

IN THE UNITED STATES
S U P R E M E C O U R T

CASE NO.

IN RE: JAMES YOUNG

REQUEST FOR
WRIT OF HABEAS CORPUS
" E X T R A O R D I N A R Y C I R C U M S T A N C E S "
PURSUANT TO SUPREME COURT RULE 20 AND RULE 22

PRO SE
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QUESTION(S) PRESENTED FOR REVIEW

WHETHER DEFENDANT (MR. YOUNG) IS BEING DETAINED IN VIOLATION OF DUE PROCESS OF LAW, AND WHETHER HE IS BEING DETAINED IN EXCESS OF THE STATUTORY MAXIMUM PENALTY PRESCRIBED BY LAW UNDER TITLE 18 USC § 922(g) WHERE HE HAS SERVED OVER THE MAXIMUM TERM OF TEN YEARS

WHETHER THE COURT OF APPEALS CAN DENY A DEFENDANT THE OPPORTUNITY TO CHALLENGE HIS SENTENCE WHEN THE SUPREME COURT ANNOUNCES A NEW SUBSTANTIVE RULE OF LAW JOHNSON v. UNITED STATES, 135 S.Ct. 2551 (2015).

INTERESTED PARTIES

There are no parties to the proceedings other than those named in the caption of the case.

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IN THE UNITED STATES
S U P R E M E C O U R T

CASE NO.

IN RE: JAMES YOUNG

REQUEST FOR
WRIT OF HABEAS CORPUS
28 U.S.C. § 2241

Petitioner, James Young, respectfully petitions for a writ of habeas corpus as a result of intervening decision by the Supreme Court, (Johnson v. United States, 135 S.Ct. 2551 (2015)), and he is now serving an unlawful sentence where the statutory maximum penalty for his incarceration is ten statutory years, pursuant to 18 U.S.C. § 922(g)(1), and he has served over 15 years of incarceration on this term, and the issue's presented in this type petition for extraordinary relief are, or has been barred, and the district court has refused to entertain petitioner's applications. See attached Appendices.

OPINIONS BELOW

The decision of the court of appeals denying petitioner's application to file a second or successive habeas corpus, is unreported and reproduced in Appendix A-1. The decision of the district courts order denying petitioner's 28 U.S.C. § 2241 application is unreported and reproduced in Appendix A-3.

All other Appendices will be listed thereafter.

STATEMENT OF JURIDICTION

Jurisdiction of this Supreme Court is invoked under 28 U.S.C. § 1651(a), § 2241, and is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court. The jurisdiction of the district court was invoked under 28 U.S.C. § 2241. The decision of the court of appeals was entered on September 13, 2017. This petition is filed under Supreme Court Rule 20, and Rule 22, where a cover letter to the Clerk of the Court accompanies the petition for "extraordinary circumstances."

STATUTORY AND OTHER PROVISIONS INVOLVED

18 U.S.C. § 922(g)(1):

(g) It shall be unlawful for any person--

(1) Who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

18 U.S.C. § 924(a)(2) Penalties.

(2) whoever knowingly violates subsection (a)(6), (d), (g), (h), (i), (j), or (o) of section 922 [18 USCS § 922] shall be fined as provided in this title, imprisoned not more than 10 years, or both.

18 U.S.C. § 924(e)(1) provides: In the case of a person who violates section 922(g) of this [18 USCS § 922(g)] and has three previous convictions by any court referred to in section 922(g)(1) of this title [18 USCS § 922(g)(1)] for a violent felony or serious drug offense, or both,

committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g) [18 USCS § 922(g)].

28 U.S.C. § 1651 Writs:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

28 U.S.C. § 2241 (a) provides:

Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.

(c) The writ of habeas corpus shall not extend to a prisoner unless--

(3) He is in custody in violation of the Constitution or laws or treaties of the United States;

STATEMENT OF FACTS

On August 10, 1994, a federal grand jury in the Northern District of Florida returned to James Young, a one count indictment charging him with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g) and 924(e). See United States v. Young, Case No. 0:94-cr-1036 (N.D. Fla.) at Cr. Doc. 1 (Criminal Docket 1).

After being found guilty by a jury, Mr. Young was sentenced by the district court to a term of imprisonment of 262 months. Cr. Doc. 27, 36, 37. Count one was punishable by a mandatory minimum term of 15 years to life of imprisonment. 18 U.S.C. § 924(e). Absent the Armed Career Criminal Act ("ACCA") enhancement, the maximum sentence Mr. Young could receive is 10 years imprisonment. 18 U.S.C. 924(a)(2). Based on the Presentence Investigation Report Mr. Young had five convictions for burglary of a dwelling and one for aggravated assault.

On June 26, 2015, the Supreme Court of the United States announced that the "residual clause" in the ACCA's definition was unconstitutionally vague, which the Supreme Court has invalidated that provision. On a number of occasions, Mr. Young filed request to the district court and the Eleventh Circuit court of appeals requesting permission to file a second or successive § 2255 motion. See Cr. Doc. 213; Doc. 218; Doc. 220; Doc. 233. On August 8, 2016, the Eleventh Circuit denied Mr. Young's third application for permission to file a successive § 2255 petition, based on Johnson Claims. Cr. Doc. 234; and on October 19, 2016, the Eleventh Circuit denied yet another request to file a successive § 2255 motion. Cr. Doc. 237; then again, in January 11, 2017, the Eleventh Circuit denied another request by Mr. Young. Cr. Doc. 239. Shortly thereafter, Mr. Young filed a request for habeas corpus pursuant to 28 U.S.C. § 2241, where the district court dismissed the case without making a determination on the merits of his Johnson claim. See Appendix A-3.

