

IN THE
SUPREME COURT
OF THE
UNITED STATES

PETITION FOR
WRIT OF CERTIORARI
TO THE 11th CIRCUIT COURT OF APPEALS

JOSEPH WILLIAMS,
Petitioner,

v.

WARDEN, FCI COLEMAN MEDIUM,
Respondent.

CASE NO. _____
(APPELLATE CASE NO. 17-12912-A)

By:
Joseph Williams, pro se
#68334-004
FCI Coleman Medium
P.O. Box 1032
Coleman, FL 33521-1032

QUESTIONS PRESENTED

1. Whether the Eleventh Circuit Court of Appeals' Holding in McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017), Which Conflicts With Holdings of Nine Other Circuit Courts of Appeals, Unconstitutionally Forecloses a Petitioner's Right to Redress Under 28 U.S.C. § 2241
2. Whether Petitioner's Sentence is Unconstitutional In Light of This Court's Holding in Mathis v. U.S., 136 S.Ct. 2243 (2016), and the Error In Its Misapplication

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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28 U.S.C. § 2241	
28 U.S.C. § 2255	

STATE STATUTES

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OPINIONS BELOW

The opinion/order from the United States Court of Appeals for the Eleventh Circuit appears at Appendix A to this petition and, to the best of Petitioner's knowledge, is unpublished.

The opinion/order from the United States District Court for the Middle District of Florida appears at Appendix B to this petition and, to the best of Petitioner's knowledge, is unpublished.

Petitioner respectfully requests and prays that a writ of certiorari issue to review the judgment below.

JURISDICTION

The jurisdiction of this Court is invoked under 28
U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED

U.S. Constitution, Amendment 6

U.S. Constitution, Amendment 8

28 U.S.C. § 2241

28 U.S.C. § 2255

STATEMENT OF THE CASE

On November 21, 2002, Petitioner was named by a federal grand jury as a defendant in an eight-count indictment in the Southern District of Florida, with the counts as follows:

1. possession with intent to distribute five grams or more of cocaine base, in violation of 21 U.S.C. § 841(a)(1);
2. possession with intent to distribute cocaine in violation of 21 U.S.C. § 841(a)(1);
- 3, 4, and 8. possession with intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1);
5. possession of a firearm and ammunition in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c);
6. possession of a firearm after having previously been convicted of a felony in violation of 18 U.S.C. § 922(g).

Following a jury trial, on July 24, 2003, Petitioner was found guilty on seven of the eight counts, only having been acquitted of Count Five (possession of a firearm in furtherance of a drug trafficking offense). On March 17, 2004, Petitioner was sentenced to a term of thirty (30) years (360 months) as an armed career offender with eight (8) years supervised released upon completion of incarceration.

Throughout the years, Petitioner exhausted his appellate and habeas corpus rights in an attempt to rectify the error which had been committed in arriving at his conviction and sentencing. Ultimately, Petitioner filed a Motion pursuant to 28 U.S.C. § 2241(c)(3) based upon his actual, factual,

and legal innocence. The district court denied Petitioner relief under § 2241 and the appellate court denied his appeal of that denial. Petitioner now seeks redress in this Honorable Supreme Court and requests that a writ of certiorari issue to review the unjust decisions below.

IN THE SUPREME COURT
OF THE UNITED STATES

JOSEPH WILLIAMS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

COMES NOW, Petitioner, JOSEPH WILLIAMS, pro se, and respectfully requests that the Honorable Supreme Court of the United States issue a writ of certiorari to the Eleventh Circuit Court of Appeals to review the decisions below. Petitioner is a layman of the law, unskilled in the law, and requests this petition be construed liberally. Haines v. Kerner, 404 U.S. 519 (1972).

ISSUE ONE

Whether the Eleventh Circuit Court of Appeals'
Holding in McCarthan v. Dir. of
Goodwill Indus.-Suncoast, Inc.,
Unconstitutionally Forecloses a Petitioner's
Right to Redress under 28 U.S.C. § 2241

Petitioner filed a motion for relief in the district court under 28 U.S.C. § 2241 based upon the "savings clause" of 28 U.S.C. § 2255. Therein, Petitioner contested his sentencing enhancement(s) pursuant to this Court's prior holding in Mathis v. U.S., 136 S.Ct. 2243 (2016). Petitioner asserted that had the sentencing court applied proper analysis of Supreme Court precedent in conjunction with the

Mathis decision, he would have (and should have) never been deemed an armed career offender and, thus, not subject to the enhanced sentence imposed.

