NO. _____

IN THE
Supreme Court of the United States

DRICKO DASHON HUSKEY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A conspiracy to violate The Racketeer Influenced and Corrupt Organization (RICO) Act, 18 U.S.C. § 1962(d), is punishable by a maximum of 20 years, but it is punishable by life if the violation is based on a racketeering activity for which the maximum penalty is life, e.g. murder. 18 U.S.C. § 1963(a).

Can a district court sentence Petitioner to life imprisonment when Petitioner was only convicted of a RICO conspiracy and where the jury made a special finding that Petitioner did not agree that murder would be part of the criminal enterprise?

LIST OF PARTIES

All the parties to the proceedings are listed in the style of the case.

RELATED PROCEEDINGS

United States v. Dricko Huskey, No. 3:17cr134-34 (W.D.N.C. 2020)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Dricko Dashon Huskey respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The amended opinion of the court of appeals is reported at 90 F.4th 651 (4th Cir. 2024) and is reprinted in Appendix A to the Petition ("Pet. App.") A1. The Fourth Circuit judgment can be found a Pet. App. A41. The judgment of the district court is available at Pet. App. A41. *United States v. Huskey,* No. 3:17cr134-34, (W.D.N.C. ECF No. 2999).

JURISDICTION

A three-judge panel of the Fourth Circuit Court of Appeals issued its amended decision on January 9, 2024 . Pet. App. A1-40. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

No person shall be [. . .]deprived of life, liberty, or property, without due process of law . . . . U.S. Const. Amend. 5.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, ... U.S. Const. Amend. 6.

As used in [Chapter 96 - Racketeer Influenced and Corrupt Organizations] racketeering activity means (A) any act or threat involving murder . . . which is chargeable under State law and punishable by imprisonment for more than one year . . . . 18 U.S.C. § 1961(1)

It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section. 18 U.S.C. § 1962(d).

Whoever violates any provision of section 1962 of this chapter shall be fined under this title or imprisoned not more than 20 years (or for life if the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment).18 U.S.C. § 1963(a)

INTRODUCTION

A federal jury found Petitioner guilty of conspiracy to violate The Racketeer Influenced and Corrupt Organizations (RICO) statute, 18 U.S.C. § 1962(d). In Special Sentencing Factor 6 the jury found that Petitioner killed Donnell Murray. Significantly, however, the jury also specifically found in Special Sentencing Factor 1 that Petitioner had not agreed to participate in racketeering conduct that included acts of murder. The district court ignored this second specific finding and instead of limiting the maximum punishment to 20 years, the court sentenced Petitioner to life.

At sentencing the district court summarily held that Petitioner's conviction of conspiracy to violate RICO along with a Special Sentencing Factor that he killed Donnell Murray was all that was required to impose a life sentence, in complete disregard of the second jury finding that the killing was not part of the RICO conspiracy. In a brief disposition of this issue, the Court of Appeals affirmed the sentence, misstating the facts to justify an illegal sentence and in disregard of controlling law.

The facts surrounding the shooting show that the killing had nothing to do with gang activity. It was a personal dispute brought on by the victim's confrontational and aggressive behavior. The jury heard facts that convinced it, beyond a reasonable doubt, that the shooting of Murray was personal and was not related to

gang activity. The jury found that Petitioner had not agreed that murder would be part of the pattern of racketeering activity of the RICO Conspiracy. Accordingly, there was no statutory basis for the district court to impose a life sentence. It was obvious error at sentencing for the district court to overrule defense counsel's objection to any sentence greater than 20 years.

The published Fourth Circuit panel decision sets a dangerous precedent.

STATEMENT OF THE CASE

A. Legal Framework.

The statutory maximum sentence for a RICO offense is normally 20 years under 18 U.S.C. § 1963(a). The maximum penalty increases to life imprisonment if the RICO violation is based on a racketeering activity for which the maximum penalty includes life imprisonment. *Id*.

The district court's unlawful life sentence, in contravention of the jury finding, deprived Petitioner of Due Process of Law under the Fifth Amendment.

