

No. 23-6230

IN THE SUPREME COURT OF THE UNITED STATES

DANILLE MORRIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's guilty plea relinquished her right to collaterally attack her sentence based on an alleged deprivation of constitutional rights prior to the entry of the guilty plea.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is not published in the Federal Reporter but is available at 2023 WL 7153220. The order of the district court (Pet. App. 5a-17a) is unreported but is available at 2023 WL 6147532. A prior order of the district court (Pet. App. 39a-71a) is unreported but is available at 2021 WL 150989.

JURISDICTION

The judgment of the court of appeals was entered on October 31, 2023. The petition for a writ of certiorari was filed on

December 8, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the District of Kansas, petitioner was convicted on one count of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and one count of using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) (1) (A). Pet. App. 5a-6a. She was sentenced to 200 months of imprisonment, to be followed by three years of supervised release. Id. at 7a; Judgment 2-3. The court of appeals affirmed. Pet. App. 18a-20a. After petitioner's conviction became final, she filed a motion to vacate, set aside, or correct her sentence under 28 U.S.C. 2255. Pet. App. 7a. The district court dismissed the motion. Id. at 5a-12a. The court of appeals denied a certificate of appealability. Id. at 1a-4a.

1. On March 9, 2016, petitioner was asked by her boyfriend, Gary Jordan, to be his getaway driver for a bank robbery. Pet. App. 6a. Bringing along her 19-month-old daughter, petitioner drove her Chevy Tahoe to pick up Jordan and another man, Jacob Smith. Ibid. They drove around looking for a target and ended up at the First National Bank in Stilwell, Kansas. Ibid. Petitioner cased the bank by going inside and pretending to look for work. Ibid. She then left and reported the number of employees to Jordan and Smith. Ibid.

Jordan and Smith entered the bank, confronted two tellers with handguns, and took approximately \$15,440 in cash from the tellers while petitioner waited outside with the Tahoe running. Pet. App. 6a. After the robbery, Jordan drove the Tahoe while petitioner and Smith began putting the money into a backpack. Ibid. Police officers located the Tahoe and initiated a high-speed chase, during which Smith fired at the officers. Ibid. The three were ultimately apprehended after Jordan lost control and wrecked the vehicle in Kansas City, Missouri. Ibid.

2. A federal grand jury charged petitioner with one count of armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and one count of using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c) (1) (A). Superseding Indictment 1-3.

Between March 2016 and April 2017, petitioner was detained at Corrections Corporation of America (CCA), a detention facility in Leavenworth, Kansas. Pet. App. 6a. In the spring of 2016, the U.S. Attorney's Office for the District of Kansas began investigating the involvement of CCA inmates and employees in a drug-smuggling conspiracy at the facility, in a case that became known as United States v. Carter, 429 F. Supp. 3d 788 (D. Kan. 2019). See Pet. App. 7a, 22a, 39a. The investigation ultimately culminated in an indictment charging certain inmates, not including petitioner, with conspiring to distribute controlled substances in the prison. Carter, 429 F. Supp. 3d at 801.

Through a grand jury subpoena in the Carter investigation, the government obtained soundless video footage from CCA surveillance cameras, which included footage capturing attorney-visitation rooms. 429 F. Supp. 3d at 801. That footage included two soundless videos depicting petitioner's interactions with counsel at CCA on April 29 and May 16, 2016. Pet. App. 8a; see D. Ct. Doc. 249, at 2 (June 5, 2020). An Assistant U.S. Attorney filed an affidavit in this case representing that she did not view any video recordings of petitioner meeting with her counsel. D. Ct. Doc. 249-1, at 1.

In August 2016, the district court issued a "clawback" order, impounding all video and audio recordings of attorney-client communications in the government's possession. Carter, 429 F. Supp. 3d at 810; see Pet. App. 22a.

3. On August 8, 2016, petitioner pleaded guilty to both counts of her indictment without a plea agreement. Pet. App. 6a. She admitted at her plea hearing that she had committed the offenses charged in the indictment and represented that her guilty plea was entered freely and voluntarily. Ibid. The district court accepted the guilty plea. Ibid. On March 27, 2017, the district court held a sentencing hearing and sentenced petitioner to 200 months of imprisonment. Id. at 7a; see C.A. ROA 12.

The district court in the Carter litigation ultimately found that calls between CCA detainees and their attorneys were routinely recorded even when the attorney requested the privatization of

their telephone numbers. Pet. App. 23a. The Carter litigation has "led to important reforms within the entire District of Kansas," designed to better protect attorney-client communications. Id. at 58a.