Rather than addressing the substantive issues set forth in Petitioner's motion, the district court, instead, issued a two-page order dismissing his motion predicated solely upon the Eleventh Circuit's 2017 decision in McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc., 851 F.3d 1076 (11th Cir. 2017)(en banc). Specifically, the trial court stated that

[r]ecently, sitting en banc the Eleventh Circuit overruled prior precedent and held that 28 U.S.C. § 2241 is not available to challenge the validity of a sentence except on very narrow grounds not present in this case.

See, App'x B, at p. 2. As a result, and without further analysis or explanation, the district court dismissed the motion .

Upon appeal from that dismissal, the Eleventh Circuit failed to address the substantive arguments as well.

The McCarthan decision, which was a relatively recent determination (as stated by the district court), reversed the course of § 2241 juris prudence within the circuit. In fact, prior to McCarthan, the Eleventh Circuit has been among the overwhelming majority of circuit courts of appeals that recognized (and still do) that the ability of persons in federal custody to invoke 28 U.S.C. § 2255(e)'s "savings

clause" to seek relief under § 2241 where an intervening and retroactively applicable decision of this Court rendered their continuing custody illegal. Nine circuits still adhere to that position. See, e.g., U.S. v. Barrett, 178 F.3d 34 (1st. Cir. 1999), cert. denied, 528 U.S. 1176 (2000); Triestman v. U.S., 124 F.3d 361 (2d Cir. 1997); In Re: Dorsainvil, 119 F.3d 245 (3d Cir. 1997); In Re: Jones, 226 F.3d 328 (4th Cir. 2000); Reyes-Requena v. U.S., 243 F.3d 893 (5th Cir. 2001); Martin v. Perez, 319 F.3d 799 (6th Cir. 2003); In Re: Davenport, 147 F.3d 605 (7th Cir. 1998); Alaimalo v. U.S., 645 F.3d 1042 (9th Cir. 2011); In Re: Smith, 285 F.3d 6 (D.C. Cir. 2002).

The decisions of these courts rests largely on the reasoning set out by the Seventh Circuit in Davenport. See, Samak v. Warden, 766 F.3d 1271, 1294 (11th Cir. 2014) (W. Pryor, J., concurring) (noting that "[t]he majority of our sister circuits have adopted variations of the Seventh Circuit rule from In Re: Davenport"). In interpreting the phrase "inadequate or ineffective" in Sec. 2255(e), the Seventh Circuit looked to the "essential function of Habeas Corpus." Davenport, at 609. It described that function as "giv[ing] a prisoner a reasonable opportunity to obtain a reliable judicial determination of the fundamental legality of his conviction and sentence." Id. (emphasis added).

Further, the Davenport court noted that a person who challenged erroneous circuit precedent in a direct appeal or initial § 2255 motion never had a reasonable opportunity that habeas corpus demands because

[t]he trial judge, bound by our * * * cases, would not listen to him; stare decisis would make us unwilling (in all likelihood) to listen to him; and the Supreme Court does not view itself as being in the business of correcting errors.

Id., at 611.

Moreover, Sec. 2255 would not provide such an opportunity after an intervening and retroactively applicable decision of this Court that postdated an initial Sec. 2255 motion because of the bar on second or successive motions. See, 28 U.S.C. 2255(h). As such, the Seventh Circuit reasoned (and the vast majority of other circuits have concurred) that, where a person in federal custody "had no reasonable opportunity to obtain earlier judicial correction of a fundamental defect in his conviction or sentence because the law changed after his first 2255 motion," the Sec. 2255(e) savings clause is triggered and an application for habeas corpus relief under § 2241 is available. Davenport, at 611.

