

24-5388

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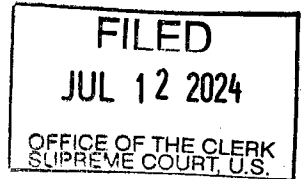
SUPREME COURT OF THE UNITED STATES

ORIGINAL

JOHN DOUGLAS, PETITIONER

vs.

UNITED STATES, RESPONDANT



On petition for writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit.

John Douglas # 16109-041

FCI-Pekin

P.O. Box 5000

Pekin, Il 61555

Pro-Se

QUESTIONS PRESENTED

- I. IF A PERSON IS HELD CRIMINALLY LIABLE FOR AN OFFENSE, COMMITTED BY ANOTHER, UNDER A "REASONABLE AND FORESEEABLE ACTS" ACCOMPLICE LIABILITY STATUTE, AND THE OFFENDER TOOK NO PART IN THE SECOND OFFENSE, WAS THE SECOND OFFENSE COMMITTED ON THE SAME OR SEPERATE OCCASSIONS AS THE PRINCIPLE OFFENSE FOR PURPOSES OF THE ARMED CAREER CRIMINAL ACT?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

Petitioner knows of no related cases.

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Appendix 2: Order of the United States district court.

Appendix 3: Order of the United States court of appeals.

Appendix 4: Order denying request for En banc review.

TABLE OF AUTHORITIES CITED

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Wooden v. U.S., 595 U.S. 360 (2022)

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STATUTES AND RULES

Minnesota statute 609.05 Subd.(1) and (2).

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18 U.S.C. 922(g)(1).

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18 U.S.C. 924(e).

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18 U.S.C. 3582.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that this court grant a writ of certiorari to review the judgement below.

OPINION BELOW

The opinion of the United States court of appeals, appeal # 24-1576, appears at Appendix 3 to the petition and is unpublished.

The opinion of the District court for the district of Minnesota appears at Appendix 2 to the petition.

JURISDICTION

A timely petition for rehearing was denied by the United States court of appeals on April 29, 2024, and a copy of the order denying rehearing is at Appendix 4.

CONSTITUTIONAL AND STATUTORY

PROVISIONS INVOLVED

Petitioner knows of no constitutional and statutory provisions involved, however, petitioner is Pro-Se and asks this court to liberally construe this, and all portions of his petition.

STATEMENT OF THE CASE

On February 10, 2012, petitioner was convicted of unlawful possession of a firearm contrary to 18 U.S.C. 922(g)(1). The district court found at sentencing that he qualified for an enhanced sentence as an armed career criminal under 18 U.S.C. 924 (e) and sentenced him to 240 months in prison on January 15, 2013.

Petitioners predicate offenses at the time of sentencing include:

1. Third degree burglary;
2. First degree burglary;
3. Aggravated robbery;
4. Aggravated robbery;
5. Second degree assault; and
6. Second degree assault.

Intervening law has negated the use of his prior burglary convictions from qualifying as ACCA predicate offenses. This leaves him with four qualifying offenses, three of which were committed on the same occasion. Because three of petitioners offenses were committed on the same occasion he would be left with only two predicate ACCA offenses and would no longer qualify for an enhanced sentence as an armed career criminal.

Petitioner filed a motion for a reduction of term of imprisonment pursuant to 18 U.S.C. 3582 citing the following reasons:

1. Mr. Douglas's physical condition constitutes an extraordinary and compelling circumstance weighing in favor of compassionate release;
2. Mr. Douglas is serving an unusually long sentence, in which he has served over 10 years, and intervening law would have resulted in a shorter sentence had the changes been in place at the time of sentencing; and
3. Mr. Douglas has been very productive in his rehabilitation efforts.

Petitioners second argument for compassionate release was based on his assertion that his two counts of aggravated robbery and one of his counts of second degree assault were committed on the same occassion because they all stem from one single act committed by petitioner on September 25, 1998 in Virginia, Mn. The two robbery convictions were the result of a robbery of a gas station by petitioner and two co-defendants. Petitioner stood in the doorway of the gas station while his two co-defendants robbed the cashier and a patron of the store. While fleeing the scene, one of petitioners co-defendants committed an assault by driving into oncomming traffic. Petitioner took no part in the assault but the state court Judge determined that he was guilty under Mn.'s reasonable and forseeable acts accomplice liability.

In essence, because petitioner stood in the doorway of the gas station, he was guilty of all three offenses. Even the assault for which he took no part.

Petitioners argument to the distric court for a reduced sentence, therefor relied on the courts finding that these three offense were committed on the same occassion. All three, as far as petitioners conduct goes, were committed at the same time, date, and location. (see Appendix 1 p. 3-7)

The district court denied the petition and ruled that the two simoultaneous robberies of the two people in the store and the assault committed by petitioners co-defendant, were all three committed on seperate occassions. (see Appendix 2)

The Eighth Circuit affirmed the order on March 21, 2024. (Appendix 3)

Rehearing was denied on April 29, 2024. (see Appendix 4)

REASONS FOR GRANTING THE PETITION

A. Convictions based on reasonable and foreseeable acts, committed by another, in furtherance of a principle offense, of which an offender played no role, should be considered to have been committed on the same occasion for purposes of the armed career criminal act because they deprive the offender an opportunity to halt their actions and decide whether or not to keep on pursuing criminal actions.

Under Minnesota law a person is held criminally liable for acts committed by another under the accomplice liability statute Minn. stat, 609.05

"A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with, or otherwise procures the other to commit the crime."

Subd. 2 "A person liable under subd. 1 is also liable for any crime committed in furtherance of the intended crime if (reasonably foreseeable) by the person as a probable consequence of committing or attempting to commit the crime intended."
(emphasis added)

Under this statute, a person who participates in an offense and then surrenders to the police because he decides to no longer participate in criminal activity, will still be held criminally liable for offenses committed by co-defendants as long as those offenses are reasonably foreseeable.

Concluding that the offenses should be considered committed on separate occasions for the defendant that surrendered eats away at the heart of the separate occasions argument raised in *Wooden v. U.S.* In *Wooden* the supreme court expanded the occasions analysis to include how "...similar or intertwined the conduct giving rise to the offenses" was, or whether "they share[d] a common scheme or purpose." *Wooden v. U.S.*, 142 S.Ct. 1063, 1070-71 (2022). This shows that conduct committed in close proximity to each other is to be considered committed on the same occasion.

In petitioners circumstances, he committed one single act, at one point in time, at one location. His co-defendant, however, committed an act mere moments later at a short distance away which resulted in a "reasonable and foreseeable acts" accomplice liability conviction for petitioner. Petitioner had no role in the act committed and is culpable only because of the direct nexus to the principal act.

This court should therefore determine that any conviction based on reasonable and foreseeable acts accomplice liability are committed on the same occasion as the principal offense.


CONCLUSION

This court should answer the question of whether or not offenses committed by others under the reasonable and foreseeable acts liability statutes -when offenders take no part in the subsequent offense- are committed on the same or separate occasions.

It should determine that because the offender does not have an opportunity to decide whether or not to continue on with their criminal activity the offenses are committed on the same occasion.

After determining thusly this court should send petitioners case back down to the district court to determine whether or not he should receive compassionate release based on this correct interpretation of law.

Respectfully Submitted By:



John Douglas, Pro-Se