In The Supreme Court Of The United States

Michael Rinaldi
Petitioner

vs.

United States Of America
Respondant

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

Petition For A Writ Of Certiorari

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Question Presented

1.) Whether the fifth and sixth amendments prohitbit a ferderal court from basing a criminal defendan'ts sentence on conduct for which a jury has acquitted the defendant?

2.) Was teh enhancement for aquitted conduct unconstitutionally applied to Rinaldi?

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Related Proceedings

The following proceddings are directly related to this case within the meaning of Rule 14.1 (b) (iii). United States District Court (M.D. PA.), United States V. Rinaldi No. 3:18-Cr, United States Court of Appeals (3rd Cir.), United States V. Rinaldi 203 U.S. App. Lexis 9546.

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(Petitioner)
v.

United States Of America
(Respondent)

Petition For A Writ Of Certiorari

Opinion Below

The opinion of the Court of Appeals (App. B pages 1-5) is reported at 2023 U.S. App. Lexis 9546.

Jurisdiction

The Judgement of the Court of Appeals was entered on 4-21-23. On July 14th 2023 the Court of Appeals denied Rehearing. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1) and article III of the constitution.

Constitutional Provisions Involved

The Fifth amendment to the United States Constitution provides, in relevant part:

No person shall *** be subject for the same offense to be twice put in jeopardy of life or limb; *** nor be deprived of life, liberty, or property, without due process of law ***

U.S. Const. Amend. V.

The Sixth Amendment to the United States Constitution provides, in relevant part:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ***

U.S. Const. Amend. VI.

Statement

This case concerns the constitutionality of a common sentencing practice that has long troubled jurists: Whether sentencing judges can enhance a defendant's sentence based on conduct of which the jury acquitted him.

This court has never squarely addressed the question presented. In United States v. Watts 519 U.S. 148 (1997) a divided court in a summary disposition held that use of acquitted conduct

sentencing does not offend the double jeopardy clause. nevertheless the lower court including the Third Circuit have taken the Watts decision as a wholesale endorsement for the use of acquitted conduct sentencing.

Under the principle of ratio decidendi the lower courts should apply the narrowest meaning to the Watts decision and Watts should not be controlling in case dealing with the due process clause or the right to trial by jury. In actuality the courts should if anything be applying this courts more recent precedents which are cases dealing due process and the right to a jury trial. In this courts newer line of reasoning it has already in so many words pointed out that Watts is not controlling in 5th and 6th amendment cases.

Currently the issue of acquitted conduct sentencing has divided lower courts and a number of distinguished jurists and scholars have questioned it's fairness and constitutionality. It is also an issue that defy's logic and common sense so much so that when Rinaldi explained it to friends, family, or people in general, they cant believe it. They think Rinaldi is lying, is explaining something wrong, or he himself is mistaken in his explanation. It is difficult to understand how a person can have their sentence based on conduct for which a jury found them not guilty. The question asked is always, what is the purpose of having a jury then? Which is also the question Rinaldi asks himself and Rinaldi would hope is something this court will answer.

For the sake of brevity Rinaldi will not cite to all of the cases in which current or former Justices of this court have themselves questioned the fairness of acquitted conduct sentencing. Just recently in a case that was relisted multiple time, McClinton Vs. United States, seventeen retired federal judges filed an Amicus Brief supporting the petitioners arguments that acquitted conduct sentencing is unconstitutional. Furthermore when this court declined to grant Certiorari Justice Sotomayor dissented and several other Justices issued statements. Notable Justices Kavanaugh, Gorsuch, and Barrett suggested they voted against Certiorari because the sentencing commission was considering new guidelines for acquitted conduct sentencing. Justice Kavanaugh wrote that it is, "appropriate for this court to wait for the sentencing commission's determination before the court decides whether to grant Certiorari." This statement does not in any way account for how the sentencing commissions determination would have any impact on the courts consideration of constitutional protection's of significant import. Whether or not acquitted conduct sentencing is constitutional has nothing to do with if the sentencing commission thinks that it makes sense policy wise to permit the use of it.

Besides the commission and Congress can only speak for sentences imposed at the federal level, even though over 90% of sentences are handed down by state courts. Furthermore the commission declined to consider aquitted conduct sentencing and say they may look at it next year. The sentencing commission has already made a determination. They determined not to address the issue. Therefore it is ripe for this court to take up this issue. A Justice Scalia said, "the time has come to end this practice." Justice delayed is Justice denied.

