

24-5437

SUPREME COURT OF UNITED STATES

NO. _____

(TO BE SUPPLIED)

CARLOS DEMOND ROBINSON

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent,

On petition for a writ of certiorari to the
United States Court of Appeals for The
Circuit

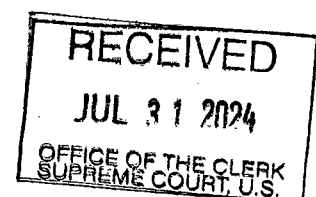
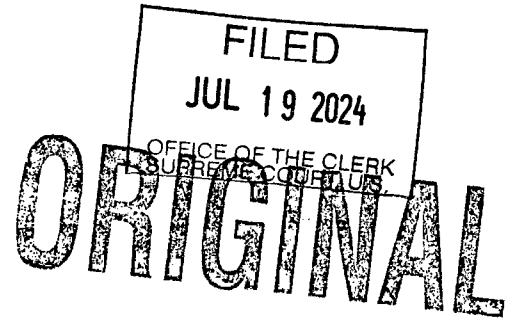
Fourth

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1.) Whether a criminal defendant should be allowed to seek judicial review of a criminal statute for constitutional infringement if he seeks only declaratory relief and not relief from his conviction

2.) Is the Unit of Prosecution for an offense Under 18 U.S.C. 924(c) the use and carry of the Firearm or the Underlying federal c rime.

RELATED PROCEEDINGS

Robinson V Janson,

No. 24-6018 (4th Cir. 2024)

Robinson V Janson,

NO. 9:23-cv-03347-HMH (D.S.c. Nov. 30 2023)

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STATUTES

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OPINIONS BELOW

The petitioner has attached the relevant opinion of the Fourth Circuit Court of Appeals. However due to belated update to institutional prison computers petitioner cannot provide the cite used. The Judgment of the district court can be found at:

Robinson Vs. Janson,

No.9:23-cv-03347-HMH(D.S.C. Nov. 30, 2023)

JURISDICTION

The court of appeals issued its decision on 06-24-2024. Petitioner requested an enlargement of time for good cause. At the drafting and filing of this petition, due to belated service, petitioner cannot speak on the determination for an enlargement of time. This court has jurisdiction under 28 u.s.c Section 1254.

RELEVANT CONSTITUTIONAL

AND

STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution provides: "no person shall be held to answer for a capital or otherwise infamous crime unless on presentation of an indictment to a grandjury...Nor be deprived of life or liberty or property without due process of law. Due process requires that a criminal statute give proper and warning. The double jeopardy clause of the United States Constitution protects against multiple punishments for the same offense.

The relevant statutory provision section 18 U.S.C. 924(c) is reproduced at Pet. App. B.

I.

INTRODUCTION

This case presents a two important constitutional questions with nation wide significance. First is a question of procedure and jurisdiction. As congress attempts to clarify the troublesome statute 18 U.S.C. § 924(c) the end result is even more vagueness as to the "unit of prosecution" in other words the clarification has left a person to wonder and guess what is the beginning and ending of the offense evenmoreso considering offenses of ongoing drug conspiracies. This attempt has left hundreds of American citizens in federal prison with questionable sentences that arguably violate double jeopardy. However, because this statute enacted many years ago leaves them stranded without any meaningful access for Judicial review. That circumstance brings the first question to this Court i.e., can a criminal Defendant seek a Judaical review of a criminal statute when he seeks only a général Constitutional review and does not request a facts review or seek individual relief. The petitioner asserts that he should be under the equal protection clause of the U.S. Constitution.

The second question is one of statutory interpretation of 18 U.S.C. 924(c) and a question whether that statute gives "fair warning" of what is outlawed. Specifically, statute 18 U.S.C. § 924(c) provides clarity as to its Unit of Prosecution. Said another way, does the criminal statute provide enough clarity to allow the Courts to enforce the double jeopardy clause.

