

Supreme Court, U.S.
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DOCKET NUMBER 23A232

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

United States of America : (E.D. Pa. No. 2-17-cr-00645-007)

v. :

James Williams, :

Appellant :

Application for Stay Pending Review on Petition for a Writ of Certiorari From
Judgement rendered in the United States Court of Appeals for the Third Circuit

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Exhibit B: Unamended Order issued by the Third Circuit Court of Appeals **Granting** a Motion by Attorney Brett G. Sweitzer on behalf of Appellant James Williams and a Motion by Appellant James Williams for Fourteen day extension of time to file Petition for Rehearing, ect.(filed: May 17, 2023)

Exhibit C: Unamended Order issued by the Third Circuit Court of Appeals denying defendant James Williams' pro se Petition for Rehearing En Banc(filed: June 21, 2023)

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IN THE SUPREME COURT OF THE UNITED STATES

United States of America : (E.d. Pa. No. 2-17-cr-00645-007)
v. :
James Williams, :
Petitioner :

Application for Stay Pending Review on Petition for a Writ of Certiorari From Judgement rendered in the United States Court of Appeals for the Third Circuit

APPLICATION FOR STAY

Petitioner prays that the mandate of the Third Circuit Court of Appeals herein, entered on/ or about August 2, 2023, be stayed pending the final determination of this cause by the Supreme Court of the United States.

By order dated July 25, 2023 (Exhibit D) the court below denied petitioners Motion by Appellant to Recall the Mandate pending Filing and Decision of Petition for Writ of Certiorari to The United States Supreme Court, thus permitting this application to be made, pursuant to S.Ct Rule 23 and 28 U.S.C. §2101(f).

Nature of case

1. This is a proceeding in which the offense conduct is centered around a controlled buy

with a confidential informant that took place on July 18, 2017 and the petitioner after being charged initially in the state of Pennsylvania's criminal courts was ultimately indicted in the Eastern District of Pennsylvania in December 2017 with one count of distribution of heroin, 21 U.S.C. §841(a)(1), (b)(1)(C) and 18 U.S.C §2(count one); one count of possession with intent to distribute heroin, 21 U.S.C. § 841(a)(1), (b)(1)(C) and 18 U.S.C. §2(count two); one count of possession with intent to distribute cocaine base, 21 U.S.C. §§841(a)(1), (b)(1)(C) and 18 U.S.C. §2 (count three); one count of possession of a firearm in furtherance of a drug trafficking crime, 18 U.S.C. §§ 924(c)(1) and (2) (count four); and one count of possession of a firearm by a felon, 18 U.S.C. §922(g)(1) (count five). Following a jury trial the petitioner was found guilty of all counts, excluding count four, of which the jury acquitted petitioner. On May 12, 2021, petitioner was sentenced to 162 months imprisonment on each of the four counts of conviction, to be followed by 6 years supervised release, and a \$400 special assessment. Prior to trial petitioner expressed concerns with trial counsel in written and oral form directly to the District Court, requested to "move pro se from this moment forward" after requests for new counsel and to move pro se for purposes of arguing pre-trial motions were denied.

Subsequent to being convicted petitioner again requested to "move pro se" in which this second request was ultimately granted and Petitioner proceeded to file post conviction motions and sentencing objections, all of which as relevant to this application were denied. Petitioner then filed a timely appeal in which he was represented by the Federal Public Attorneys Office, a "motion to proceed pro se for purposes of filing a Petition for Rehearing En Banc"- which the Third Circuit Court of Appeals granted after Attorney Brett G. Sweitzer, for the Federal Public Defenders office, filed a "Motion on behalf of Petitioner to Withdraw Representation and to Recall the Mandate and Allow Petitioner to Proceed Pro Se for Filing of Petition for Rehearing",

a timely "Petition for Rehearing En Banc", and an "Motion to Recall the Third Circuits Court of Appeals Mandate", all of which were denied in full except the Petitioners third issue on Direct Appeal(a sentencing error on count five of Petitioners Superseding Indictment which in relevant part is why Petitioner now seeks a Stay by the United States Supreme Court). see: Exhibit(s) A, B, C, and D.

Petitioner is a thirty- six year old man who has a prior conviction as a juvenile, and including the current criminal proceedings has two prior convictions in Pennsylvania as an adult. Petitioner is currently incarcerated in a Pennslvania State correctiona Facility for committing a direct violation of State Parole by being convicted in Federal Court for the above mentioned charges.

2. **Jurisdiction.** 28 U.S.C. § 1257(a) confers Supreme Court jurisdiction to review this case on petition for certiorari. 28 U.S.C. § 2101(f) confers jurisdiction to issue the requested stay.

3. **The ruling below and the reasons for certiorari.**

The Third Circuit Court of Appeals, in a non-precedential opinion affirmed the Petitioners conviction, denying his sixth amendment right to self-representation arguments, and Career Criminal objections, while also reversing defendants conviction on count five-(§922(g)- and remanding for resentencing, due to the District Court sentencing the petitioner to more time for such count than then statutorily permissible at the time the petitioner was sentenced in Federal Court.

