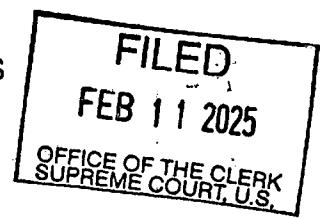


24-3678

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



OMARI PATTON — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

OMARI PATTON

(Your Name)

FCI-DANBURY, ROUTE 37

(Address)

DANBURY, CT 06811

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

WHEN FEDERAL DEFENDANTS ARE ATTRIBUTED A DRUG QUANTITY BASED ON EXTRAPOLATION AND THE CHEMIST FAILS TO TESTIFY AS TO HOW THE EXTRAPOLATION WAS CONDUCTED AND THERE'S NO EVIDENCE IN THE RECORD DOES THIS REQUIRE REVERSAL

WHEN DEFENDANTS RECEIVE AN LEADERSHIP ENHANCEMENT UNDER 3B1.1(A) WHICH INVOLVED 5 OR MORE PARTICIPANTS BUT THE 5 PARTICIPANTS ARE NOT CHARGED IN THE INSTANT INDICTMENT BUT ARE CHARGED IN A SEPARATE INDICTMENT IS THE ENHANCEMENT PERMISSIBLE

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

- DaShawn Burley, 22-cr-121-02; sentenced to 2 years probation; no appeal filed; United States District Court, Western District of Pennsylvania

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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 is unpublished.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 _____ 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 is unpublished.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 December 5, 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: _____, 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

18 U.S.C 1791(a)(1)

3.

STATEMENT OF THE CASE

In September and October 2018, Petitioner Omari Patton was housed at the Federal Correctional Institution Fort Dix, in New Jersey. During that period, Patton's adult son, Dashawn Burley, mailed three envelopes to Patton at FCI-Fort Dix and two envelopes to Shamar Banks at FCI Ray Brook. At Patton's direction, Burley labeled the envelopes as "legal mail" sent by a fictitious attorney named James Davis. Id. Each of the envelopes contained pages of paper saturated with Schedule I synthetic cannabinoid controlled substances, including 5F-MDMB-PINACA, colloquially known as K2 paper. Id. See Appx B (government expert defined K2 as paper dipped in liquid mixed with synthetic cannabinoids).

Burley received the K2 paper from Noah Landfried, a drug supplier in Allegheny County, Pennsylvania, and Landfried's assistant, James Perry. PSR paragraph 8. Patton provided Burley with specific instructions about how to acquire the K2 paper, who to send it to, and how to package and mail it. Patton, Burley, Banks, Landfried, and Perry were originally indicted, along with 43 other co-defendants, in a 10 count indictment charging them with conspiracy to possess with intent to distribute K2 and other related offenses. See *United States v. Landfried et al.*, Crim No. 19-008 (W.D.PA), Docket Entry 501. On March 11, 2022, Patton and Burley were acquitted of the single charge against each of them-conspiracy to distribute K2, in violation of 21 U.S.C. 841 at Docket Entry 3311. On May 3, 2022, Patton and Burley were re-indicted in the instant case Crim. No. 22-cr-121 (W.D.PA), and charged with multiple counts of attempting to provide contraband to an inmate, in violation of 18 U.S.C. 1791(a)(1) and (b)(2), and attempting to obtain contraband

in prison, in violation of 18 U.S.C. 1791(a)(2) and (b)(2). (Appx C) Patton proceeded to trial and was convicted on two counts of attempting to provide contraband to an inmate and three counts of attempting to obtain contraband in prison. (Appx D) Burley entered a guilty plea to two counts of attempting to provide contraband to an inmate and was sentenced to 2 years probation.

In preparation for sentencing, Patton made numerous factual and legal objections to the Presentence Investigation Report. (Appx E). Extensive briefing by both parties followed, (Appx F), and the district court issued findings and rulings on many of the disputed issues prior to sentencing. (Appx G) Specifically, the district court:

- Denied Patton's objection to the converted drug weight calculation under 2D1.1(c), finding that sample testing of part of a quantity of controlled substances has been held to be reliable and sufficient (Appx H)
- Denied Patton's objection to application of leader/organizer enhancement under 3B1.1(a), Finding that Patton created a network for the acquisition and distribution of K2 paper at Fort Dix and Ray Brook and recruited accomplices, including his son. (Appx I) The court also found that Patton's scheme involved Five individuals Patton, Burley, Banks, Perry, and Landfried.

