

No.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2018

RAYMOND A. COLLINS,
Petitioner,

- V -

UNITED STATES OF AMERICA,
Respondent,

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE HOLDING OF THE COURT BELOW ERRED IN DENYING DEFENDANT'S MOTION FOR A REDUCTION IN HIS SENTENCE PURSUANT TO 18 USC §3582(c)(2) AND AMENDMENT 591.
2. THE COURT SHOULD GRANT CERTIORARI TO DETERMINE IF THE FAILURE OF THE PROBATION OFFICER IN THE (P.S.R.) MAKES NO REFERENCE TO TITLE 18 U.S.C. §34 PRE-1994 VERSION OF 18 U.S.C. §844(i) THE CONTROLLING STATUTE REFERENCING THE GUIDELINES.
3. THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE HOLDING OF THE COURT BELOW ERRED IN DENYING DEFENDANT'S MOTION FOR A REDUCTION OF SENTENCE PURSUANT TO THE SUPREME COURT'S HOLDING IN PEUGH V. THE UNITED STATES, 133 S.Ct. 2072 (2013).

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POINT I

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE WHETHER THE HOLDING OF THE COURT BELOW ERRED IN DENYING DEFEN- DANT'S MOTION FOR A REDUCTION IN HIS SENTENCE PURSUANT TO 18 U.S.C. §3582 (C)(2) AND AMENDMENT 591.	6
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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND
ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT:

Petitioner Raymond A. Collins respectfully pray's that a writ of Certiorari issue to review a judgement of the United States Court of Appeals for The Second Circuit affirmed a judgment of the United States District Court for the Northern District of New York (The Honorable Thomas J. Mcavoy) entered on October 10, 2016, petitioner's motion for a reduction of sentence pursuant to 18 U.S.C. §3582(c)(2) and Amendment 591.

OPINIONS BELOW

The Summary Order, and decision of the Court of Appeals is annexed hereto as Appendix (A).

The summary Order, and decision of the Court of appeals denying petitioner's motion for PANEL REHEARING/RECONSIDERATION, annexed hereto as Appendix (B).

A copy of petitioner's appeal Brief, annexed hereto as appendix (C).

A copy of petitioner's Informal Reply Brief, annexed hereto as Appendix (D).

A copy of petitioner's Informal Motion Requesting Rehearing with a suggestion of Rehearing en banc, annexed hereto as Appendix (E).

A copy of Brief For Appellee United States of America, annexed hereto as Appendix (F).

A copy of petitioner's Motion pursuant to 18 U.S.C. §3582 (C)(2) seeking a reduction of sentence in light of Amendment 591, annexed hereto as Appendix (G).

A copy of Government's Response To Petitioner's 3582 Motion, annexed hereto as Appendix (H).

A copy of the District Court's Decision & Order, annexed hereto as Appendix (I).

A copy of petitioner's Writ of Certiorari is annexed hereto as Appendix (J).

JURISDICTION

The order of the Court of Appeals denying petitioner's 18 U.S.C. § 3582(C)(2) relief after filing, a petition for Panel Rehearing, or, in the alternative, for rehearing en banc was entered on December 28, 2017.

The Court's jurisdiction is invoked pursuant to Title 28 U.S.C. Code, Section 1254 (1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The constitutional provisions involved in this case are fifth and Six Amendments, which are set forth in appendix (J).

STATEMENT OF THE FACTS

On October 16, 1995, petitioner Raymond A. Collins was named in a first superseding indictment charging him with conspricay to commit arson count 3, in violation of U.S.C. §371, and count 4, in violation of §844(i). Petitioner proceedec trial on a second superseding indictment charging him with the identical aforementioned offenses. After a two month trial with five other co-defendants petitioner was convicted of both counts in the indictment.

The petitioner was scheduled to be sentence on October 22, 1996, however, this date was postedponed, because, the District Count requested both parties to file memorandum's of law regarding the manner inwhich, the Court wanted to sentence the petitioner, in light of the inter-play of 18 U.S.C. §34, and 18 U.S.C. §844(i)...arson resulting in death.

Petitioner's attorney filed two sepearte sentencing memorandum's each addressing different issue's of importance, (1)presentencing memorandum motion for a downward departure; (2) A motion addressing an ex post facto violation, (docket #'s 1076, and 1108. Counsels were requested to submit additional briefing's as to whether the ex post facto doctrine precluded the imposition of a life sentence.

After the presentment of the requested memorandum's the matter then proceeded to sentencing. In the Presentencing Investigation Report (PRS), the United States Probation Office for the Northern District of New York recommended that counts 3, and 4 should be grouped together

into a single group. See: (PSR) ¶28. The probation office than analyzed the base offense level for arson in violation of 18 U.S.C. 844(i), without considering the inter-play of 18 U.S.C. 34, which was mandatory under the guidelines at the time of the offense charged in the indictment.

