

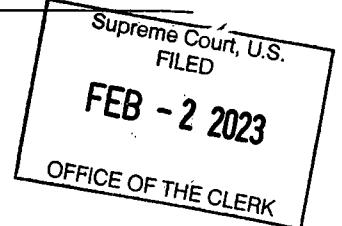
22-7138

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MUZAMMIL ALI,
Petitioner,



VS.

THE UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE 8th CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Muzammil Ali
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QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THAT ALI'S FIFTH AND SIXTH AMENDMENT RIGHTS WERE NOT VIOLATED UNDER THE SPEEDY TRIAL ACT?
2. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF ALI'S MOTION FOR CONTINUANCE?
3. WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S ADMISSION OF JAIL PHONE CALLS?
4. WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY NOT GRANTING ALI A DOWNWARD VARIANCE?

PARTIES TO THE PROCCEDINGS AND LIST OF RELEASED CASES

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I.
CITATIONS OF OPINIONS AND ORDERS IN CASE

The original judgment of conviction of Petitioner in the United States District Court for the Southern District of Iowa was not reported and therefore not attached.

The original judgment of conviction of Petitioner was appealed to the United States Court of Appeals for the Eighth Circuit, which affirmed the conviction and sentence in a published opinion attached hereto as Appendix "1".

The original judgment of Petitioner's En Banc hearing was not reported and is attached hereto as Appendix "2".

II.

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on August 30, 2022. The judgment for the En Banc hearing was entered on November 3, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

III.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fifth Amendment of the United States Constitution provides:

"No person shall be...deprived of life, liberty, or property without due process of law[.]"

2. The Amendment of the United States Constitution provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy, and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory processes for obtaining witnesses in his favor and to have the Assistance of Counsel for his defence."

3. The statutes involved and under review are:

Article IV, Federal Rules of Evidence 403, which states that "[t]he Court may exclude relevant evidence if its probative

value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."

IV.

STATEMENT OF THE CASE

In 2019, Ali and several other codefendants were indicted on conspiracy charges for distribution of tetrahydrocannabinol (THC), a violation of 21 U.S.C. § 841(a)(1), (b)(1)(C) and § 846. After a three day trial, a jury convicted Ali of all alleged counts. Ali timely appealed to the Eighth Circuit Court of Appeals arguing that-1.) the district court abused its discretion by denying his motion for continuance; 2.) the district court erred by admitting into evidence portions of recordings of phone calls Ali made from jail: 3.) the district court permitted trial delays that violated Ali's Sixth Amendment right to a speedy trial; and 4.) the district court erred at sentencing by declining to vary downward.

On August 30, 2022, the Court of Appeals affirmed Ali's sentence and conviction. Ali timely filed for an en banc hearing, which was denied on November 3, 2022.

A. Prior to Ali's three day trial, the nation was trying to get control of a rapid spreading virus known as Covid-19. To control the spread of the virus, the president implemented a series of protocols that included restrictions on physical contact and mandates that required social distancing, extreme sanitation, and mask wearing over the mouth. Jail facilities were implementing stricter limitations to prevent the spread of the virus. These restrictions on contact made it difficult for Ali to properly prepare for trial because he was subjected to the limitations of the jail facility that only allowed correspondence with his counsel through a plexiglass, using the guards to pass documents between the two, or through limited video conference or timed phone calls. Ali motioned the district court for a continuance, explaining that the challenges brought by the Covid restrictions caused

difficulty in communicating with counsel. The district court denied Ali's motion but permitted Ali and his counsel to meet for a few hours at the court during the days of trial. On appeal, the Eighth Circuit concluded that Ali suffered no constitutional violations by the district court denying his motion for continuance because five months was enough time for Ali's counsel to prepare for trial.

