

23-5758
No. _____

FILED
SEP 01 2023
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

JIMMY STRAYHORN — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

4th Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JIMMY STRAYHORN

(Your Name) Reg. No. 28159-057
FCC-Yazoo City Medium USP
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QUESTION(S) PRESENTED

- I. WHETHER OR NOT WHEN ONE HAS EXERCIZED HIS RIGHT TO TRIAL AND BE FOUND GUILTY OF A COUNT IN HIS INDICTMENT THAT WOULD LATER BE FOUND UNCONSTITUTIONAL DURING HIS INCARCERATION, IS THAT PERSON ENTITLED TO BE PRESENT FOR A RESENTENCING HEARING IN LIGHT OF PEPPER v. U.S. AND § 3553(a) FACTORS THAT NOW FAVOR HIM -
- II. WHETHER OR NOT THE COURT ERRED AFTER A DEFENDANT'S COUNT IN HIS INDICTMENT WAS LATER FOUND TO BE UNCONSTITUTIONAL AFTER EXERCISING HIS RIGHT TO TRIAL - THE COURT THEN CLAIMED THAT THE JUDGMENT WAS "CORRECTED" NOT "VACATED" -
- III. CAN A COURT "CORRECT" A JUDGMENT AS OPPOSED TO "VACATING" A JUDGMENT WHEN A COUNT IS LATER FOUND TO BE UNCONSTITUTIONAL TO JUSTIFY A NEW SENTENCE BY JUST SUBTRACTING THAT COUNT'S TERM OF IMPRISONMENT FROM THE TOTAL TERM IN CALCULATING A NEW SENTENCE OR IS THAT UNCONSTITUTIONAL AND A VIOLATION OF DUE PROCESS - WHEN A PLENARY RESENTENCING WAS WARRANTED -
- IV. IS IT UNCONSTITUTIONAL FOR A COURT TO MODIFY A SENTENCE AFTER A COUNT IN A PERSON'S INDICTMENT WAS LATER TO BE FOUND TO BE UNCONSTITUTIONAL (WHEN ONE WAS CONVICTED OF THAT SAME COUNT BY A JURY OF HIS PEERS), WITHOUT FULL REVIEW OF § 3553(a) FACTORS IN LIGHT OF PEPPER v. U.S. - ESPECIALLY WHEN UNDER THE SENTENCING PACKAGE DOCTRINE A PLENARY RESENTENCING SUPPORTS STRAYHORN A RESENTENCING HEARING -

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

Pepper v. U.S., 562 U.S. 476, 490 (2011)

Koon v. U.S., 518 U.S. 81, 113 (1996)

U.S. v. Davis, 139 S.Ct. 2319 (2019)

Dean v. U.S., 581 U.S. 62 (2017)

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STATUTES AND RULES

OTHER

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

XX For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is Case No. 22-4420

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[X] 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 20, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

6th Amendment - U.S. Constitution - DUE PROCESS

18 U.S.C. § 924(c) - Residual Clause Unconstitutionally Vague

28 U.S.C. § 2255(b)

28 U.S.C. § 2255(3)(a) or (b)

28 U.S.C. § 2253(c)(2)

STATEMENT OF THE CASE

(1) October 31, 2011 Strayhorn was Indicted in the Middle District of North Carolina;

(2) The Indictment included six counts in which four counts were charged to Strayhorn as follows: (1) Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a); (2) Carry and Use by Brandishing of a Firearm During and in Relation to the Robbery, in violation of 18 U.S.C. § 924(c); (3) Conspiracy to Commit Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a); and (4) Carry and Use of a Firearm During and in Relation to Conspiracy Robbery, in violation of 18 U.S.C. § 924(c) and 18 U.S.C. § 2;

(3) Strayhorn exercised his right to trial and was convicted by a jury trial on all four counts;

(4) Strayhorn was sentenced on June 13, 2012 to 533 months as follows: 137 months on Counts 1 & 3 to run concurrently with each other; 96 months on Count 2 to run consecutive to all other counts; and 300 months on Count 4, consecutive to all other counts;

(5) Strayhorn was AFFIRMED in the Fourth Circuit and remanded to the District Court for resentencing as to Count 2 due to the holding in Alleyne v. U.S., 570 U.S. 99 (2013);

(6) Count 2 was reduced from 96 months to 72 months;

(7) Strayhorn againAppealed and was AFFIRMED in the Fourth Circuit;

(8) Strayhorn filed a § 2255 in light of Johnson v. U.S., 576 U.S. 591 (6/26/2015) and then U.S. v. Davis, 139 S.Ct. 2319 (2019) and Dean v. U.S., 581 U.S. 62 (2017);

(9) In light of Count 3's Conspiracy to Commit a Hobbs Act Robbery, on which Count 4 was predicated, the Court agreed to dismiss Count 4 using a 2007 case in U.S. v. Hadden, 475 F.3d 652, 668 (4th Cir. 2007) as having authority to correct an unlawful sentence without conducting a formal resentencing;

(10) Strayhorn's new sentence was corrected by deducting 300 months (Count 4) from the remaining sentence (509 months - 300 months = 209 months), no other factors were addressed or reviewed on behalf of Strayhorn and his "corrected sentence;"

(11) Strayhorn appealed that he should have been able to have a full resentencing hearing to allow present changes in law, post-sentencing rehabilitation, and other mitigating factors;

(12) Counsel of Record filed an Ander's Brief and the Fourth Circuit AFFIRMED his sentence.

