

No. 24 - 5400

In The
Supreme Court of the United States

OCTOBER TERM, 2023

JAVONTAE QUINTEZ WHITE,
Petitioner,

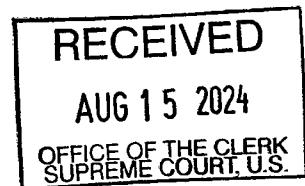
v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Question One: Is a Constitutional Due Process violation triggered when an appellate court holds that an issue is waived if not specifically raised in the statement of reasons? There is a significant circuit split on this issue.

ANSWER IN THE AFFIRMATIVE

PARTIES TO THE PROCEEDING

Petitioner Javontae Quintez White was the Movant-Appellant in the proceedings below.

Respondent United States of America was the Plaintiff-Appellee in the proceedings below.

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PETITION FOR A WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the Court of Appeals is unreported but is reproduced in the attached Appendix.

The order of the Court of Appeals denying the Petition for Rehearing is unreported but is reproduced in the attached Appendix.

JURISDICTION

On June 24, 2022, the United States Court of Appeals for the Sixth Circuit denied Petitioner's Direct Appeal. See: *United States v. Javontae Quintez White, No. 21-1417 (Aug. 24, 2022 6th Cir.), Appendix "A"*. On December 13, 2022, Petitioner's timely Petition for Rehearing was denied. See: *Rehearing Denial, Appendix "B"*. On May 14, 2023, this Court granted the Petitioner's Motion for an extension of time in which to file his certiorari petition. In the Order, the Court gave the Petitioner until June 1, 2023 in which to file his certiorari petition. See: *Javontae Quintez White v. United States, No. 22A815 (May 14, 2023, Kavanaugh, J.)*.

Jurisdiction is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution guarantees that all citizens are not deprived of life, liberty, or property without due process of law. Specifically, the Fifth Amendment provides:

" No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. " See: *U.S. Cons. Amd. V*

STATEMENT OF THE CASE

The Petitioner¹, Javontae Quintez White (“White”)², was convicted following a jury trial of distribution of fentanyl resulting in death in violation of 21 U.S.C. §§841(a)(1), (b)(1)(C) (“§841”). See: United States v. White, Appendix “A”. White’s defenses at trial were, in large part, that: A) he did not sell any narcotics to the victim; 2) if narcotics that he sold to another person were later sold or given to the victim, he was not aware that they contained fentanyl; and 3) the victim could have died from any number of other substances that were found in her body. This defense was bolstered by the testimony of Dr. Yale Caplan, a toxicologist and defense expert, who testified that the victim died of “a mixed toxicology death and that it was impossible to tell which of the drugs present in her body caused her death.” See: *Id.* When discussing jury instructions, over the objection of defense counsel, the District Court declined to provide the jury with a proximate-cause instruction. See: *Id.*

Following the Jury verdict, White filed a timely notice of appeal seeking review from the Sixth Circuit. On appeal, White argued that 1) the evidence was

¹ Because White is proceeding in this matter without the benefit of counsel, he respectfully requests that this Court apply a liberal interpretation to the questions and arguments asserted herein. See: Hughes v. Rowe, 449 U.S. 5, 15 (1980) (“An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims”).

² In the interests of judicial economy, only the facts relevant to the question presented by White for review are discussed herein.

insufficient to support a conviction; 2) the Fentanyl was not the cause of the victim's death; and 3) the Trial Court erred when it declined to give a proximate-cause jury instruction. See: *Id.* White's proximate-cause argument was not contained in his statement of issues on appeal, but rather was discussed within the body of his merits Brief. See: *Id.*

As it relates to White's proximate-cause argument, the Appellate Court held that, in accordance with circuit precedent, the issue was forfeited because it was not included within the statement of issues as required by circuit authority. The Court of Appeals cited *United States v. Calvetti* as the relevant controlling authority. See: *Id.* In his Petition for Rehearing, White argued that:

