

23-6596

No. 23-1624 *Appealing 4th Cir. decision (denial)*

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

NOV 20 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

Kenneth Keshawn Reid

— PETITIONER

(Your Name)

vs.

Solicitor General

— 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

Kenneth Keshawn Reid

(Your Name)

P.O. Box 300 USP Canaan

(Address)

Waymart PA 18472

(City, State, Zip Code)

(Phone Number)

RECEIVED

DEC 15 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

The Fair Sentencing Act of 2010 is retroactive

QUESTION(S) PRESENTED
to the Supreme Court Justices

ISSUE #1

Did the District Court Abuse its discretion, and commit "Plain Error" when it refused to Apply the Fair Sentencing Act of 2010 Crack Law to Kenneth Roshawn Reid's case #19-7803 on Remand after the 4th Circuit Court of Appeals Vacated and Remanded it for resentencing and for them to reconsider.

Article III Courts must apply the law, current law, abide by those laws when applicable to a defendant. It is not a optional chose to Not Apply the laws, especially a retroactive law.

Did the District Court "Abuse its discretion" when the case #19-7803 was Vacated and Remanded by not giving Appellant Kenneth Reid Right to Allocute under Rule 32, and refusing to give him the opportunity to be heard, present mitigating evidence, Appointment of Counsel. Reid is a Capital defendant who is entitled to Appointment of Counsel. (Rule 32 Fed R. Crim P violation) United States v. LaJeunesse NO: 22-178 (2nd Cir 2023)

Did the District Court "Abuse its discretion" by not even giving Mr. Reid a resentencing hearing after case #19-7803 was Vacated and Remanded. He was not even brought back to Court at all.

District Court "Abused its discretion" by refusing to, failing to follow the U.S.S.G. Sentencing Guidelines as instructed to do so in conducting appropriate Sentences for a defendant SRA Sentencing Reform Act violations) United States v. Gall by making the drug quantity Threshold Element findings themselves instead of the Jury, by violating Kenneth Reids Sixth Amendment right to trial by Jury,

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:

There can be no Guideline range set or determined where a Jury did not find "Any" drug quantity - Elements or Threshold drug quantity - Elements as where charged in the indictment. The District Courts sentence violated the Sixth Amendment right to trial by Jury, by making its own drug quantity findings. There is no threshold drug quantity finding in this case by the Jury. The Threshold drug quantity charged in Count 1 were the Elements of Count 1. Therefore the conviction on Count 1 is invalid and sentence is unlawful.

RELATED CASES/Memorandum of law ↓ ↑

Alleyne 570 US 99 (2013)

Appendix v. New Jersey 530 US 466 (2000)

Fair Sentencing Act of 2010 Crack Law

In re Winship 397 US 358 (1970) It has been settled throughout our history that the Constitution protects every criminal defendant "against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. It is equally clear that the Constitution gives a criminal defendant the right to demand that a jury find him guilty of all elements of the crime with which he is charged. United States v. Gaudin 515 US 506 / Alleyne v. United States 570 US 99 2013

So I am demanding that the U.S. Supreme Court protect me, my rights under the 14th, 5th Amendment of the U.S. Constitution under "Due Process of Law" because the government did not sustain its burden of proof on Count 1 as you can see. And the District Court made up (Fabricated) its own ^{threshold} drug quantities and imposed an unlawful sentence of 20 years on Count 1 based on a false conviction on Count 1. Petitioner was not lawfully convicted as a matter of law on Count 1, the conviction must be reversed in the interest of Justice.

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FACTS
Petitioner's sentence on Count 1 was not based on facts found by Jury
it was based on facts found by the Judge only. Which violated the
Sixth Amendment right to Jury trial in this case

TABLE OF AUTHORITIES CITED

CASES		PAGE NUMBER
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Fair Sentencing Act of 2010 Crae Klau

STATUTES AND RULES	
	<i>Oath of office</i>
	<i>U.S. Constitution 14th, 5th Amendment</i>
	<i>Due Process of law</i>

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

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at No: 23-1624; 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 AA; 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 AA; 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 Case #23-1624.

☒ No petition for rehearing was timely filed in my case. *it was denied as untimely Oct 23, 2023*

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Oct, 23 2023, and a copy of the order denying rehearing appears at Appendix _____.