In the instant case Rinaldi was charged in a superseding incitement with conspiracy to possess with intent to distribute controlled substances. The substances alleged to be involved were cocaine, cocaine based (crack), heroin, and marijuana. See Appendix D. The verdict form contained multiple interrogatory's pertaining to the drug identity and drug quantity. The jury was asked to determine if the offense involved the four drugs charged in the indictment. The jury unanimously found that Rinaldi was not responsible for cocaine, cocaine base (crack), and marijuana. The jury found that the offense only involved heroin. See Appendix E. Nevertheless at sentencing the district court made findings that the offense involved 6 kilograms of cocaine, 1 kilogram of cocaine base (crack), and 48 pound's of marijuana in addition to the 15 grams of heroin that they jury found. See Appendix A pages 93-94.

Without any enhancements the sentencing range for the offense of conviction is 21 to 27 months. If you add 2 levels for a leadership enhancement and 2 levels for obstruction of justice the range becomes 33 to 41 months. However the district court ultimately found the range to be 235 to 293 months based on the addition of this acquitted conduct enhancement. For the sake of argument Rinaldi does not take issue with the 4 levels added for leadership and obstruction He only raises the acquitted conduct issue since this is exactly what the jury rejected. Since Rinaldi was sentenced at the low end of the guidelines to 235 months, his sentence was increased by 202 months and it was more than 5 times the 41 months which was the high end of the appropriate range.

Another thing that is notable about this sentence is that it should be viewed for what it is, an impermissible trial penalty. Rinaldi had 5 co-defendants who were alleged to have supplied Rinaldi with drugs were given an immunity agreements to testify against Rinaldi and their charges were dismissed. One defendant who had a more severe criminal history than Rinaldi but was alleged to have worked for Rinaldi received 18 months after testifying against Rinaldi. And lastly co-defendant

Duwayne Brown who testified that he split the money evenly with Rinaldi although he said he was more culpable in the offense received 33 months. This is after he said he made the trips to purchase the drugs. He stored the drugs at his house. He cooked the cocaine into crack and he sold a share of the drugs. He also had a similar criminal history as Rinaldi. Yet Rinaldi received a sentence of 202 months more than Brown. Ironically the offenses that Brown pled guilty and admitted to were much more severe and had a higher guideline range than the offenses for which the jury convicted Rinaldi of.

REASONS FOR GRANTING THE PETITION

I. The constitutionality of considering acquitted conduct at sentencing is an important and recurring question that only this court can resolve. This court has never squarely addressed whether a sentencing judge's consideration of acquitted conduct to enhance a defendants sentence violates the Due Process Clause of the Fifth Amendment or the Sixth Amendment's guarantee of a trial by jury. This courts decision in Watts dealt with the double jeopardy clause of the Fifth Amendment. This was emphasized in Booker 543 U.S. at 240 N.4. When it stated Watts, "presented a very narrow question regarding the interaction of the U.S. sentencing guidelines with the double jeopardy clause, and did not even have the benefit of full briefing or oral argument." Thus the Watts court did not consider whether the due process clause of the Fifth Amendment or the Sixth Amendments jury-trial guarantee forbids the use of acquitted conduct at sentencing. Yet for decades lower courts have used Watts and this court subsequent silence on the topic as a wholesale endorsement of acquitted conduct sentencing.

A. Distinguished jurist have long criticized acquitted conduct sentencing

1.) From the very outset, members of this court questioned the holding in Watts, as well as it's summary disposition of such an important issue. Justice Stevens decried the idea, "that a charge that cannot be sustained by proof beyond a reasonable doubt may give rise to the same punishment as if it had been so proved" as "repugnant" to the constitution. Watts 519 U.S. at 170. Justice Kennedy criticized the court for failing to clearly "confront the distinction between uncharged conduct and acquitted conduct," which he call a "question of recurrent importance in hundreds of sentencing proceedings in the federal criminal system" and which ought to be confronted by a reasoned course of argument, not by shrugging it off." Id. at 170.

