

JUN 20 2023

OFFICE OF THE CLERK

No. 23-5031

IN THE
SUPREME COURT OF THE UNITED STATES

Marc Anthony Hill — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Fifth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Marc Anthony Hill

(Your Name)

U.S.P. Pollock U.S. Penitentiary P.O. Box 2099

(Address)

Pollock, LA 71467

(City, State, Zip Code)

N/A

(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

Is Apprendi v. New Jersey still good law?

If Yes, are the Fifth Circuit Court of Appeals and other circuits applying Apprendi incorrectly which violates the "four corner" rule?

Is Rosemond still good law?

If yes... Does the Jury have to find the essential element "Advance Knowledge" as required under Rosemond?

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 & B 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 is unpublished.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 _____ 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 is unpublished.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 is unpublished.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 is unpublished.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 22nd, 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: April 5th, 2023, 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

Fifth and Sixth Amendment of the United States Constitution

18 U.S.C. 1951(a)

18 U.S.C. 1952

18 U.S.C. 924(c)(1)(A)(iii)

18 U.S.C. 924(c)(3)

18 U.S.C. 924(j)(1)

STATEMENT OF THE CASE

In March of 2018, a Grand Jury returned a four-count indictment against Hill, Polk, Scott, Phillips and Duncan-Bush. Hill and Polk were charged with Conspiracy to Interfere with Commerce by Robbery in violation of 18 U.S.C. 1951(a) and 1952 (Count One), and aiding and abetting the use of a firearm during a crime of violence causing death of a person in violation of 18 U.S.C. 925(c)(1)(A)(iii), (c)(3) and (j)(1) (Count Two), in conjunction with the Wells Fargo murder-robbery during which they successfully murdered and robbed an armored car driver. Hill, Polk, Scott, Phillips, and Duncan-Bush Conspiracy to Interfere with Commerce by Robbery in violation of 18 U.S.C. 1951. (This indictment is covered by the Four Corner doctrine which states:

The principle that a document's meaning is to be gathered from the entire document and not from it's isolated parts.

The principle that no extraneous evidence should be used to interpret an unambiguous document.)

REASONS FOR GRANTING THE PETITION

To determine if Apprendi v. New Jersey is still good caselaw?

For over 20 years the courts have been erroneously applying this line of caselaw in accurately.

For the Supreme Court in Apprendi held that unconstitutional sentence scheme that allowed a judge to increase a defendants sentence beyond the statutory maximum "based on the judge's findings of new facts by a preponderance of the evidence." Was illegal.

In Blakely v. Washington, A jury must find beyond a reasonable doubt every fact "which the law makes essential to [a] punishment" that a judge might later impose. To be illegal.

In Alleyne v. United States, the Supreme Court confronted the important gap left from Harris v. United States, 536 U.S. 545 (2002) and McMillian v. Pennsylvania, 477 U.S. 79 (1986); In Alleyne, the jury convicted the defendant of a crime that ordinarily carried a sentence of five years to life in prison. But separate statutory "sentencing enhancement" increased the mandatory minimum to seven years if the defendant "brandished" the gun. At sentencing, a judge found by a preponderance of the evidence that the defendant had indeed brandished a gun and imposed the mandatory minimum-7-year term. The Supreme Court reversed, finding no basis in the original understanding of the Fifth and Sixth Amendment for McMillian and Harris, the Supreme Court expressly overruled those decisions and held that "the principle applied in Apprendi applies with equal force to facts increasing the mandatory minimum" as it does to facts increasing the statutory maximum penalty. Alleyne, 570 U.S. at 112. Nor did it matter to Alleyne's analysis that even without the mandatory minimum, the trial judge would have been free to impose a 7-year sentence because it fell within the statutory sentencing range authorized by the jury's findings. Both the "Floor" and "Ceiling" of the sentencing range "defined the legally prescribed penalty."

Under the U.S. Constitution, when "a finding of facts alters the legally prescribed punishment so as to aggravate it" the finding must be made by a jury of a defendant's peers [and/or stipulated in plea agreement] beyond a reasonable doubt.

The Supreme Court went even further by observing that there can be little doubt that "[e]levating the low end of a sentencing range heightens the loss of liberty associated with the crime:

The defendants expected punishment has increased as a result of the narrowed range and the prosecution is empowered, by invoking the mandatory minimum, to require the judge to impose a higher punishment than he might wish.

Now in this case this court will notice (after a careful review of the record) that based on the juries "general verdict form" the jury only found this defendant guilty of a 924(c) without the "overt acts" listed in the indictment, but was sentenced to a 924(j).

