No. 23-6823

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

TROY R. ALEXANDER- PETITIONER

vs.

UNITED STATES OF AMERICA-RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

Mr. Troy R. Alexander #30781-057

FCI-McKean/ P.O. Box 8000

Bradford, PA. 16701

QUESTION(S) PRESENTED

QUESTON NUMBER ONE:

Whether the lower court abused their discretion by denying Mr. Alexander a C.O.A. as it is debatable amongst of jurists of reason as to whether his Guilty Plea was entered "unknowingly and unintelligently" and **VOID** in light of the U.S. Supreme Court's Ruling in Rehaif v. United States, 139 S. Ct. 2191 (2019), in which added an additional element in which must be proven to establish guilt for a violation of Section 922 (g) (1), thus, was his Fifth Amendment Due Process Clause Rights violated ?

QUESTION NUMBER TWO:

Whether the lower court abused their discretion by denying Mr. Alexander a C.O.A. as it is debatable amongst of jurists of reason as to whether his Superseding Indictment is fatally defective as it omits an essential element of the offense and required statutory language of 18 U.S.C. 922 (g) (1), thus, in light of the U.S. Supreme Court's Ruling in Rahaif v. United States, 139 S. Ct. 2191 (2019), was his Fifth Amendment Grand Clause Rights and Sixth Amendment Rights violated ?

QUESTION NUMBER THREE:

Whether the Fourth Circuit Court of Appeals failure to provide Mr. Alexander with a Written Opinion articulating a legal basis for the

denial of a Certificate of Appealability in which to provide this Court with a sufficient basis for review does this violate his Procedural due process of law; and U.S. Supreme Court precedents ?

LIST OF PARTIES

[x] 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:

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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

[x] 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 _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] 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

JURISDICTION

[x] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 1, 2023.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 08/1/2023

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) in Application No. ___ A_____.

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

[ ] For cases from **state courts:**

The date in 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

PAGE NUMBER

STATEMENT OF THE CASE

On February 25, 2019, Petitioner Alexander filed his 2255 Motion to Vacate. After full briefing the district court denied Mr. Alexander's 2255 Motion to Vacate on December 1, 2021. Thereafter, Petitioner Alexander filed a Motion to Alter or Amend a Judgment in which was denied on December 30, 2021, thus, a timely Notice of Appeal was filed and a COA appeal commenced in the Fourth Circuit Court of Appeals. In the beginning of April of 2022, Petitioner Alexander filed his Pro Se Application to Grant Certificate of Appealability. On June 1, 2023, the Fourth Circuit Court of Appeals denied Troy R. Alexander's COA Application, however, the Fourth Circuit did not provide any Written Opinion as to why his COA were in fact denied. A Panel Rehearing or Rehearing En Banc was denied on August 1, 2023. The Fourth Circuit Court of Appeals without issuing legal basis as to reasons for such denial, thus, rendering it difficult for adequate higher court review by the U.S. Supreme Court in the case at bar.

Petitioner Alexander, asserts that he now petitions this Honorable U.S. Supreme Court to GRANT his Pro Se Petition for a Writ of Certiorari, thus, issuing a Certificate of Appealability as to Questions One, Two, and Three or as this Supreme Court deems warranted in the case herein.

REASONS FOR GRANTING THE PETITION

Petitioner Alexander, acknowledges that a review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted by this court only for compelling reasons, see Supreme Court Rule 10.

In the instant case, Petitioner Alexander, respectfully request that this Court **GRANT** his pro se Petition for a Writ of Certiorari as to Questions Number One, Two, and Three as relevant to question # 1, Troy R. Alexander argues that his guilty plea was entered "unknowingly and unintelligently" and is VOID in light of the U.S. Supreme Court's Ruling in Rehaif v. United States, 139 S. Ct. 2191 (2019), in which added an additional element to establish guilt for a violation of 18 U.S.C. 922 (g) (1), in which violates his Fifth Amendment Due Process Clause Rights. Regarding question # 2, his Superseding Indictment is fatally defective as it omits an essential element of the offense and required statutory language of Section 922 (g) (1), thus, conflicts with Rehaif v. United States, 139 S. Ct. 2191 (2019), and his Fifth and Sixth Amendment Rights. Regarding question # 3, the Fourth Circuit do not provide a Written Opinion for a legal basis for the Denial of COA Application to provide this court with a sufficient basis for review as there is a split in the federal circuits on this issue. Consistent with federal statute pursuant to 28 U.S.C. 2253 (c) (2), and U.S. Supreme Court precedents in **Slack,** thus, Troy R.

