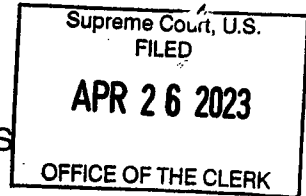


22-7462

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



RONNIE BOWMAN — PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

RONNIE BOWMAN, Reg.# 97314-071
(Your Name)

FCC COLEMAN, USPII, P.O. Box 1034
(Address)

COLEMAN, FLORIDA 33521
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WHETHER, IN LIGHT OF THE "INTERVENING CHANGE IN LAW" HOLDING IN CONCEPTION V. UNITED STATES, 142 S. CT. 2389 (2022), AND THE "BUT-FOR" CAUSATION HOLDING IN BURRAGE V. UNITED STATES, 571 U.S. 204 (2014), THE DISTRICT COURT WAS REQUIRED TO CONSIDER PETITIONER'S NON-FRIVOLOUS ARGUMENT RAISED IN A FIRST STEP ACT MOTION; THAT IS, HIS CLAIM THAT, BECAUSE THERE WAS NO "BUT-FOR" CAUSATION FINDING IN HIS CASE, THE DISTRICT COURT WAS AUTHORIZED TO CONSIDER, AND SHOULD HAVE CONSIDERED, THE DECISIVE HOLDING IN BURRAGE V. UNITED STATES, SUPRA, AND THE MANNER IN WHICH IT MAY HAVE APPLIED TO PETITIONER'S CONVICTION AND ENHANCEMENT TO LIFE IMPRISONMENT UNDER 21 USC 841(b)(1)(A).
2. WHETHER, IN LIGHT OF THE "RULE OF LENITY" HOLDING IN BITTNER V. UNITED STATES, 142 S. CT. 2033 (2023), REQUIRING THAT CRIMINAL STATUTES IMPOSING PENALTIES TO BE "CONSTRUED STRICTLY", AND ITS INTERPLAY WITH THE ABSENCE OF ANY "BUT-FOR" CAUSATION HERE, AS REQUIRED BY BURRAGE V. UNITED STATES, 571 U.S. 204 (2014), AND THE "INTERVENING CHANGE IN LAW" HOLDING IN CONCEPTION V. UNITED STATES, 142 S. CT. 2389 (2022) THE PETITIONER IS ENTITLED TO A GVR SO THAT THE COURT BELOW MAY MAKE THIS DETERMINATION IN THE FIRST INSTANCE.

3. WHETHER, IN LIGHT OF THE "COLLATERAL CONSEQUENCES" HOLDING IN BAIL V. UNITED STATES, 470 U.S. 856 (1985), THE COURTS BELOW SHOULD HAVE CONSIDERED THE HOLDINGS IN CONCEPTION, SUPRA, AND BURRAGE, SUPRA, AS THEY APPLIED TO PETITIONERS CONCURRENT LIFE SENTENCES, IN COUNTS ONE AND FOUR, REGARDLESS OF THE FACT THAT, EVEN IF RELIEF WERE GRANTED ON COUNT FOUR (THE "BUT-FOR" ENHANCEMENT UNDER 21 USC 84(b)(1)(c)), THE PETITIONER WOULD STILL BE FACING THE LIFE TERM ON COUNT ONE, IMPOSED PURSUANT TO THE "FELONY DRUG CONVICTIONS" AND 21 USC 851

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:

RELATED CASES

N/A

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FIRST STEP Act of 2018, Pub. L. No. 115-391, 132 STAT. 5194, AT 5239

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 U.S. v. Bowman, No. 22-6956; 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 A to the petition and is

☐ reported at U.S. v. Bowman, (3:01-cr-00349-CMC-I); 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 N/A; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the N/A 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 22, 2023.