The Sixth Amendment requires that any fact that increases the penalty for a crime beyond the otherwise prescribed statutory maximum must be submitted to a jury

and proved beyond a reasonable doubt. *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

B. Proceedings Below.

The original indictment was returned May 16, 2017, and charged 83 defendants in Count One with conspiracy to violate the RICO Act in violation of 18 U.S.C. § 1962(d). The conspiracy involved the United Blood Nation (UBN) and was alleged to have begun by 2009 and continued to the filing of the indictment eight years later. In addition to the conspiracy in Count One there were an additional 68 counts alleging specific crimes by various defendants. One of the overt acts alleged in the original indictment was that on August 17, 2016, Petitioner Dricko Huskey shot and killed Donnell Murray.

The third superseding indictment was returned shortly before trial and it charged Petitioner, Renaire Lewis, Alandus Smith, and Jonathan Wray (along with three others who did not proceed to trial and who are not relevant to this petition). Count One of the 23-Count third superseding indictment alleged a RICO conspiracy to conduct and participate in the affairs of the UBN enterprise through a pattern of racketeering activity consisting of, *inter alia*, witness tampering, firearms possession, obstruction of justice, identify theft, wire fraud, bank fraud, drug trafficking, robbery, and murder. It was alleged in Count One that Petitioner and the other three defendants agreed that at least one coconspirator would commit at

least two acts of racketeering activity in violation of the RICO Act, 18 U.S.C. § 1962(d). *United States v. Huskey*, 90 F.4th 651, 661 (4th Cir. 2024).

The third superseding indictment contained a Notice of Special Sentencing Factors, of which Factors 1 & 6 are relevant to Petitioner, as follow:

> 1. Agreement to Acts of Murder - N.C. General Statute § 14-7
>
> As part of their agreement to conduct and participate in the conduct of the affairs of the UBN enterprise through a pattern of racketeering activity, the defendants (34) DRICKO DASHON HUSKEY, a/k/a "Drizzy, [. . . .] and others known and unknown to the Grand Jury, agreed that multiple acts of murder would be committed, in violation of N.C. Gen. Stat. § 14-7, to wit, (1) the willful, deliberate, premeditated, and unlawful killing of a human being, and (2) a killing committed in the perpetration or attempted perpetration of robbery or a felony committed or attempted with the use of a deadly weapon.
>
> 6. Murder of Donnell Murray - N.C. Gen.Statute § 14-17
>
> On or about August 17, 2016, in Cleveland County, North Carolina, (34) DRICKO DASHON HUSKEY a/k/a "Drizzy" killed Donnell Murray willfully with malice and after premeditation, in violation of N.C. Gen. Stat. §§ 14-17 and 14-5.2.

The jury trial began October 7, 2019, and the Government presented testimony and documentary evidence for two weeks. The Government introduced testimony of cooperating witnesses, of communications to other UBN members through social media like Facebook or texts and emails between purported gang members and photos of alleged gang members. Evidence was presented to established that

Petitioner was a member of UBN in Shelby, North Carolina, and that he sold drugs as part of his activities associated with UBN membership.

The Government called witnesses to prove that Petitioner shot and killed Donnell Murray on August 17, 2016. With regard to this allegation Margie Gordon testified that she is Petitioner's grandmother. One of her daughters, Shontay, is Petitioner's aunt; Shontay and Petitioner lived with Gordon at the time of the shooting. Shontay was dating Mickey Parks and their relationship was sometimes volatile. Parks tried to break into Gordon's house and in doing so tore the screen off from Shontay's bedroom window. Ms. Gordon told Parks not to come back because she was concerned for Shontay's safety. Gordon asked Petitioner to tell Parks not to return. Gordon testified that Donnell Murray and Parks were friends and Murray was always "taking up" for (i.e., defending) Parks. Joint Appendix (JA) 1867-92.[1]

Wykesia Ross testified that she lives with her boyfriend, Carson Curtis. Mickey Parks and Donnell Murray also lived in Curtis' house. On the day of the shooting Ross and Curtis were talking with Parks and Murray who were upset, apparently about something that happened earlier that day. Ross saw about five "boys" walking toward them. She headed for her house to get her phone. She looked back and saw Murray confronting Petitioner; Murray lifted up his shirt as if to show he had no

[1] Reference will be made to the Joint Appendix (JA) filed in the Court of Appeals docket for this case. *See United States v. Huskey, et. al.*, No. 20-4565 (4th Cir. 2024).

weapon or he wanted to fight. Petitioner shot Murray. As she went into her house she heard three more shots. JA1893-1922.

