
NO. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2017

Johnny Madison - Petitioner,

vs.

United States of America - Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, contrary to the sentencing guidelines and authority from other circuits, the Eighth Circuit Court of Appeals erred by endorsing the District Court's decision to treat for sentencing purposes more than 500 grams of unseized and untested methamphetamine as actual methamphetamine, as opposed to methamphetamine mixture.

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The petitioner, Johnny Madison, through counsel, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit in case No. 16-3391, entered on July 20, 2017. Mr. Madison's petition for rehearing *en banc* and petition for rehearing by the panel were denied on August 24, 2017.

OPINION BELOW

On July 20, 2017, a panel of the Court of Appeals entered its ruling affirming Mr. Madison's 140-month sentence for methamphetamine offenses. The Court of Appeals' decision is published at 863 F.3d 1001. Mr. Madison was sentenced in the United States District Court for the Northern District of Iowa, which did not issue any published decisions related to his sentence.

JURISDICTION

The Court of Appeals entered its judgment on July 20, 2017, and denied Mr. Madison's petition for rehearing *en banc* and petition for rehearing by the panel on August 24, 2017. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V: "No person shall . . . be deprived of life, liberty, or property, without due process of law"

STATEMENT OF THE CASE

Mr. Madison pled guilty in the District Court to conspiracy to distribute methamphetamine and distribution of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(B) and 846. App. B at 1, 3.

On July 1, 2015, police in Sioux City, Iowa, used a confidential source ("CS") to make a controlled purchase of 24.5 grams of methamphetamine from Mr. Madison for \$1,200. Laboratory testing revealed that the methamphetamine was 99.1% pure (approximately 24.3 grams of actual methamphetamine). This was the only completed controlled purchase of methamphetamine from Mr. Madison. *See id.* at 2.

Admissions allegedly made by Mr. Madison in an unrecorded, pre-federal-indictment interview with law enforcement played a significant role in his sentencing. Over Mr. Madison's objection, the District Court found that he

admitted during the interview to having obtained the following quantities of methamphetamine from the following suppliers: 141.75 grams from Josh Navrkal, 56.7 grams from Seid Tilahun, and 340.2 grams from Daniel Suhr – for a total of 538.65 grams of methamphetamine. These quantities of methamphetamine were never seized or tested for purity, and Mr. Madison made no admissions regarding the purity of the drugs. *See id.* at 2-4.

Based on Mr. Madison's alleged admissions, the District Court held him accountable at sentencing for 519.1 grams of actual methamphetamine, which corresponded to a base offense level under the sentencing guidelines of 34. *Id.* at 3-4 (citing USSG § 2D1.1(c)(3)). The District Court concluded that the methamphetamine allegedly acquired from Messrs. Navrkal, Tilahun, and Suhr was 99%, 98%, and 95% pure, respectively, based on laboratory tests of other methamphetamine seized from those suppliers. With those purity levels, the court concluded that Mr. Madison obtained actual methamphetamine in the following quantities: 140.3 grams from Mr. Navrkal (141.75 grams * 99%), 55.6 grams from Mr. Tilahun (56.7 grams * 98%), and 323.2 grams from Mr. Suhr (340.2 grams * 95%). In reaching its conclusion to apply the very high purity rates for unseized and untested drugs, the District Court also considered evidence that the less than one ounce of methamphetamine that Mr. Madison sold to the CS was 99.1% pure, and anecdotal testimony at sentencing from Sioux City Police Sergeant Troy

Hansen that methamphetamine seized in Sioux City is often “97, 98, 99 percent pure.” *Id.* at 7-8 & n.4.

Mr. Madison unsuccessfully argued at sentencing that the District Court should have calculated the drug quantity attributable to him differently. He argued that any unseized and untested methamphetamine should be considered methamphetamine mixture. At the same time, he acknowledged that the 24.3 grams of actual methamphetamine that he sold to the CS should also be reflected in his base offense level. Under Mr. Madison’s approach, the 538.65 grams of methamphetamine mixture (141.75 + 56.7 + 340.2 grams) and the 24.3 grams of actual methamphetamine should have been converted to 1,563.3 grams of marijuana equivalent ([538.65 grams of methamphetamine mixture * 2 kilograms] + [24.3 grams of actual methamphetamine * 20 kilograms]). *See* USSG § 2D1.1 comment. n.8(B), (D). That quantity of marijuana equivalent corresponds to a base offense level of 30. *See* USSG § 2D1.1(c)(5).

Ultimately, the District Court sentenced Mr. Madison to 140 months’ imprisonment. The sentence reflected a modest downward variance from the 168-to-210-month guideline range (base offense level of 34, total offense level of 31, and criminal history category of V). App. B at 4-5; *see also* App. D.