Alexander is entitled to issuance of Certificate of Appealability as to Questions 1, 2, and 3, in the matter herein.

QUESTION NUMBER ONE:

Whether the lower court abused their discretion by denying Mr. Alexander a C.O.A. as it is debatable amongst of jurists of reason as to whether his Guilty Plea was entered "unknowingly and unintelligently" and **VOID** in light of the U.S. Supreme Court's Ruling in Rehaif v. United States, 139 S. Ct. 2191 (2019), in which added an additional element in which must be proven to establish guilt for a violation of Section 922 (g) (1), thus, was his Fifth Amendment Due Process Clause Rights violated ?

Discussion

Petitioner Alexander, asserts that the lower court abused their discretion in failing to issue a Certificate of Appealability as the U.S. Supreme Court held in **Rehaif,** the Supreme Court "conclude[d] that in a prosecution under 18 U.S.C. 922 (g) and 924 (a) (2), the Government must prove **both** that the defendant **knew** he possessed a firearm and that he **knew** he belonged to the relevant category of persons barred from possessing a firearm." **Rehaif,** 139 S. Ct. at 2200, in which applies "retroactively" on collateral attack, thus, controls the outcome of Question Number One, herein. See United States v. Waters, 64 F.4th 199, 201 (4th Cir. 2023) (The Fourth Circuit held that **Rehaif**

applies retroactively on collateral attack as it announced a new substantive rule that "narrow[s] the scope of a criminal statute by interpreting its terms," it applies retroactively. Schriro v. Summerlin, 542 U.S. 348, 351 (2004)).

The Superseding Indictment omitted this "essential element" as required by **Rehaif,** thus, it did not include the prior felony conviction(s) to establish that he knew he belonged to the relevant category of persons barred from possessing a firearm, see Appendix D (A copy of Superseding Indictment in which was filed on July 27, 2015), and the Rule 11 Plea Colloquy confirms that Mr. Alexander was never apprised of the "essential elements" of 18 U.S.C. 922 (g) (1), see Appendix E (Change of Plea Transcripts on September 22, 2015, before the Honorable James A. Beaty, Jr. at page 1; and pages 13-14), as required by the Federal Rules of Criminal Procedure- Rule 11 (b) (1) (g), in which renders his guilty plea "unknowingly and unintelligently" entered in violation of his due process of law rights in which rendered his Guilty Plea **VOID,** see Boykin v. Alabama, 395 U.S. 238, 243 & f. n 5 (1969), and United States v. Hogg, 723 F.3d 730, 752 (6th Cir. 2013) (emphasis added).

Petitioner Alexander, asserts that the U.S. Supreme Court's Ruling in **Rehaif,** 139 S. Ct. 2191 (2019), in which applies retroactively on collateral attack as it is a new substantive rule of law, see Welch

v. United States, 136 S. Ct. 1257, 1264-65 (2016), and Schriro v. Summerlin, 542 U.S. 348, 351 (2004) (A substantive decision from the Supreme Court that narrows the scope of a criminal statute through interpretation of its term generally applies retroactively to cases on collateral review). Several federal courts have held that: "The U.S. Supreme Court Ruling in Rehaif v. United States, 139 S. Ct. 2191 (2019), applies retroactively on collateral attack," see Conley v. United States, No. 20-3887, 2022 U.S. App. LEXIS 3909 (6th Cir., Feb. 11, 2022) (The Sixth Circuit held that: "The Court's holding in **Rehaif** interpreted a criminal statute to require proof of additional elements to convict a defendant, id. 139 S. Ct. at 2200. We have held, therefore, that **Rehaif** announced a new substantive rule that applies retroactively to cases on collateral review); **In re Watkins,** 2021 U.S. App. LEXIS 27760, at * 11-20 (11th Cir., Sept. 15, 2021) (The Eleventh Circuit held that: "First, the rules announced in **Borden** and **Rehaif** are retroactively applicable to cases on collateral review because they are new rules of substantive law. The Supreme Court has declared that "new substantive rules generally apply retroactively.") (emphasis added).