Moreover, does it provide enough information for a criminal Defendant to seek protection of the double jeopardy clause and protection against multiple punishments for the same offense. In simple terms the criminal statute now has the question of Unit of Prosecution in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. This Courts intervention is necessary to ensure criminal Defendant's charged under § 924(c) are provided proper notice, due process, and protection from multiple prosecutions for the same offense. Furthermore, to ensure even convicted felonies have a means, [and] an opportunity to seek Judicial review of criminal statutes.

Section 924(c) requires harsh no nonsense mandatory consecutive sentences. A statute so troublesome that even this Court could not correctly interpret it. For instance, Congress recently had to "clarify" what it intended in the First Step Act of 2018. For sure Congress could have used "Amend" or "change" but it did not it "clarified" the statute in an attempt to clarify what is a "second or subsequent" offense. Frankly, that attempt failed miserably because Courts across the country are differing on exactly what is the Unit of Prosecution. Moreover, the ones imprisoned simply have no means to simply seek a fair Judicial review of the "clarified" statute for Constitutional concerns.

The Petitioner sought a declaratory judgment. (emphasis added) He did not seek individual relief he sought a fair impartial review of this clarified statute. Nevertheless, the District

determined it lacked jurisdiction to review the Constitutionality of a criminal statute that has been troublesome for years and imprisoned thousands under sentences that now arguably violate the double jeopardy clause the Fourth Circuit affirmed that judgment.

Only this Court can establish the proper Unit of Prosecution and address this important question of Constitutional law and protect the integrity of our criminal justice system.

II.

STATEMENT

A.) Legal Framework

Under 18 U.S.C. § 924(c) a Defendant convicted for the use or carrying of a firearm while committing a federal crime of violence or drug offense faces a required mandatory minimum consecutive sentence. If he commits a second or subsequent offense he faces a even harsher penalty of a, in the least, mandatory consecutive 25 years. For years, the District Courts were stacking those mandatory sentences for multiple overt acts of drug conspiracies. A result stemming from sentence manipulation by the government. For instance the more controlled buys from a individual the more stacked 25 year sentences. Many of the Defendants sought review and this Court attempted to interpret the statute and found that the language of the statute supported those astronomical stacked sentences.

The Congress of today under the comprehensive remedial efforts of the First Step Act of 2018 in Section 403 "clarified" its intent to what constituted a "second or subsequent" 924(c) offense for the purpose of "stacking" those harsh mandatory minimum sentences by adding the language "a violation of this subsection that occurs after a prior conviction under this subsection has become final." This clause replaced a broad language of a "second or subsequent" violations. It is notable Congress did not run this "clarification" retroactive but nevertheless District Courts across the country, under the discretion and authority granted to them under the compassionate release statute, (See Section 603 of the First Step Act) and under Section 404 of the First Step Act are attempting to correct those sentences. However, those Courts are issuing conflicting decisions and imposing sentences that are questionable under the double jeopardy clause. For instance, many Defendants convicted of drug conspiracies with multiple controlled buys were sentenced to multiple 924(c) offenses and were sentenced to "stacked" 25 year mandatory consecutive sentences. However, under the "clarification" of Congress in 2018 the Courts are now merely lower[ing] the "stacked sentence" from 25 years to 5 or 7 years; i.e., the punishment for the first Section 924(c) offense. One can argue if the Conspiracy is one crime and a Defendant carried a firearm throughout that Conspiracy he committed only one 924(c) offense. The question is clear what is the Unit of Prosecution for the Section 924(c) offense. The actual use or carrying of the firearm, or the predicate offense.

The legislative history Counsels that it would be the "predicate offense." To be sure, before the First Step Act, the legislative history of 924(c) is both meager and muddled. See *United States v. Diaz*, 592 F.3d 467 473-74 (3d Cir. 2010). The predecessor to the current version of the statute was first adopted as part of the Gun Control Act of 1968. The legislative history of that act is limited to floor debates, as it does not contain any committee reports or congressional hearing[s]. See Wendy Bibble, *Lets Make A Deal: Liability For "Use of a Firearm" When Trading Drugs For Guns under 18 U.S.C. § 924(c)*, 38 val. U.C. rev 65, 68-69 (2003); See also *United States v. Chalan*, 812 F.2d 1302, 1317 (10th Cir. 1987). (characterizing the legislative history of the original version of § 924(c) as "exceedingly sparse"). History is murky and provides little insight into Congress' intent, what little it does give supports that it is the actual predicate offense that support the Unit of Prosecution.