The Courts non-precedential decision held that, "[1] The district court did not err in denying defendant the right to proceed pro se before his trial because it was not clear to the district court during the hearing in question, that defendant wanted to fire his appointed defense counsel and assumed all aspects of his defense. The defendant's pretrial statements about self-representation were far from clear and unambiguous; [2]-The district court properly applied the career offender enhancement given defendant's convictions under 35 Pa. Stat. Ann. § 780-113(a) (30) qualified as controlled substance offenses under the U.S. Sentencing Guidelines Manual § 4B1.1(a). see: ExhibitA

In their April 6, 2023, opinion the Court stated(in relevant part): "In sum, Williams asked to "proceed pro se for a minute,"{2023 U.S. App. LEXIS 5} and then, a few minutes later, "to move pro se from this moment forward." In many other contexts, these statements would be enough to effect a waiver of the right to counsel. But it is not clear to us now, and it certainly was not clear to the District Court during the hearing in question, that Williams wanted to fire his appointed defense counsel and assume all aspects of his defense. Instead, we agree with the District Court that the record suggests that Williams wanted to "glide in and out of self-representation." App. 279. There is no constitutional right to a hybrid arrangement where a defendant proceeds pro se at some points and is represented by counsel at others. McKaskle v. Wiggins, 465 U.S. 168, 183, 104 S. Ct. 944, 79 L. Ed. 2d 122 (1984).

Williams proceeded to trial without further objection to his representation by counsel. After trial, Williams wrote a letter to the District Court and asked "to proceed[] in a pro se capacity . . . representing [himself]" with standby counsel. App. 106. The District Court held a hearing on the

motion, conducted a Faretta colloquy, and allowed Williams to proceed pro se. In contrast to this unambiguous post-trial request, Williams' pretrial statements about self-representation were far from clear and unambiguous, and the {2023 U.S. App. LEXIS 6} Supreme Court requires trial judges to "indulge in every reasonable presumption against waiver." Brewer, 430 U.S. at 404. So we reject Williams' claim that the District Court erred in denying him the right to proceed pro se before his trial."

"The career offender provision of the Guidelines dramatically increases a defendant's sentencing range if he has previously been convicted of two "crimes of violence" or "controlled substance offenses." U.S.S.G. § 4B1.1(a). Before his most recent arrest, Williams was twice convicted of violating 35 Pa. Stat. Ann. § 780-113(a)(30), which prohibits manufacturing, delivering, or possessing with the intent to manufacture or deliver a controlled substance. The District Court correctly determined that these convictions were for controlled substance offenses as defined by the Guidelines and applied the enhancement." see: Exhibit A

The reasons for applying for certiorari will include the following:

(1) The decision conflicts with this courts ruling in Faretta v. California, 422 U.S 806, 95 S.ct 2525, 45 L. Ed. 2d 562(1975) and consistent Federal rulings that the Sixth Amendment to the Constitution of the United States guarantees to every criminal defendant the "right to proceed without counsel when he voluntarily and intelligently elects to do so". id. at 807. see also: Johnson v. Zerbst, 304 U.S 458, 464, 82 L.Ed 1461(1938)(Courts indulge every reasonable presumption against a waiver of fundemental constitutional rights, and do not presume acquiescence in their loss."); Von Moltke v. Gillies, 332 U.S 708, 68 S.Ct. 316, 92 L.Ed

309(1948)(requiring a trial court to be particularly vigilant when a defendant waives his right to counsel. And by cititng to Johnson v. Zerbst, reiterated that "this protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent and competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the court, and it would be fitting and appropriate for that determination to appear upon the record."); Illinois v. Allen, 397 U.S 337, 350-351, 90 S.Ct. 1057, 25 L. Ed. 2d 353(1970)("the right to defend is personal", and a defendant's choice in exercising that right "must be honored out of 'that respect for the individual which is the lifeblood of the law'"); McKaskle v. Wiggins, 465 U.S 168, 176-177, 104 S. Ct. 944, 79 L.Ed 2d 122(1984)("the right to appear pro se exists to affirm the dignity and autonomy of the accused"... "when a defendant appreciates the risks of forgoing counsel and chooses to do so voluntarily, the constitution protects his ability to present his own defense even when that harms his case", i.d. at 177, n.8, "the right is either respected or it is denied, its deprivation cannot be harmless." i.d. at 177, n.9);

Due process is plainly offended when a court denies a defendant his rights which are based on a fundamental legal principle. See: Faretta v. California(citations omitted). If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgement of conviction pronounced by a court without jurisdiction is void. See: Johnson v. Zerbst(citations omitted).

