

NO. : 23A438

IN THE
SUPREME COURT OF THE UNITED STATES

LYNN RICHARD NORTON -- PETITIONER Supreme Court, U.S.
FILED

VS.

UNITED STATES OF AMERICA -- RESPONDENTS

OFFICE OF THE CLERK

NOV 22 2003

ON PETITION FOR A WRIT OF CERTIORARI TO
SIXTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

LYNN RICHARD NORTON

FED. REG. NO.: 54534-074

FCI-BEAUMONT-LOW

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QUESTIONS PRESENTED

- (1) Whether Defense Counsel Jessica McAfee Performance Was Ineffective Assistance Under Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)?
- (2) Whether the District Court Error When Calculating Mr. Norton's base-offense level at thirty-two (32). By Attributing to Mr. Norton A drug quantity of at least 150 grams, but less than 500 grams?
- (3) Whether The Government had a Duty to file an Enhancement Notice, Pursuant to 21 U.S.C. §851, before Norton's Trial?
- (4) Whether The Sale or Delivery of three grams of Crack-Cocaine qualified as serious drug offenses for the purpose of an Armed Career Criminal Enhancement?
- (5) Whether The District Court Error When Enhancing Mr. Norton's Sentence two-levels for obstruction of Justice U.S.S.G. §3C1.1.
- (6) Whether The District Court Error In Enhancing Mr. Norton's Sentence two-levels Pursuant to U.S.S.G. §2k2.1(b)(6) Use of a firearm in connection with another felony offense?

LIST OF PARTIES

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JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 28, 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: July 14, 2023, and a copy of the order denying rehearing appears at Appendix D.

An extension of time to file the petition for a writ of certiorari was granted to and including Nov. 16, 2023 (date) on Dec. 5, 2023 (date) in Application No. 23 A 438.

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).

STATEMENT OF CASE

On March 19, 2021 A jury in the Eastern District Court in Greenville, Tennessee found the Petitioner, Lynn Richard Norton, guilty to Counts (1, 6, 7) and Not Guilty to Count (11) Docket [Doc. 389, PageID## 2653-2655](Appendix "A")

On April 4th, 2022, The District Court Sentence Mr. Norton to (240) Months Imprisonment. [Doc. 503] Judgment.

Following the Convictions and Sentences, The Sixth Circuit Court of Appeals in Cincinnati, Ohio Affirmed the District Court's Convictions And Sentences. [Doc. 548, PageID## 4996-5006](Appendix (B) Judgment, Stating Defense Counsel Jessica McAfee's claims Raised on Direct Appeals were "Meritorious;" "Abandoned;" and "Fofeited."

Mr. Norton, filed a Pro-se Motion To Rehear (Appendix (C)) Reviewed and Denied. Order Included, Based Upon Defense Counsel Jessica McAfee's Performance Ineffective Assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)].

The Sixth Circuit Court of Appeals Addressed Defense Counsel, Jessica McAfee's Claims In Turn:

(I) There Was Insufficient Evidence To Convict Defendant Of Count One Of His Indictment: Conspiracy To Distribute Methamphetamine Greater Than 50 Grams.

The Court States: At best we can discern McAfee Contends the Evidence Introduced Against Mr. Norton, Was Insufficient because McAfee's view the government made it's case only through testimony of Co-defendant Who pleaded guilty (Ward) And A Cooperating Witness (Greene), That A Sufficient claim does not Allow us to weigh the Evidence presented to consider the crediblitiy of witnesses or Substitute our judgment for that of the jury.

(II) Defendant's fundamental Rights to a fair trial was Violated when the trial Court disallowed Defense to Introduce testimony or Impeach Government Cooperation over Relevant prior criminal Conduct which went to Motive, Opportunity And Intent.

The Court States: McAfee Argues the district Court erred when It barred Under Federal Rule of Evidence 404(b) certain questioning Concerning Greene's then-pending charges And prior convictions. But McAfee does not say why the district Court Abused its discretion when it invoked Rule 404(b)'s bad-act exclusion Failing to Advance any sort of argument for the reversal of the district Court or Cogent Claim that the district Court got it Wrong Constitutes Abandonment.

(III) The Trial Court Erred When It Allowed the Government to Introduce An Audio Recording When it Was Not Only Irrelevant but highly prejudicial to defendant and likely to confuse the jury resulting in a conviction for possession of a firearm by a convicted felon and distribution of methamphetamine.

McAfee next asserts that the district Court Impermissably Admitted the Audio Recording of the firearm and methamphetamine, exists soley in her statement of issues and not in the body of her brief. Noticeably absent therefore, Is Any Record, Citation, legal authority In Support, or argumentation as to why the district Court purportedly erred. Merely, Argument Identifying that potential Issues And then leaving it to us "to put flesh on the bones" of a "skeletal" Argument Renders It Abandoned As Well. [Doc. 548, PageID## 4997-4999].