Carson Curtis testified that on the day of the shooting he lived with his girlfriend Wykesia Ross, Donnell Murray and Mickey Parks. This particular day he was talking with Murray and Parks who were angry because something had happened concerning Parks. Three men came around the corner and Murray confronted them. Murray pulled up his shirt and challenged them to fight. Petitioner shot and killed Murray. JA 1922-1950.

Petitioner and codefendants rested without presenting evidence. The court denied all Rule 29 motions.

The court conducted an extensive charge conference covering over 100 pages of transcript. JA3135-3275. The Government and Defense counsel frequently voiced their position on instructions. The court and the parties agreed that in Petitioner's case, both special sentencing factors 1 and 6 would be required to be answered "YES" in order to raise the statutory maximum from 20 years to life imprisonment.

Significantly, during the charge conference Defense Counsel Parsonage requested that the court list all possible predicate crimes on the verdict sheet so that it would

be clear what the jury found were the two types of predicate crimes that were committed. JA 3262. Following is the exchange between Attorney Parsonage and the court.

> MS. PARSONAGE: We are requesting . . . [t]hat the predicate racketeering acts be listed on the verdict sheet. [T]his has been done in a number of different cases both here in North Carolina and in the Fourth Circuit.
>
> THE COURT: Who's done it in North Carolina?
>
> MS. PARSONAGE: Excuse me?
>
> THE COURT: What judge has done it in North Carolina?
>
> MS. PARSONAGE: This was done in the Cornell Latin Kings case in the Middle District of North Carolina by Judge Beatty.[2] It's been done in the Third Circuit. The jury --
>
> THE COURT: Well, I -- I got to cut to the chase on this. A pattern of racketeering activity is an element, and we've instructed the elements in these instructions. I do not break it out as to the jury doesn't find each element. They find guilty or not guilty. So long as it's in the instructions, the elements are properly in the instructions, that's it. That's how I do it. So you've preserved that for appeal. But, no, the question goes to the jury. It's guilty or not guilty, not did someone commit this predicate act and did someone commit this predicate act and did someone commit this predicate act.
> MS. PARSONAGE: Well, I would just say for the record that I think, you know, in light of the importance of the instruction on page 25 about being unanimous as to which two predicate acts, I think that it would be simply cautious and not onerous on anybody to submit those to the jury.
>
> THE COURT: All right. So noted and overruled. JA 3262-3263.

[2] *United States v. Cornell*, 780 F.3d 616, 623-625 (4th Cir. 2015).

Because the trial judge declined to have the jury disclose what types of predicate crimes the jury found the Government proved beyond a reasonable doubt, it is unknown if murder was one of those types of crime.

Relevant to Petitioner's charge of RICO conspiracy, which was the only count charging Petitioner, the court correctly instructed the jury in the following relevant excerpts. Neither the Petitioner nor the Government objected in the district court or on appeal to the following final jury instructions. There was no objection because these instructions are correct:

> Count One of the third superseding indictment charges each defendant with conspiring to violate the . . . RICO Act, in violation of Title 18, United States Code, Section 1962(d). JA3293.
>
> In order to convict a defendant on the RICO conspiracy . . . the Government must prove the following three essential elements beyond a reasonable doubt:
>
> One. An enterprise affecting interstate commerce existed;
>
> Two. The defendant knowingly and intentionally agreed with another member to conduct or participate in the conduct of the affairs of the enterprise; and
>
> Three. The defendants . . . knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two acts of racketeering of the types of racketeering activity set forth in the indictment. JA 3295-3296.
>
> The Government is not required to prove that a defendant agree that any particular conspirator . . . participated in all of the activities of the enterprise, or had full knowledge of all the activities of the enterprise, or knew about the participation of all the other members of the enterprise. JA 3305.
>
> The Government must prove beyond a reasonable doubt that the defendant agreed that a conspirator would engage in a pattern of