Career Offender Objections Context

As relevant to this application for a stay and Petitioners forthcoming Writ of Certiorari

said petitioners two prior convictions wer for Possession with intent to deliver under Pennsylvania's controlled substance act. 35 P.A §780-113(A)(30). Pennsylvania's drug statute prohibits, in relevant part: the manufacture, *deliver, or possession with intent to deliver*, a controlled substance. Thus, the text of §780-113(A)(30) and its definitional provisions provide that a conviction under the statute can rest on either the completed or attempted transfer of a controlled substance. (Pennslvania's definitional section- §780-102(a)- defines Deliver/Delivery as: the actual, constructive, or attempted transfer of a controlled substance from one person to another.) In Petitioners objections to his two prior Pennsylvania convictions being used as predicate offenses for sentencing purposes the Petitioner vehemently argued that it was impermissible for the District court to combine two seperate statutes in the Federal Controlled Substance Act(hereinafter CSA), i.e. §802(11) Distribute, and §802(8) delivery, before deciding if the Petitioners priors qualified as predicates for Career Offender enhancement purposes.

The tern "controlled substance offense" in the career offender provision of the Federal Sentencing Guidelines is defined as: an offense under federal or states law, punishable by imprisonment for a term exceeding one year, that *prohibits* the manufacture, import, export, *distribution*, or despending of a controlled substance...*or the possesion of a controlled substance....with intent to*...manufacture, import, export, *distribute* or dispense(alterations in original).

By combining two seperate definitional statutes-during the course of using the Categorical approach to define the elements of the Petitioners prior convictions-, the District Court, and Third Circuit court of Appeals decisions conflict with the following United States

Supreme Court decisions and/or Federal Statutes and sections in the Federal Sentencing Guidelines: Burgess v. United States, 553 U.S 124, 128 S.Ct. 1572(2008): ("as a rule, a definition which declares what a term 'means' excludes any meaning not stated"...and "when a statute includes an explicit definition, a court must follow that definition"); For criminal law purposes an offense that 'prohibits' specified conduct 'forbids' that conduct- nothing more; Connally v. General Constr. Co., 269 U.S 385, 391(1926)("criminal statutes 'prohibit' conduct by forbidding it"); Salinas v. United States, 547 U.S 188(2006)(which found that possession is not a prohibited offense under §4b1.2- and thereby, without allowing the court to impermissibly combine two separate terms in the CSA, would imply that attempts are not prohibited in the term 'controlled substance offense' either); James v. United States, 550 U.S 192, 197(2007): ("attempted burglary is not burglary"); United States v. Shepard, 544 U.S 25: (courts must "ignore the actual manner in which the defendant committed the prior offense"); Moncrieffe v. Holder, 569 U.S 184, 191: (courts "must presume the defendant engaged in no more than the minimum conduct criminalized by the statute"); Legal Services Corp. v. Valasquez, 531 U.S 533, 557(2001): ("Judicial decisions do not stand as binding precedent for points that were not raised nor argued, and hence not analyzed"); Will v. Mich. Dep't of State Police, 491 U.S 58, 63(1989) ("even if a court assumed in a prior case that a statutory term applied to a particular situation..the court is not bound by its prior sub silentio holdings when a subsequent case finally brings to the Court a textual issue as to whether the statutory term applies to the particular situation, where (1) the Court did not address such issue in any of the prior cases, and (2) in none of the prior cases was the resolution of such issue necessary to the decision.")

4. Reasons for requesting a stay.

By way of their denials of the Petitioners fundamental right to self-representation, the Third Circuit Court of Appeals lacked jurisdiction to decided the Petitioners Appeal and confirms his conviction and sentence in all aspects except as to count five of petitioners superceding indictment. Furthermore, the District Court lacked jurisdiction to sentence the defendant on May 12, 2021, and if the petitioners Application for a stay is denied, said Petitioner will again be sentenced by the District Court dispite the District lacking juridistion to do so. Moreover, if the Petitioner is transfered to another correctional facility(namely, Federal Detention Center-Philadelphia) for holding while he is waiting to be sentenced, he will also be at risk of missing his 90 day deadline to file a Writ of Certiorari in this Court due to the fact that while in transit he will not be in possession of any of his legal materials, exhibits, ect.

Even more serious will be petitioner's predicament -after being deprived of his right to self-representation, being sentenced outside of the applicable guidelines range he should have been sentenced under without the Career Offender designation -despite the District lacking the jurisdiction to do so, having his sentence and conviction being in substantial part affirmed by the Appellate Court, and being deprived of his right to file a Writ of Certiorari- which amounts to leaving the Defendant with no way of challenging his sentence and conviction without unduly increasing Petitioners burder of proof(i.e., through §2244 §2255) and decreasing his chances of succeeding in his filings(inwhich if he did succeed, would further prejudice him should he eventually be awarded a new trial(due to the passage of time, likely dimished ability to find favorable defense witness, loss of memory on the part of now existing witnesses and the sheer amount of time the Petitioner will have spent in prison in violation of his Due process rights).


*** See also Florida v. Nixon, 543 U.S 175(2004)(defendant has a right to make critical

decisions); see also: S.Ct. Rule 23 and 28 U.S.C. §2101(f).

Petitioner is willing moreover to file his petition within the 90 day time limit applicable to the above captioned matter if the stay is granted(i.e. by September 21, 2023).

WHEREFORE, petitioner prays that this application be granted.

Dated: August 29, 2023


James Williams, pro se