No. ____________

In The

Supreme Court of the United States

Caleb Deason,

Petitioner

v.

United States of America,

Respondent

On Petition For Writ Of Certiorari

To The United States Court of Appeals

For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

Caleb Deason

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Bastrop, Texas 78602

QUESTIONS PRESENTED

I. Does Title 18 U.S. Code, Section 1343, in conjunction with 18 U.S.C. Section 3237, establish that venue in a wire fraud case is only proper in a district from, through, or into which the subject wire travels?

II. Does a district court err in failing to grant a hearing in a habeas case when a Petitioner presents evidence that the subject wire transmission never traveled from, through, or into the charging district, and that evidence is in direct conflict with the Government's trial testimony that the wire did touch the charging district?

III. Does the Constitution's strict venue requirements mandate that venue in a wire fraud case is only proper in a non-conspiracy case in a district touched by a wire transmission?

IV. Does a Court of Appeals err in failing to grant a certificate of appealability in a case where a habeas movant presents the district court with a sworn affidavit that the wire transmission charged as having been received in the charging district, in truth and in fact never touched the charging district?

LIST OF PARTIES

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

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PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to this petition and is unpublished.

The opinion of the United States district court appears at Appendix B to this petition and is unpublished.

The opinion of the United States court of appeals denying panel rehearing appears at Appendix C to this petition.

JURISDICTION

The date on which the United States Court of Appeals decided my case was December 7, 2017.

A timely petition for rehearing was denied by the United States Court of Appeals on February 5, 2018.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution	Amendment VI
United States Constitution	Article III, Sec. 2, Cl.3
18 U.S.C. Section 1343	
18 U.S.C. Section 3237(a)	
28 U.S.C. Section 2255	

STATEMENT OF THE CASE

Deason was named in a two-count indictment charging wire fraud and money laundering on September 4, 2013 in the Northern District of Texas. At Deason's trial, a government agent testified the subject wire transmission was received in Deason's bank account in the Northern District of Texas. Deason was subsequently convicted of both charges and is incarcerated today serving concurrent 120 month terms on both the wire fraud and money laundering charges.

After his conviction was affirmed on direct appeal to the Fifth Circuit, Deason filed a Motion to Vacate, Set Aside or Correct Sentence, pursuant to 28 U.S.C. Section 2255. Attached to Deason's 2255 was an affidavit from a banking expert (the "Coker Affidavit"), stating the subject wire transmission never went from, through, or into the Northern District of Texas or any part of Texas. Coker provided a detailed explanation as to the fed wire system and how the routing and transit numbers in the wire demonstrated conclusively the wire went to California, not Texas.

The government filed a Response to Deason's 2255, simply regurgitating the now debunked trial testimony. The Government stayed clear of the Coker affidavit, not challenging it. Deason also provided the 2255 court a letter from a new law firm who reviewed the entire work file of former counsel, and found no research on the venue issue. In response to Deason's allegation that former counsel was ineffective for failing to research the venue issue which would have resulted in dismissing the indictment, former counsel made no denial they were ineffective. Former counsel provided no "strategic reason" for failing to raise the venue argument.

In denying Deason's 2255 without a hearing or any evidence to contradict Deason's proof of lack of venue, the district court judge said:

"His contention is that venue was improper in the Northern District of Texas, because the wire at issue never went from, to, or through Texas. His third ground says that he was denied due process through his counsel's failure to object to lack of venue due to the wire transmission not taking place in Texas. Neither of these grounds has merit. The court is satisfied that movant's counsel thoroughly investigated the wire transfer and made every plausible argument on movant's behalf."

The district court also denied 2255 relief on an alternate theory: "[V]enue in the Northern District was proper as it is the place where defendant orchestrated the crimes for which he was convicted" (citing United States v. Rodriguez-Moreno, 526 U.S. 275, 279 (1999) and United States v. Pace, 314 F. 3d 344, 349-50 (9th Cir. 2002)).

Opinion, Appendix B. But nothing in the record before the district court led to that conclusion that former counsel did any venue investigation whatsoever. Former counsel never denied he was ineffective, did not deny he failed to even consider venue. The district court had before it documentary evidence to demonstrate there was no venue for the wire fraud or money laundering charge and counsel was ineffective. The Government Response also made no denial that their agent had testified recklessly and falsely and that they committed a Brady violation by suppressing the true path of the wire transmission.

The district court denied Section 2255 relief and denied a COA. The Fifth Circuit Court of Appeals in this case upheld the district court's denial of Section 2255 relief, and denied a Certificate of Appealability ("COA"). This appeal follows.

REASONS FOR GRANTING THE PETITION

This is a very significant case, permitting this Court to address a Constitutional issue on which the Circuits are currently split - proper venue in a wire fraud case. This Court has never addressed this issue. The Second, Third, Fourth, Sixth and District of Columbia Circuits hold that venue in a non-conspiracy wire fraud case is proper only in a district from, through, or into which the named wire transmission travels. This interpretation complies with Title 18 U.S.C. Section 3237(a) which specifically limits venue in cases involving interstate transportation to those districts "from, through, or into which such commerce, mail matter or imported object or person moves."

The Seventh and Ninth Circuits hold venue in a wire fraud case is proper in any district where a victim or potential victim was defrauded, or from which the scheme was orchestrated, respectively. The Fifth Circuit has issued conflicting panel opinions on the subject, failing to reconcile earlier decisions. The First, Eighth and Tenth Circuits have no published decisions on the subject. Accordingly, this Court's guidance on the subject is sorely needed to prevent wrongful convictions, as in the case at bar.

Deason respectfully submits the time has come for this Court to resolve this important Circuit split and determine whether or not 18 U.S.C. Section 3237(a) firmly dictates venue in wire fraud cases.

