No. 22-7000

ORIGINAL

Supreme Court, U.S.
FILED
FEB 27 2023
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NICKLESS WHITSON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SIXTH CIRCUIT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

NICKLESS WHITSON
(Your Name)

USP-POLLOCK, P.O. BOX 2099
(Address)

POLLOCK, LOUISANA 71467
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

I. MR. WHITSON, CONTENDS THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF COUNSEL DURING HIS TRIAL PROCEEDING IN WHICH DEPRIVED HIM OF HIS SIXTH AMENDMENT RIGHT OF THE UNITED STATES CONSTITUTION;

Q. DOES THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION STILL PROVIDE A CRIMINAL DEFENDANT WITH THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, TO PROTECT THE FUNDAMENTIAL RIGHT TO A FAIR TRIAL?

II. MR. WHITSON, CONTENDS THAT HIS TRIAL COUNSEL MADE CONCESSIONS THROUGHT HIS TRIAL THAT AMOUNTED TO AN ADMISSION OF GUILT, THAT RELIEVED HIM OF HIS SIXTH AMENDMENT RIGHT TO ASSISTANCE OF COUNSEL AT TRIAL.

Q. DOES A TRIAL COUNSEL HAVE THE AUTHORITY TO MAKE CONCESSIONS THROUGHOUT HIS CLIENTS TRIAL REGARDING TO HIS GUILT, WHEN HIS CLIENT MAKES IT PLAIN THAT HIS OBJECTIVE OF HIS DEFENSE IS TO MAINTAIN HIS INNOCENCE OF THE CHARGED CRIMINAL ACTS AN PURSUE AN ACQUITTAL?

III. MR. WHITSON, CONTENDS THAT HIS HOBBS ACT ROBBERY CONVICTIONS VIOLATED THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION AND THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE, BECAUSE THE SIXTH CIRCUIT COURT OF APPEALS RELIED ON THE UNITED STATES SUPREME COURT'S DECISION IN TAYLOR V. UNITED

STATES., 579 N.S. 301 (2016), A CASE DECIDED AFTER HE WAS ALLEGED TO HAVE COMMITTED HIS OFFENSES TO AFFIRM HIS CONVICTIONS ON DIRECT APPEAL.

Q. DOES A NEW RULE OF LAW THAT IS APPLIED TO A DEFENDANT'S CASE TO DECIDE HIS DIRECT APPEAL," WHICH REQUIRES [Q] LESSER QUANTUM OF EVIDENCE TO CONVICT THE DEFENDANT THAN WAS REQUIRED AT THE TIME THAT THE PETITIONER'S CRIME WAS ALLEGED TO HAVE BEEN COMMITTED VIOLATE THE EX POST FACTO CLAUSE OF THE UNITED STATES CONSTITUTION?

IV. MR. WHITSON, CONTENDS THAT THE GOVERNMENT WITHHELD AGREED UPON BRADY, JENCKS, AND GIGLIO MATERIAL, FALSIFIED SEARCH WARRANT AFFIDAVITS AND WARRANTS, PRESENTED FALSE EVIDENCE AND PERJURED TESTIMONY TO OBTAIN PROBABLE CAUSE LEADING TO THE ILLEGAL ARREST AND SEARCH OF MR. WHITSON'S RESIDENCE.

Q. DOES THE CONSTITUTION PERMIT THE PROSECUTION TO COMMIT PROSECUTORIAL MISCONDUCT SO EGREGIOUS AS TO DENY A CRIMINAL DEFENDANT HIS CONSTITUTIONAL RIGHTS AND A FUNDAMENTALLY FAIR TRIAL, WHEN THE EVIDENCE IS CLEAR OF THIS FACT?

LIST OF PARTIES

[X] 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:

RELATED CASES

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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

[X] reported at CASE NO. 22-5592, D.E. 5 AND D.E. 6; 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

[X] reported at CASE NO. 3:18-CV-00833; 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was DECEMBER 13, 2022.