The probation department adjusted petitioner's base offense level in accordance to 18 U.S.C. §844(i), and U.S.S.G. 2k1.4(C)(2), "if death resulted, or intended to cause death or serious bodily injury, apply the most analogous guideline from Chapter Two, part A in accordance with 18 U.S.C. §111 first degree murder. (PSR) ¶29.

At sentencing, the district Court adopted the factual content of the Probation Department's Report and recommendation by the preponderance of the evidence, and determined that; "it's perfectly appropriate, factually, legally to sentence the defendant at level 43." This decision was based in part on the petitioner's conduct, where the court stated; "this defendant didn't care, he didn't care if there were people in side, He came up here with the intent to burn down a building whether there were people in side, or weren't people inside. "His conduct in my judgment, displayed a reckless indifference, a depraved indifference for whether human life was present", whether it was Mr.Allen or the firefighter's, or people who might have been in the apartments adjoining the dells structure itself.

The petitioner contents that, the court erred by equating his reckless indifference with knowledge, and the intent to cause a death, which led the court to the erroneous conclusion to sentence the petitioner at a level 43.

STATEMENT OF THE CASE

Petitioner, Raymond A. Collins filed for a sentence reduction pursuant to 18 U.S.C. section 3582(C)(2) in light of Amendment 591 connected with the circumstance this case presents reflecting, the sentence previously imposed under 18 U.S.C. 371, and 844(i).

Upon receipt of the petition being filed, the district court issued a notice of scheduling which directed the United States to respond to the petition by September 23, 2016. The motions were taken on submission basis October 10, 2016. On October 11, 2016, the District Court entered it's decision & order, denying petitioner's petition for a reduction of sentence pursuant to Amendment 591.

On October 18, 2017, the court of Appeals for the Second Circuit, ordered that the petition is denied, and the appeal dismissed. On October 27, 2017, petitioner filed his informal motion requesting rehearing with a suggestion of rehearing en banc. On December 28, 2017, the Second Circuit considered petitioner's motion as a request for reconsideration, and order that, the motion and petition be denied.

REASONS FOR GRANTING THE WRIT

POINT I

THE COURT SHOULD GRANT CERTIORARI TO
DETERMINE WHETHER THE HOLDING OF THE
COURT BELOW ERRED IN DENYING DEFEN-
DANT'S MOTION FOR A REDUCTION IN HIS
SENTENCE PURSUANT TO 18 U.S.C. §3582
(C)(2) AND AMENDMENT 591

The panel that decided petitioner's appeal, and ORDERED that the motion is DENIED, and the appeal is DISMISSED did so, without rendering a decision that fully addressed the merits of petitioner's claim, and that is, "whether petitioner is eligible for a reduction in his sentence based on amendment 591" but instead, relied solely upon the argument advanced in; (Brief For Appellee); See, Appellee's Brief.

In Appellant's "Informal Reply Brief", p. 1-2; hereafter "Reply Br., ____". concedes to the fact that, the probation officer used the correct procedure in analyzing the base offenses level for arson in violation of 18 U.S.C. §844(i), and the cross reference thereof. However, the panel failed to address appellant's argument that, the probation departments report and recommendation was based on the preponderance evidence, without taking into consideration the laws, and evidence surrounding this case, and the district court's narrative concerning appellant's "relevant conduct" which did not correspond to U.S.S.G. §2A1.1(a) to determine appellant's base offense level.

Because of this failure, the appellant request this Honorable

Court to exercise its authority to vacate the lower court's ruling and instruct the court to rehear appellants argument, addressing the district court's denial of his 18 U.S.C. §3582 (c)(2) for abuse of discretion, based on amendment 591.

POINT II

THE COURT SHOULD GRANT CERTIORARI TO DETERMINE
IF THE FAILURE OF THE PROBATION OFFICER IN THE
(P.S.R.) MAKES NO REFERENCE TO TITLE 18 U.S.C.
§34 PRE-1994 VERSION OF 18 U.S.C. §844(i) THE
CONTROLLING STATUTE REFERENCING THE GUIDELINES.

Appellant sought relief by way of 18 U.S.C. §3582(c)(2) motion in the district court, requesting a reduction of sentence pursuant Amendment 591. It is appellant's contention that, the district court erroneously held that amendment 591 did not have the effect of lowering appellant's guideline range.

In making this determination, the district court concluded that amendment 591 did not apply to appellant's sentence because, the sentencing court correctly selected the offense guideline based on the a statute of conviction, namely, 18 U.S.C. §844(i).