☒ 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 N/A (date) on N/A (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 N/A.
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. 2255(a)

18 U.S.C. 3553(a)

18 U.S.C. 3582(c)(1)(A)

21 U.S.C. 841(a)(1)

21 U.S.C. 841(b)(1)(c)

21 U.S.C. 846

21 U.S.C. 851

STATEMENT OF THE CASE

IN AN EIGHT-COUNT INDICTMENT FILED ON SEPTEMBER 25, 2001 RONNIE BOWMAN WAS CHARGED WITH CONSPIRACY TO DISTRIBUTE ONE KILOGRAM OR MORE OF HEROIN, IN VIOLATION OF 21 U.S.C. 841(b)(1), AND 841(b)(1)(C), AND 846, AND WITH OBSTRUCTION OF JUSTICE, IN VIOLATION OF 18 USC 1503 AND 1512(b)(3). ON NOVEMBER 21, 2001, THE UNITED STATES FILED A "NOTICE OF INTENT TO SEEK ENHANCEMENT" UNDER 21 USC 851, BASED ON TWO PRIOR "FELONY DRUG OFFENSE" CONVICTIONS.

ON ADVICE OF COUNSEL, RONNIE BOWMAN ENTERED A PLEA OF GUILTY ON COUNTS ONE AND FOUR, WITH THE REMAINING 6 COUNTS DISMISSED BY THE UNITED STATES. ON AUGUST 15, 2002, THE COURT IMPOSED CONCURRENT TERMS OF LIFE ON COUNTS ONE AND FOUR.

RONNIE BOWMAN CHALLENGED THE LEGALITY OF HIS PLEA ON APPEAL BASED ON THE NEGATIVE TOXICOLOGY RESULTS THAT SURFACED AFTER HIS PLEA, PURSUANT TO THE "BUT-FOR" DEATH RESULTS ENHANCEMENT UNDER 21 U.S.C. 841(b)(1)(C), AND ON NOVEMBER 3, 2002 THE FOURTH CIRCUIT COURT OF APPEALS AFFIRMED. ON MARCH 3, 2005 A MOTION TO VACATE OR CORRECT SENTENCE UNDER 28 USC 2253(a) WAS FILED IN THE DISTRICT COURT, AND WAS DENIED ON SEPTEMBER 12, 2005.

IN LIGHT OF THIS COURT'S DECISIONS IN BURRAGE V. UNITED STATES, 571 U.S. 204 (2014), FOLLOWED BY CONCEPCION V. UNITED STATES, 142 S.C. 54 (2022) RONNIE BOWMAN FILED A MOTION IN THE DISTRICT COURT UNDER 18 USC 3582(e)(1)(A) WHICH WAS DENIED ON AUGUST 8, 2022. THIS DECISION WAS APPEALED, AND ON FEBRUARY 22, 2023 THE FOURTH CIRCUIT COURT OF APPEALS AFFIRMED.

REASONS FOR GRANTING THE PETITION

THE COURT SHOULD GRANT THE PETITION, VACATE THE JUDGMENT BELOW, AND REMAND FOR FURTHER CONSIDERATION IN LIGHT OF BITTNER, BURRAGE, AND CONCEPTION; EACH OF WHICH APPLIES TO THE PETITIONER'S FIRST STEP ACT MOTION WITH DECISIVE FORCE.

A GVR IS THE APPROPRIATE WAY TO DISPOSE OF THIS CASE. UNDER THE PREVAILING STANDARD "ELMBROOK SCHOOL DISTRICT V. DOE, 134 S. CT 2283 (2014), A GVR SHOULD BE GRANTED "WHERE AN INTERVENING FACTOR HAS ARISEN THAT HAS A LEGAL BEARING UPON THE DECISION," LAWRENCE V. CHATER, 516 U.S. 163, 168-69 (1996); HICKS V. UNITED STATES, 137 S. CT. 2000, 2001 (2017) (HOLDING IT APPROPRIATE TO GRANT GVR "WHERE A PLA. LEGAL ERROR INFECTS THE JUDGMENT, AND PETITIONER ENJOYS A REASONABLE PROBABILITY OF SUCCESS IN GETTING THE JUDGMENT REVERSED ON THE MERITS."