It is noteworthy that, speaking through the Office of the Solicitor General, the government has repeatedly taken the position in the Court that the majority rule is the correct one. Since 2011, the government has filed at least eleven briefs in the Eleventh Circuit "agree[ing] that the

savings clause provides relief where Section 2255 prevents a federal prisoner from presenting a claim that, under an intervening, retroactively applicable statutory-construction decision ... his sentence is above the statutory maximum and circuit law foreclosed his legal claim at the time of his sentencing, direct appeal, and first Section 2255 motion." See, Briefs of the United States in Dority v. Roy, No. 10-8286 (11th Cir. May 16, 2011); Sorrell v. Bledsoe, No. 11-7416 (11th Cir. Jan. 17, 2012); McKelvey v. Rivera, No. 12-5699 (11th Cir. Dec. 17, 2012); Thornton v. Ives, No. 12-6608 (11th Cir. Feb. 1, 2013); McCorvey v. Young, No. 12-7559 (11th Cir. Fe. 4, 2013); Jones v. Castillo, No. 12-6925 (11th Cir. Feb. 21, 2013); Blanchard v. Castillo, No. 12-7894 (11th Cir. Mar. 26, 2013); Prince v. Thomas, No. 12-10719 (11th Cir. Aug. 12, 2013); Abernathy v. Cozz-Rhodes, No. 13-7723 (Mar. 7, 2014); Williams v. Hastings, No. 13-1221 (11th Cir. Jul. 30, 2014). See also, Brief of the United States in Tyler v. Cain, No. 00-5961 (11th Cir. Mar. 2, 2001) (stating that "[b]ecause of the availability of the 'savings clause,' there is no concern that federal prisoners who have a claim based on a new decision of" the Supreme Court "cutting back on the sweep of a criminal statute * * * will lack a remedy").

Additionally, in those Briefs, the government specifically disagreed with the Tenth Circuit's holding in Prost v.

Anderson, 636 F.3d 578 (2011), upon which the Eleventh Circuit ultimately decided McCarthan. For example, in Dority, the government said the Tenth Circuit's "overly restrictive interpretation of Section 2255(e) ... departs from the other circuits to have addressed the issue." As well, in U.S. v. Suratt, No. 14-6851 (4th Cir. Feb. 2, 2016), the government posited that "Prost's analysis is refuted by Section 2255(e)'s text, when read as a whole."

Under the current paradigm involving a significant split amongst the circuit courts of appeals, if McCarthan is allowed to stand, many federal prisoners in the Eleventh Circuit will not be able to take advantage of decisions of this Court and will remain incarcerated for conduct that all agree is no longer criminal (or for a term of imprisonment that all agree exceeds the maximum term authorized by law) while other prisoners in other circuits will be afforded that right and opportunity. It is incumbent upon this Honorable Supreme Court to address this circuit split and Petitioner hopes and prays that this Court will issue a writ of certiorari to the Eleventh Circuit for just that purpose.

ISSUE TWO

Whether Petitioner's Sentence Is Unconstitutional
In Light of This Court's Holding in Mathis
And the Error in Its Misapplication

In the sentencing phase of Petitioner's case, the trial court determined he was an armed career criminal pursuant to the Armed Career Criminal Act ("ACCA"), 28 U.S.C. § 924(e). This decision was predicated upon Petitioner having prior state felony convictions as listed on the Pre-Sentencing Investigation Report ("PSR") which was completed by the U.S. Probation Office. The listed "predicate offenses" were

1. F93-18076B: sale, purchase, or delivery of cocaine;
2. F93-19173: possession of cannabis with intent to sell, purchase, or deliver; and,
3. F96-14111 (resisting arrest).

As discussed herein, based upon the actions and/or, more precisely, inactions of the trial court, and premised upon this Court's holding in Mathis, these three "predicate offenses" do not qualify Petitioner for ACCA status and, as such, the district and appellate courts erred in not vacating that determination.

I. State Priors 1 and 2 Are Not "Controlled Substance Offenses" for ACCA Determination

Section 4B1.1 of the U.S.S. Guidelines for Career Offender Enhancement, the term "controlled substance of-

fense" is an offense under federal or state law, punishable by imprisonment for a term exceeding one year, that prohibits the manufacture, import, export, distribution, or dispensing of a controlled substance (or a counterfeit substance), or the possession of a controlled substance (or a counterfeit substance) with the intent to manufacture, import, export, or dispense. The government bears the burden of proving that a sentencing enhancement under ACCA is warranted.