McAfee, Also Raised In the Body Of Her Brief that the Magistrate Judge Erred In denying Mr. Leonard's Pre-trial motion For DNA And Fingerprint tests of the handgun Mr. Norton's Stands Convicted for.

McAfee's Issues was Also forfeited by the Sixth Circuit. [Doc. 548, PageID# 5004](Appendix (B))

McAfee's Brief, Asserts the following Procedural Errors Regarding the District Court's Sentence, That the Sixth Circuit States: None has merit. [Doc. 548, PageID## 4999-5004]

(1) That the District Court Error In Calculated Norton's base-offense level by a drug quantity of 150 grams but less than 500 grams, The District Court's Findings being (336) grams of methamphetamine, And A level (32), U.S.S.G. §2D1.1.

(2) Because the jury Convicted Norton of being a felon In Possession And Norton having at least three prior qualifying Convictions the District Court Enhanced Norton's Sentence under the Armed Career Criminal Act (ACCA) 18 U.S.C. §924(e). Norton's Attorney Jessica McAfee makes two objections to this error. The Enhancement could not apply because the government did not file

any Notice of Enhancement or Any 21 U.S.C. §851 Notice of Enhancement for use of the (ACCA) or prior convictions. Secondly: The three prior convictions did not qualify as "Serious drug offenses" under the (ACCA) Enhancement.

(3) That the District Court Error, In Enhancing Mr. Norton's Sentence two levels for obstruction of Justice under U.S.S.G. §3C1.1; and

(4) The District Court Erred In Enhancing Mr. Norton's Sentence two levels under U.S.S.G.'s 2K2.1(b)(b). "Use of a firearm or possession of a firearm In connection of Another felony offense."

REASONS FOR GRANTING THE WRIT

First: In reference to Mr. Norton's case. The United States District Court and the Sixth Circuit Court of Appeals decisions are an "Infringement" of Mr. Norton's (6th) Amendment rights and made contrary to the standards and opinions in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984).

Mr. Norton's defense counsel, Jessica McAfee claims and performance in filing "Meritorious" claims; violating Rule 28(a)(5) of the Federal Rules of Appellate Procedures causing Mr. Norton's claims to be "Abandoned and Forfeited" through out her appellate brief as noted by the Sixth Circuit Court of Appeals judgement, [Appendix (B)] constitutes ineffective assistance of counsel, with prejudice and deprives Mr. Norton of his life without due process of law, and equal protection of the law, due to counsel's ineffective assistance.

Secondly: Mr. Norton's conviction in counts one (1); Six (6), and seven (7) of [Doc. 250] superseding indictment and sentence calculation of a level 32 of a drug quantity of (336) grams of methamphetamine was sustain by a jury; the prosecution; and district court though perjury testimony and false evidence that was acquittal by a jurors not guilty verdict when acquiting count 11 of the superseding indictment [Doc. 398 page ID at 2655 . Perjury testimony and false evidence that intertwine with the charges that Mr. Norton stands convicted for, that's contrary to the decisions in Napue v. Illinois, 360 U.S. 264, 269, 78 S. Ct. 1173, 3 L.Ed 2d 1217 (1959). False evidence and perjury testimonies that the prosecution and district court, judge, and defense counsel Jessica McAfee

knew was false and no effort to correct or did not instruct the jurors to disregard. That the district judge used to sentence Mr. Norton to a level (32) and (240) months imprisonment, ID in the presentence report at paragraphs (12),(13),(25), and (33) of [Doc. 454]. (PSI) report is insufficient evidence to support a conviction or sentence.

Thirdly: Mr. Norton was not provided notice of any armed career criminal act (ACCA) or was not provided notice that sale or delivery of (3) grams of crack cocaine under the prior convictions in 1999 would be used against Mr. Norton as a second punishment, after having served (24) years in a state prison for a quantity of three (3) grams of crack cocaine that was charged under a common scheme or plan, and was intertwined into a single trial in 1999 in Greene County Criminal Court, in Greenville, Tennessee under case number 97-CR-443 [Doc. 460, page ID at 3013 See, Wooden v. United States, 142 S. Ct. 1063, 1069, 212 L.Ed. 2d 187 (2022).

In this matter, the district court and Sixth Circuit Court of Appeals in Appendix (B)] [Doc. 548 , page ID at 5001 alleges the government who states at [Doc. 460, page ID at 3014 The United States did not file 21 U.S.C. 851 Notice of Enhancements in this case. The district court and Sixth Circuit Courts states the government does not have to file 21 U.S.C. 851 under the Armed Career Criminal Enhancement Act, of 18 U.S.C. 924(e) (ACCA).

The 21 U.S.C. 851(a): No person who stands convicted of an offense

under this part shall be sentenced to increased punishment by reason of one or more prior convictions "unless" before trial or before entry of a plea of guilty the United States Attorney files an information with the court, and serves a copy of such information to the person or counsel for the person, stating in writing the previous convictions to be relied upon.