For instance in Jones v. United States, petitioners convicted by a jury of distributing small

amounts of crack cocaine, but acquitted of conspiring to distribute drugs, challenged the constitutionality of the sentencing judged imposing sentence enhancements based on the acquitted conduct. Justice Scalia, joined by Justice's Thomas and Ginsburg, dissented form the courts denial of certiorari, explaining that "the Sixth Amendment together with the Fifth Amendments due process clause, requires that each element of a crime be either admitted by the defendant, or proved to the jury beyond a reasonable doubt." Jones 574 U.S. at 948. Accordingly, "any fact that increases the penalty to which a defendant is exposed constitutes an element of a crime, and must be found by a jury not a judge." Id at 949. The group observed that "the Courts of Appeals have uniformly taken our continuing silence to suggest that the constitution does permit otherwise unreasonable sentences supported by judicial fact finding, so long as they are within the statutory range." The dissenters protested that "this has gone on l long enough," and urged the court to "grant certiorari to put an end to the unbroken string of cases disregarding the Sixth Amendment." Id at 950.

B. STATE COURTS ARE SPLIT REGARDING THE CONSTITUTIONALITY OF THE PRACTICE

There is a much wider range of opinion among state courts. Since long before Watts, state courts have been divided on whether the federal constitution permits consideration of acqu9itted conduct at sentencing. Some states have held that the constitution permits courts to consider acquitted conduct at sentencing. (State v. Witmer 10 A3d 728, 733 (Ma. 2011) Cidentifying California, Colorado, Florida, Missouri, Ohio, and Wisconsin as states that permit it's use.)

There are a number of states who took the opposite position. For example the New Hampshire Supreme Court has concluded that considering acquitted conduct at sentencing violates due process because it denies to the defendant the "full benefit" of the presumption of innocents "when a sentencing court may have used charges that have resulted in acquittals to punish the defendant." State v. Cote 530 A.2d 775, 785 (N.H. 1987). North Carolina, Georgia, and Michigan Supreme Courts have also all held the use of acquitted conduct sentencing to be unconstitutional.

The New Jersey Supreme Court canvassed both federal and state constitutional law, emphasizing the criticisms of members of this court and other federal appellate judges, before holding that, "once the jury has spoken through it's verdict of acquittal, that verdict is final and unassailable. *** Fundamental fairness simply cannot let stand the perverse result of allowing in through the back door at sentencing conduct that the jury rejected at trial." State v. Melvin 258 A.3d 1075, 1086, 1089, 1093-1094 (N.J. 2021). The New Jersey Supreme Court" Agreed with the Michigan Supreme Court that Watts is not dispositive of the due press" issue because, "as clarified in Booker, Watts was cabined specifically to the question of whether the practice of using acquitted conduct at sentencing was inconsistent with double jeopardy." Id at 1090.

Thus, several state Supreme Courts applying federal law have adopted rules about acquitted conduct sentencing at odds with the corresponding regional federal court of appeals. This court has recognized that such splits are particularly intolerable, because the rule of decision turns on happen stance of whether a matter is brought in federal or state court. See Madsen v. Women's Health 512 U.S. 753, 761-762 (1994).

C. THIS COURT'S INTERVENTION IS NECESSARY

Without this courts intervention, this division of authority will continue to persist. Just as the Jones dissenters warned, the federal courts of appeals continue to "take this courts continuing silence to suggest that the constitution does permit" acquitted conduct sentencing. See 574 U.S. at 949. Not only has every federal court of appeals with criminal jurisdiction foreclosed these claims but also every court of appeals has been asked to reconsider the issue

en banc and has refused.

No other mechanism will resolve this issue. This court has repeatedly referenced the sentencing commission taking up this matter in the future but the sentencing commission once again refused to act. Justice delayed is justice denied.

Even where federal district court judges decided not to rely on acquitted conduct at sentencing and the government appealed. The courts of appeals vacated these sentences and ordered the district courts to consider the acquitted conduct using a preponderance of evidence standard. This courts intervention is the only thing that can resolve this.

II. The Decision Below Is Wrong

A. Watts did not resolve whether the due process clause or Sixth Amendment jury trial right prohibits consideration of acquitted conduct at sentencing.

