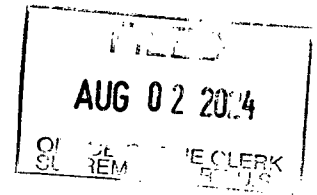


24-5375
No. _____

ORIGINAL



IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL ANTRANTRINO Lee PETITIONER
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

FOURTH CIRCUIT COURT OF APPEALS
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Antrantrino Lee
(Your Name) Scotland Cty. Det. ctr.

P.O. Box 607
(Address)

LAURINBURG, N.C. 28353
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- 1). Is the Fourth Circuit's decision/holding in U.S. v. Norman, 935 F.3d 232, 238-39 (4th Cir. 2019) retroactively applicable on Collateral review?
- 2). Does Misapplication of the pre-Booker/mandatory guidelines violate Due process concerns articulated by the Supreme Court (this Court) in Johnson v. U.S., 135 S.Ct. 2551 (2015)?

LIST OF PARTIES

☒ 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:

RELATED CASES

- U.S. v. Lee, 5:01-cr-00221-M-1, U.S. Dist. Court for the (E.D.N.C.). Judgment entered Mar. 20, 2002
- Lee v. Gomez, 5:19-cv-175 (N.D.Wa). (2241)
- U.S. v. Lee, 5:20-cv-00436-m, U.S. Dist. Court for the (E.D.N.C.). Judgment entered Dec. 19, 2023 (2255)
- U.S. v. Lee, No. 24-6097, Fourth Circuit Court of appeals. Judgment entered April 2, 2024 * Petition for rehearing and rehearing en banc denied on June 6, 2024.

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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

☒ 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,
☒ is unpublished.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,
☒ is unpublished.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

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was April 2, 2024.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: June 6, 2024, and a copy of the order denying rehearing appears at Appendix C.

☐ 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. § 1254(1).

☐ For cases from **state courts**:

The date on 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

- 1) 21 U.S.C. § 846: conspiracy was held by the Fourth Circuit in U.S. v. Norman, 935 F.3d 232 (4th Cir. 2019) not to be a controlled substance offense, in relation to the federal sentencing guidelines. Can not support an enhanced sentencing as a career offender.
- 2) 28 U.S.C. § 2255: Mr. Lee filed his first 2255 to seek to take advantage of the Fourth Circuit's decision in U.S. v. Norman. 2255 is a constitutional appeal of Mr. Lee's sentence being in excess of what was authorized by law. In violation of the laws of the United States
— Career Offender —
- 3) U.S.S.G. § 4B1.1 (1.2(b)): Sentencing guideline enhancement when a defendant's instant offense is either a crime of violence or a controlled substance offense. *Also the defendant must have (2) priors of either a crime of violence or a controlled substance offense.
- 4) Mandatory (Pre-Booker) guidelines: Before the Supreme Court's decision in U.S. v. Booker, 543 U.S. 220 (2005).
- 5) Fifth Amendment Due Process rights: "No person shall be deprived of life, liberty, or property, without due process of law." Govt violates this under vague laws, rules, or statute's. *Not of issue in this petition. As mentioned above.

STATEMENT OF THE CASE

On Nov. 13, 2001, Mr. Lee pleaded guilty to conspiracy to distribute and possess with the intent to distribute (5) kilograms or more of powder cocaine and (50) grams or more of cocaine base (crack), in violation of 21 U.S.C. § 846 (count 1), and carrying a firearm during and in relation to a drug trafficking crime, in violation of 18 U.S.C. § 924(c) (count 3). On March 20, 2002 Mr. Lee was sentenced to a total of 420 months of imprisonment and (5) years of supervised release (360 months for the relevant drug conspiracy count and (60) months consecutive for the firearm count).

Mr. Lee received (3) reductions in his sentence. The first 3582(c)(2) reduction was ordered on Sept. 10, 2009. The second 3582 reduction was ordered on May 27, 2014. The final reduction (FSA 2018) First Step Act was ordered on Sept. 23, 2020. *Relevant Mr. Lee never sought to file a direct appeal or collateral attack of his sentence!

In 2018, the Fourth Circuit had a ground breaking ruling. The Fourth Circuit decided two exceptional cases. U.S. v. McCollum, 885 F.3d 300, 303 (4th cir. 2018) and U.S. v. Whitley, 737 F. App'x 147, 149 (4th cir. 2018).

