

NO:

IN THE

SUPREME COURT OF THE UNITED STATES

_____ TERM

EDWARD TREISBACK

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent,

On Petition for Writ of Certiorari from the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

1. Did the District Court shift the burden of proof from the United States to the defendant in violation of 18 U.S.C. 3583(c)(3) {see In Re Winship, 397 U.S. 358 (1970)} in a supervised release revocation hearing, and was defendant's right to due process violated pursuant to the 5th Amendment to the United States Constitution pursuant to Rule 32.1(b)(2)(C), Federal Rules of Criminal Procedure {see Morrisey v. Brewer, 408 U.S. 471 (1972) and Gagnon v Scarpelli, 411 U.S. 788 (1973)}.

INTERESTED PARTIES and RELATED CASES

There are no parties to the proceeding other than those named in the caption of the case. The instant case arose from U.S. v. Treisback, U.S. District Court, Northern District of Georgia, Case: 2:14-CR-00027 and it was appealed to the 11th Circuit, Case: 23-12218.

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PETITION FOR WRIT OF CERTIORARI

Hugo Treisback respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINION BELOW

The Eleventh Circuit's unpublished opinion affirming Mr. Treisback's direct appeal is located at *United States v. Edward Treisback*, No. 23-12218, (11th Cir. March 21, 2024), and is included in the Appendix at Appendix A.

The District Court's judgement and commitment is located at *United States v. Edward Treisback*, No. 2:14-CR-00027-RWS-JCF-1 , (N.D.G.A), and is included in the Appendix at Appendix B.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of the Rules of the Supreme Court of the United States. The decision of the court of appeals affirming the district court's sentence of Mr. Treisback was entered on March 21, 2024. This petition is timely filed pursuant to Supreme Court Rule 13.1.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

5th Amendment U.S. Constitution

18 U.S.C. 3583(e)(3)

22 U.S.C. 1254

STATEMENT OF THE CASE

A jury found Mr. Treisback guilty of of Count I (18 U.S.C. 2252(a)(2) and 2252 (b)(1)) and Count II (18 U.S.C. 2252(a)(4)(B) and 2252(b)(2)) on December 15, 2015 (Doc: 75). Mr. Treisback was sentenced on March 22, 2016 “to be imprisoned for 100 months on Count One and 70 months on Count Two, to served concurrently (Doc: 82 at p. 2). The District Court ordered Mr. Treisback to be placed on supervised release for 10 years upon release from imprisonment (Doc: 82 at p. 3). After Mr. Treisback was released from prison, the United States Probation Office filed a Violation Report and Petition for Warrant for Offender Under Supervision (Doc: 113), an Amended Violation Report and Petition for Warrant for Offender Under Supervision (Doc: 116), and a Second Amended Violation Report and Petition for Warrant for Offender Under Supervision (Doc: 118). The Second Amended Violation Report and Petition for Warrant for Offender Under Supervision sought to revoke Mr. Treisback’s supervised release for the following reasons: (1) The defendant is not to commit another federal, state, or local crime; (2) Pay a special assessment in the amount of \$200.00; (3) Pay restitution in the amount of \$7,500.00; (4) The defendant shall report in person to the probation office in the

district to which the defendant was released within 72 hours of release from the custody of the Bureau of Prisons; (5) The defendant shall not leave the judicial district without the permission of the Court or Probation Officer; (6) The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he resides, work, is a student, or was convicted of a qualifying offense. (Doc: 118 at p. 3). The Court found that Mr. Treisback violated conditions two and three listed above, but that they were not a basis to incarcerate Mr. Treisback (Doc: 138, transcript p. 36). The Court found Mr. Treisback violated condition four listed above (Doc: 138 at p. 36 & p. 37). The Record is not clear if the District Court found he violated condition five listed above, but the District Court did mention that it was not a serious offense given Mr. Treisback was homeless (Doc: 138, at p. 38). After a hearing, the District Court revoked Mr. Treisback's supervised release for 12 months and 1 day with 10 years supervised release to follow (Doc: 122).

Mr. Treisback filed a notice of appeal on July 3, 2023 (Doc: 128) and the Eleventh Circuit Court of Appeals on March 21, 2024 issued its decision affirming the District Court (see Exhibit "A" attached). This petition for writ of certiorari is timely filed.

REASONS FOR GRANTING THE WRIT

There was not any evidence presented proving that Mr. Treisback did not follow the District Court's sentencing order about reporting after being released

from prison. Therefore, the District Court and the Appellate Court both violated Mr. Treisback's Constitutional Rights. The District Court violated the defendant's right to due process pursuant to the 5th Amendment to the United States Constitution by not following the procedure outlined in Rule 32.(b)(2)(C) of the Federal Rules of Criminal Procedure and by shifting the burden of proof from the United States to the defendant in violation of 18 U.S.C. 3583(e)(3) {see *In Re Winship*, 397 U.S. 358 (1970). That case supports the proposition that proof beyond a reasonable doubt is a constitutional requirement in criminal cases pursuant to the 5th Amendment, U.S. Constitution, and in Morrisey v. Brewer, 408 U.S. 471 (1972) and Gagnon v. Scarpelli, 411 U.S. 788 (1973) the Supreme Court held that a defendant must be accorded a minimum of due process before his parole or probation can be revoked. Fed. R. Crim. P. 32.1 added in 1979 incorporates the Court's requirements.

The District Court's and the Appellate Court's orders/opinions depriving the defendant of his constitutional rights are decisions that have departed so far from the accepted and usual course of proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of the Supreme Court's supervisory power. {see Rule 12(a)} The Appellate Court's ruling sanctioning the District Court's shifting of the burden of proof and its violation of the defendant's right to due process.

CONCLUSION

The Supreme Court of the United States should GRANT the Petition for Writ of Certiorari.

Respectfully submitted June 18, 2024,

/s/Michael H. Saul
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CERTIFICATE OF SERVICE

This is to certify that I have this day served Elizabeth Prelogar, Solicitor General listed below a copy of the attached Petition by depositing a copy of same in the U.S. Mail in a properly addressed envelope, with adequate postage affixed thereon to wit:

Elizabeth Prelogar
Solicitor General of the United States,
Department of Justice,
950 Pennsylvania Ave., N.W., Room 5614,
Washington, D. C. 20530-0001

June 18, 2024

/s/Michael H. Saul

Michael H. Saul

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CERTIFICATE OF SERVICE

This is to certify that I have this day served Ryan Buchanan, United States Attorney for the Northern District of Georgia, listed below a copy of the attached Petition by depositing a copy of same in the U.S. Mail in a properly addressed envelope, with adequate postage affixed thereon to wit:

Ryan Buchanan, United States Attorney
Paul Jones, Assistant United States Attorney
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June 18, 2024

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