The Third Circuit relied on Watts to affirm petitioners sentence. App. B. But Watts did not address the issue at hand. Watts presents a narrow question regarding the interaction of the guidelines with the double jeopardy clause and did not consider if the use of acquitted conduct sentencing violated a defendants Sixth Amendment jury trial rights or the due process clause of the Fifth Amendment. Book 543 U.S. at 240. This court should be particularly reluctant to read Watts broadly because the court decided the case by summary disposition and did not even have the benefit of full briefing or oral argument. Furthermore a broad reading of Watts is hard to square with this courts more recent sentencing precedents. In the quarter century since Watts, this court has issued numerous decision emphasizing the essential importance of jury fact finding under the Sixth Amendment in determining sentences.

From those cases it unavoidably follows that any fact necessary to prevent a sentence from being substantively unreasonable thereby exposing the defendant to the longer sentence is an element of the crime that must be either admitted by the defendant or found by the jury. It may not be found by a judge. Many of those decisions have emphasized that the jury trial right works in conjunction with the due process clause because a court's authority to sentence a defendant fundamentally flows from jury findings regarding facts essential to punishment. These cases emphasized the central role of the jury in the criminal justice system. This series of cases provides a compelling reason to at least limit Watts to the double jeopardy clause, if not to overrule it entirely. Indeed Bookers narrow reading of Watts was likely necessary to avoid having

to overrule the case. Watts must yield when in conflict with this large body of law that has since developed. As a summary disposition, Watts reasoning was slight, and this court has long recognized that it is less constrained to follow precedent where, as here, the opinion was rendered without full briefing or argument. Hohn v. United States 524 U.S. 236, 251 (1998) Connecticut v. Doehr 501 U.S. 1, 12 1991 ("A summary disposition does not enjoy the full precedential value of a case argued on the merits ***.)

B. The Sixth Amendment prohibits courts from relying on acquitted conduct at sentencing

The Sixth Amendment's jury trial right is one of the most fundamental reservations of power in our constitutional structure. Blakely 542 U.S. at 305-306. It not only gives citizens a voice in the courtroom but also guarantees them control in the judiciary. Id at 306. And by giving citizens a voice it safeguards a person accused of a crime against the arbitrary exercise of power by prosecutor or judge. Batson v. Kentucky 476 U.S. 79, 86 (1986). Accordingly, the right to a trial by jury is a right of surpassing importance, Apprend., 530 U.S. at 476 and occupies a central position in our system of justice. Batson 476 U.S. at 86.

The Sixth Amendment right to jury trial grew out of several centuries of angle 'American common law tradition under which the right to trial by jury was an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. Duncan v. Louisiana 391 U.S. 145, 156 (1968. Historically juries acted as the conscience of the community not only through flat out acquittals but also indirectly checking the severity of sentences by issuing what today we would call verdicts of guilty to lesser included offenses. Jones v. United States 526 U.S. 227, 225 (1999). Through parietal acquittals juries determined not only guilt but also the defendants sentence. The common law system left judges with little sentencing discretion: Once the facts of the offense were determined by the jury, the judge was meant simply to impose the prescribed sentence. Alleyne 570 U.S. at 108.

Consistent with this history in the decades since Watts, this court has again focused on the importance of jury fact finding in sentencing. Beginning with Apprend. This courts sentencing cases have carried out this design by ensuring that the judges authority to sentence derives from the jury's verdict, because without that restriction the jury would not exercise the control that the framers intended. Blakely 542 U.S. at 306. When courts consider acquitted conduct as a basis for

enhancing a defendants sentence, it undermines the jury's historic role as a bulwark between the state and the accused at the trial for an alleged offense. Traditionally an acquittal is accorded special weight. It's finality is unassailable even if the verdict is based upon an egregiously erroneous foundation. Yeager v. United States 557 U.S. 110, 122-123 (2009). If jurors acquit their verdict is final, no one is likely to suffer of whose conduct they do not morally disapprove; and this introduces a slack into the enforcement of law, tempering it rigor.

But acquitted conduct sentencing affords the government a second bite at the apple in which the government almost always wins by needing only to prove its (lost) case to a judge by a preponderance of the evidence. This diminishes the jury's role and dramatically undermines the protections enshrined in the Sixth Amendment. Moreover many judges and commentators have observed that using acquitted conduct to increase a defendants sentence undermines respect for the law and the jury system, undermining public perceptions of the importance of jury service and discouraging jurors from taking their duties seriously.