For instance, Representative Pott declared that the purpose of the offense is to encourage "the man who is tempted to commit a federal felony, to leave his gun at home." 114 Cong. Rec 22, 231 (1968).

Senator Marsfield, who sponsored the original amendment to § 924(c) adding a heightened sentence for a second conviction under the statute, stated that the law "provides for the first time a separate and additional penalty for the mere act of choosing to use or carry a gun in committing a crime under

federal law. If that choice is made more than once, the offender can in no way avoid a prison sentence regardless of the circumstances." 115 Cong. Rec. 34 838 (1969).

Those two statements do not conclusively establish the intent of whether it should be the actual use or carrying the firearm or the underlying federal crime that is the Unit of Prosecution but they weigh heavily toward the predicate offense and the underlying federal crime. For example, one decision to conspire to distribute controlled substances and carrying a firearm while doing so would be one federal crime, one predicate offense, and one 924(c) offense. Therefore, to impose multiple punishments even the lesser penalties constitutes double jeopardy. But, again the current statute leaves a person of reason to guess and as to what the unit of prosecution is and this Court needed to clarify exactly what the Unit of Prosecution is, i.e., the act, use, carrying, or the underlying federal offense.

REASONS FOR GRANTING THIS PETITION

There are conflicting rulings by Circuit Courts as to what the Unit of Prosecution is for a Section 924(c) offense. The actual use of the firearm [or] the underlying federal crime. This Court is needed to provide uniform decision of the Court of Appeals.

The Court is needed to settle the question what is the correct Unit of Prosecution for § 924(c). The vast majority of Circuit

Courts hold that "the underlying predicate crime, i.e. the drug distribution Count" is the Unit of Prosecution. *United States v. Diaz*, 592 F.3d 467, 477 (3rd Cir. 2010). See also *United States v. Khan*, 461 (Goodwin J. dissenting) (collecting cases); those Courts explain that:

Section 924(c) clearly focus[es]
on firearms only to the extent
that a defendant uses or carries "during
and in relation to" ...
drug trafficking crimes ...
The statute emphasizes the
relationship between the
firearms and the underlying
drug trafficking crime, rather
than the individual firearm
themselves ...

Congress has enacted a host of other statutes addressing firearms in other Contexts. The purpose of § 924(c)(1) ... is to target those defendants who choose to involve weapons in an underlying narcotics crime or crime of violence. Consequently, the predicate offense, not the firearm, is the object of § 924(c)(1).

United States v. Taylor, 13 F.3d 986, 993-94 (6th Cir. 1994).

However, *CF. United States v. Camps*, 32 F.3d 102, 107 (4th

Cir. 1994) (finding that the use or possession of the firearm, not the underlying predicate crime, is the Unit of Prosecution.

Petitioner respectfully contends it is the majority that is correct if the language of the statute today is considered, coupled with legislative history. But, most importantly, this Court is needed to answer this important Constitutional question.

B.) THIS CASE PRESENTS PERFECT FACTS TO REVIEW TO ANSWER THIS QUESTION

The case here provides an excellent example of why this question needs answered and provides a perfect opportunity to do so. Petitioner unquestionably committed a prior 924(c) violation was convicted and the conviction was final. However he committed a second drug trafficking crime. To ensure conviction the government conducted two controlled buys in which petitioner used and carried a firearm this second controlled buy resulted in a second 25 year stacked sentence so the question is whether the second controlled buy in the conspiracy was a second 924(c). In other words whether the predicate offense the drug conspiracy was the unit of prosecution or the separate use and carry men of common intelligence could differ and the court of appeals are differing on application of the statute in these circumstances. This case provides an excellent platform to review these two important questions.

CONCLUSION

The Petition for a writ of certiorari should be granted.

Respectfully Submitted on: 7/18/2024

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