B. Parallel to Ali seeking a Continuance to prepare for trial, Ali moved for trial under the Speedy Trial Act. The district court denied his request and on appeal, the Eighth Circuit concluded that Ali could not establish presumed prejudic because the 14 month delay between Ali's arrest and his trial was attributable to his co-defendants requesting a continuance or the district court ordering continuances. Ali wrote the court explaining that he had no knowledge that he was waiving his right to a speedy trial based on his co-defendants request or his agreement with the district court. All filings made on Ali's behalf that agreed with exceeding any time limits of the Speedy Trial Act was made through his counsel at the time. Once Ali was aware of counsel's error, he moved the court to remove his attorney.

C. Ali also raised on appeal the district court's admission of jail phone calls between his the-girlfriend and child's mother, as being prejudicial to him during trial. Ali's argument in the lower courts was the phone calls prejudiced his defense because the government's intentions were to use those calls to establish guilt of the charged offense. Moreover, Ali argued that any statements made between Kendall (Gov't witness and girlfriend of Ali), even if relevant to the case at hand, that their probative value was far outweighed by their prejudicial nature. The district court, and Eighth Circuit, determined that the calls were relevant and admissible and that Ali used threats to influence her testimony; threats that the record does not establish were made. After the district court allowed the government to play the audio recordings, Ali then requested that the recordings be played in their full context rather than the edited version prepared by the government. The district court denied Ali's request and the Eighth Circuit affirmed.

D. At sentencing, the district court gave a valuation of 1 to 167 ratio when determining the amount of THC involved in the charged offense. The court's error resulted in a criminal offense level calculation that was ten to twelve levels higher than necessary to effectuate the purpose of sentencing under section § 3553(a). On appeal, Ali argued that the district court imposed an unreasonable sentence primarily because of the guidelines ratio of 1 to 167 of converted drug weight. Ali objected to the cal calculation and presented expert testimony that indicated that the correct conversion ratio should fall between 1:4 and 1:10, resulting in a base offense level of 26, not 32. Though this testimony was not provided at Ali's sentencing hearing, both Ali and the government urged the district court, who conducted both hearings, to incorporate the arguments and evidence from his co-defendants sentencing.¹

REASONS FOR GRANTING THE WRIT

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING
THAT ALI'S FIFTH AND SIX AMENDMENT RIGHT WERE
NOT VIOLATED UNDER THE SPEEDY TRIAL ACT?

i.) A speedy trial is a fundamental right that is guaranteed by the Sixth Amendment and imposed by the due process clause of the Fifth Amendment. See *Klopfer v. North Carolina*, 386 U.S. 213 (1967). A right that this Court has explained is "specifically affirmed in the Constitution." *Barker*, 407 U.S. 533. And adherence to this right is exactly the expectation Ali had when he invoked it after 14 months elapsed between the time he was indicted until the actual trial.

The Eighth Circuit relied heavily on this Court's precedent in *Barker v. Wingo*, 407 U.S. 514 33 L. Ed. 2d 101, 92 SCT 2182, in which this Court outlined several

1 Expert testimony in regards to what the actual drug weight ratio should have been was provided at Ali's co-defendant's sentencing hearing in a related case. *United States v Hansen*, Hansen, No. 20-3603.

factors a district court should use as a balancing test to determine if the speedy trial right was violated. The Court of Appeals, nonetheless, determined that Ali's right to a speedy trial was not violated because the delay was attributable to his codefendants or the district court, and that the "period of delay [did] not trigger presumptive prejudice." *United State v. Cooke*, 853 F.3d 464, 472 (8th Cir. 2017).

The Barker Court explained that "failure to assert the right would make it difficult for a defendant to prove that he was denied a speedy trial." *Id.* at 407 U.S. 532. But that is not the case here because Ali asserted his right several times prior to his official trial date. The delays, as the Eighth Circuit concluded, were not attributable to Ali but rather his co-defendants or the district court. In a letter to the district court Ali explained that he had no prior knowledge that he was waiving his right to a speedy trial by acquiescing to his codefendants continuances. When Ali was made aware of it he fired his then-attorney for not informing him prior to.

Ali now petitions this Court for review to determine if delays that are attributable to his co-defendants or the district court establishes presumed prejudice under Barker and amounts to a violation of the speedy trial act when Ali had no prior knowledge that he was waiving his rights by acquiescing to the continuances.

ii.) WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S DENIAL OF ALI'S MOTION FOR CONTINUANCE?