After overruling each of Patton's Guidelines objections, the district court adopted the PSR's Guidelines calculations in their entirety. Patton received an 4 point enhancement under 3B1.1(a), for an organizer or leader of criminal activity that involved 5 or more participants PSR Paragraph 14-24. With a total offense level of 24 and a criminal history category of III, Patton faced a Guidelines range of 63 to 78 months imprisonment. The district court imposed a sentence of 63 months imprisonment and three years supervised release. (Appx J) The court imposed sentence on June 15, 2023, and entered its judgment

the same day. (Appx K)

SUMMARY OF THE ARGUMENT

Omari Patton was sentenced to 63 months imprisonment for possessing and attempting to possess contraband in prison. He was convicted of these offenses more than three years after being acquitted of a related conspiracy offense. The conduct underlying the acquitted conspiracy offense and instant offense was identical. It involved the same actors, the same drugs, the same institutions, and the same timeframe. Both cases were tried by the same prosecutor.

In this petition for a writ of certiorari, Patton contends that the district court and Appellate court erred in attributing 26.2 kilograms of Converted Drug Weight (CDW) to Patton based on the extrapolation. The exact quantity of K2 paper involved in the offense was known and identified by the government as 19 sheets of paper. But only half those sheets were tested for the presence of K2. The government offered no evidence regarding how particular sheets were selected for testing, how the tested sheets compared to those that were not tested, or whether the sample size selected supported a reliable extrapolation. Accordingly, the CDW figure in calculating Patton's base offense level.

The record also fails to support application of the four-level leadership enhancement under U.S.S.G. 3B1.1(a). The evidence in this overwhelmingly showed that Patton operated as nothing more than a broker. Patton did not lead others and the indictment shows that 5 or more participants are not charged in the indictment in order for the leadership enhancement to be permissible.

REASONS FOR GRANTING THE PETITION

- I. The issue presented holds exceptional importance to the public and affects all Federal defendants similarly situated who was attributed a drug quantity based on extrapolation. Furthermore it settles a split in the circuits**

- II. The issue sets first time precedent of Federal defendants who receives a 3B1.1 enhancement.**

The Appellate court erred in affirming the quantity of drugs attributable to Mr. Patton based on extrapolation for the offense.

A. Argument

The Presentence Investigation Report attributed 26.6 kilograms of Converted Drug Weight (CDW) to Patton. PSR Paragraph 15. The PSR provides no basis for its calculations, stating only that the Government advised that the type and quantity of controlled substance attributable to Patton is 26.6 kilograms of Converted Drug Weight. Patton objected to this calculation, arguing that not every sheet of paper included in the calculation was tested to determine if it contained K2, leading to an inaccurate and overstated estimate of CDW. (Appx K). The district court overruled Patton's objection to the calculation, holding that sample testing and extrapolation are reliable and sufficient methods for calculating a CDW. (APPX L). The Court reviews the district court's drug quantity determination for clear error. United States v. Diaz, 951 F.3d 148, 159 (3d Cir. 2020). The Court must determine by a preponderance of the evidence that a defendant was responsible for a particular weight of substance before attributing that amount to defendant. United States v. Collado, 975 F.2d 985, 998 (3d Cir. 1992).

Here in Patton's case, the government indicted 19 sheets of paper seized from FCI-Fort Dix and FCI-Ray Brook. (APPX M). Given the limited quantity of sheets involved in this offense, the government could have easily tested each sheet of paper. But it did not. Nor did the government offer testimony from the chemist as to how he conducted the extrapolation.

The government only tested about half the sheets. (APPX N).
Patton contends the Appellate Court clearly erred in relying on
an extrapolated CDW in this case.

B. The Appellate Court clearly erred in affirming an aggravating role enhancement under U.S.S.G. 3B1.1(a) where Patton was not an organizer or leader of criminal activity involving 5 or more participants.

Factual findings are reviewed for clear error. United States v. Adair, 38 F.4th 341, 347 (3d Cir. 2022).

Argument

The court concluded that Patton was a leader or organizer of criminal activity involving five or more participants. Those participants included Patton, Burley, Banks, Perry, and Landfried.

The only two defendants charged in the indictment are Burley and Patton. Banks, Perry, and Landfried were not charged in the contraband indictment. (See Indictment Appx O). By the defendants not being charged in the indictment, Patton could not be a leader or organizer of criminal activity involving five or more participants therefore, the leader or organizer enhancement under 3B1.1(a) was error. The Court should reverse the application of the enhancement.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Amar Datta

Date: February 10, 2025