As a result of the Supreme Court decision in Johnson, Mr. Young's burglary convictions that were used to support his ACCA classification are no-longer qualifying offenses for purposes of the ACCA enhancement. Mr. Young has repeatedly attempted to get resolution through the lower district court's and the Eleventh Circuit court of appeal to no avail. He now seeks to have this miscarriage of justice corrected by the Supreme Court of the United States.

REASON FOR GRANTING WRIT

BECAUSE DEFENDANT IS BEING DETAINED IN EXCESS OF THE STATUTORY MAXIMUM PENALTY AS PRESCRIBED BY TITLE 18 USC §§ 922(g)(1), AND 924(a)(2), WHERE HE HAS SERVED MORE THAN THE TEN YEAR MAXIMUM TERM AND IS BEING DENIED ACCESS TO THE LOWER COURT'S

Mr. Young, believes he is being detained illegally based on the following. As a result of the United States Johnson decision 2015, Defendant's sole contention in this matter is that he is now beyond the 10-year period for his § 922(g)(1) offense and he argues that his present detention is invalid because the Florida burglary statute has been declared inapplicable under the residual clause and the enumerated offense clause [See United States v. Esprit, No. 14-13066, (11th Cir. Nov. 21, 2016)], and cannot serve as a predicate offense under the Armed Career Criminal Act (ACCA).

However, Defendant's prior Florida burglary offenses are the sole foundation for his present ACCA illegal enhancement. See Appendix A-6.

In further support, Defendant states his enhancement is illegal post the recently inextricably intertwined retroactive holdings in

Johnson v. United States, 135 S. Ct. 2551, 192 L. Ed. 2d 569 (2015); Welch v. United States, 136 S. Ct. 1257, 1268, 194 L. Ed. 2d 387 (2016); and James v. United States, 550 U.S. 192, 212 (2007) (Abrogated by Johnson)(emphasis added); all certifying that the predicate offenses used to enhance Mr. Young's sentence from 18 U.S.C. § 922(g), to 18 U.S.C. § 924(e), no longer qualifies for purposes of ACCA enhancement.

18 U.S.C. § 924(e)(1) provides:

In the case of a person who violates section 922(g) of this [18 USCS § 922(g)] and has three previous convictions by any court referred to in section 922(g)(1) of this title [18 USCS § 922(g)(1)] for a violent felony or serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g) [18 USCS § 922(g)].

Defendant has no other eligible felonies that can be used for the purposes of any enhancement beyond the 10 years he has already served. Defendant's record doesn't have the three required ACCA felonies.

Without the ACCA enhancement, possession of a firearm by a convicted felon is a class C felony with a statutory maximum of 10 years' imprisonment. See 18 U.S.C. § 924(a)(2).

It has further been held [when a prisoner convicted of a § 922(g) crime serves more than the applicable 10-year maximum in § 924(a), he is being detained without authorization by any statute.]. And it is this particular position that is also an extraordinary circumstance, because where there's no statute, there's no crime.

BECAUSE THE COURT OF APPEALS DENIED DEFENDANT THE OPPORTUNITY TO CHALLENGE HIS SENTENCE WHEN THE SUPREME COURT ANNOUNCED A NEW SUBSTANTIVE RULE OF LAW IN JOHNSON V. UNITED STATES, 135 S.Ct. 2551 (2015)

Secondly, what makes the writ request extraordinary is that this

Court in Welch, made it's Johnson (2015) decision retroactive, however, the lower courts denying retroactive review following Defendant's initial Johnson (2015) request which was just prior to retroactivity, denied Defendant the right afforded by the Supreme Court's later decision in Johnson (2015).

Each second and successive request made to the Eleventh Circuit Court of Appeals after that initial denial, was then denied by procedural bar due to *In re Baptiste*, 828 F.3d 1337 (11th Cir. 2016). See e.g. - Appendix A-2. Baptiste, was, thus, prematurely used in this instance.

Now, neither lower court has allowed Defendant any procedural opportunity to retroactive Johnson review post this Court's decision in Johnson (2015). This denial by the Eleventh Circuit Court of Appeals and the district court, works as a denial of due process.

Wherefore, due to the facts outlined above, Defendant has shown that the exceptional circumstances in his case warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court; and because of such, his request for an extraordinary writ, is justified and should be granted.

CONCLUSION

Based on the facts presented, that adequate relief cannot be obtained in any other form, Defendant requests that the requested relief be granted.

REQUESTED RELIEF

Mr. Young is requesting relief in the form of immediate release

from custody, based on the facts that he has served beyond the statutory term of imprisonment found in 18 U.S.C. § 924(a)(2); in the alternative, Defendant requests release on bond pursuant to rules of Crim. App. P. Rule 23 as this Court may deem applicable, either of which will aid this Court in it's habeas corpus decision.

Respectfully submitted,

Date: December 22, 2017

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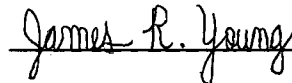
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Respectfully submitted,

Date: December 22, 2017



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