C. THE FIFTH AMENDMENT PROHIBITS COURTS FROM RELYING ON ACQUITTED CONDUCT AT SENTENCING

This court has held that the due process clause works in conjunction with the Sixth Amendment to guarantee fair sentencing procedures. Due process protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. In Re Winship 397 U.S. 358, 364 (1970. The beyond a reasonable doubt standard provides concrete substance for the presumption of innocence.

Considering acquitted conduct at sentencing offense the due process clause in several related ways. To begin with, the clause does not permit courts to treat acquitted conduct as a sentencing factor that can be imposed based on facts found by a preponderance of the evidence thereby eliminating the core procedural protection of proof beyond a reasonable doubt. Several courts have held that revisiting facts the jury rejected under a preponderance standard deprives the accused of the full benefit of the presumption of innocents. A courts reliance on acquitted conduct also implicates due process concerns because it increases the risk of inaccurate sentencing. Even when a defendant has previously been convicted of a crime, this court has cautioned that reliance on facts underlying those prior convictions may

raise concerns about unfairness and lead to error. Those same accuracy concerns obviously apply when the court relies on facts underlying prior jury acquittals. Facts that the jury determined that the prosecution had failed to prove.

If a jury verdict does not have to be respected and honored then how can you logically guarantee the right to a trial by jury. In essence this is a trial by judge and prosecutor. Not only is this unconstitutional but in a system that guarantees rights and then uses semantics and sleight of hand tricks to do away with these rights invites nothing but scorn and contempt. It promotes disrespect for the law and erodes confidence in the fairness and integrity of such a system.

This court acknowledges that criminal law is concerned not only with guilt or innocents in the abstract, but also with the degree of criminal culpability assessed. Mullaney v. Wilbur 44 L.Ed2d 508 (1975). In Mullaney this court dismissed the idea that a state could circumvent the protections defined in Winship by redefining the elements that constitute different crimes, and characterizing them as factors that bear solely on the extent of punishment.

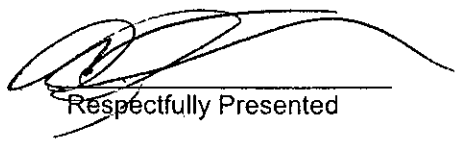
In United States v. Haymond 139 S.ct 2369 (2019) this court held that the application of 18 U.S.C. 3583 (K) was unconstitutional because it violated the defendants right to trial by jury in violation of the Fifth and Sixth Amendments. The court stated, "only a jury, acting on proof beyond a reasonable doubt, may take a person's liberty. That promise stands as one of the constitutions most vital protections against arbitrary government." In Haymond, the district court revoked supervised release based on a finding by preponderance of the evident that the defendant possessed child pornography. The judge imposed a mandatory minimum sentence under 3583 (k) of five years. The court held that the application of the preponderance standard violated the defendants right to a jury trial guaranteed by the Fifth and Sixth Amendment. "A judges authority to issue a sentence derives from, and is limited by the jury's factual findings of criminal conduct." "When a finding of fact alters the legally prescribed punishment so as to aggravated it, that finding must be made by a jury of the defendants peers beyond a reasonable doubt." Id.

In Nelson v. Colorado 137 S.ct. 1249 this court held that, "absent conviction of a crime, one is presumed innocent." "Once those convictions were erased for any reason, the presumption of innocents was restored."

In short Rinaldi argues that he has a presumption of innocents and the only way this presumption can be overcome is by his admission or by a jury finding using the standard of proof beyond a reasonable doubt. The district court cannot overcome this presumption using the standard of preponderance of evidence. This violates the Fifth and Sixth Amendment.

Conclusion

In conclusion Rinaldi requests this court grant certiorari to resolve this issue. In the alternative Rinaldi is asking this court to grant a GVR in light of this courts rulings in United States v. Haymond 139 S.ct 2369 (2019) and Nelson v. Colorado 137 S.ct 1249 (2017). In these cases Watts was effectively limited to the double jeopardy clause and is not the precedent that should have been applied. The Third Circuit should have applied the more recent precedents starting with Appredi all the way to Haymond and this court can make that clear if not by the grant of certiorari then by a GVR in light of these newer precedents.



Respectfully Presented

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