McCollum was published, but Whitley was unpublished. In Whitley the Fourth Circuit held "that 21 U.S.C. § 846 conspiracy convictions [Mr. Lee's relevant offense of conviction] cannot support an enhanced sentencing as a career offender, because they are not categorically controlled substance offenses within the meaning of the federal sentencing guidelines." This holding came as a result of the Fourth Circuit using the "categorical approach". At sentencing in 2002, Mr. Lee was identified as a career offender, which increased his sentence.

In 2019, the Fourth Circuit reaffirmed their decision in Whitley in a published case, U.S. v. Norman, 935 F.3d 232 (4th Cir. 2019). * Mr. Lee notes there is a circuit split. As the First, Third, Sixth, Tenth, and at least the Seventh Circuits agree with the Fourth Circuit Court of Appeals.

Within one year of the Norman decision, Mr. Lee sought collateral review, and filed his first 28 U.S.C. § 2255! case # 5:20-cv-00436-M USA v. Lee. To which Mr. Lee challenged that without the U.S.S.C. § 4B1.2(b) enhancement and a resentencing, Mr. Lee will have exceeded his entire sentence imposed. Relevant, Mr. Lee was sentenced while the guidelines were mandatory (pre-Booker). As the sentence

was imposed before this Court's decision in U.S. v. Booker, 543 U.S. 220 (2005). Which held the guidelines as mandatory were unconstitutional. So Mr. Lee has never been sentenced under a constitutional guidelines regime! ^{Mr. Lee no longer qualified as a career offender.}

Importantly, Mr. Lee also challenged in his first 2255, that the Fourth Circuit's decision in U.S. v. Norman was retroactive, as it applies to Mr. Lee.

As the holding in Norman was the product of an interpretation of a federal statute (21 U.S.C. § 846) and a comparison of the statute with a regulation (U.S.S.G. § 4B1.2(b)). Mr. Lee cited this court's decision(s) in Rivers v. Roadway Exp., Inc., 511 U.S. 298, 312-13 (1994). "A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction." Also two other relevant cases: Fiore v. White, 149 F.3d 221 (3rd Cir. 1998) - ruling in S.Ct. - and Bunkley v. Florida, 538 U.S. 835 (2003). That retroactivity should not be an issue.

The U.S. District Court, (New Judge. Mr. Lee's original sentencing judge retired), Never addressed Mr. Lee's issues / claims in his Dec. 19, 2023

decision denying Mr. Lee relief in his 2255 order. Actually, the court ruled on an issue(s) that Mr. Lee never presented. The judge denied Mr. Lee's claim stating "Petitioner maintains that his sentence reduction was error in light of his purported "career offender" designation." - - - - - "the court rejects petitioner's argument that the sentencing judge erroneously designated petitioner as a career offender when recalculating his sentence."

Mr. Lee immediately appealed the denial of his 2255 to the Fourth Circuit. The Fourth Circuit denied a certificate of appealability and dismissed the appeal. Without addressing Mr. Lee's argument(s) on retroactivity and Mr. Lee's sentence being unlawful. As with Mr. Lee's sentence being imposed when the guidelines were mandatory, the Court was without the authority / discretion to increase Mr. Lee's sentence. As Mr. Lee did not fall within any of the few exceptions to increase or depart from the mandatory sentence to be imposed. In short, Mr. Lee 2002 sentence was wrong due to the career offender / 4B1.1/1.2(b) enhancement.

On April 15, 2024 Mr. Lee filed a timely petition for rehearing and rehearing en banc (combined).

Requesting the Fourth Circuit to look at his case on the merits. On 6/6/24 the en banc was denied. In sum, Mr. Lee's arguments have never been addressed. As he notified the Fourth Circuit that Norman in light of existing circuit, Supreme Court, and nearly all other Court of Appeals was retroactive. By denying Mr. Lee, ~~that~~ ^{they} were in conflict with: the First, Second, Third, Eighth, Ninth, Eleventh, and D.C. circuit's. Not to mention its own ruling's. * Mr. Lee has not seen authority on the Fifth, Sixth, Seventh, or Tenth circuit's to verify what their circuit law is on retroactivity. Again, At his 2002 Sentencing, Mr. Lee was incorrectly identified as a Career Offender in light of Norman.