Petitioner Alexander, states that there is a reasonable probability that absent the Rule 11 (b) (1) (g) violation, thus, he swears and declare under the penalties of perjury he would not have plead guilty,

however, insisted on proceeding to Jury Trial in the case herein. See United States v. Dominguez-Benitez, 542 U.S. 74, 84-85 (2004), therefore, consistent with Fourth Circuit precedents Troy R. Alexander should be permitted to withdraw his Guilty Plea and to plead anew in accordance with United States v. Lockhart, 947 F.3d 187 (4th Cir. 2020) (en banc).

Petitioner Alexander, asserts that he has established a substantial showing of a denial of his Fifth Amendment Due Process Clause Rights in compliance with 28 U.S.C. 2253 (c) (2), thus, this Honorable Fourth Circuit should **GRANT** a Certificate of Appealability in the case at bar. See **Slack,** 529 U.S. at 483-94 (2000).

QUESTION NUMBER TWO:

Whether the lower court abused their discretion by denying Mr. Alexander a C.O.A. as it is debatable amongst of jurists of reason as to whether his Superseding Indictment is fatally defective as it omits an essential element of the offense and required statutory language of 18 U.S.C. 922 (g) (1), thus, in light of the U.S. Supreme Court's Ruling in Rahaif v. United States, 139 S. Ct. 2191 (2019), was his Fifth Amendment Grand Clause Rights and Sixth Amendment Rights violated ?

Discussion

Petitioner Alexander, contends that the lower court abused their discretion in failing to issue a Certificate of Appealability as to whether his Superseding Indictment as to Counts One and Seven are fatally defective and fails to state an offense by the omission of the statutory language of **"unlawfully,"** see Appendix F (A copy of 18 U.S.C. 922 (g) (1) federal statute), thus, Section 922-Unlawful acts

(g) It shall be unlawful for any person-

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

The U.S. Supreme Court has held that the Indictment **must track the statutory language,** see Hamling v. United States, 418 U.S. 87,

117-118 (1974) ("It is generally that an indictment set forth the offense in the words of the statute itself."); and United States v. Harvey, 484 F.3d 453, 456 (7th Cir. 2007) (indictment charging firearms possession sufficient because tracked statutory language and provided sufficient notice to defendant) (emphasis added).

Petitioner Alexander, argues that Counts 1 and 7, of his Superseding Indictment are fatally defective and fail to state an offense against the United States, thus, are subject dismissal in the case herein. See United States v. Morrison, 536 F.2d 286, 289 (9th Cir. 1976), and United States v. Carll, 105 U.S. 611, 613 (1881) (such indictment fails to charge defendant with any crime). The Fifth Amendment thus requires that a defendant be convicted only on charges considered and found by a grand jury. See United States v. Hooker, 841 F.2d 1225, 1230 (4th Cir. 1988). Mr. Alexander's conviction requires reversal as to Counts One and Seven because his indictment fails to ensure that he was prosecuted **ONLY** "on the basis of the facts presented to the grand jury...." United States v. Rosi, 27 F.3d 409, 414 (9th Cir. 1994).

Specifically, the "failure to include the [statutory language]..... renders [an] indictment constitutionally defective." United States v. Kurka, 818 F.2d 1427, 1431 (9th Cir. 1987). It is not amendable to harmless error review. See United States v. Spruill, 118 F.3d 221,

227 (4th Cir. 1997).

The lower court abused their discretion by failing to issue an Certificate of Appealability as to Question Number Two, thus, this Honorable U.S. Supreme Court should **GRANT** a Certificate of Appealability as it is adequate to deserve encouragement to proceed further, see **Slack,** 120 S. Ct. at 1603-04 (2000).

