

No. 22-7906

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JUN 09 2023
OFFICE OF THE CLERK

Lamar McDonald — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeal U.S. v. McDonald (22-60073)
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Lamar McDonald

(Your Name)

F.C.I. Memphis, P.O. Box 34550

(Address)

Memphis, Tennessee 38184-0550

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- 1) Is Apprendi v. New Jersey Still Good Caselaw?
- 2) If so Is Are the Lower Courts (Appeals Courts included) misapplying Apprendi and Mr. McDonald Fifth and Sixth Amendment to determine if the sufficiency of the evidence standard of review is correct?
- 3) Is 18 U.S.C. 3661 unconstitutional under the Void for Vagueness Clause of the Fifth Amendment?

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:

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 _____ 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 is unpublished.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 United States district court appears at Appendix A to the petition and is

[] reported at _____; 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 is unpublished.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[] is unpublished.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[] is unpublished.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

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was March 13th, 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 _____ (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).

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	
STATEMENT OF THE CASE	
REASONS FOR GRANTING THE WRIT	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

STATUTES AND RULES

OTHER

STATEMENT OF THE CASE

Mr. Lamar McDonald was convicted after a jury trial of one count of conspiring to possess with intent to distribute 500 grams or more of a substance or mixture containing a detectable amount of methamphetamine; two counts of possessing with intent to distribute a mixture of substance containing a detectable amount of cocaine, and two counts of attempting to distribute a mixture of methamphetamine. He argued on appeal that the district court incorrectly applied three sentencing enhancements.

REASONS FOR GRANTING THE PETITION

Is Apprendi v. New Jersey still good Caselaw?

is so the petitioner is under the assumption that for over 20 that the District Court and the Appellant Courts have been erroneously applying this line of cases . Thereby creating erroneous precedent.

This court has pointed out that "When faced with demonstrably erroneous precedent, this District Court's rule should be simple: DONNOT FOLLOW IT. But so many hurdles have been put in place to stop petitioner's to bring this to this court's attention and it takes decades upon decades to get this court to review it..

So the petitioner humbly request the Supreme Court has now encountered a decision that is demonstrably erroneous - [i.e., one that is not ~~an~~permissible interpretation of the text] [i.e. Apprendi, Blakely, & Alleyne]. This court should not correct the error, regardless of whether others factors support overuling the precedent. For Federal Court's may (but need not) adhere to an incorrect decision as as precedent, but only when traditional tools of legal interpretations show that the earlier decision adopted a textually impermissible interpretation of the law. See Haymondsv. United States, interpretation of Apprendi, Blakely and Alleyne). A demonstrably incorrect decision, by contrast, is tantamount to making law, and adhering to it both disregards the supremacy of the Constitution and perpetuates a usurpation of the legislative power.

Now petitioner takes a portion of Judge Alito's dissenting opinion in which he states:

It is telling that the plurality never brings itself to acknowledge this clear departure from Apprendi line of cases. For nearly two decades now, the Court has insisted that these cases, turn on "a specific statutory offense," and its "ingredients" and "elements." Yet today we learn that - atlèast as far as the plurality is concerned none of it realy matters (Haymond)

The Supreme Court in Haymond v. U.S. acknowledge that Apprendi and Alleyne have been misapplied for over 20 years. Meaning that precedent ins all Court of a of Appeals in the United States precedents have been wrongly decided and are unconstitutionaly incorrect. These are the "stare decisis" cases that they rely upon. Therefore the petitioner is making this plea making a plea that his Fif Fifth and Sixth Amendment Right are being violated and that the Sufficiency of the evidence does not show a finding of fact that supports any sentence over 500 grames. For Justice Alito also stated that:

The plurality also errs by failing to distinguish between the unconstitutional liberty interest with which Apprendi is concerned and the conditional interest affissuécin cases like in Haymond.

This statement supports the petitioner's position that the above mentioned courts have been applying Apprendi line of cases wrong because nowhere have they ever discussed the defendant's "conditional liberty interest".

So this court should not disregard and must now apply the correct interpretation of Apprendi.

Is 18 U.S.C. 3661 Unconstitutional and in Violation of Apprendi?

Petitioner now asserts that the all judicial precedents under 18 U.S.C. 3661 is "erroneous" and that this court is fully aware that it is in violation of Apprendi's line of cases. This continuous reliance of erroneous judicial precedent is within itself a violation of the Constitutionnal duties inwhich a judicial officers have sworn to uphold. The "Judicial power" must be understood in light of "the Constitution's status as the Supreme legal document" over "lesser sources of law." Lawson, 29-30. This status necessarily limits "the power of a court to give legal effect to prior judicial decisions" that articul demonstrably erroneous interpretations of the Constitution because those prior decisions cannot take precedence over the Constitution itself. Ibid. Put differantly, because the Constitution is Supreme over other sources of law, it

requires the courts to privilege its text over it's own precedents when two are in conflict.