REASONS FOR GRANTING THE PETITION

Under § 2255, the District Court may conduct plenary resentencing, discharge the prisoner, or "correct the sentence" without full resentencing. 28 U.S.C. § 2255(b); see also U.S. v. Hadden, 475 F.3d 652, 661 (4th Cir. 2007). The remedial provisions of § 2255 "confer [] a broad and flexible power to the district courts to fashion an appropriate remedy [after a sentence is vacated]." U.S. v. Hillary, 106 F.3d 1170, 1171 (4th Cir. 1997).

The Sentencing Package Doctrine supports plenary resentencing. (where Strayhorn's § 2255 was successful in attacking one of the convictions that formed a component of an overall sentencing plan, the court was allowed to reconfigure the sentencing plan to ensure that it remains adequate to satisfy the sentencing factors in 18 U.S.C. § 3553(a)); Greenlaw v. U.S., 554 U.S. 237, 253, 128 S.Ct. 2559, 171 L.Ed.2d 399 (2008); see also Dean v. U.S., 581 U.S. 62, 137 S.Ct. 1170, 1176-78, 197 L.Ed.2d 490 (2017)).

Strayhorn was no longer subject to the dramatic 300-month consecutive sentence for the § 924(c) Count 4 conviction. A plenary resentencing was never afforded Strayhorn in which he was entitled to. A plenary resentencing could not only allowed the court reconfigure the original sentencing plan, but would have also afforded Strayhorn the opportunity to argue his post-sentencing rehabilitation that now supports a downward variance. See Pepper v. U.S., 562 U.S. 476, 490 (2011)(where [Strayhorn's] post-conviction rehabilitation "may be highly relevant" to sentencing factors, especially § 3553(a)(1) and § 3553(a)(6) and § 3553(a)(2)(B)-(C)... as well as "evidence of post-sentencing rehabilitation provides the most up-to-date-picture of [Strayhorn's] history and characteristics and most accurate indicator of [Strayhorn's] true tendencies.")

Federal judge's have always been able to conduct inquiries broad in

scope, "largely unlimited either as to the kind of information [s]he may consider or the source from which it may come." U.S. v. Tucker, 404 U.S. 443, 446 (1972). The circumstances in this case are far from common (extraordinary), and are most unusual (extraordinary).

The district court relied on a 2007 case in U.S. v. Hadden to "correct Strayhorn's sentence" without full resentencing. However, in light of Pepper's ruling in the Supreme Court and the Sentencing Package Doctrine, plenary resentencing was denied Strayhorn. Because Strayhorn was convicted by a jury trial, after excersizing his right to trial, on all four counts, to then have one count invalid due to an unconstitutionally vague statute, that count must be VACATED as opposed to "CORRECTED." Pepper was ruled in 2011 by the Supreme Court (four years after Hadden ruling in the Fourth Circuit). Strayhorn had been incarcerated since 2011 and the following factors would have supported Strayhorn at his RESENTENCING HEARING for an even lesser sentence in 2023:

(1) Intervening Changes In Law -

- (a) Supreme Court ruling in Dean v. U.S., 581 U.S. 62 (2017) (allowing courts to review the underlying predicate offense when reconfiguring a sentence before applying a mandatory § 924(c) consecutive sentence);
- (b) First Step Act - Section 403 and changes made in the § 924(c) stacking amounts;

(2) Post-Sentencing Rehabilitation - Not only has Strayhorn compiled an extraordinary prison record from the onset of his incarceration with a sterling no infraction record, but his rehabilitation in successfully completing numerous classes offered in the Bureau of Prisons, including being gainfully employed, etc. Strayhorn has also aged 13 years and has a reduced risk in reoffending/recidivism.

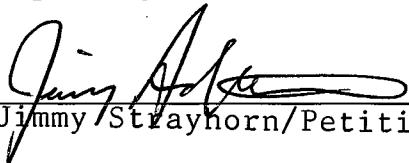
(3) § 3553(a) factors now favor Strayhorn -

Strayhorn had enough facts and support if the court would have held a plenary resentencing that would have resulted in a new reconfiguration, a downward variance, in a lesser sentence. The court violated that due pro-

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Jimmy Strayhorn/Petitioner/In Pro Se/Affiant

Date: September 10, 2023