Mr. Lee also challenged that the misapplication of the mandatory (pre-Booker) guidelines violate's Fifth amendment due process concerns articulated by the Supreme Court in Johnson v. U.S., 135 S.Ct. 2551 (2015). Neither challenge Mr. Lee raised in the lower courts were addressed.

See Fourth Circuit cases that suggest Mr. Lee's claim is valid. Ward v. Dixie Nat. Life Ins. Co., 595 F.3d 164 (4th Cir. 2010), and U.S. v. Powell, 691 F.3d 554 (4th Cir. 2012). On the issue of retroactivity!

REASONS FOR GRANTING THE PETITION

The decision in the lower court and Fourth Circuit court of appeals is in conflict with the rulings in this court. See Rivers v. Roadway, Exp., Inc., 511 U.S. 298, 312-13 (1994); Fiore v. White, 149 F.3d 221 (3rd cir. 1998), and Bunkley v. Florida, 538 U.S. 835 (2003).

The decision by the Fourth circuit is in conflict with the First Circuit: in Butler v. U.S., case # 10-cv-216-PB, opinion # 2010 DNH 198 (DNH Nov. 23, 2010); Second circuit: Restrepo v. McElroy, 369 F.3d 627 (2nd cir. 2004); U.S. v. Balde, 943 F.3d 73 (2nd cir. 2019), and Lurtsema v. Comm'r. of correction, 299 Conn. 740, 12 A.3d 817 (Conn. 2011). Eighth Circuit: State v. McGinnis, 2022 ND 46 20210216, 20210217 (N.D. Mar. 03, 2022). Ninth Circuit: James v. State, 85363 COA (Nev. App. May. 10, 2023); Palomares - Gastelum N. Garland, 19-73180 (9th cir. Oct. 19, 2023); U.S. v. City of Tacoma, 332 F.3d 574, 580 (9th cir. 2003); Murphy v. DirectTV Inc., 724 F.3d 1218, 1225-26 (9th cir. 2013), and U.S. v. Frutos - Lopez, 627 F. Supp. 2d 1164 (C.D. Cal. 2008).

ELEVENTH Circuit: Hester v. State, 267 So 3d 1084 (Fla. App. 2019); Yu v. U.S. Att. Gen., 568 F.3d 1328 (11th cir. 2009); Edwards v. U.S. Att. Gen., 19-15077 (11th cir. Mar. 06, 2024), and U.S. v. Davis, 875 F.3d 592 (11th cir. 2017). D.C. Circuit: U.S. v. Jenkins, 50 F. 4th 1185 (D.C. Cir. 2022).

The conflicts as to retroactivity ~~were~~ never addressed by the Fourth Circuit Court of Appeals or the lower court (District). The authority listed herein stands for the proposition that Norman is retroactive ~~on~~ collateral review. As it applies to Mr. Lee.

Actually, on the retroactive issue (claim) Mr. Lee raises, this court should decide the issue if the decision in Norman is indeed retroactive. As the Norman case affects probably about at least 10,000 defendants in federal custody, who were sentenced when the guidelines were mandatory.

All of which were sentenced before this court's decision in Booker. Which ultimately led to these defendant's receiving an unconstitutional sentence. As Booker was never made retroactive. The disparity of those sentenced before Booker and those sentenced after should be an important factor

In the reason for granting this petition for certiorari. As many defendant's who were wrongfully enhanced under the mandatory guidelines, who are still serving 20 plus year sentences, may get an opportunity to receive a lesser sentence.

This case is of NATIONAL importance, as other ~~circuit's~~ circuit's have ruled in similar cases, as the Fourth circuit has. This case could shed light on how circuit's move in those similar cases going forward.

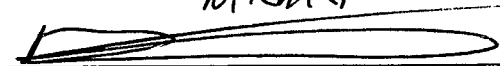
(To be clear, the way that the Fourth Circuit has ruled in Lee's case, is in a different way than law allows. Retroactivity, that Lee seeks, is but the normal in this Court and all other circuit's.

If Norman is declared retroactive, it could lead to the release of many federal defendant's. Possibly, many state defendant's as well. Mr. Lee, as it stands, will have served over his entire sentence, to include supervised release, upon any resentencing! As we know and see it today, the sentences imposed before Booker, enhanced under the career offender 4B1.1/1.2 ~~guidelines~~ guidelines were illegal. This can be a start to correction. What our great Constitution affords us.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Michael Lee


Date: August, 2 2024