As a matter of law and authority it was the United States Attorney General's duty and responsibility to file the 21 U.S.C. 851 enhancement notice before Mr. Norton's jury trial, not the district court's duty. As a matter of law the government abandoned and forfeited this enhancement and the district court's authority to use this enhancement under any prior convictions or enhancement under the Armed Career Criminal Act. The district court or Sixth Circuit Court of Appeals have no authority or jurisdiction to change a statute or statutory law passed by legislature to protect Mr. Norton and people of the United States due process and equal protection of the laws passed by congress.

Further the character of the offenses or sale or delivery that was intertwined into a single jury trial in 1999, as a common scheme, or plan, Rule 8(a) Federal Rules of Criminal Procedures that was modified on direct appeals into a twenty four year prison term, where one charge was ran concurrent with the remaining two charges did not constitutea violation of 21 U.S.C. 924(e) or the (ACCA) enhancement. Mr. Norton was a range 1, standard offender with no crime of violence, and were offenses that meet the "relevant conduct" tests, composed in U.S.S.G 1B1.3 comment,

and (5)(B)(ii) (noting that offenses may be relevant conduct when they are part of a single episode, spree, or ongoing series of offenses.

Fourthly: The Sixth Circuit Courts decisions in denying the district courts errors and abuse of discretion in using the U.S.S.G. 2K2.1(b)(6)(B) two level enhancement. In this matter the district court and Sixth Circuit Court of Appeals judgements claimed because a jury found Mr. Norton guilty of meth, and felon in possession of a firearm that this enhancement applied.

When analyzing this enhancement, the grand jury did not charge this element in the indictment, pursuant to 18 U.S.C. 924(c)(1). The Fifth Amendment, Article (IV), states, No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury. The United States Supreme Court has clearly established that no enhancement would apply other than a prior conviction, must be charged in an indictment, imputed to a jury and proven beyond a reasonable doubt. Appendix v. New Jersey, 530 U.S. 490 (2000).

In this matter, Mr. Norton is charged under 18 U.S.C. 922(g)(1) as a "prohibited person" as described under U.S.S.G. 2K2.1 cut, n.3, and section 2K2.1(A)(4) sets a base offense level (14) and (20) for a person who has a prior felony for a crime of violence, under 2K2.1(A)(4) which incorporates by reference the definitions in 4B1.2(C), see 2K2.1 application note 1, page 3, a felon-in-possession conviction make Mr. Norton a "prohibited person" and

a "prohibited person" under a category (1); with a base offense (14) is (15-21) months for possession of a firearm under 18 U.S.C. 922(g)(1).

Further the records [Doc. 314, page ID nt2222] and [Doc. 378, page (6)] of the government's response to [Doc. 302, 303] and judge's order to [Doc. 352] states, "The audio recording does not prove the defendant sold any methamphetamine or possessed any firearm". The sentence judge state: "A drug transaction did not occur on the April 8th, 2019 audio recording". And in [R.513, Tr. at page 3490] the officer, Gene Watson there stated: "He did not have additional evidence outside of the April 8, 2019 audio recording". There is no evidence that the firearm charged in count (7) that was confiscated from [CI] Cheree Greene miles from Mr. Norton's residence was used or had any potential's of facilitating another felony or drug transaction that did not occur on the April 8, 2019 audio recording. U.S. v. Coleman, 609 F.3d 699 (5th Cir. 2010), clearly and illegal use of this enhancement by the courts.

Fifthly: In [Doc. 460, page ID at 3015] defense counsel, Jessica McAfee filed objections to the government's U.S.S.G 3C1.1 enhancement for accusing Mr. Norton of obstruction of justice instead in [Doc. 454, paragraph (27)] of the presentence investigation report (PSIR).

In the matter in [Doc. 460, paragraph (4)] identified more than (40) occasions occurring at Mr. Norton's residence, 7205 Saint Clair Road, in Whiteburg, Tennessee where law enforcement were

involved in searches of Mr. Norton and his home and property and no drugs, weapons, or drug paraphernalia were seized. These reports contain facts that government witness Cheree Greene had been removed from Norton's property on two or three separate occasions by law enforcement for illegally trespassing, stealing, and other matters.

The facts are Greene had been told to leave the property with her firearm, and she had tried to buy Mr. Norton's stereo on several occasions. What Mr. Norton had to do is invoke his (5th) Amendment rights and attempt to defend himself from a malicious prosecutions where the government had prepared through James Ward's, Cheree Greene, and law enforcement officers perjury testimonies and fabricated evidence that provided Mr. Norton's jurors false information, no where does Mr. Norton's trial testimony represent perjury or obstruction of justice to support a two-level enhancement under U.S.S.G 3C1.1. Such enhancement is unconstitutionally and violates due process of law, City of Sacramento v. Lewis, 523 U.S. 833, 845-46 (1989). (Citing) Daniel v. Williams, 474 U.S. 327, 331 (1986).

CONCLUSION

For the reasons stated hereinabove, Lynn Richard Norton, petitioner herein requests that this Court grant his petition for a writ of certiorari and ultimately that the Court remand this matter for retrial by the district court.

Respectfully Submitted,

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