

In The Supreme Court of the United States

JOSEPH EDWARD WILLIAMS,
Petitioner,

v.

JORGE PASTRANA,
Warden.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE ELEVENTH CIRCUIT COURT OF APPEALS

BRIEF IN REPLY
TO RESPONDENT'S BRIEF IN OPPOSITION

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PRELIMINARY STATEMENT

Respondent's Brief in Opposition to Petition for Writ of Certiorari will be referred to as "RB."

ARGUMENT

This case presents the Court with another opportunity to review the conflict in the circuits which was aggravated by *McCarthan v. Dir. of Goodwill Indus.-Suncoast*, 851 F.3d 1076 (11th Cir. 2017) (*en banc*), cert. denied, 138 S. Ct. 502 (2017) (No. 17-85).¹ The Government, for good reason, is anxious that the Court not do so. For years the Government advocated for the very position that Williams advances in his case - that federal courts have jurisdiction to adjudicate the merits of habeas petitions brought under 28 U.S.C. § 2241 under the saving clause of 28 U.S.C. § 2255(e) when a petitioner is serving a mandatory minimum sentence that he would not qualify under current law. The Government itself acknowledges that this had been its position and that it has reversed itself under the Trump administration.

Having accepted that a defendant could seek habeas relief based on an intervening Supreme Court decision of statutory interpretation that rendered his conduct of conviction no longer criminal, the Department of Justice eventually determined that two additional categories of defendants could take advantage of the same exception. First, in 2010, the Department argued that habeas relief is available for a defendant who seeks to challenge, on the basis of an intervening Supreme Court decision, a sentence that exceeds the applicable statutory maximum. See *Hunter v. United States*, 449 Fed. Appx. 860, 862 (11th Cir. 2011) (per

¹ Unlike McCarthan, who was challenging the remaining balance of a term of supervised release, Williams is challenging a life sentence as to which he has served over 27 years in prison.

curiam).² Second, in 2013, the Department adopted the view that habeas relief is similarly available to a defendant who argues that he was improperly subject to a mandatory-minimum sentence. See U.S. Br., *United States v. Surratt*, 797 F.3d 240 (2015), dismissed as moot, 855 F.3d 218 (4th Cir. 2017) (*en banc*), petition for cert. denied, No. 17-5255 (December 11, 2017).

[R.B. p. 14]

The circuits are split on this question, again, as acknowledged by the Government in its brief in opposition. R.B. 14-16.

The lower courts, both the District Court and Eleventh Circuit Court of Appeals, refused to address Williams’ claim on the merits, instead adjudicating the matter strictly on the issue of the court’s jurisdiction to adjudicate the claim. This was correct in the sense that federal courts have a duty to first determine whether the court has jurisdiction. Federal courts are always “under an independent obligation to examine their own jurisdiction,” *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990), and a federal court may not entertain an action over which it has no jurisdiction. See *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982).

Williams, in his *pro se* petition, framed the question presented as:

Whether the Lower Courts in the Eleventh and Tenth Circuits had

² Williams’ current counsel was *pro bono* counsel for Hunter and is appearing in this matter *pro bono*.

Jurisdiction to hear and decide whether Petitioner was, or was not, eligible for the filing of a Title 28 U.S.C. Section §2241(c)(3) Motion through the “savings clause” of Title 28 U.S.C. Section §2255(e) Motion to verify the Petitioner’s Actual, Factual, and Legal innocence of an unconstitutional sentence?

The question is strictly and narrowly a jurisdiction question. The merits of Petitioner Williams’ underlying sentencing claim are not at issue in this Petition except insofar as they may determine the parameters of the savings clause and the scope of jurisdiction under § 2241 to correct sentencing errors. That context is a claim of sentencing error predicated upon a developing line of authority from this Court which has had the effect of limiting the application of certain prior convictions to enhance federal sentences.

Williams’ claim is that he would not qualify for the mandatory life sentence nor the 30 year Sentencing Guideline Career Offender sentence imposed in 1991 based on prior felony convictions that he argues under this Court’s newly developed jurisprudence - *Descamps v. United States*, 133 S. Ct. 2276 (2013) and *Mathis v. United States*, 136 S. Ct. 2243 (2016) - would not constitute felony drug offenses under 21 U.S.C. § 802(44) for the life sentence enhancement nor constitute a controlled substance offense under U.S.S.G. § 4B1.2(b).

That his case was not addressed on the merits below is not an obstacle to this Court granting certiorari, rather it is an inducement to do so, because this Court need

not concern itself with the merits of the underlying claim. Instead, this case presents a pure vehicle for deciding the fundamental jurisdictional question presented in its starkest form.

Even among those courts which have found jurisdiction to lie under 28 U.S.C. § 2241 to correct statutory sentencing errors, generally such courts have engrafted onto the statute without any statutory authority a requirement that the subsequent authority that serves as the basis for the § 2241 claim have been made retroactive by this Court. Williams would agree with the Government that neither *Descamps* nor *Mathis*³ has been made retroactive by this Court, thus Williams' Petition presents the question in its most compelling form:

Does Due Process⁴ permit the Government to imprison a person for life when the application of the minimum mandatory life sentence was done in error?

³ Williams made a claim under *Johnson v. United States*, 135 S.Ct. 2551 (2015), made retroactive by *Welch v. United States*, 136 S. Ct. 1257 (2016). It is not apparent, however, what application Johnson would have to the predicate offenses at issue in Williams' case.

⁴ See *Salerno v. United States*, 481 U.S. 739, 746 (1987) (noting that the substantive due process component of the Fifth Amendment "prevents the government from engaging in conduct that shocks the conscience.") Holding a person in prison for life based on a misapplication of the authorizing statute would or should shock the conscience of reasonable persons.

Does the Suspension Clause of the Constitution⁵ require that the savings clause of § 2255(e) be interpreted in such a way to permit correction of a sentence which was imposed in error?

The Eleventh Circuit brushed aside such concerns in its order. It applied its newly found rule of *McCarthan* and concluded:

This Court further held [in *McCarthan*] that, where the petitioner's motion attacked his sentence based on a cognizable claim that could have been brought in a § 2255 motion to vacate, *the § 2255 remedial vehicle was adequate and effective to test his claim, even if circuit precedent or a procedural bar would have foreclosed it. Id.* at 1079-81, 1085-86.

Here, Williams clearly challenged the validity of his sentence, rather than its execution, and, thus, his claims generally should have been brought in a § 2255 motion to vacate. *See Antonelli v. Warden, U.S.P. Atlanta*, 542 F.3d 1348, 1351 (11th Cir. 2008). Moreover, Williams has failed to invoke § 2255(e)'s savings clause, or otherwise demonstrate that § 2255 was inadequate or ineffective to test the legality of his sentence. *Even if the procedural bar against successive § 2255 motions foreclosed Williams' claims, his arguments are, nonetheless, claims that could have been asserted in a § 2255 motion, and therefore, § 2255 was an adequate remedial vehicle to test his claims. See McCarthan*, 851 F.3d at 1079-81, 1085-86. Thus Williams' claims are not cognizable under the savings clause. *See* 28 U.S.C. § 2255(e). Therefore, the district court properly dismissed Williams's § 2241 petition . . .

[Petition, Appendix B, pp. 2-3] (emphasis supplied)

Procedural due process that does not result in substantive due process is not

⁵ Constitution, Art. I, Sec. 9, Clause 2.

Constitutionally adequate due process.

WHEREFORE, Petitioner, JOSEPH EDWARD WILLIAMS, respectfully requests this honorable Court grant his petition for certiorari.

Respectfully submitted,

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