Part II:

As to the U.S. Supreme Court's Ruling in **Rehaif,** 139 S. Ct. 2191 (2019), in which applies retroactively on collateral attack as it is a new substantive rule of law, see Welch v. United States, 136 S. Ct. 1257, 1264-65 (2016), and Schriro v. Summerlin, 542 U.S. 348, 351 (2004) (A substantive decision from the Supreme Court that narrows the scope of a criminal statute through interpretation of its terms generally applies retroactively to cases on collateral review). The Court's holding in **Rehaif,** 139 S. Ct. at 2200, interpreted a criminal statute to require proof of one more element to convict a defendant than courts previously required. Thus, it is arguable that **Rehaif** announced a new substantive rule that applies retroactively to cases on collateral review. Mr. Alexander, argues that this Honorable U.S. Supreme Court should **GRANT** a Certificate of Appealability as his Superseding Indictment as to Counts One and Seven is **defective,** Petitioner Alexander relies on the Supreme Court decision in Rehaif

v. United States, 139 S. Ct. 2191, 2194, 204 L. Ed. 2d 594 (2019), which held that, for convictions under Section 922 (g), the government "must show that the defendant knew he possessed a firearm and also that he knew he had the relevant status when he possessed it." While Mr. Alexander maintains that his Superseding Indictment did not include these elements, see Appendix D, thus, the lower court denied relief in this regard, however, the Fourth Circuit abused their discretion by doing so and consistent with Supreme Court precedents a COA should issue, see Conley v. United States, No. 20-3887, 2022 U.S. LEXIS 3909 (6th Cir., Feb. 11, 2022) (The Court's holding in **Rehaif** interpreted a criminal statute to require proof of additional elements to convict a defendant. id. 139 S. Ct. 2200. We have held, therefore, that **Rehaif** announced a new substantive rule that applies retroactively to cases on collateral review. The Sixth Circuit VACATED and REMANDED for a prompt Evidentiary Hearing as to whether Conley's Indictment was fatally defective to entitle him to relief.); and the Fourth Circuit has held **Rehaif,** 139 S. Ct. 2191 (2019), applies retroactive on collateral attack, see United States v. Waters, 64 F.4th 199, 201 (4th Cir. 2023), thus, consistent with the U.S. Supreme Court's Ruling in **Slack** a C.O.A. must issue that a court could resolve the issue [in different manner], see **Barefoot,** 463 U.S. at 893 n. 4 (1983); and **Slack,** 529 U.S. 473, 484 (2000) (emphasis added).

QUESTION NUMBER THREE:

Whether the Fourth Circuit Court of Appeals failure to provide Mr. Alexander with a Written Opinion articulating a legal basis for the denial of a Certificate of Appealability in which to provide this Court with a sufficient basis for review does this violate his Procedural due process of law; and U.S. Supreme Court precedents ?

Discussion

The U.S. Supreme Court held in 1998, in Hohn v. United States, 524 U.S. 236, 241 (1998) (Supreme Court has jurisdiction to review denial of application for certificate of appealability by circuit judge or appellate panel because application qualifies as "case" under 28 U.S.C. 1254 (1)). Petitioner Alexander, states that there is a split in the federal Circuit Court of Appeals in whom prepare Written Denial Opinions for COA Applications, thus, the First, Second, Third, Fifth, Sixth, Ninth, Tenth, Eleventh, and D.C. Circuit provide such Written Opinions articulating a legal basis for the denial of COA Application, however, the minority of the federal Circuit Court of Appeals that being the Fourth, Seventh, and Eighth Circuit Court of Appeals do not provide such Written Opinions articulating a legal basis for the denial of COA Application.

Petitioner Alexander, states that his constitutional right pursuant to the Fifth Amendment affords him the right to Procedural Due

Process of law in which means as follows: "The basic requirement of due process is the right to notice and an opportunity to be heard "at a meaningful time and in a meaningful manner." Hamdi v. Rumsfeld, 542 U.S. 507, 533 (2004).

Thus, Petitioner Alexander, argues that consistent with his procedural due process of law rights and as the result of this Honorable Court having jurisdiction to review denial of application for certificate of appealability from the Fourth Circuit's Denial of COA, therefore, this Honorable Supreme Court should **GRANT** a Certificate of Appealability as to Question Number Three, and VACATE and REMAND so that the Fourth Circuit Court of Appeals can provide further explanation of its Denial of COA Application in order to "provide this court with sufficient basis for review." See Golan v. Saada, 596 U.S. ___, 2022 U.S. LEXIS 2939 (2022); Rita v. United States, 551 U.S. 338, 356 (2007); and Concepcion v. United States, 142 S. Ct. 2389, 2404 (2022).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

x Troy K. Alexander

Date: 10/27/2023