This Court has explained that "the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." *Holmes v. North Carolina*, 547 US 319, 324 (2006). This guarantee is "rooted directly in the Due Process Clause of the [Fifth Amendment]," and "Compulsory Process or Confrontation Clauses of the Sixth Amendment." *Id.* It is a right that ensures the fairness of the criminal proceeding," *Texas v. Cobb*, 532 U.S. 162, 177, and allows for fair litigation. Unfortunately, this right was violated by the Eighth Circuit upholding the district court's denial of Ali's motion for continuance because he was not prepared for trial.

The Circuit court based its conclusions on its own precedent in *United States v. Bradshaw*, 955 F.3d 699 (8th Cir. 2020). In that case, the defendant sought a continuance to substitute counsel during a collateral proceeding. A proceeding in which a defendant has no absolute right to counsel. See *United States v. Jones*, 662 F.3d 1018, 1024 (8th Cir. 2011). Ali's case differs significantly because he requested a continuance because of the challenges he faced preparing for trial during the Covid-19 pandemic; in which strict protocols were in place that prevented him from adequate contact—(meaning being able to be face to face with his counsel to discuss trial strategy and go over his discovery without passing documentation through jail staff). In fact, during oral argument at the appellate level, Counsel for Ali admitted that had he been granted a continuance, the result of the trial would have been different.

Ali petitions for review for this Court to determine if the Court of Appeals erred in affirming the district court's denial of Ali's motion for continuance.

iii.) WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING THE THE DISTRICT COURT'S ADMISSION OF JAIL PHONE CALLS?

Under Federal Rules of Evidence Rule 403, evidence may be excluded if its "probative value is substantially outweighed by the danger of unfair prejudice." *Id.* Evidence that establishes an unfair prejudice to the defense violates the Fifth and Sixth Amendments collectively

During Ali's trial, the government, with the permission of the district court, admitted audio recordings of the two phone calls that took place between Ali and his former girlfriend Samantha Kendall, also a government witness. The district court determined that the phone calls were admissible because it showed Ali's guilt and his desire to influence her testimony. But the calls the court permitted to be played were portions that the government edited and despite Ali's objections, the district court denied Ali's request to play the full audio recordings. Ali argued that the tapes played outside the full context of the conversation prejudiced his

defense and violated his constitutional rights at a fair trial. It is also worth noting that the lower courts determined that Ali threatened the witness though no record of a threat was ever produced.

Ali petitions the Court for review of the Eighth Circuit's decision to affirm the district court's admission of those jail phone calls between Ali and Kendall, thus violating Rule 403 of the Federal Rules of Evidence.

iv.) WHETHER THE COURT OF APPEALS ERRED IN FINDING THAT THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY NOT GRANTING ALI A DOWNWARD VARIANCE?

The Sixth Amendment ensures that a defendant receives a fair sentencing. And the factors set forth under 18 U.S.C. § 3553(a) mandates a district court impose a sentence that comports with the purposes of sentencing. *Id.* The advisory guidelines is "[t]he starting point and initial benchmark," *Gall*, 552 U.S. 38, for any imposed criminal sentence.

The district court imposed a 235 month term after Ali was found guilty at trial. The bulk of his sentence was determined by the guidelines drug table, USSG § 2D1.1, which lists THC as a prohibited substance, though the drug is not listed in the controlled substance act. The district court used a 1:167 ratio to determine Ali's sentence, despite expert testimony determining that the ratio should fall between 1:4 and/or 1:10. This would have essentially placed Ali on a lower base offense level. But the district court, and the Eighth Circuit, declined to take this expert's testimony into consideration, thus sentencing Ali at a much more severe base offense level.

Ali now petitions to this Court for review to determine if the Court of Appeals decision to affirm the district court's sentence establishes a violation of Ali's Fifth and Sixth Amendment.

CONCLUSION

Wherefore, Petitioner request that this Court grant his petition for review.

Respectfully submitted,

/s/ Muzammil Ali

Muzammil Ali