> racketeering. A pattern of racketeering activity requires at least two acts of racketeering, [. . . .] To establish a pattern of racketeering activity as alleged in Count One . . . the Government must prove three elements beyond a reasonable doubt:
>
> One. The defendant agreed that a conspirator, which could include the defendant himself, did or would intentionally commit, or cause, or aid and abet the commission of, two or more of the racketeering acts of the type or types alleged in the third superseding indictment. Your verdict must be unanimous as to the type or types of racketeering activity you find that the defendant agreed was or would be committed, caused, or aided and abetted. [emphasis added].
>
> Two. The racketeering acts must have a "nexus" to the enterprise and the racketeering activity must be "related." To be "related," the racketeering acts were or would have the same or similar purposes, results, participants, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics and not be merely isolated events. Two racketeering acts of the type or types of racketeering activity described in third superseding indictment may or would be "related" even though they are dissimilar or not directly related to each other, provided that the racketeering acts are or would be related to the same enterprise. [. . . .]
>
> Three. The racketeering acts must have extended over a substantial period of time, or they posed or would pose a threat of continued criminal activity. JA 3307-3308.
>
> Moreover, in order to convict a defendant of the RICO conspiracy offense, the jury must be unanimous as to which type or types of predicate racketeering activity the defendant agreed would be committed; for example, at least two acts involving robbery, two acts involving murder, two drug trafficking acts, two acts of wire fraud, or any combination thereof (for example, one act involving robbery and one act of drug trafficking). JA 3309.

The jury deliberated over a two-day period before reaching verdicts. Petitioner's verdict sheet can be viewed at JA 3570; codefendant's verdict sheets are at JA 3572-3577. The jury found each Defendant guilty of Count One, i.e., that each conspired

to violate 18 U.S.C. § 1962(d). The jury also found Lewis and Smith guilty of their individual counts.

As to the special sentencing factors listed on the respective verdict forms, the jury answered "YES" to each sentencing factor for Petitioner's codefendants. However, the jury answered NO to Petitioner's special sentencing factor 1. What the jury did not find is that Petitioner "agreed to conduct and participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity that included acts involving murder." JA 3570. This was the only verdict or jury decision on sentencing facts that did not favor the Government.

Following is undersigned counsel's summary interpretation of what the jury was asked regarding Special Sentencing Factors 1 and 6:

> Special Sentencing Factor 6. We, the jury, having found [Petitioner] guilty of conspiracy to violate the RICO Act (i.e., Count One) further find beyond a reasonable doubt that [Petitioner] murdered or aided and abetted in the August 17, 2016 murder of Donnell Murray, as alleged in Special Sentencing Factor 6.
>
> YES__X____ NO ___
>
> Special Sentencing Factor 1. We, the jury, having found [Petitioner] guilty of conspiracy to violate the RICO Act further find beyond a reasonable doubt that [Petitioner] agreed to participate in the affairs of the conspiracy through a pattern of racketeering activity that includes murder.
>
> YES_____ NO___X____

The probation office filed a presentence report (PSR) in Petitioner's case that set the maximum guideline sentence as life imprisonment. JA 4044-4087. The PSR arrived at this calculation by application of United States Sentencing Guideline (USSG) §2E1.1, which guideline directs a cross reference to the offense level applicable to the underlying offense, which in this case was determined to be first degree murder under USSG §2A1.1. The effect of this cross reference produced a base offense level of 43. The PSR also recommended a three-level specific offense characteristic for Role in the Offense under USSG §3B1.1(b), resulting in a total offense level of 46, which at Petitioner's Criminal History Category of III, resulted in a guideline of life.

Petitioner through counsel filed a sentencing memorandum objecting to any sentence in excess of the statutory maximum of 20 years. JA 4083. Counsel contended the jury had not found that Petitioner had agreed that murder was part of the RICO conspiracy by its answering NO to special sentence factor 1. Petitioner's counsel contended that a sentence in excess of 20 years violated the holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

The transcript of Petitioner's sentencing is at JA 3590. Defense counsel argued the court could not impose a sentence in excess of 20 years because the only interpretation of the jury's Special Sentencing Factor 1 is that the murder of

Donnell Murray was not part of the RICO conspiracy. Defendant had not agreed that murder was part of the conspiracy.

The district court denied Petitioner's objection to a sentence in excess of the 20 year maximum. JA 3609-3610. The court also denied Petitioner's other objections to the PSR and adopted the PSR's information and guideline calculations. JA 3619-3620. The court sentenced Petitioner to life in prison.