The prohibition on improper venue in a criminal case was so important to the framers, it is recited twice in our Constitution. Amendment VI; Article III, Section 2, Clause 3.

Secondly, this Court should further extend its holding announced in Miller-El v. Cockrell, 537 U.S. 322 (2003). In Miller-El, this Court held that a movant's "evidence" alone makes a Constitutional evidence "debatable". The standard for a Certificate of Appealability

("COA") should be met where, as here, a movant's sworn statement and documented allegations of ineffective assistance of counsel are unrefuted by former counsel and the Government provides no evidence or cogent "strategic" reason for counsel's obvious failures.

I. There is a Circuit Split on Proper Venue in a Wire Fraud Case

In United States v. Kim, 246 F. 3d 186, 192-93 (2nd Cir. 2001), the court held venue in a wire fraud case is proper only in any district from, through, or into which the wire moved); United States v. Goldberg, 830 F. 2d 459, 465 (3rd Cir. 1987) (same); United States v. Jefferson, 674 F. 3d 332, 367 (4th Cir. 2012) (same; reversing wire fraud conviction); United States v. Wood, 364 F. 3d 704, 713 (6th Cir. 2004) (same in context of mail fraud case); United States v. Fahnbulleh, 752 F. 3d 470, 477 (D.C. Cir. 2014) (same, quoting 18 U.S.C. Section 3237(a)).

The Seventh and Ninth Circuits have come to entirely different conclusions. In United States v. Pearson, 340 F. 3d 459 (7th Cir. 2003), the Circuit found venue proper in a wire fraud case, where no wires touched the district, because of the alleged "intent to defraud" in the Southern District of Illinois. Consequently, this interpretation permits prosecution wherever a defendant has the mens rea, but not an actus reus. In United States v. Pace, 314 F. 3d 344, 350 (9th Cir. 2002), the court found wire fraud venue would lay in and district where the scheme was "orchestrated" even if no wires passed from, through, or into the charging district. These interpretations represent dramatic departures from the intent of Congress in 18 U.S.C. Section 3237(a).

Likewise, in Deason's case, the district court held that prosecution was proper because Deason allegedly "orchestrated" his wire fraud crime there. District Court Order, p. 7, Appendix B. This holding, sustained by the 5th Circuit, conflicted with prior panel opinion in mail fraud, holding exactly the opposite. United States v. Martino, 648 F. 2d 367, 400 (5th Cir. 1981) (venue for mail fraud only allowed in district from, through, or into which mail matter traveled, citing 3237(a)); United States v. Boruff, 310 F. 2d 918, 923 (5th Cir. 1962) (no venue for wire fraud where no interstate communication touched).

A. Congress Limits Venue in Wire Fraud Cases

Title 18 U.S.C. Section 3237(a) states:

Any offense involving the use of the mails, transportation in interstate or foreign commerce ... is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter or imported object or person moves.

The wire fraud statute contains no specific venue provision. Congress has not expressly provided any other venue for wire fraud. Consequently, Congress has specifically limited the venue for prosecution for wire fraud cases to districts actually touched by the wire transmission itself. The Courts are not free to give the Government free rein to bring these cases in any district in which some tangential activity occurred, because prepatory acts, contemplation, and acts of "orchestration" do not and never have constituted the "actus reus" required to criminalize such acts.

Black's Law Dictionary, 9th Ed. defines "actus reus" as the "guilty act", "the wrongful deed that comprises the physical components of a crime and that generally must be coupled with the mens rea to establish criminal liability; a forbidden act." This Court should adopt the Fourth Circuit's well-reasoned definition of the mens rea in a wire fraud case.

B. The Circuit Courts Have Misapplied "Causing" a Wire Transmission

The opinions of the Circuits holding venue for a wire fraud charge is proper, even in the absence of any wire touching the charging district, is misplaced reliance on the verb "cause" in the wire fraud statute itself. This is error. A number of federal statutes criminalize "causing" the interstate transportation of items, e.g. firearms, explosives, automobiles, stolen securities. But "causing" has properly been interpreted to mean "causing" the item of commerce to be transmitted into, through or out of the charging district. See e.g. United States v. Stewart, 256 F. 3d 231, 243 (4th Cir. 2001) (venue for wire fraud proper when the defendant "although not the actual sender or receiver of wire transmissions, caused communications into and out of the district in which defendant was tried.").

C. No Prior Decision On Wire Fraud Venue from This Court

See The Federal Mail and Wire Fraud Statutes: Correct Standards for Determining Jurisdiction and Venue, Jack E. Robinson, 44 Willamette Law Review, 479-516 (2008): "[T]he Supreme Court has provided even less direction for determining the proper venue in mail and wire fraud prosecutions than it has regarding subject matter jurisdiction."

II. The Fifth Circuit Failed To Apply the Standard for a COA Announced in Miller-El v. Cockrell

At the COA stage, this Court's framework analysis provides a COA is warranted if there was "any evidence" supporting the Constitutional claim. Miller-El 537 U.S. at 340-348. In Deason's case, he provided: (1) an uncontested affidavit his attorney never researched the issue of venue; (2) a banking expert's sworn statement the subject wire never touched the charging district; and (3) a letter from an independent law firm who stated their review of former counsel's entire case file revealed no evidence of any research on the venue issue. Former counsel offered no "strategic" reason he failed to raise the venue issue.

This documentary evidence warranted a COA, and the case deserved encouragement to proceed further. The district court and the Fifth Circuit erred by failing to apply Miller-El's documentary evidence rule. A COA should have issued. But in this case, the Circuit merely issued a rote, uninspired Order with no discussion of Deason's evidence or arguments.

CONCLUSION

The petition for a writ of certiorari should be granted.

April 19th, 2018

Respectfully submitted,

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