First, in this case, the only information provided to the district court for determination of Petitioner's prior offenses was the PSR. The government failed to provide any documentation which was recognized by this Court in Shepard v. U.S., as proper documentation to support the determination of what may constitute a predicate offense. 544 U.S. 13 (2005). It was the government's burden to do so and failed. Absent the proper Shepard documentation (which does not include a PSR), the trial court had no way to ascertain whether the supposed offenses met the necessary elements of a "controlled substance offense" for ACCA purposes. The reason is that, under Florida law, two statutes criminalize sale, delivery, or manufacture. See, Fla. Stat. §§ 893.13 and 893.135. However, § 893.135 also prohibits the act of purchase which is not included in the definition of a "serious substance offense." Since no Shepard documents were

introduced, and since the prior convictions related to drugs may have been for possession, there was no way for the sentencing court to make that determination.

Secondly, the sentencing court was then required to perform a modified categorical approach analysis to ascertain whether the Florida statutes contained the elements necessary for ACCA determination, as this Court noted in Mathis. The Florida statutes for sale, purchase, and delivery do not qualify as controlled substance offenses because they set forth various means of committing the offenses. Various means of committing an offense does not establish disjunctive, separate offenses. Mathis instructs that there is a difference between alternative elements of an offense and alternative means of satisfying a single element. Elements must be agreed upon by a jury while a jury is not required to agree on a way a particular element of an offense is met. The way of satisfying that requirement is a means of committing an offense, not an element of that offense. Facts and means are mere real world things extraneous to the crimes legal requirements. They are circumstances or events having no legal effect or consequences and need neither be found by a jury nor admitted by a defendant. Additionally, Taylor v. U.S. does not allow conduct to be looked at. 495 U.S. 575 (1990). Thus, if conduct,

facts, and means cannot be used, then there was no way for the sentencing court to determine the elements of Petitioner's prior convictions.

Finally, given that the Florida statutes are indivisible, the sentencing court was required to assign to Petitioner the least culpible conduct under that statute for an ACCA determination. Moncrieffe v. Holder, 130 S.Ct. 1628 (2010).

As a result, there was no way for the trial court to make a determination that Petitioner's prior "drug related" convictions were properly classified as "serious substance offenses" for ACCA enhancement purposes. Petitioner's sentence which is based upon the ACCA determination is, thus, unconstitutional and must be vacated.

II. State Prior 3 Was Not a "Crime of Violence" for ACCA Enhancement

Under U.S.S. Guidelines § 4B1.2, the term "crime of violence" means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that has as an element the use, attempted use, or threatened use of physical force against the person of another or is enumerated as murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use of unlawful possession of a firearm described in 26 U.S.C. § 5845(a) or explosive material as

defined in 18 U.S.C. § 841(c). Again, the government bears the burden of proving that a sentencing enhancement is warranted.

As set forth above, the government failed to provide the Shepard documentation necessary to establish Petitioner's prior conviction. Florida's "resisting arrest" statute, Fla. Stat. § 843.01, is also an indivisible statute which may not be used as a predicate for an ACCA enhancement. Additionally, the charge of "resisting arrest" is not one of the enumerated acts. Moreover, because the act may be violated without the use of physical force (or the threat thereof), there was no method employed by the sentencing court to ascertain whether Petitioner's prior conviction actually met the criteria under the ACCA for enhancement purposes. Petitioner's sentence, based upon the ACCA enhancement, is, thus, unconstitutional and must be vacated.

CONCLUSION

It is imperative that this Court act to curb the disjointed and aberrant sentencing results which are issuing from within the Eleventh Circuit Court of Appeals in conflict with the vast majority of the other circuit courts, and instruct the district courts of the Eleventh Circuit to perform the proper analyses in conformity with Supreme Court precedent. Therefore, Petitioner JOSEPH WILLIAMS respect-

fully requests and prays that this Honorable Supreme Court will issue a writ of certiorari to review the decisions of the courts below on this extremely important issue.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Joseph Williams".

Joseph Williams
#68334-004
FCI Coleman Medium
P.O. Box 1032
Coleman, FL 33521-1032