[X] 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

18 U.S.C. § 924(c)(1)(A)(i)
18 U.S.C. § 924(c)(1)(A)(ii)
18 U.S.C. § 1951(a) AND 2
18 U.S.C. § 3550(b)
18 U.S.C. § 3553
18 U.S.C § 3661

21 U.S.C. § 841(a)(1)
21 U.S.C. § 846

28 U.S.C. § 2244(d)
28 U.S.C. § 2255(a)
28 U.S.C. § 2255(b)
28 U.S.C. § 2255(f)

Fed. R. App. P. 22(b)(2)

U.S. CONST. ART I, § 10, Cl. 1
U.S. CONST. AMEND. V
U.S. CONST. AMEND. VI

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STATEMENT OF THE CASE

IN 2015, A JURY CONVICTED MR. WHITSON OF TWO COUNTS OF CONSPIRING TO COMMIT HOBBS ACT ROBBERY, IN VIOLATION OF 18 U.S.C. § 1951 (COUNTS 1 AND 5); AIDING AND THE ABETTING THE POSSESSION OF A FIREARM DURING AND IN RELATION TO A CRIME OF VIOLENCE, IN VIOLATION OF 18 U.S.C. § 924(c)(1)(A)(i) AND 2 (COUNT 2); TWO COUNTS OF CONSPIRING TO POSSESS WITH THE INTENT TO DISTRIBUTE NARCOTICS, IN VIOLATION OF 21 U.S.C. § 846 (COUNTS 3 AND 7); AIDING AND ABETTING THE POSSESSION OF A FIREARM DURING AND IN RELATION TO A DRUG-TRAFFICKING CRIME, IN VIOLATION OF § 924(c)(1)(A)(i) AND (c)(i) AND 2 (COUNT 4); BRANDISHING A FIREARM DURING AND IN RELATION TO A DRUG-TRAFFICKING CRIME, IN VIOLATION OF § 924(c)(1)(A)(ii) AND (c)(i) (COUNT 6); AND BRANDISHING A FIREARM DURING AND IN RELATION TO A DRUG-TRAFFICKING CRIME, IN VIOLATION OF § 924(c)(1)(A)(ii) AND (c)(1) (COUNT 8). THE DISTRICT COURT SENTENCED MR. WHITSON, TO A TOTAL TERM OF 1252 MONTHS OF IMPRISONMENT. THESE CONVICTIONS AROSE FROM TWO SEPARATE ROBBERIES THAT MR. WHITSON, AND OTHERS ALLEGED TO HAVE COMMITTED IN 2011. SEE: UNITED STATES V. WHITSON, 664 F. App'x 503, 504-05 (6TH CIR. 2016).

ON DIRECT APPEAL, THE COURT OF APPEALS FOR THE SIXTH CIRCUIT ORDERED THE DISTRICT COURT TO VACATE EITHER (COUNT 2) OR (COUNT 4) AND EITHER (COUNT 6) OR (COUNT 8) ON THE GROUNDS OF DOUBLE JEOPARDY GROUNDS, BUT AFFIRMED THE DISTRICT COURT'S JUDGMENT. Id. at 507.

THE DISTRICT COURT ENTERED AN AMENDED JUDGMENT VACATING COUNTS 4 AND 8 AND RESENTENCED MR. WHITSON, TO A TOTAL TERM OF 652 MONTHS OF IMPRISONMENT.