NO [] An extension of time to file the petition for a writ of certiorari was granted to and including Oct 23, 2023 (date) on Oct 23, 2023 (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from state courts:

N/A
The date on which the highest state court decided my case was N/A.
A copy of that decision appears at Appendix N/A.

[] A timely petition for rehearing was thereafter denied on the following date: N/A and a copy of the order denying rehearing appears at Appendix N/A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

Argument

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Kenneth Roshawn Reid and his two Co-defendants Patrick Simpson and Larell Anderson were all charged in Count 1 with a

"Conspiracy to possess with intent to distribute and to distribute 50 grams or more of crack cocaine and 500 grams or more of cocaine all in violation of 21 USC § 846, 841(a)(1), 21 USC § 841(b)(1)(A), 21 USC § 841(b)(1)(B). (See indictment) Exhibit A, B, C

See Jury Verdict form (Count 1), See USPO response, which are all proof that the Fair Sentencing Act of 2010 should have been applied and Count 1 should have been dismissed at the resentencing hearing of case #19-7803. This is the reason why the District Court refused to give a resentencing hearing at all and refused to Apply the FSA of 2010 Crack Law. The US Supreme Court must "Order" or Send "Order" to the Appeals Court and District Court to Apply the law.

Apply the Fair Sentencing Act of 2010 Crack Law to Count 1 and appropriately recalculate Mr. Reid's sentence, or dismiss Count 1 because the Jury did not find him guilty as charged or guilty of any of the drug quantity - Elements charged in Count 1.

The Jury Acquitted Mr. Reid of Count 1 as a matter of Law. Mr. Reid should get the Benefit of his Acquittal of Count 1, by applying the "Prohibiting Punishment of Acquitted Conduct Act (HR 5340) Now in effect. He was Acquitted of Count 1 as a matter of Law.

STATEMENT OF THE CASE

Kenneth Reid is the only person in federal Prison on a drug Conspiracy sentence or drug Crime sentence where the Jury did not find any of the drug quantity-Elements charged in the case. Neither did the Jury find any drug quantity-Elements Attributable to, reasonably foreseeable to Kenneth R. Reid as a individual. Drug Quantity's are Elements not Sentencing factors. The government did not sustain its burden of proof on Count 1 because it did not find guilt beyond a reasonable doubt of the 50 gram element or 500 gram elements charged in Count 1, 3. A lot of cases in the 4th Circuit and Supreme Court has been reversal's of the convictions based on this same type of claim in other case so why has petitioner been overlooked by the district Court, Circuit Court, and Supreme Court for over 21 years and he's been kept in federal Prison unlawfully for 21 years on an unlawful sentence and false conviction where no elements were proven beyond a reasonable doubt in Count 1. Where is the Justices? Please intervene and help me.

Reid is "actual innocent of Cart 1 in every lawful way known to law

REASONS FOR GRANTING THE PETITION

9 reasons

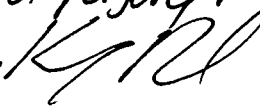
- 1) Because the district Court, Appeals Court must Apply the law
it must apply the Fair Sentencing Act of 2010 Cracklaw to my case it's Application is not discretionary, not optional to do. Its mandatory to apply laws and retroactive laws especially when "Ordered" to do so.
- 2) Because the Sentence on Cart 1 is obviously unlawful
- 3) Because there were no drug quantity-Elements proven beyond a reasonable doubt by way of Jury Verdict. § 2D1.1(c) U.S.S.G has not been followed as instructed by the Sentencing Commission.
- 4) Without a drug quantity-Element being proven beyond a reasonable doubt there is no lawful way to explain the 20 year Sentence on Cart 1 or any lawful way to explain Kenneth Reid's conviction on Cart 1.
- 5) Because Petitioner's sentence violates Alleyne, Apprendi, Gaudin, Gall pretty much all of this courts ruling (Harris v. United States) was overruled since Petitioner was convicted, sentenced,
- 6) Because drug quantities are Elements Not Sentencing factors which trigger statutory minimums
- 7) Writ of mandamus should have been granted to make the District Court Apply the FSA of 2010 Law, to make the Court give Mr. Reid a resentencing hearing for case #19-7803 that was Vacated and Remanded for the district Court call Apply the fair Sentencing Act of 2010 Cracklaw to Cart 1.
- 8) In the interest of Justice "Writ of Certiorari" must be granted to not do so would be a complete miscarriage of Justice and Sentencing Reform (SRA) Act violation and blatant refusal to correct an illegal sentence, unlawful conviction that is obvious by review of the Jury Verdict form, indictment alone.
- 9) The Sentencing Judge made all the drug quantity-Element findings herself now after 20 years she still refuses to correct the illegal Sentence unlawful conviction she imposed 20 years on

