

No. 23-1448

33-6729

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ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
DEC - 3 2023
OFFICE OF THE CLERK

Timothy Paul Bush — PETITIONER
(Your Name)

vs.

USA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

Timothy Paul Bush
(Your Name)

FCI Forrest City, PO Box 3000
(Address)

Forrest City, AR 72336
(City, State, Zip Code)

N/A
(Phone Number)

RECEIVED
JAN 16 2024
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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

1. Whether the 8th Circuit's *Ex parte DeBose* decision conflicts with the 7th Circuit's decision in *United States v. Bush* (CA7 June 3, 2020) 966 F.3d 682 2020 U.S. App. LEXIS 22476 No. 20-1034 whereas Petitioner Bush's prior conviction under 720 ILCS 570/401 does not qualify as a predicate drug offense because it's broader than the federal definition because it contains positional isomers of cocaine.

See 8th Circuit opinion in *United States v. Olivera* (CA8 Feb. 11, 2021) 987 F.3d 794, 2021 U.S. App. LEXIS 3848. Appellant Bush states certiorari is necessary to restore uniformity between the 8th Circuit and the 7th Circuit, whereas the 8th + 7th Circuits said in *Oliver v. Bush* that 720 ILCS 570/401 was not a predicate felony drug offense under the Federal Applicable Penal Statute 21 USC § 841(b)(1)(C).

2. Whether Petitioner Bush's 924(c) offense elements violates *Bailey*, 516 US (1995) because the Gov never proved the "use" + "carry" prong that Petitioner Bush violated.

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

1. United States v. Bailey 516 US (1995)
2. United States v. Ruth (CA7 June 3, 2020) 966 F.3d 642, 2020 U.S. App. LEXIS 22476 No. 20-1034.
3. United States v. Oliver (CA8 Feb. 11, 2021) 987 F.3d 794, 2021 U.S. App. LEXIS 3848.
4. United States v. Myers (CA8 Dec. 29, 2022) 56 F.4th 595, 2022 U.S. App. LEXIS 35847 No. 21-3443.

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
1. United States v. Roth (CA7 June 3, 2020) 966 F.3d 642 2020 U.S. App. LEXIS 22476 No. 20-1034	
2. United States v. Oliver (CA8 Feb. 4, 2021), 987 F.3d 794, 2021 U.S. App. LEXIS 3848	
3. United States v. Bailey 516 US (1995)	
4. United States v. Myers (CA8 Dec. 29, 2020) 56 F.4th 595	

STATUTES AND RULES

720 ILCS 570/40
21 USC { 841(b)(1)(c)
18 USC { 924(c)(1)(A)(i)
USSG 4.81.1

OTHER

(6)

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 A to the petition and is

reported at 8th Cir. Oct. 6, 2023; 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 _____; 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 _____; 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.

(7)

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

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: 11-22-2023, and a copy of the order denying rehearing appears at Appendix B.

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

Fifth Amendment Due Process U.S. Const.
Amend V. and Sixth Amendment

720 ILCS 570/401

21 USC {841(b)(1)(C)

USSG 4B1.1

28 USC 1254(a)

(9)

STATEMENT OF THE CASE

The 8th Circuit Court of Appeals and the 8th Circuit En Banc Court has entered a decision in conflict with the decision of the 4th Circuit on the same important matter and certiorari is necessary to resolve the circuit split as to whether Petitioner Timothy Paul Bush's prior convictions under 720 ILCS 570/401 possession of cocaine qualifies as a predicate offense for career offender enhancement.

Petitioner Bush argues it does not cause its definition of a Controlled Substance offense is broader than the Federal definition, because it encompasses and criminalizes "positional isomers" of cocaine, whereas the Federal definition only criminalizes OPTICAL and GEOMETRIC isomers of cocaine. See United States v. Nathaniel Ruth (CA7 June 3, 2020) 966 F.3d 642; 2020 U.S.App. LEXIS 22476 No. 20-1034.

See United States v. Oliver (CA8 Feb. 4, 2021) 987 F.3d 794; 2021 U.S.App. LEXIS 3848.

See United States v. Alpers (CA8 Dec. 29, 2022) 56 F.4th 595; 2022 U.S.App. LEXIS 35847 No. 21-3443.

The 8th Circuit affirmed my Illinois prior as controlled substance offenses to keep me as a Career Offender.

REASONS FOR GRANTING THE PETITION

To resolve the Circuit Split between the 8th and 7th Circuits. In the 7th Circuit, my prior conviction under 720 ILCS 570/401 does not qualify as a predicate.

In the Opinion by the 8th Circuit dated [redacted] they say my prior conviction under 720 ILCS does qualify as a predicate. However, when in *Oliver* (CA8 Feb. 11, 2021) 987 F.3d 794, the 8th Circuit said 720 ILCS 570/401 is broader than the federal definition and does not qualify as a controlled substance offense.

This is my reason I feel my petition should be granted per Supreme Court Rule 10.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Timothy Bush

Date: 12-29-23