A. ERRONEOUS CASELAW/PRECEDENT

The Supreme Court has pointed out that:

When faced with demonstrably erroneous precedent, the Court of Appeals should be simple: DO NOT FOLLOW IT.

Which should mean that when a district court and/or an appellate court encounters a decision that is demonstrably erroneous - [i.e., one that is not a permissible interpretation of the text] [i.e. Apprendi, Blakely, & Alleyne], The lower courts should correct the error, regardless whether other factors [i.e. conformity] support the overruling of the precedents. Federal Court's may (but need not) adhere to an incorrect decision as precedent, especially when traditional tools of legal interpretation show that the earlier decisions adopted a textually impermissible interpretation of the law. (See Haymond's discussion of Apprendi line of cases). Petitioner asserts that "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.

Petitioner points to Judge Alito 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 "ingrediants" and "elements". Yet today we learn that - atleast as far as the plurality is concerned none of that really mattered.

Therefore the plurality in Haymond v. United States acknowledge that Apprendi and Alleyne have been misapplied to over 20 years and the lower court still refuse to provide the full application of the Fifth and Sixth Amendment of the U.S. Constitution when it is the defendant's right. Cases like petitioner's still go uncorrected and procedural ruling continue with wrongly decided precedents providing the guidance to make limited usage of the actual merits of each case being presented. Meaning that his cases has been wrongly decided and are both unconstitutionally incorrect. Proving that lowing courts a using these erroneous cases as "stare decisis" to deny reaching the actual merits of petitioner's case. The petitioner is making a Fifth and Sixth Amendment contentions and using Justice Alto to dissenting opinion to make his point. Justice Alto Stated:

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

This statement support's the petitioner's contention and show that the lower court have been applying Apprendi wrong because nowhere in any of there decisions have they (prior to making a decision) discussed the defendant's "conditional liberty interest". So when the lower court disregards the correct interpretation of Apprendi, Alleyne, the Fifth and Sixth Amendment of the U.S. Constitution and the lower courts still make additional judicial factfinding. As they did in this case were the jury provided a gereral verdict and did not have to find the overt acts listed in the indictment.

Under the "Forner Rule" which states;

The principle that a document's meaning is to be gathered from the entire document and not from it's isolated parts.

The principle that no extraneous evidence should be used to interpret an ambiguous document.

In this specific case the jury was never instructed to consider the overt act, the the Verdict form does not required the jury to consider element of a 924(j) crime. The judge using the preponderance of the evidence found on his on that the overts acts were committed and thereby violated the petitioner's Fifth and Sixth Amendment right under Apprendi and it's line of cases.

The Constitution's supremacy is also reflective in it's requirements that all judicial officer's, executive officers, congressman, and state legislators take an oath to "support this Constitution". Art. VI, cl.3: See also Art. II, Section 1, cl.8 (requiring the President to "solemnly swear (or affirm)" to "preserve, protect and defend the U.S. Constitution of the United States").

Notably, the Constitution does not mandate the 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; *Youngstown 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").

So the real question this court needs to answer is: When the lower courts (district and appeals courts) ignores the full reading of the Constitution and follow judicial erroneous precedent by using the "preponderance of the evidence standard" is it a blantant violation of the defendant's 5th and 6th Amendment Rights?

Is Rosemond v. United States Still good caselaw?

If so then in Rosemond v. United States, 134 S.Ct. 1240, 1249 (2014) where this Honorable Court held that to convict a criminal defendant of the inchoate federal crime of aiding and abetting a 18 U.S.C. 924(c) violation (engaging in a drug deal in which the person or a confederate carries or fires a gun) the government must prove that the defendant actively participated in the underlying drug trafficking or violent crime with advanced knowledge that a confederate would use or carry a gun during the commission of the crime.

A close review of this case will show that the petitioner jury was never instructed nor did they provide any indication in the general verdict form that they found that petitioner had "advanced knowledge". Which is an "element" and/or "ingrediant of the specific charge alleged in the alter indictment.

The petitioner has made several attempts to have this specific issue addressed by the government and the courts of appeal. But they refused to address and/or to litigate the matter.

For this matter is being ignored because of the erroneous use of Apprendi and its line of cases. For when a petitioner takes "no action with respect to any firearm" and is charged with aiding and abetting, This courts decision in Rosemond becomes the controlling caselaw which now requires proof that the petitioner had "advance knowledge of a firearm's presence". 572 U.S. at 72, 81. The Jury is suppose to be instructed of this element requirement and the verdict form is suppose to show a specific finding of this "element" or "ingrediant". In order to be in compliance with Rosemond's decision.

Thereby the petitioner claims that his Fifth and Sixth Amendment Rights have been violated under Rosemond and Apprendi.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Marc Anthony Hill

Date: 6/20/2023