"In a case that pre-dates *United States v. Calvetti*, 836, F. 3d 654 (6th Cir. 2016) a panel of this Court determined that an issue is only forfeited when it is not raised in the statement of issues *or* in the argument. See: *McCarthy v. Ameritech Publishing, Inc.*, 763 F. 3d 488, 494 (6th Cir. 2014); See also: *Lemoine v. United States*, No. 18-3328 at *8 (6th Cir. July 10, 2020) (citing *McCarthy* and "concluding that argument not raised in either the argument or issues section was forfeited"); *Kinch v. Pinnacle Foods Group, LLC.*, No. 18-1400 at *9 (6th Cir. December 19, 2019) (same). Because White identified and raised the claim in the argument section of his Opening Brief, he satisfies the standard set by this Court in *McCarthy* and as such his "proximate cause" argument should not have been deemed waived. Secondly, assuming *arguendo* that *Calvetti* is controlling, White did sufficiently state the claim in his statement of issues. As discussed *supra*, White's "proximate cause" argument was part of his larger sufficiency of the evidence argument – which was properly listed and articulated in his statement of issues. As such, White did not assert his "proximate cause" argument as a stand along claim within his brief, rather he raised within his overarching sufficiency of the evidence argument. The Panel's decision, as currently written, would require Appellant's going forward to list each and every sub-argument raised on the statement of issues page – a requirement

that is well outside of the scope of Fed. R. App. P. 28(a)(5)." See: *Petition for Panel Rehearing, Exhibit "C"*.

Without explanation, the Appellate Court denied White's Petition for Panel Research. See: *Rehearing Denial, Appendix "B"*. This timely Petition for the Issuance of a Writ of Certiorari follows the Opinion of the Court of Appeals.

REASONS FOR GRANTING THE PETITION

This Court's guidance is necessary on the Questions Presented for Review to resolve a circuit split as to whether or not an appellate issue is forfeited simply because it is not specifically referenced in the statement of reasons. The very real result of this Circuit split is that appellants are having their arguments considered differently based solely upon the circuit their case happened to originate in. Appellants regardless of their judicial circuit should have their arguments on appeal considered under the same structural standard. To that end, applying the bright line principles of the Fifth Amendment to the current varying structural standard facing Appellant's, it is clear that a due process violation is triggered when one circuit refuses to consider a properly preserved issue on appeal because it was not referenced in the statement of issues; while another circuit permits the appellate court to apply its discretion and still consider the issue.

With the above being said, the Fifth, Sixth and Eighth Circuits have all held that an issue is waived if not included in the statement of issues on Appeal. See: *Zimmermann v. Jenkins*, 165 F. 3d 1026, 1029 (5th Cir. 1999); *United States v. Calvetti*, 836, F. 3d 654 (6th Cir. 2016); *Mahler v. First Dakota Title, Ltd.*, 931 F. 3d 799, 804 (8th Cir. 2019). The Eleventh Circuit has however reached an opposition conclusion finding that an issue is forfeited and not waived if not included in the statement of issues. See: *United States v. Patti*, 337 F. 3d 1317, 1320 (11th Cir. 2003). This distinction is important because, the

appellate court has the ability to exercise its discretion and consider a forfeited claim; unlike a waived claim where there is no discretionary authority. See: *Id.* It is White's position that the Eleventh's Circuit's decision in *Patti* properly addresses and resolves the issue of an Appellant that fails to identify a specific issue in their statement of claims. This is so because it provides the Court with the discretion to consider specific facts and circumstances as to why the claim was not identified in the statement of reasons. Putting in place a hard and fast rule that deprives the appellate court of any discretion, simply because of a potential oversight, does not comport with the most fundamental of notions that our judicial system is predicated on. As such a rigid rule prevents the Court from considering a properly preserved but improperly asserted error. So long as the error was raised concisely in the argument section of the filing – that should be the most important thing. Applying the reverse, what if an argument is only listed in the statement of reasons but not in the argument; is that argument properly raised and asserted? The undersigned has been unable to find any argument that states that it isn't.

In sum, some circuits applying such a heavy, seemingly singular importance to the wording used in the statement of reasons – while other circuits do not – creates a due process violation and requires intervention from this Court.

CONCLUSION

For the foregoing reasons, White prays that this Honorable Court grant his Petition for a Writ of Certiorari.

Dated this 1st day of July, 2024

Respectfully Submitted,



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