

24-6460

P.1

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL
FILED
DEC 30 2024
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Jonathan Mason — PETITIONER
(Your Name)

VS.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals, Seventh Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Jonathan Mason #52144-424
(Your Name)

SPC Ashland, P.O. Box 6001
(Address)

Ashland, KY 41105
(City, State, Zip Code)

n/a

(Phone Number)

QUESTION(S) PRESENTED

Can a bias witness testimony, made during a bench trial in an unrelated case be admitted for its truth at Petitioner's sentencing hearing, to support role facilitation enhancement?

Does the Confrontation Clause, under the Sixth Amendment of the U.S. Constitution apply at contested sentencing hearings conducted under FRCP 32(i)(2)?

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

TABLE OF AUTHORITIES CITED

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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 2024 U.S. App. LEXIS 20668; 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 is unpublished.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 _____ 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 is unpublished.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 is unpublished.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 is unpublished.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 August 13, 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: September 24, 2024, 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. § 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

Sixth Amendment Confrontation Clause, U.S. Constitution

FRCP 32(i), Sentencing, Introducing Evidence

STATEMENT OF THE CASE

The Sixth Amendment Confrontation Clause guarantees a criminal defendant the right to confront the witnesses against him.

A contested sentencing hearing was conducted following Petitioner's guilty plea. The District Court applied several offense characteristics to his offense level, to include a four level role enhancement for being an organizer or leader of a criminal activity, in violation of 21 USC §846.

Petitioner objected to the court's finding and the sentencing hearing was conducted in accordance with FRCP 32(i).

AUSA provided testimonial evidence of Wiltz's testimony from a bench trial that proceeded before the honorable Judge Lee, in the case of Pugh.

Pugh had a bench trial and Wiltz testified regarding Pugh's offense conduct, including role facilitation.

Wiltz made statements against Petitioner, not to establish the truth of the matter asserted against Pugh, however, his statements were deemed credible against Petitioner at sentencing.

Bench trials are governed by FRCP 23, which do not require findings of fact.

Although Wiltz's testimony was determined by Judge Lee to be credible against Pugh, his testimony had no relevance in the court's role facilitation assessment against Petitioner.

Wiltz is an acquaintance of Petitioner and the record from Pugh's bench trial reveals that Wiltz harbored bias and resentment for Petitioner.

The Appeals Court affirmed the District Court's determination that Wiltz's testimony was credible against Petitioner.

Wiltz described past uncharged events involving Petitioner, but none of the events that had been charged by the Government.

Petitioner appealed the role facilitation enhancement, in part, on the testimony of Wiltz against Pugh. Wiltz testimony was not adversarially tested and lacked an

indicia of reliability, because he did not attest to Petitioner's offenses of conviction or any hierarchy involving the Petitioner and criminal activity. The factual basis of Petitioner's plea identified Anderson, Wiltz, Myers and Petitioner as participants in a Drug Trafficking Organization in Chicago, Illinois. Petitioner objected to the assertion that he facilitated role amongst this or any group of conspirators.

Wiltz's testimony against Pugh, was presented against Petitioner's objection, to support role enhancement.

The Confrontation Clause is generally understood to apply strictly to trial, not sentencing. However, sentencing factors that increase punishment beyond statutory guidelines or thresholds triggers the right to due process.

Rule 32(i) requires the court to resolve factual disputes and to ensure the opportunity to address the court and comment on the factual or legal issue.

Petitioner had a right to confront Wiltz at sentencing. His plea to conspiracy and three distribution offenses were premised on three arranged heroin transactions, involving a confidential informant that was employed by authorities.

Role was not facilitated, but at sentencing, the court applied a four level increase for being an organizer or leader of criminal activity.

Judge Andrea Wood admitted a statement of Wiltz's testimony against Petitioner's objection, despite the fact that Wiltz's testimony had not been made to prove the matter asserted against Petitioner.

Statement materially affecting sentencing must be substantiated to be relied on by the court. Pugh sentence was enhanced for role facilitation and Judge Wood relied on this same testimony to apply the same role enhancement against Petitioner. Then, failed to provide Wiltz for examination by the defense.