Mr. Madison appealed, raising several sentencing-related issues, including the issue presented by this petition. A panel of the Court of Appeals affirmed his sentence (Apps. A and B). On the issue presented in this petition, the Court of

Appeals relied on intracircuit authority for the proposition that “[t]he government may prove the total quantity of actual methamphetamine in a series of transactions by testing the purity of a seized quantity and applying the percentage of actual methamphetamine in the tested quantity to the unrecovered quantities.” App. B at 7 (quoting *United States v. Houston*, 338 F.3d 876, 879 (8th Cir. 2003)). Relying on that proposition, the Court of Appeals found no procedural error in the District Court’s method of calculating the drug quantity attributable to Mr. Madison, or in its conclusion that his base offense level was 34. *Id.* at 7-8.

Mr. Madison petitioned for rehearing before the same panel of the Court of Appeals and the *en banc* Court of Appeals. His petition was denied without comment. App. C.

This petition follows.

REASONS FOR GRANTING THE WRIT

The Due Process Clause of the Fifth Amendment provides that “[n]o person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V. A sentence based on unreliable information violates a criminal defendant’s right to due process. *United States v. Eschman*, 227 F.3d 886, 890 (7th Cir. 2000). As such, in a drug case, a sentencing court may not make “far reaching” assumptions in calculating the drug quantity for which a defendant is responsible. *See United States v. Hewitt*, 942 F.2d 1270, 1274 (8th Cir. 1991). The decision of the Court of Appeals, which allows treating unseized and untested methamphetamine

as substantially pure methamphetamine for sentencing purposes, promotes sentencing based on unreliable information.

The decision of the Court of Appeals overlooks the sentencing guidelines, which, in order to facilitate sentencing based on reliable information, treat actual methamphetamine and methamphetamine mixture as different drugs in the drug quantity table and drug equivalency table. *See* USSG § 2D1.1(c) & comment n.8(D). The difference between the two drugs is stark: the guidelines equate one gram of actual methamphetamine to twenty kilograms of marijuana, while one gram of methamphetamine mixture is equivalent to two kilograms of marijuana. *See id.* The sentencing guidelines expressly provide the method for calculating the base offense level for an offense involving more than one type of drug: “The Drug Equivalency Tables also provide a means for combining differing controlled substances to obtain a single offense level. In each case, convert each of the drugs to its marijuana equivalent, add the quantities, and look up the total in the Drug Quantity Table to obtain the combined offense level.” *Id.* comment. n.8(B).

The Court of Appeals relied upon intracircuit authority providing that “[t]he government may prove the total quantity of actual methamphetamine in a series of transactions by testing the purity of a seized quantity and applying the percentage of actual methamphetamine in the tested quantity to the unrecovered quantities.” App. B at 7 (quoting *Houston*, 338 F.3d at 879, and also citing *United States v. Mesner*, 377 F.3d 849, 852-53 (8th Cir. 2004)).

Given that “[n]o other drug is punished more severely based on purity” than methamphetamine, *United States v. Hayes*, 948 F. Supp. 2d 1009, 1025 (N.D. Iowa 2013), the sounder approach is to consider unseized and untested methamphetamine to be methamphetamine mixture. For offenses such as Mr. Madison’s that involve both actual methamphetamine and methamphetamine mixture, a sentencing court should convert the drug quantities to marijuana equivalent according to the commentary to § 2D1.1. This approach is more faithful to the rule of lenity, providing that when “an ambiguous section of the Sentencing Guidelines may be given either of two plausible readings, [a court] must resolve the ambiguity in the defendant’s favor.” *United States v. Parker*, 762 F.3d 801, 806 (8th Cir. 2014) (quotation marks omitted).

The approach advocated for here is also consistent with case law from other circuits. For instance, in *United States v. Aquino*, 242 F.3d 859, 866 (9th Cir. 2001), the Ninth Circuit held that where “the actual purity of the seven pounds of methamphetamine [attributed to the defendant] was not known, the [district] court properly treated it as generic methamphetamine and converted the 3,175.2 grams of ‘generic’ methamphetamine to its marijuana equivalent.” In *United States v. Molina*, 286 F. App’x 94, 95-96 (4th Cir. 2008) (unpublished), the Fourth Circuit found no error where the district court calculated the drug quantity attributable to the defendant by “converting the quantities of actual methamphetamine and methamphetamine mixture to marijuana equivalents to determine” the offense

level. Indeed, even case law from the Eighth Circuit – albeit unpublished – supports Mr. Madison’s method of calculating drug quantity in an offense involving relatively small seized quantities of actual methamphetamine and larger quantities of unseized and untested methamphetamine. *United States v. Garcia-Panama*, 432 F. App’x 641, 643 (8th Cir. 2011) (unpublished) (“Approximately fifty grams of a methamphetamine mixture was not submitted for purity testing. Accordingly, the district court converted the total amount of actual (tested) methamphetamine and the (untested) methamphetamine mixture to its marijuana equivalent. This was the appropriate approach.”).

The District Court’s approach in this case, which was endorsed by the Court of Appeals, had a severe impact on Mr. Madison’s base offense level, increasing it from 30 to 34, which in turn dramatically increased his sentence, even after a modest downward variance. This Court should use Mr. Madison’s case as a vehicle to promote sentencing in drug cases based on reliable information, and to address an apparent split among the circuits on this issue.

CONCLUSION

For the foregoing reasons, Mr. Madison respectfully requests that this Petition for Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,



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