2. The Fourth Circuit affirms. *United States v. Huskey*, 90 F.4th 651 (4th Cir. 2024).

In a published opinion the Fourth Circuit panel correctly recognized that the statutory maximum sentence for a RICO offense is generally 20 years under 18 U.S.C. § 1963(a). And that the 20 year maximum increases to life imprisonment if the RICO violation is based on a racketeering activity for which the maximum penalty includes life imprisonment, e.g. murder as defined by under North Carolina law. *United States v. Huskey*, 90 F.4th 651, 674 (4th Cir. 2024). The panel recognized that the Sixth Amendment requires that any fact that increases the penalty for a crime beyond the otherwise prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt. *Id.*, *citing Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

In finding no reversible error the appellate court held as follows:

> The record is clear that everyone involved understood the purpose of the special sentencing factors was to comply with *Apprendi* and assess the defendants' eligibility for an enhanced sentence. But neither Huskey nor Wray objected to the indictment or the verdict form on the ground that Sentencing Factors 2 and 6 were insufficiently tied to the RICO conspiracy charge. Neither Huskey nor Wray made this argument when the parties and the court discussed the language of possible jury instructions explaining the verdict form. And when the district court suggested the language of the verdict form itself was sufficient without a jury instruction, neither Huskey nor Wray objected. To the extent that Huskey and Wray now argue the special verdict form should have been clearer or did not adequately describe what the jury needed to find, that claim is forfeited, and we conclude any error was not clear or obvious.
> *United States v. Huskey*, 90 F.4th 651, 674-675.

As discussed below, the panel's treatment of the facts and of the law was wrong. In the above paragraph, the appellate panel attributes arguments to the defense that Petitioner never made. Then the panel states that Petitioner waived or forfeited the arguments his counsel never made.

REASONS FOR GRANTING THE PETITION

A. The District Court Erred By Disregarding The Jury's Finding In Special Sentencing Factor 1 And By Imposing a Life Sentence.

During the charge conference, the court, the Government and the Defense meticulously went through the final instructions. All the parties were satisfied with

the verdict sheets and Petitioner did not object to the instructions or to the verdict sheets because there was no basis to object. The instructions and the verdict sheet correctly set out the law and both Special Sentencing Factors 1 and 6 were required to be answered YES in order to sentence Petitioner above the statutory maximum of 20 years.

It begs the question: if Special Sentencing Factor 1 was not necessary then why was it included. The answer is that the Government and the court knew that both Special Sentencing Factors 1 and 6 were required to justify a life sentence. The amazing part is that the court at sentencing imposed a clearly unlawful sentence and the appellate panel went along with it.

Petitioner's counsel did not object to the instructions or the verdict sheet - both were correct. The appellate panel decision justifies the district court's decision by stating defense counsel did not object but that is not the error. The district court's instructions and verdict forms were correct and everyone agreed they were correct. The error occurred when the district court ignored the jury finding.

It was absolutely necessary for the jury to find both Sentencing Factors 1 and 6 in order to comply with *Apprendi*. The jury found that the killing of Murray had

nothing to do with the RICO conspiracy. Petitioner never agreed that murder would be part of the conspiracy.

The district court gave the following correct instruction to the jury:

> In order to convict a defendant on the RICO conspiracy . . . the Government must prove the following three essential elements beyond a reasonable doubt:
>
> One. An enterprise affecting interstate commerce existed;
>
> Two. The defendant knowingly and intentionally agreed with another member to conduct or participate in the conduct of the affairs of the enterprise; and
>
> Three. The defendants . . . knowingly and willfully agreed that he or some other member of the conspiracy would commit at least two acts of racketeering of the types of racketeering activity set forth in the indictment. JA 3295-3296.

The district court refused to adopt the request of Defense Counsel Parsonage to require the jury to disclose the predicate racketeering acts that were agreed to on the verdict sheet, as was done in other cases, such as in *United States v. Cornell*, 780 F.3d 616, 623-625 (4th Cir. 2015). Accordingly, for all anyone knows, the jury found that the two types of racketeering acts that the jury found were drug trafficking, witness intimidation, or robbery, none of which crimes would justify a life sentence. These types of RICO predicate crimes would be capped at 20 years.

Prior to sentencing Petitioner's attorney filed a concise sentencing memorandum objecting to any sentence in excess of the statutory maximum of 20 years. JA 4083. Counsel contended the jury had not found that Petitioner had agreed that murder

was part of the RICO conspiracy by its answering NO to special sentence factor 1. Petitioner's counsel contended that a sentence in excess of 20 years violated the holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

The transcript of the sentencing hearing is at JA 3672. From the outset it was clear that the district court viewed the jury's convicting Petitioner of the RICO conspiracy in Count One, coupled with the finding in Sentencing Factor 6, ended the matter. Petitioner's counsel attempted to explain why any sentence above the 20 year maximum was barred by the jury's finding on Special Sentence Factor 1 and by the holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Because the trial judge declined to have the jury disclose what types of predicate crimes the jury found the Government proved, there is nothing to show that the jury found Petitioner had agreed that murder was one of those types of predicate crimes.

