

No. 23-1448
23-6729

IN THE
SUPREME COURT OF THE UNITED STATES

Timothy Paul Bush - PETITIONER

vs.

United States of America - RESPONDENTS

REHEARING ON PETITION FOR WRIT OF CERTIORARI
SCT RULE 44

Timothy Paul Bush
Fed Reg. No.: 90781-509
FCC Forrest City-MEDIUM
P.O. Box 3000
Forrest City, AR 72336

Writ of Certiorari Denied
March 18th, 2024

Rehearing Request
March 26th, 2024

Corrected Rehearing Request
May 13, 2024

GROUND ONE: The Supreme Court placed Petitioner Timothy Paul Bush on their docket February 13, 2024. It was filed December 3, 2023. It was denied March 18, 2024, No. 23-6729.

The Eighth Circuit Court of Appeals, ~~by an~~ En Banc Panel, entered an affirmative decision against Petitioner Bush that conflicts with United States v. Oliver, 987 F.3d 794; 2021 U.S. App. LEXIS 3848. In Oliver, 720 ILCS 570/401 was decided to conflict with the Federal definition of a controlled substance.

See Ruth, 966 F.3d 642; 2020 U.S. App. LEXIS 22476 Seventh Circuit. The 7th Circuit vacated and held - Appellant's sentence was vacated because the district court committed plain error in sentencing ~~Appellant~~ with a statutory enhancement because his 2006 Illinois conviction under 720 ILCS 570/401 was not a predicate felony drug offense under 21 U.S.C. 841(b)(1)(c).

The 8th Circuit vacated this same Illinois predicate in Oliver, 2021 U.S. App. LEXIS 3848, 987 F. 3d 794.

The 8th Cir affirmed this Illinois predicate in U.S. v. Timothy Paul Bush, 2023 U.S. App. LEXIS 26571 and No. 23-1448.

In Ruth, 966 F.3d 642; 2020 U.S. App. LEXIS 22476 No. 20-1034 July 20, 2020, they vacated due to his 2006 Illinois conviction under 720 ILCS 570/401(c)(2) not being a predicate felony drug offense under the applicable federal penalty statute, 21 U.S.C.S. § 841(b)(1)(c). Petitioner Bush sustained this prior conviction in Chicago, Illinois on July 2006.

Certiorari is necessary to resolve uniformity between the 8th Circuit's and 7th Circuit's, whereas in Oliver, (CA8 Feb. 11, 2021) 987 F.3d 794, the predicate 720 ILCS 570/401 was broader than the federal definition because it criminalizes and contains positional isomers

of cocaine, whereas, the federal definition only criminalizes 1.) optical and 2.) geometric isomers of cocaine. See 720 ILCS 570/401. Rehearing on Petition For Writ of Certiorari is warranted to preserve Petitioner Bush's Due Process of Law, his substantive and substantial rights and his 6th Amendment Right to a Fast, Fair, and Speedy Trial.

GROUND TWO: Petitioner asserts in this Petition for Rehearing that the Supreme Court did not rule that the Eighth Circuit violated Bailey, 516 U.S. 137 (1995) when the Government in his case did not show a required showing of active employment of the firearm to facilitate a drug-trafficking offense.

Petitioner was inside his home. The guns and drugs were outside locked in his car.

In Bailey, 516 U.S. 137 (1995), this court reversed and remanded and held that (1) a conviction for use of a firearm for purposes § 924(c)(1) requires evidence sufficient to show an active employment of the firearm by the accused, a use that makes the firearm an operative factor in relation to the predicate offense; (2) the § 924(c)(1) convictions in question were not supported by sufficient evidence that the firearms were actively employed in any way.

The trial evidence does not show Petitioner actively employed a firearm(s), in connection with a drug trafficking crime, to stand continually convicted and sentenced under § 924(c)(1).

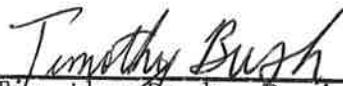
Neither the 8th Circuit Court of Appeals, nor the 8th Circuit En Banc Panel considered liability under the "carry" prong of 18 U.S.C. § 924(c)(1).