4. In 2019, petitioner (like more than 100 other CCA inmates) moved for postconviction relief under 28 U.S.C. 2255, contending that the government had violated the Sixth Amendment by intruding on her attorney-client communications. Pet. App. 7a, 23a. Petitioner asked the district court to vacate her conviction and release her immediately or, in the alternative, to vacate her sentence and resentence her to 90 months of imprisonment. Id. at 7a.

a. The government opposed petitioner's motion. In doing so, it relied on the principle, set forth by this Court in Tollett v. Henderson, 411 U.S. 258 (1973), that, "[w]hen a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Id. at 267. Instead, "[h]e may only attack the voluntary and intelligent character of the guilty plea by showing that the advice he received from counsel" in connection with the plea was constitutionally deficient. Ibid. And here, the government observed, petitioner did not claim that her counsel

rendered ineffective assistance relating to his decision to plead guilty. D. Ct. Doc. 249, at 6-7.

The district court stayed petitioner's case pending the resolution of the related appeal of Matthew Spaeth, a CCA detainee whose own Section 2255 motion raising similar claims had been dismissed in reliance on Tollett. Pet. App. 7a; see id. at 39a-71a; CCA Recordings 2255 Litig. v. United States, No. 19-2491, 2021 WL 1244789 (D. Kan. Apr. 2, 2021).

b. The court of appeals subsequently affirmed the district court's dismissal of Spaeth's Section 2255 motion. United States v. Spaeth, 69 F. 4th 1190 (10th Cir. 2023), petition for cert. pending, No. 23-6250 (filed Dec. 11, 2023); Pet. App. 18a-38a; see id. at 7a. Among other things, the court of appeals' decision reiterated that Tollett "leaves habeas petitioners with one avenue to pursue pre-plea constitutional violations -- ineffective assistance of counsel that causes their pleas to be involuntary and unknowing." Id. at 31a.

The court of appeals also rejected Spaeth's argument that, "even if Tollett bars his pre-plea constitutional claims, it cannot bar a challenge to his sentence." Pet. App. 35a. First, the court observed that it had "already concluded that Spaeth's plea counsel's performance was neither deficient nor prejudicial." Ibid. Second, the court stated that it "cannot agree that Tollett permits [a defendant] to recast a pre-plea claim as an ongoing sentencing error." Ibid. The court explained that Tollett rested

on a guilty plea breaking the causal effect of any unconstitutional conduct on the defendant's conviction. Ibid. And the court reasoned that, without any claim of "post-plea intrusions into his attorney-client conversations," the alleged pre-plea conduct "falls under Tollett's ambit no matter if the effect of that conduct continues through sentencing." Ibid.

c. Following the court of appeals' decision in Spaeth, petitioner declined the opportunity to amend her Section 2255 motion to seek relief under Tollett or allege a post-plea violation. Pet. App. 7a. She acknowledged that, by doing so, she invited dismissal of her motion. Ibid. And the district court determined that the court of appeals' decision in Spaeth "compels dismissal of Petitioner's Sixth Amendment intentional-intrusion claim." Id. at 8a. "Like Mr. Spaeth," the court explained, petitioner "d[id] not attempt to meet the applicable Tollett standard for showing that ineffective assistance of counsel caused her to enter her plea involuntarily and unknowingly." Ibid. "Thus," the court concluded, "she is also precluded from challenging her sentence based on any alleged pre-plea violation." Ibid. The court both dismissed petitioner's Section 2255 claim and denied a certificate of appealability. Id. at 8a, 12a.

5. The court of appeals likewise denied a certificate of appealability and dismissed petitioner's appeal. Pet. App. 1a-4a. It observed that petitioner, along with other appellants in whose cases had been consolidated, "bring these appeals to

challenge only the Spaeth-based dismissal of their § 2255 sentencing challenges based on the Kansas USAO's pre-plea collection of their attorney-client communications." Id. at 4a. And it observed that petitioner and the other appellants "acknowledge that [the court of appeals] is bound by Spaeth."
Ibid.

ARGUMENT

Petitioner contends (Pet. 11-20) that, even though her guilty plea bars her from collaterally attacking her conviction or plea based on a pre-plea constitutional violation, it does not bar her from attacking her sentence based on that same conduct. Petitioner's arguments are identical to the ones raised in the petition for a writ of certiorari in Spaeth v. United States, No. 23-6250 (Dec. 11, 2023).

For reasons explained in the government's brief in opposition in Spaeth, petitioner's claim does not warrant this Court's review.* As explained there, the claim lacks merit, see Br. in Opp. at 15-17, Spaeth, supra (No. 23-6250); the court of appeals' decision implicates no conflict in the circuits, see id. at 17-18; and the circuit precedent on which petitioner relied in seeking relief on attorney-client privilege grounds is currently undergoing en banc reconsideration by the court of appeals, see id. at 18-19.

* Because counsel of record in this case is also counsel of record in Spaeth, he will receive a copy of the government's brief in opposition in that case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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MARCH 2024