

No. 24-6784 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED

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JOSE SANCHEZ/ADAME
Petitioner,

VS.

UNITED STATES OF AMERICA
Respondent.

On Appeal from the United States Court of Appeals
for the Eighth Circuit-Appeal No. 24-2580
Dist Ct. Dkt. No. 4:12-cr-00170-SMR-2

PETITION FOR A WRIT OF CERTIORARI

PRISONER PRO SE

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SUPREME COURT, U.S.

Question(s) Presented

1. Whether a district court may point to documents on the record that a defendant has complained of not having received as the only justification for denying a Retroactive Amendment Reduction under 18 USC § 3582(c)(2).
2. Whether a circuit court of appeals may affirm the denial of a motion under 18 USC § 3582(c)(2) when said motion was denied based on information that has been withheld from the defendant alone.
3. Whether this Court's previous holdings prohibiting sentencing based on secret information in capital cases should be applied toward non-capital sentencing proceedings.
4. Whether it violates either Due Process protections or Equal Treatment protections under the 5th Amendment to fail in calculating a previous retroactive Guideline Amendment's change to a defendant's guideline range when including such would result in the current sentence being outside of the applicable guideline range and the district court had previously denied the prior retroactive amendment application based solely on the fact that it had granted a downward departure at original sentencing to account for the previous retroactive guideline prior to its passage, and a failure to include such means that effectively all future retroactive amendments to the guidelines make the defendant unable to avail himself of their benefit due solely to the same previous downward departure at sentencing, creating a potential situation that leaves the defendant with a higher sentence than he would receive at the time of the retroactive amendment and a disparate sentence with all others who qualify and are similarly situated absent the original retroactive amendment's denial.

Related Cases

unknown (prisoner Pro Se has extremely limited access to legal materials)

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Statute

Opinions Below

Relevant to this Petition, the opinions of the courts below were not published. The district court's opinion appears at Appendix A, the Eighth Circuit Court of Appeals' Opinion Appears at Appendix B, the Denial of a Request for Rehearing appears at Appendix C, and the previous Retroactive Amendment 782 denial appears at Appendix D.

Jurisdiction

The district court below had jurisdiction under 18 USC § 3582(c)(2); the Eighth Circuit Court of Appeals held jurisdiction under 18 USC § 3742; and this Court holds jurisdiction under 28 USC § 1253.

Statutory and Constitutional Provisions Involved

This Petition involves the application of the 5th Amendment to the United States Constitution toward the grant or denial of a retroactive Sentencing Guidelines Amendment (821 Part B) toward a prisoner's sentence when he has already received the benefit of a previous retroactive guideline amendment before it was enacted (782, Drugs Minus Two) in the form of a downward departure at sentencing, yet his guidelines were not re-calculated to reflect said reduction which then affected his potential reduction for the later guideline amendment; and the district court's failure to explain its reasons in the second reduction proceeding under 18 USC § 3582(c)(2).

This Petition also involves the 8th Amendment's requirement of reliability in determination of a criminal sentence.

Statement of the Case

Petitioner Jose Sanchez Adame was convicted in a conspiracy which involved another individual of the same name. Petitioner's co-defendant received the mandatory minimum sentence of 120 months. Petitioner received a much higher sentence of 216 months on April 18, 2014. At sentencing, Petitioner was granted a downward departure to reflect the Sentencing Commission's upcoming Amendment 782 (Doc 749). Petitioner subsequently applied for, and was denied, a reduction under Amendment 782, as "[t]he [c]ourt granted the requested reduction in anticipation of Amendment 782 during the Defendant's original sentencing hearing." - Doc 848. There was no apparent re-calculation of the sentence in the district court's analysis, leaving Petitioner's sentence at a below-guidelines level at that time.

When Amendment 821 Part B was declared to be retroactive, Petitioner filed for a reduction under 18 USC § 3582(c)(2). Both the Office of Probation and the Federal Defender's Office issued recommendations to the court below, which the lower court referenced without explanation clarifying what was in these documents. (Doc ____). Petitioner complained in a motion for reconsideration that he had not received these documents, but was again denied without explanation (Doc ____). He timely appealed, complaining that he had no idea why he had been denied (Appeal No. 24-2580, Opening Brief); and speculating that it may have been confusion between him and his codefendant who shared the same name. The Eighth Circuit court of Appeals denied his appeal, again refusing to shed light on why he was denied. Since the time of his application to the district court for Amendment 821 and the filing of the instant Petition, Petitioner's legal papers have been taken twice by BOP officials, so his personal records are spotty.

