

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN ALBRITTON, PETITIONER

vs.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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SUPREME COURT U.S.

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QUESTION PRESENTED

1. Does a Court of Appeals err after it grants a Certificate of Appealability and then holds that a petitioner's conviction and sentence are not invalid under 18 U.S.C. § 921(a)(20) despite the restoration of his civil rights -- including the right to possess firearms -- prior to his federal conviction under 18 U.S.C. § 922(g)?

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FOR THE FOURTH CIRCUIT

The Petitioner, JOHN ALBRITTON, pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case which affirmed the judgment of sentence imposed in the District Court.

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OPINIONS BELOW

After granting a Certificate of Appealability on the matter at hand, the United States Court of Appeals for the Fourth Circuit denied on the merits; that Opinion is unpublished and attached hereto. See Appendix A. The judgment of the United States District Court for the Eastern District of North Carolina is unpublished and hereto attached. See Appendix B.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered on September 7, 2017 after granting Petitioner a Certificate of Appealability (COA). See Appendix A; Appendix C. The jurisdiction of this Honorable Court is invoked pursuant to Title 18, United States Code, 1251(1).

CONSTITUTIONAL AND STATUTORY AUTHORITY INVOLVED

The issue herein -- on which the Court of Appeals granted COA to resolve -- concerns the application of Title 18, United States Code, Section 921(a)(20), which provides, in part, "[a]ny conviction which has been expunged, ... or for which a person ... has had civil rights restored shall not be considered a conviction for purposes of this chapter [Title 18 U.S.C. § 922], unless such ... restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." See Appendix D.

STATEMENT OF THE CASE

In the State of North Carolina, Petitioner John Albritton was convicted of certain conduct in the years 1977, 1978, and 1984.

After two superseding indictments which each added an additional charge of distribution of a quantity of cocaine base -- ultimately totalling three: two counts of distribution of less than one gram of cocaine base in violation

of 21 U.S.C. § 841(a)(1) and one count of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), relying on his 1977, 1978, and 1984 North Carolina State convictions, despite the restoration of Albritton's civil rights under the State's Felony Firearm Act in N.C. Gen. Stat. § 14-415.1 -- a jury convicted Albritton of all three counts in February 2013.

Relying on the same North Carolina prior convictions, the District Court sentenced Albritton to 180 months imprisonment under the Armed Career Criminal Act in 18 U.S.C. § 924(e) on July 2, 2013.

After the Court affirmed Albritton's direct appeal challenging the sufficiency of the evidence among other issues, he filed a Motion to Vacate, Set Aside, or Correct a Sentence under 28 U.S.C. § 2255. The District Court denied that motion and declined to grant a certificate of appealability. Albritton appealed, requesting that the Court of Appeals for the Fourth Circuit grant him a Certificate of Appealability (COA), and the Court of Appeals did grant such COA but denied the case on merits after ordering additional briefing.

REASONS FOR GRANTING THE WRIT:

I. RESTORATION OF PETITIONER'S CIVIL RIGHTS -- SO LONG AS SUCH RESTORATION DOES NOT EXPRESSLY EXCLUDE FIREARM RIGHTS -- PRECLUDES CONVICTION UNDER 18 U.S.C. § 922(g)(1) OR SENTENCING UNDER 18 U.S.C. § 924(e) REGARDLESS OF WHETHER THERE WAS A DELAY IN SUCH RESTORATION

The issue for which the Court of Appeals issued COA to be briefed was "whether Albritton's civil rights were restored in North Carolina following his 1977 and 1978 convictions such that he was improperly designated an Armed Career Criminal." See Appendix C.

The Government conceded in its Informal Response Brief that at least "some of Albritton's civil rights associated with these convictions were restored in 1983." [Appeal No. 16-6901, Doc. 17, p. 3].

The true question is when were Albritton's rights to possess a firearm restored and -- if there was a delay in such restoration -- can that delay of

restoration ever possibly be tantamount to the complete deprivation of such a right?

To answer both of these questions, a review of this Court's ruling in Caron v. United States, 524 U.S. 308 (1998); the applicability of Title 18, United States Code, Section 921(a)(20); and the relevant North Carolina State statutes is essential.

First, in Caron, this Court found that the rights of a person with a prior felony conviction can be "restored" within the meaning of § 921(a)(20) either by automatic operation of general state laws or by an individualized document such as a certificate of restoration. See Caron, at 313-314.