According to Woods vs. Etherton, 578 US 113 (2016), this is a confrontation clause violation. Due process requires confrontation, because Petitioner objected to the role facilitation assertion. The Circuit Court affirmed, mistaking that Wiltz's statement had been made during the course or in furtherance of Petitioner's

offenses of conviction.

Petitioner's arranged drug transactions did not involve Wiltz or any other conspirators. In US vs. Mendoza, 576 F.3d 711 (CA7 2009), defendant's sentence was affirmed, because the record supported the district court's finding that he played an aggravating role in the offense of conviction. A conspirator indicated that Mendoza stored drugs for him.

In this case, record does not support Wiltz statement against Peitioner. Pugh never indicated Petitioner facilitated role in his offense of conviction. Wiltz's testimony was presented to prove that Pugh facilitated role. Wiltz's statement against petitioner had not been made to prove any matter asserted against Pugh or Petitioner for that matter.

In US vs. Austin, 806 F.3d 425 (CA7 2015), multiple conspirators identified defendant as the leader of their criminal organization. Their testimonies were made to prove the truth of the matter asserted. see US vs. Lockwood, 840 F.3d 896 (CA7 2016).

The cases cited by the Circuit Court, to support the determination that Wiltz's testimony against Pugh, could be presented against Petitioner as credible is misplaced. They did not involve a non-jury trial, where the court is required to determine guilty and its examination of credibility is premised on common sense.

Wiltz's testimony against Pugh was not contradicted by extrinsic evidence, however, his statements about Petitioner was bias and inconsistent.

He provided testimony about Pugh's role facilitation, mentioning that Pugh frequented Petitioner's residence to gamble and distribute drugs in an open market. He spoke of resentment for Petitioner, due to past conflict and a willingness to assist authorities against Petitioner, however, Petitioner had already pled guilty to his offenses of conviction.

The court failed to ensure the reliability of Wiltz's statements against Petitioner. According to US vs. Tucker, 404 US 443 (1972), due process under the Fifth Amendment

requires the court to provide defendant an opportunity to examine a witness regarding a statement that has been admitted central to a sentencing decision.

Petitioner never admitted to role facilitation. Rule 32(i)(2) provides his right to confrontation.

In *Crawford vs. Washington*, 561 US 36 (2004), the Supreme Court held that the Confrontation Clause prohibits the admission of statements that are not subject to cross.

No Circuit Court has ever considered the effect of Washington at sentencing under Rule 32(i)(2), which provides the rule to present evidence or witness testimony, on an objection to the findings for sentencing. see *US vs. Reyna*, 336 Fed. Appx. 353 (CA4 2009).

Wiltz's statement was admitted against Petitioner's objection and an evidentiary hearing was conducted, pursuant to Rule 32(i). Petitioner had the right to confront Wiltz and to ensure that Wiltz's statement conformed with FRCP 26.2. Failure to comply with Rule 26.2 excludes consideration of statement. see *Atkins vs. US*, 2018 US Dist. LEXIS 105833, *US vs. Gibbs*, 26 F.4th 760 (CA7 2022) and *US vs. Noble*, 367 F.3d 681 (CA7 2004).

REASONS FOR GRANTING THE PETITION

When parties dispute facts central to sentencing, the court must make factual findings on the basis of reliable evidence.

The court may only consider information or evidence that has a sufficient indicia of reliability, to support its probable accuracy. The fact that Wiltz's testimony was deemed credible against Pugh, says nothing in regards to it being reliable against Petitioner. Examination would have provided the court with a level of detail and corroboration by other evidence that would have allowed it to base it's sentence on accurate information. see US vs. Smith, 674 F.3d 711 (CA7 2012) and US vs. Holding, 948 F.3d 864 (CA7 2020).

Petitioner objected to the assessment of a role facilitation enhancement and the Government was allowed to admit a witness statement from a bench trial, that had been conducted after Petitioner's plea, to prove the truth of whether or not he facilitated role.

Petitioner was not provided an opportunity to adversely examine the witness. present evidence and witnesses to support his objection.

No other court has addressed the application of Crawford vs. Washington, 541 US 36 (2004) at sentencing, under Rule 32(i).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Jonathan Mason

Date: December 19, 2024