Through the course of researching for the instant appeal, however, the prisoner assisting Petitioner with his preparations (Christopher David Cobb, #37691-051) has located a previous denial of retroactive application of Amendment 782 (Doc 848, included at Appendix D). Throughout the proceedings, therefore, and not discovered until after the 8th Circuit denied rehearing, the lower courts involved have been operating without having ever calculated the previous retroactive reduction through Amendment 782, which then leaves any reduction from Amendment 821 to fall within his currently incorrectly calculated guidelines range. This appeal follows.

Reasons for Granting the Petition

Under § 3582(c)(2), a district court must "begin by determining the amended guideline range that would have been applicable to the defendant had the relevant amendment been in effect at the time of the initial sentencing." -

Dillon v United States, 560 US 817, 130 S.Ct. at 2691 (2010) (quoting USSG § 1B1.10(b)(1), quotations omitted, cleaned up). In this instance, Petitioner present that such a calculation would also include previous retroactive amendments, but can find no authority either for or against such a position.

As such, this appears to be an issue of first impression - but Petitioner acknowledges that the BOP's law library is sorely lacking and may simply be inadequate to find relevant authority as this issue should have already come up at some point.

In contrast to an initial screening of an appropriate sentence, a district court cannot pronounce a sentence below the minimum of the amended guidelines range in a § 3582(c)(2) proceeding - **Dillon**, 130 S.Ct. at 2691.

This means that a district court who has previously granted what at the time of original sentencing was a downward departure, but would almost immediately thereafter have become a within-guidelines sentence (as happened here), will never be able to grant any reduction as all previous reduction amendments made retroactive have been either one or two points. Unless the highly unlikely (and to Petitioner's knowledge currently unprecedeted) occurs and the Commission creates a 3 or higher point amendment, no matter how many amendments are made retroactive, Petitioner and those similarly situated to him will never receive the intended benefits of the retroactive amendments.

At least so long as the original retroactive amendment's effects are not calculated. This would seem to be a Due Process error of cumulative proportion.

As the Guidelines Manual era ages, more and more of these types of issues will mount - potentially affecting tens or hundreds of thousands of both current and future prisoners.

Had the district court explained itself at all in its decision below, Petitioner would have been able to make these arguments previously. But due to the lower court's reliance on documents which Petitioner does not have to reference, he could not discern why he was denied. This again affects both due process and equal treatment principles - as other courts around the Republic require at least **some** explanation as to the reasons for any denial. The Eighth Circuit here, however, found the reference to hidden information

to be adequate for the due process protections required in a § 3582 proceeding (see Appendix B and C, respectively).

This left Petitioner flailing to find the reason or reasons for his denial. Indeed, he is still flailing in such a manner here.

Were this a Capital Case, the use of secret information withheld from the defendant would be seen as a clear error violation of Due Process - see, e.g. **Simmons v South Carolina**, 512 US 154, 176 (1994) (discussing due process violations in keeping secret from the jury that an alternative sentence to death was available); **Marks v United States**, 430 US 188, 193 (1972) (use of secret information in determining punishment violated the 8th Amendment's requirement of reliability in the determination of appropriate punishment); **Skipper v South Carolina**, 476 US 1, 5 (1986) (secret evidence cannot be used to determine a sentence); and **Gardner v Florida**, 430 US 349, 358 (1977) (same).

And this Court has held that a defendant has a legitimate interest in the character of the procedure which leads to the imposition of a sentence even if he may have no right to object to the particular result of the sentencing process - **Witherspoon v Illinois**, 391 US 510, 521-23 (1968).

For these reasons, this Court should reverse, with an order to explain how Petitioner does not qualify for the retroactive application of Amendment 821, and/or an Order stating that Amendment 782's effect on his guidelines range should also be included in the district court's calculation of appropriate guideline range.

Respectfully Submitted.

CONCLUSION

Petitioner has completed a large portion of his current sentence, and has rehabilitated considerably during this time. This information, however, will never reach the calculus of any reduction analysis so long as Amendment 782's effect on his guidelines range is not included. Also, the district court could have avoided all of these appeals had it given any explanation at all to the defendant - who is the only party without access to the referenced documents in the district court's denial below. The granting of this request for Certiorari, therefore, would promote both judicial economy and consistency of the procedures under § 3582(c)(2) nationwide and affects a large pool of both current and future prisoners. For these reasons, I Jose Sanchez Adame, hereby request for this Court grant Certiorari review of the instant case.