IN 2018, MR. WHITSON, FILED A § 2255 MOTION RAISING NINE GROUNDS FOR RELIEF: (1) HIS HOBBS ACT ROBBERY CONVICTIONS VIOLATED THE EX POST FACTO CLAUSE AND THE FIFTH AMENDMENT'S DUE PROCESS CLAUSE; (2) HIS CONVICTIONS IN COUNTS 2 AND 6 SHOULD BE VACATED BECAUSE HIS HOBBS ACT ROBBERY (CONSPIRACY) CONVICTIONS DO NOT QUACIFY AS CRIMES OF VIOLENCE FOR PURPOSES OF § 924(C); (3) THE EVIDENCE IS INSUFFICIENT TO SUPPORT HIS CONVICTIONS ON COUNTS 3 AND 7; (4) THE PROSECUTOR ENGAGED IN MISCONDUCT; (5) THE DISTRICT COURT ERRED BY DENYING HIS MOTIONS TO SUPPRESS AND TO HOLD A FRANKS HEARING, AND HIS ATTORNEY PERFORMED INEFFECTIVELY BY FAILING TO RAISE THIS ISSUE ON DIRECT APPEAL; (6) THE DISTRICT COURT ERRED BY DENYING HIS MOTION TO DISMISS COUNTS 2, 4, 6, AND 8, AND COUNSEL PERFORMED INEFFECTIVELY BY FAILING TO RAISE THIS ISSUE ON DIRECT APPEAL; (7) MR. WHITSON'S SENTENCE IS UNREASONABLE; (8) THE DISTRICT COURT SHOULD HAVE NOT HAVE ALLOWED THE PROSECUTOR TO CROSS-EXAMINE HIM DURING HIS ALLOCUTION, AND HIS ATTORNEY PERFORMED INEFFECTIVELY BY FAILING TO RAISE THIS ISSUE ON APPEAL; (9) TRIAL AND POST-CONVICTION COUNSEL PERFORMED INEFFECTIVELY. THE DISTRICT COURT APPOINTED COUNSEL TO REPRESENT MR. WHITSON, AND COUNSEL FILED A SUPPLEMENTAL § 2255 MOTION, EXPANDING ON MR. WHITSON'S SECOND GROUND FOR RELIEF. FOLLOWING THE SUPREME COURT'S DECISION IN UNITED STATES V. DAVIS, 139 S. Ct.

2319 (2019), THE GOVERNMENT CONCEDED THAT MR. WHITSON, WAS ENTITLED TO RELIEF ON HIS SECOND CLAIM.

THE DISTRICT COURT DENIED RELIEF ON THE MERITS OF MR. WHITSON'S FIRST, THIRD, FOURTH, SEVENTH AND NINTH CLAIMS, AND FOUND THAT HIS FIFTH, SIXTH, AND EIGHT CLAIMS WERE PROCEDURALLY DEFAULTED. THE DISTRICT COURT GRANTED RELIEF ON MR. WHITSON'S SECOND CLAIM VACATING WHITSON'S CONVICTIONS ON COUNTS 2 AND 6 AND ORDERING HIM TO BE RESENTENCED. IT DECLINED TO ISSUE A (COA) ON WHITSON'S REMAINING GROUNDS FOR RELIEF. MR. WHITSON, WAS RESENTENCED TO A TOTAL TERM OF 360 MONTHS OF IMPRISONMENT.

REASONS FOR GRANTING THE PETITION

THE PETITIONER MR. WHITSON, REQUESTS THAT THIS HONORABLE COURT GRANT CERTIORARI IN THIS MATTER ON THE FOLLOWING GROUNDS:

THE UNITED STATES COURT OF APPEALS HAS ENTERED A DECISION THAT CONFLICTS WITH THE DECISION OF THE UNITED STATES SUPREME COURT AS DECIDED IN McCoy V. LOUISANA, 2018 No: 16-8255, ON THE SAME MATTER; AND HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

THE UNITED STATES COURT OF APPEALS HAS ENTERED A DECISION THAT CONFLICTS WITH THE DECISION OF THE UNITED STATES SUPREME COURT AS DECIDED IN McCoy V. LOUISANA, 2018 N: 16-8255, ON THE SAME MATTER, AND HAS DECISION AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Nicholas Whitson

Date: FEBRUARY 23, 2023

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