Appellant argued in his appeal brief that, the probation officer made no reference to the fact that, Title 18 U.S.C. §844(i) defers to 34, for the purpose of sentencing, "if death resulted" See; Appellants Brief", p.9; hereafter "Appellants Br. ____". Here appellant argued that, the Probation Dept. ignored the statutory construction of 18 USC §34, and recommended that appellant be sentenced to life .

Appellant states that, as corrected by amendment 591, following the statutory construction, and indexing 18 USC §34, the appropriate offense guideline would have been 2A1.2, making his base offense level 33.

This argument is premised upon, the statute that was in place at the time of appellants offense, which was 18 U.S.C. §34. This statute provided the basic rules for determining the guideline applicable to offense conduct under Chapter Two, (where death has resulted to any person as a direct, or proximate result of the prohibited conduct); "the defendant shall be subject to imprisonment for any term of year's, or to the death penalty, or to life imprisonment.

Title 18 U.S.C. §34 sets forth four separate sections in the statutory index, namely 2A1.1 thru 2A1.4, which the probation officer, and court failed to take into consideration, before, deciding to sentence appellant to life imprisonment. Section 34 also states that, "a district court cannot impose a life sentence, or death unless it first submitted the to the jury, and the jury recommended it." See; Appellants Br.p.10., where Appellant argues "The Guidelines Being Mandatory, and section 34 being controlling when the instance offense occurred.

Under the statutory index reference for §34, it is made clear for the court that, each reference is a guideline application, and not merely merely a guideline range, therefore, the statutory language was controlling, and in accordance with that language 2A1.2, or lower was only applicable guideline available without a direction from the jury, which was with held in appellant's case, because, the jury requirement was eliminate under, "The Control and Law Enforcement Act of 1994."

In sentencing appellant to life imprisonment, the probation department applied, the cross reference at U.S.S.G. §2K1.4(c)(1) as

as instructed if death resulted, or was intended to cause serious bodily injury.....apply the most analogous guideline from Chapter Two, PartA. (Offense Against the person) §1111, First Degree Murder, (which has two applicable guideline applications; 2A1.1 and 2A1.2).

Appellant argued that, the Probation Department committed error by not considering, the guideline application note 1 in §2A1.1, before deciding to sentence appellant at a level 43 where death resulted, mainly because, the death in appellant's case was proven to be unintentional, and supported by the position taken by the government; See; Appellant's Br. p. 12.

In response to this claim, the government argues that, §34 does not apply to appellant's circumstances regarding his sentencing. This stance is in absolute error and conflict with second circuit precedent, and sister circuits that address the same matter; See: United States v. Tocco, 135 F.3d. 116 (2d cir. 1998); "where the court affirmed this very issue".; also See: United States v. Ferranti, 928 F.supp. 206, 215 (E.D.N.Y. 1996); United States v. Martin, 63 F.3d 1422, 1432-33 (7th Cir. 1995); United States v. Prevatte, 16 F.3d 767, 782, 84 (7th Cir. 1994); United States v. Williams, 775 F.2d. 1295, 1299 (5th Cir. 1985).

None of the aforementioned case's have held 18 U.S.C. §34 to be a charging statute, or one addressing offense's involving aircraft, and motor vehicles in the content of 844(i) which only applies to arson.

Because of the conflict caused by the government in this matter, appellant request that, the Honorable Court grant Certiorari Review to settle this claim, and miscarriage of justice, and violation of due process

The government argued that, Amendment 591 only applies to the choice of the applicable offense guideline, not the subsequent selection of the base offense level, stating that, once the Chapter Two guideline was properly selected, the district was entitled to consider appellant's "relevant conduct" under U.S.S.G. §1b1.3, when deciding whether the cross-reference in subsection (c)(1) applied. Appellant submits that, in light of this Court's recent ruling in Nelson v. Colorado, 137 S.ct 1249 (2018), addressing "relevant Conduct" the argument is now questionable, and this Honorable Court should grant Certiorari in light of it's holding in Nelson v. Colorado, Id.

POINT III

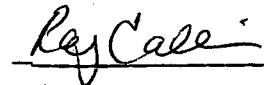
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2072 (2013).

In addresing this argument Appellant relies on his initial filing,
and the argument in his reply brief respectively.

CONCLUSION

FOR THE REASONS SET FORTH ABOVE, THE COURT SHOULD GRANT APPELLANTS
PETITION FOR A WRIT OF CERTIORARI AND DIRECT THAT THE CASE BE BRIEFED
ON THE MERITS AND ARGUED BEFORE THE COURT.

Respectfully submitted



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