satisfied 18 U.S.C. § 1962(d)'s statutory requirement for a jury to find that Mr. Farmer agreed with another person in his enterprise to murder Lowry and Siegers, then a base offense level of 43 is erroneous, which means that Farmer's Guidelines range of imprisonment is incorrect.

REASON FOR GRANTING THE PETITION

22. It is also in the interest of justice for this Court to interpret the scope of 21 U.S.C. § 846, to determine if Congress intended for defendants to be convicted under 21 U.S.C. § 846, absent the jury finding an agreement to distribute drugs.

23. In this case, the District Court convicted Mr. Farmer for violating 21 U.S.C. § 846, absent the jury finding an agreement to distribute drugs, which is a statutory requirement of 21 U.S.C. § 846, and such a conviction is contrary to congressional intent in regard to the scope of 21 U.S.C. § 846.

REASON FOR GRANTING THE PETITION

24. A finding of an agreement to distribute drugs, is a statutory requirement of 18 U.S.C. § 846, that must be satisfied for a conviction under 18 U.S.C. § 846, and that requirement was not satisfied in this case.

25. Also, in this case, the government sought enhanced sentencing under 18 U.S.C. § 1963(a) for the murders of Lowry and Siegers, and the government relied on Ind. Code § 35-50-2-9(b)(1)(I), to provide the sentence, but Title 18 U.S.C. § 1959(a)(1) provides VICAR murder penalties.

REASON FOR GRANTING THE PETITION

26. In *Moskal v. United States*, 498 U.S. 103, 108 (1990), this court held that the rule of lenity applies when "a reasonable doubt persists about a statute's intended scope even after resort to the language, structure, and motivating policies of the statute."

27. The rule of lenity mandates that when two rational readings of a statute are possible, the one that treats the defendant less harshly prevails, because when statutes are unclear, the consequences should be visited on the party more able to avoid and correct the effects of shoddy legislative drafting.

REASON FOR GRANTING THE PETITION

18. That principle matters because the less the courts insist on precision in statutes relating to punishments, the less Congress will take the trouble to provide it.

19. A reasonable construction of an enhanced sentence under 18 U.S.C. § 1963(a) - based on the text, statutory history, and structure, is that 18 U.S.C. § 1959(a)(1) provides murder conspiracy penalties for purposes of an enhanced sentence under 18 U.S.C. § 1963(a).

REASON FOR GRANTING THE PETITION

30. Applying the rule of lenity, the district court exceeded its statutory authority and pronounced an unlawful sentence that exceeds the statutory maximum 20-year sentence under 18 U.S.C. § 1963(a), by selecting a sentence based on Ind. Code § 35-50-2-9(b)(1)(I).

31. This Court generally presumes that Congress expects its statutes to be read in conformity with this Court's precedents

32. Moskal is Supreme Court precedent, and Congress expects 18 U.S.C. § 1963(a) to be read in conformity with Moskal's requirement that courts apply the rule of lenity when two rational readings of a statute are possible.

REASON FOR GRANTING THE PETITION

33. Also, under the Supremacy Clause in Article IV of the Constitution of the United States, when the penalty proscribed by Ind. Code § 35-50-2-9(b)(1)(I) conflicts with the penalty proscribed by 18 U.S.C. § 1959(a)(1), the penalty proscribed by federal law controls, when calculating an enhancement   for a federal statute that fixes a penalty.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jeremia Farmer

Date: November 4, 2022