Petitioner's offense consisted of the gun's and drug's, being located in his parked car outside locked, in his driveway to his

home. This is not a showing of active employment the Supreme Court considers as in Bailey, 516 U.S. 137 (1995). See Bousley, 523 U.S. 614 (1998) Reversed and Remanded and Held:- the accused will be entitled to a hearing on misinformation claim, if, on remand, the accused makes the necessary showing of actual innocence to relieve his procedural default in failing to contest his § 924(c)(1) guilty plea in his prior direct appeal, as (1) if the record disclosed that at the time of the plea, neither the accused, nor his counsel, nor the District court correctly understood the essential elements of the crime with which he was charged, then the plea was invalid under the Federal Constitution; (2) the accused was not precluded from relying on Bailey v. United States in support of his claim. In light of Bailey, 516 U.S. 137 (1995), Petitioner asserts his claim that the Government never proved or showed the required element of how (Bush) actively employed a violation of § 924(c)(1) when the evidence shows a different fact, discrediting a basis for a § 924(c)(1) violation in his offense.

Petitioner's conduct he was sentenced and indicted for must be reversed, remanded, and vacated.

I declare under the penalty of perjury that the foregoing is true and accurate to the best of my knowledge. Signed this 14 day of May, 2024.



Timothy Bush, Petitioner, Pro Se
Fed. Reg. No.: 90781-509
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P.O. Box 3000
Forrest City, AR 72336

CERTIFICATE OF
PARTY UNREPRESENTED BY COUNSEL

I, Timothy Bush, a party unrepresented by counsel (pro se),
certify that the petition enclosed is restricted to the grounds
specified in Supreme Court Rule 44.2 and is presented in good faith
and not for delay.

Signed under penalty of perjury on this 14 day of
MAY, 2024.

Timothy Bush
Timothy P. Bush Reg No:90781-509
FCC FORREST CITY-MEDIUM
P.O. BOX 3000
FORREST CITY, AR 72336

CERTIFICATE OF SERVICE

I, Timothy Bush, Pro Se, certify pursuant to 28 U.S.C. § 1746,
that on MAY 14, 2024, I mailed a copy of
this Rehearing Petition For Writ of Certiorari to the following below
using the correct U.S. Postage:

1. Clerk of Court
Supreme Court of the United States
Washington, D.C. 20543-0001
2. Timothy Paul Bush Fed # 90781-509
FCI Forrest City (Med)
P.O. Box 3000
Forrest City, AR 72336

Timothy Bush
Timothy P. Bush Reg No.: 90781-509
FCC Forrest City-MEDIUM
P.O. Box 3000
Forrest City, AR 72336

May 13, 2024

Dear Clerk - Supreme Court:

Will you send me a filed-stamped copy of this corrected
Rehearing Motion once you file it please?

Sincerely,

MAY 14 Timothy Bush

Timothy Paul Bush, Petitioner, Pro Se
Fed Reg. No.: 90781-509
FCC Forrest City-MEDIUM
P.O. Box 3000
Forrest City, AR 72336

See U.S. v. Friend, 101 F.3d 557; 1996 U.S. App. LEXIS 30899 No. 94-22263 November 29, 1996. Court reversed conviction for using and carrying a firearm equipped without silencer during and in relation to a drug trafficking conspiracy, holding that there was insufficient "use" to justify a conviction. (8th Cir. Nov. 29, 1996).

See U.S. v. Cooke, 110 F.3d 1288; 1997 U.S. App. LEXIS 6645 No. 96-1852 April 9, 1997. Reversed. A conviction for using and carrying a firearm during and in relation to a drug trafficking crime required proof that the defendant either actively used or transported the weapon. Mere possession did not precipitate liability. (7th Cir. Oct. 29, 1996).

See U.S. v. Bailey, 116 SCT 501, 133 LED 2D 472, 516 U.S. 137 (1995) - conviction for use of a firearm for purposes of § 924(c)(1) requires evidence sufficient to show an active employment of the firearm by the accused, a use that makes the firearm an operative factor in relation to the predicate offense.