The same principles apply when interpreting statutes and other sources of law:

"If a prior decision demonstrably erred in interpreting such a law, federal judges should exercise the judicial - not perpetuate a usurpation of the legislative power - and correct the error. For a contrary rule would permit judges to "substitute their own pleasure" for the law." The Federalist No. 78, at 468; See *Id.*, at 466 ("[T]here is no liberty if the power of judging be not separated from the legislative and executive powers").

In this specific case the court is aware that 18 U.S.C. § 3661, is a blatant violation of the 5th and 6th Amendment and the *Apprendi* line of cases [making additional judicial fact finding by a preponderance of the evidence] using "relevant conduct". In petitioner's case the District Court is ignoring the "four corner" rule of the indictment and the plea agreement by using 'relevant conduct' [making additional judicial fact finding from P.S.I.] [i.e. "ingrediant's" or "elements" of the charge offense] by using the preponderance of the evidence standard. Accord *Marshall v. Baltimore & Ohio R. Co.*, 16 How. 314, 343-344 (1894) (Daniel, J. dissenting) ("Where ever the Constitution command, discretion terminates" because continued adherence to "palable error" is a "violation of duty, an usurpation "); Thus, no "'special justification'" is needed for a federal court to depart from it's own, demonstrably erroneous precedent.

ERRONEOUS PRECEDENT AVOID CONSTITUTION QUESTION?

The Constitution does not mandate that judicial officers swear to uphold judicial precedents. And the Supreme Court has long recognized the supremacy of the Constitution with respect to executive action and "legislative act[s] repugnant to" it. *Marbury*, 1 Cranch, at 177; *Youngtown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587-589 (1952); See also The Federalist No. 78, at 467 ("No legislative act, therefore, contrary to the Constitution, can be valid".)

In short, the Court of Appeal has employed something akin to the Constitutional Avoidance Doctrine to read 18 U.S.C. § 3661 statute to avoid practical Fifth and Sixth Amendment problems raised by *Apprendi* line of cases.

Therefore this court now has the power to make an independant decision without relying on erroneous precedent.

RULE OF LENITY TO BE USED AFTER APPLYING FIFTH AND SIXTH AMENDMENT

The rule of linity teaches the ambiguities about the breath of a criminal statute should be resolved in the defendant's favor. That rule is perhaps not much less old than the task of statutory construction itself. And much like the vagueness doctrine, it is founded on the tenderness of the law for the rights of individuals to fair notice of the law and on the plain principle that the power of punishment is vested in the legislative, not the judicial department. Applying constitutional avoidness to narrow a criminal statute accord with the rule of lenity. By contrast, using the avoidance canon instead to adopt a more expansive reading of a criminal statute would place these traditonally sympathetic doctrines at war with one another.

In *United States v. Davis*, 139 S.Ct. 2319 (2019) the Supreme Court found that the constitutional avoidance canon must yeild to the Rule of Lenity. The Rule of lenity "comes into operation at the end of the process of construing what Congress has expressed, not at the begining as an overriding consideration of being lenient to wrongdoers." In addition, the rule of lenity is triggered only in the face of "greivious ambiguity." This should be applied because the statute at question [18 U.S.C. § 3661] is ambiguous to the requirement's of the Fifth and Sixth Amendment Right to a jury trial and therefore are in violation of *Appredni*, *Blakely*, and *Alleyn* line of cases. For as at the time the Fifth and Sixth Amendment's adoption, a judge's sentencing authority derives from, and is limited by, the jury's factual findings of criminal conduct. A jury must find beyond a reasonable doubt every fact "which the

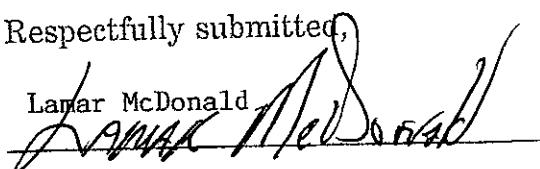
law essential to [a] punishment'" that a judge might later seek to impose. Blakely at 542 U.S. 296, 304.

CONCLUSION

Petitioner request that his Petitioner be GRANTED, and/or STAYED in light of McClinton. If favorable his appeal should be VACATED and Remanded back to the Fifth Circuit Court of Appeals for further consideration After a full briefing is conducted by both parties.

This Petition should be GRANTED for the above provided reason unless further briefing is required.

Respectfully submitted,

Lamar McDonald


Date: June 7th, 2023