The district Court Judge Cameron McGowan Currie would rather leave a innocent man in prison for 20 years rather than Apply the Fair Sentencing Act of 2010 Cracklaw to his sentence (Cant one) which will reveal that Petitioner was never lawfully convicted on Cant 1, None of the elements of Cant one were proven beyond a reasonable doubt or proven at all by way of Jury Verdict. The injustice is obvious here. 28 USC §2106 Power to Act. This U.S. Supreme Court must exercise its Authority and reverse, vacate petitioners conviction on Cant 1, & in its entirety in the interest of Justice.

Relief Sought

For the Supreme Court to Grant "Writ of Certiorari" and "Order" The Appellate Court in the 4th Circuit to dismissal of Cant 1, & or for the Supreme Court to exercise its Authority and make the "Order" the reversal of conviction on Cant 1, & due to the obvious Due Process of law violations by the lower Court

CONCLUSION

title 28 USC §1746 under the penalty of perjury that the foregoing is true and correct to the best of my knowledge. 

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth R. Reid

Date: 11-20-23

Relief Sought

GRANT Reversal of Cant 1 conviction due to due process of law violation where no drug quantity-Elements were proven beyond a reasonable doubt by the Jury in this Jury trial situation, Sixth Amendment violation right to trial by Jury is obvious from review of the Indictment, Jury Verdict form

Apply the law or "Order" lower Court to Apply the Fair Sentencing Act of 2010 Cracklaw to Reid's case its retroactive, applicable, mandatory it must be applied its the Law, current law, (13)

Petitioner filed for a Writ of Mandamus to be granted because he never got his day in Court, never got a resentencing hearing for Case #19-7803 on remand petitioner never got a chance to allocate his case under Fed Rule Crim P 32, 43(a). The Court did not apply the Fair Sentencing Act of 2010 Crack Cocaine Law to Kenneth Reid's case on Count 1 when his case had been Vacated and Remanded for that specific reason. The lower Court refused to give Kenneth Reid equal protection of the retroactive law - the Fair Sentencing Act of 2010 Crack Law. All petitioner wants is for the Court to Apply the law, give him a resentencing hearing where the law will be applied and Count 1, 4 will be dismissed. The Drug Quantity Elements that were charged in Count 1 amount to Acquitted Conduct, because the Jury already Acquitted petitioner Kenneth Reid of all the drug quantity Elements that were charged in Count 1. Therefore No Sentence should have been imposed on Count 1.

The Supreme Court can now Apply the Amendments, Apply the "Prohibiting Punishment of Acquitted Conduct Act" here and dismiss or Order lower Courts to dismiss the Count 1 and Count 4. Because the Jury Verdict Form on Count 1 shows that the Drug quantity Threshold Elements "were unfounded, not proven by the Jury."

Court err'd, Abused its discretion when it imposed a 20 year Sentence on Cant 1 based on Acquitted Conduct. The Drug-quantity-Elements 50 grams or more of crack cocaine and 500 grams or more of cocaine powder - Reid was found Not guilty of. The Jury was instructed that it must be unanimous in its Drug quantity-Element findings but the Jury chose to Not find Any drug quantity-element at all, none attributable to, reasonably foreseeable to Reid as a individual.

The U.S. Supreme Court can now Apply the Prohibiting Punishment of Acquitted Conduct Act (HR 4130) to Order the lower court to Acquit or dismissal of Cant 1 due to the drug quantity-elements of Cant 1 not being found or proven by the Jury beyond a reasonable doubt.

The Jury Acquitted Reid of Cant 1. The District Court used the drug quantity-Elements which were Acquitted Conduct to impose a 20 year Sentence on Cant 1. See Jury Verdict.

The Threshold drug quantity-Elements were unfounded by the Jury in this case. Therefore the Sentence is illegal and this illegal Sentence was based on a wrongful conviction.