Second, a review of 18 U.S.C. § 921(a)(20) and how it applies to §§ 922(g)(1) and 924(e) is critical.

Title 18, United States Code, Section 922(g), provides, in part, "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;

to ... possess ... any firearm." § 922(g)(1); see Appendix D.

Title 18, United States Code, Section 924(e), provides, in part:

In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g) of this title ... such person shall be ... imprisoned not less than fifteen years.

18 U.S.C. § 924(e); see Appendix D.

As such, to be convicted under § 922(g)(1) or sentenced under § 924(e), a defendant must have "been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year." § 922(g). The term "crime punishable by imprisonment for a term exceeding one year" is further limited by 18 U.S.C. § 921(a)(20), which expressly provides, in part:

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offense relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction ... for which a person ... has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such ... restoration of civil rights expressly provides that the person may not ... possess ... firearms.

18 U.S.C. § 921(a)(20).

The Congressional language in § 921(a)(20) "shall be determined in accordance with the law of the jurisdiction in which the proceedings were held" supports that "courts must look to 'the whole of state law'" when determining whether civil rights -- including firearm rights -- have been restored in such a way to exclude them under § 921(a)(20) from being qualifying felonies under § 922(g) or § 924(e). See Logan v. United States, 552 U.S. 23, 33 & n.4 (2007) (recognizing that "[c]ourts have divided on the question whe[n] § 921(a)(20)'s 'unless' clause is triggered").

In Logan, this Court noted that the Circuits are split over how the "unless" clause -- the clause under § 921(a)(20) which provides that civil rights restorations are excluded from §§ 922(g) and 924(e) "unless such ... restoration ... expressly provides that the person may not ... possess ... firearms" -- is applied throughout the States which provide such restoration, i.e. when a state provides a certificate of restoration, should the court rely on such certificate alone or also on the automatic operation of general state laws. Id.

Some circuits have held that courts may look only at the face of the document/certificate itself. See United States v. Burnett, 641 F.3d 894, 896 (CA7 2011); United States v. Chenoweth, 459 F.3d 635, 639-40 (CA5 2006);

Department of Correction; or of a defendant under a suspended sentence by the court.

...

N.C. Gen. Stat. § 13-2 — Citizenship Restored

Issuance and filing of a certificate or order of restoration.—The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of G.S. 13-1[] shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship....

N.C. Gen. Stat. § 14-415.1(a)—Felony Firearms Act

Possession of firearms, etc., by felon prohibited.—(a) It shall be unlawful for any person who has been convicted of any crime ... to purchase, own, possess, or have in his custody, care, or control any handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches, ... within five years from the date of such conviction, or the unconditional discharge from a correctional institution, or termination of a suspended sentence, probation, or parole upon such conviction, whichever is later.

...

Nothing in this act would prohibit the right of any person to have possession of a firearm within his own home or on his lawful place of business.

See Appendix D.

The State of North Carolina routinely purges its copies of the Certificates of Unconditional Discharge after ten years. See United States v. Burleson, No. 15-6589, Doc. 38, pp. 7-8 n.1 (CA4 12/23/2015)(Counsel submitting under oath to the Court of Appeals for the Fourth Circuit that he contacted the North Carolina Department of Public Safety and discovered "that the Department no longer possessed [his client]'s original [1988] certificate in 2013 because it routinely purges such certificates after ten years.").

Albritton similarly contacted the Department in 2017 and was told that his 1983 certificate had been purged. The counsel in Burleson provided a solution, however, that aids Albritton, as well. He provided to the Court of Appeals for the Fourth Circuit a duplicate certificate that -- while possibly

conviction." Id. As such, the NC statute in 1983 permitted felons to possess long-barreled firearms -- like the long-barreled firearm found at a home determined to be Albritton's in this case -- even within the five years when handguns and short-barreled firearms were prohibited.

Additionally, the statute expressly permits possession of a handgun or short-barreled firearm by a felon within the five-year waiting period so long as such possession is "in his home or on his lawful place of business." Id. ("Nothing in this act [the Felony Firearms Act] would prohibit the right of any person to have possession of a firearm.").