AT THE VERY LEAST, THE ISSUES IN BURRAGE ARE SUFFICIENTLY ANALOGOUS TO COMPEL RE-EXAMINATION OF THE PLAID LEGAL ERROR THAT EXISTS IN THIS CASE. IN BURRAGE, THIS COURT UNANIMOUSLY HELD THAT A CONVICTION UNDER 21 U.S.C. 841(b)(1)(C) REQUIRES A "BUT-FOR" CAUSATION FINDING. IN SPECIFIC TERMS, THIS COURT HELD THAT "AT LEAST WHERE THE DRUGS DISTRIBUTED BY THE DEFENDANT ARE NOT AN INDEPENDANTLY SUFFICIENT CAUSE OF THE VICTIM'S DEATH OR SERIOUS BODILY INJURY, A DEFENDANT CANNOT BE LIABLE FOR PENALTY ENHANCEMENT UNDER 841(b)(1)(C)." AND FURTHER, THE BURRAGE COURT HELD THAT INTERPRETATION OF A CRIMINAL STATUTE SUBJECT TO THE "RULE OF LENITY" CANNOT BE INTERPRETED DIFFERENT FROM ITS ORDINARY MEANING, ESPECIALLY WHEN IT FAVORS THE DEFENDANT.

IN BITTER, THIS COURT REVISITED THE "RULE OF LENITY" STANDARD AND REITERATED THAT CRIMINAL STATUTES SUCH AS 841(b)(1)(C) MUST ALWAYS BE "CONSTRUED STRICTLY."

BECAUSE THE LIFE TERMS ON COUNTS ONE AND FOUR WERE IMPOSED ON THE PETITIONER PRIOR TO THE DECISIONS IN BURRAGE (2014) AND BITTER (2023) THESE DECISIONS REPRESENT "INTERVENING CHANGES IN LAW" NOW COGNIZABLE UNDER CONCEPTION V. UNITED STATES, 142 S. CT. 2389 (2022) WHEN PRESENTED IN A FIRST STEP ACT MOTION, AS HERE.

IN CONCEPTION, THIS COURT HELD THAT A DISTRICT COURT ADJUDICATING A 3582 MOTION UNDER THE FIRST STEP ACT IS REQUIRED TO CONSIDER, WHEN RAISED, "INTERVENING CHANGES IN LAW"... "BASED NOT ONLY ON THE CHANGES TO THE CRACK-COCAINE SENTENCING RANGES, BUT ALSO ON OTHER UNRELATED LEGAL OR FACTUAL CHANGES THAT HAVE OCCURRED SINCE THE ORIGINAL SENTENCING." AND FURTHER, THE CONCEPTION COURT HELD, "WHEN DECIDING A FIRST STEP ACT MOTION, DISTRICT COURTS BEAR THE STANDARD OBLIGATION TO EXPLAIN THEIR DECISIONS, AND DEMONSTRATE THAT THEY CONSIDERED THE PARTIES' NON-FRIVOLOUS ARGUMENTS."

HERE, IN THE PETITIONERS 3582 MOTION UNDER THE FIRST STEP ACT, NEITHER THE DISTRICT COURT OR COURT OF APPEALS DEMONSTRATED, IN ANY WAY, THAT THEY HAD CONSIDERED THE "NON-FRIVOLOUS ARGUMENTS" RAISED BY HIM, CONCERNING THE "BUT-FOR" HOLDING IN BURRAGE V. UNITED STATES, 571 U.S. 204 (2014), AS REQUIRED UNDER CONCEPTION.

AND THEN SUPERIMPOSED OVER THESE HOLDINGS, THE FACT THAT, EVEN AFTER APPLICATION OF BURRAGE, THE PETITIONER WOULD STILL BE LEFT WITH A LIFE TERM ON COUNT ONE, IS OF NO MOMENT.

IN BALL V. UNITED STATES, 470 U.S. 856 (1985), THIS COURT HELD THAT, IN CIRCUMSTANCES SUCH AS THIS, "THE COLLATERAL CONSEQUENCES MAY NOT BE IGNORED."

IN SPECIFIC TERMS, THE COURT HELD, "THE PRESENCE OF TWO CONVICTIONS ON THE RECORD MAY DELAY THE DEFENDANT'S ELIGIBILITY FOR PAROLE OR RESULT IN AN INCREASED SENTENCE UNDER A RECIDIVIST STATUTE FOR A FUTURE OFFENSE." [] "THUS, THE SECOND CONVICTION, EVEN IF IT RESULTS IN A GREATER SENTENCE, IS AN IMPERMISSIBLE PUNISHMENT."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

* Rune Brown

Date: APRIL 23, 2023