Counsel contended the jury had not found that Petitioner had agreed that murder was part of the RICO conspiracy by its answering NO to special sentence factor 1. Petitioner's counsel contended that a sentence in excess of 20 years violated the holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). The court misstated counsel's argument and then declared why Petitioner's argument was not dispositive.

The district court then sentenced Defendant to life instead of capping the sentence at 20 years.

B. The Court of Appeals Opinion Regarding Petitioner's Life Sentence Is Wrong.

Following are relevant excerpts from the Fourth Circuit panel decision, justifying the district court's decision:

> But neither Huskey nor Wray objected to the indictment or the verdict form on the ground that Sentencing Factors 2 and 6 were insufficiently tied to the RICO conspiracy charge. Neither Huskey nor Wray made this argument when the parties and the court discussed the language of possible jury instructions explaining the verdict form. And when the district court suggested the language of the verdict form itself was sufficient without a jury instruction, neither Huskey nor Wray objected. To the extent that Huskey and Wray now argue the special verdict form should have been clearer or did not adequately describe what the jury needed to find, that claim is forfeited. *United States v. Huskey*, 90 F.4th at 674.

Neither in the district court nor in the Court of Appeals did Petitioner's attorneys argue that the indictment or the verdict form were defective, i.e., that Factors 2 and 6 were insufficiently tied to the RICO conspiracy charge. This had never been an argument asserted by Petitioner's attorneys.

Similarly, the court of appeals clearly misstated the issue: "Neither Huskey nor Wray made this argument when the parties and the court discussed the language of possible jury instructions explaining the verdict form." Again, the Panel misstated

Petitioner's position in the charge conference. Petitioner, the district court, and the Government all agreed that the instructions correctly set out the law. And when the Jury came back with the finding that Petitioner had not agreed that murder would be part of his agreement concerning the criminal enterprise, the district court held that defense counsel had not objected, when there was nothing to object to. There was no objection to the verdict form because that verdict form was correct.

C. The Fourth Circuit Published Opinion Sets A Dangerous Precedent.

The upshot of the panel's published opinion substantially lowers the bar in a RICO prosecution by holding that a predicate act need not be related to the purpose of the conspiracy.

The Second Circuit case of *United States v. Minicone*, 960 F.2d 1099 (2d Cir.), *cert. den.*, *Minicone v. U.S.,* 503 U.S. 950 (1992) is instructive. In this RICO prosecution one of the defendants, Zogby, conceded there was sufficient evidence to support the jury's finding that he committed a murder, but he argued the murder was unrelated to any enterprise and did not constitute a pattern of racketeering.

To prove a RICO violation under § 1962(c), which provision applies to the instant case, the Government must prove that an enterprise engaged in a pattern of

racketeering activity. An enterprise is proved by evidence of an ongoing organization and by evidence that the members work as a continuing unit. *Minicone*, 960 F.2d at 1106, *citing United States v. Turkette*, 452 U.S. 576, 583 (1981). This pattern requirement prevents the application of RICO to an isolated and non-repetitive criminal act. *Id.*, *citing United States v. Indelicato*, 865 F.2d 1370, 1383 (2d Cir.1989) (en banc). Two predicate acts are sufficient to prove a pattern of racketeering, but only so long as the Government proves that "the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." *Minicone*, 960 F.2d at 1106, *citing H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 239 (1989). The racketeering acts must be related to each other and they must be related to the enterprise.

The application of the holding in *Manicone* to Petitioner's case is clear: the district court and the appellate panel erred in holding that the jury's finding that Petitioner had not agreed that murder would be part of the conspiracy could simply be ignored. As the district court in the instant case instructed, racketeering acts must have a "nexus" to the enterprise and the racketeering activity must be related. The jury's finding in Special Sentencing Factor 1 establishes that the murder of Murray was not related to the conspiracy. Nothing should be so final as a jury verdict, but in this case the jury's finding on Special Sentencing Factor 1 has been totally disregarded.

The Fourth Circuit panel decision eviscerates the requirement that a predicate act justifying a life sentence must be related to the conspiracy.

CONCLUSION

The petition for grant of certiorari should be granted.

Respectfully submitted, March 29, 2024.March 28, 2024

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