Attention should be called to the unambiguous language regarding the five-year waiting period, as well. The NC felon in the 1980s was prohibited from owning a handgun or short-barreled firearm "within five years from date of ... termination of ... probation ... upon such conviction."

Note that there is no other limiting language. After five years, NC felons pre-1995 were permitted to own even handguns and short-barreled firearms so long as the five-year limitation period had run. Period. This is important because this Court -- in Logan v. United States, 552 U.S. 23 (2007) -- recognized that "[m]any states that restore felons' civil rights ... nonetheless impose or retain firearm disabilities. ... citing ... La. Rev. Stat. Ann. § 14:95.1(C) ... under which felons' firearm disabilities are lifted only after ten years and only if no further felony convictions intervene." Id., at 33.

North Carolina's statute had no such limitation that prevented that restoration of the right to possess firearms if a felon had an intervening conviction. In this way, it is completely different from the Louisiana statute this Court considered when reviewing the disability period.

Relevant here, and getting to the heart of the Government's argument on appeal and the reason the Court of Appeals gave for denying relief to

Albritton, he sustained a conviction in 1984 -- which the Government and Court of Appeals for the Fourth Circuit erroneously held was an intervening conviction that prevented Albritton's firearm rights from being restored at all, thus allowing those convictions to qualify under §§ 922(g)(1) and 924(e).

While Albritton did indeed sustain another NC conviction in 1984 -- a conviction which the Court of Appeals did not bring into its question, presumably because the rights later restored to Albritton under the NC 1995 version of the Felony Firearms Act immediately restored his firearm rights to possess the long-barreled firearm in question in this case -- the pre-1995 version of the NC Felony Firearms Act does not provide that such an intervening conviction keeps the five-year window from lapsing.

As such, even though Albritton was in prison for a separate conviction, his five-year firearm disability for the 1977/1978 convictions lapsed five years after the termination of his probation for "such conviction" -- meaning his full rights to possess any firearms in regards to his 1977/1978 convictions were restored under the NC Felony Firearms Act in 1988, meaning that these convictions are excluded by § 921(a)(20) and cannot be used to qualify as convictions or sentences under §§ 922(g)(1) or 924(e).

Even if such an intervening conviction did delay such restoration in 1988, as the Government and Fourth Circuit Court of Appeals contends, such a delay cannot be interpreted by federal courts as a permanent ban. In fact, the Government and Fourth Circuit never submit that Albritton's firearm rights to own the long-barreled firearm at his home following his 1984 conviction and restoration of his civil rights in 1996 was in question at all in this case.

This makes sense, because the 1995 version of North Carolina's Felony Firearm Act removes the five-year waiting period, providing immediate

restoration for felons to possess long-barreled firearms. See McSwain v. United States, No. 3:08-cv-206; 3:05-cr-79, 2010 U.S. Dist. LEXIS 92313 (W.D. Nc. September 3, 2010)("In 1995, however, the North Carolina Legislature amended the statute to eliminate the five year [disability]").

It is undisputed that Albritton's ownership of the long-barreled firearm in question was permitted under the 1995 version of the NC Felony Firearms Act. In fact, the Government conceded as much in its Response Brief in the underlying appeal. See [Appeal No. 16-6901, Doc. 17, p. 8](citing Albritton's 1996 discharge from parole); Id., p. 9 (citing 1996 complete "discharge" twice); Id., p. 11 (same).

This fact highlights that the Government's and Court of Appeals' reasoning is flawed here. At a minimum, if Albritton was permitted to legally possess the long-barreled firearm in question at his home in 1996, it is nonsense to say that his 1977/1978 convictions somehow permanently banned such possession and that his rights were not restored for the 1977/1978 convictions but were restored for the 1984 conviction.

Thus, at best, Albritton's rights to possess the long-barreled firearm in question were restored in 1988; at worst, such restoration was delayed until 1996. Either way, the NC Felony Firearms Act did restore Albritton's right to possess the long-barreled firearm used to convict and sentence him under 18 U.S.C. §§ 922(g)(1) and 924(e).

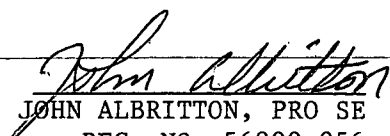
As such, certiorari is warranted.

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CONCLUSION

WHEREFORE, it is respectfully requested that a Writ of Certiorari be granted.

RESPECTFULLY SUBMITTED,


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