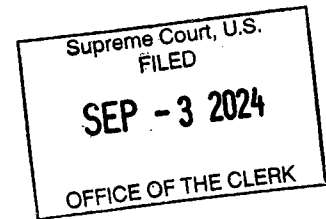


CASE NO. **24-5837**

ORIGINAL

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA



RUBEN AGUILERA, Petitioner

vs.

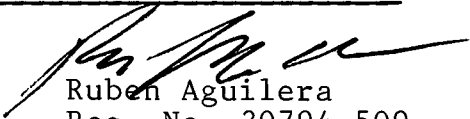
UNITED STATES OF AMERICA, Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE FIFTH CIRCUIT COURT OF APPEALS

CRIM. NO. 7:21-cr-062 (WDTX)
CIV. NO. 7:22-cv-171 (WDTX)

APPEAL NO. 23-50778 (5th Cir.)

• PETITION FOR WRIT OF CERTIORARI •


Ruben Aguilera
Reg. No. 30794-509
FCI Beaumont Low
P.O. Box 26020
Beaumont, TX 77720

☐
INMATE
LEGAL ☐

QUESTIONS PRESENTED

- [1] May a petitioner in his initial § 2255 stage who has preserved the claim that a jury must decide the "occasions" clause of the Armed Career Criminal Act receive a Certificate of Appealability in light of Erlinger v. United States, 144 S. Ct. 1840 (2024)?

LIST OF PARTIES

All parties are contained in the caption of the case appearing on the cover page.

TABLE OF CONTENTS

Pursuant to the Rules of the Supreme Court of the United States ("the Rules"), no Table of Contents is required, as the petition does not exceed 1,500 words or five pages. [id., Rule 14(1)(c)].

TABLE OF CITED AUTHORITIES

Pursuant to the Rules, no Table of Cited Authorities is required for the same reason enunciated in the foregoing section. [id., Rule 14(1)(c)].

CITATIONS OF OPINIONS AND ORDERS

The Petitioner's motion under 28 U.S.C. § 2255 was denied on the merits. [Appendix B; Aguilera v. United States, case no. 7:21-cr-062 (WDTX), Doc. 47]**.

The Petitioner's motion for leave to proceed in forma pauperis was denied by the district court. [Appendix C; Aguilera, Doc. 76].

The district court denied a Certificate of Appealability ("COA"). [Appendix B; Aguilera, Doc. 47 at 29-30].

The Fifth Circuit Court of Appeals denied a COA. [Appendix D; Aguilera v. United States, case no. 23-50778 (5th Cir. 2023)].

Also included from the Petitioner's direct appeal, the Fifth Circuit overruled his claim that his prior offenses occurred on a single occasion. [Appendix A; United States v. Aguilera, case no.

**Local rules in the WDTX create a civil docket for a § 2255 motion [case no. 7:22-cv-171]; however, filings are placed on the respective criminal docket.

21-50767 (5th Cir. 2022)].

JURISDICTIONAL STATEMENT

The order to be reviewed was issued by the Fifth Circuit Court of Appeals on June 06, 2024. [Aguilera v. United States, case no. 23-50778 (5th Cir. 2023), Doc. 28]. The Petitioner has until September 04, 2024, to file this petition.

No motion for rehearing nor any motion for an extension to file this petition has been filed.

This petition seeks to review a decision issued by a federal court of appeals. This Court has jurisdiction to review this case under 28 U.S.C. § 1254(1) and Rule 11 of the Supreme Court rules.

The Petitioner submits this petition pursuant to the Prison Mailbox Rule, enabling filing status upon the date it was submitted to prison authorities for mailing. [see Houston v. Lack, 487 U.S. 266 (1988)]. The Certificate of Service page reflects the date this occurred.

CONSTITUTIONAL PROVISIONS

•FIFTH AMENDMENT:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

•SIXTH AMENDMENT:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

•28 U.S.C. § 2253. Appeal:

- (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

...

- (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from --

...

(B) the final order in a proceeding under section 2255.

- (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
- (3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

•18 U.S.C. § 924(e):

- (1) 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)(1) of this title for a violent felony or a 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).

STATEMENT OF THE CASE

Ruben Aguilera, enhanced under the Armed Career Criminal Act ("ACCA") following the release of his presentence report, was sentenced on August 25, 2021, to 180 months of imprisonment. [see United States v. Aguilera, case no. 7:21-cr-062 (WDTX), Doc. 41].

Two of the predicates forming the basis of his ACCA enhancement related to offenses occurring in temporal and physical proximity:

[A] 2007 conviction for two counts of Burglary of a Habitation, each a 2nd degree felony, and for each of which Aguilera was sentenced to 6 years confinement, to run concurrently, out of the 366th District Court, McKinney, Texas (Cause Nos. 366-81692-06 and 366-81981).

[Appendix B at 21].

There was debate in the district court, and then on direct appeal, as to whether these offenses were committed on the same "occasion." [Appendix A at 02 (revealing the Fifth Circuit deemed the offenses "sequentially" and not "simultaneously")].

The Petitioner did not admit, nor did a jury find, that he committed these offenses on different occasions. [Appendix B at 24 ("[The] Movant also argues...that a jury must find or the Defendant must admit that ACCA predicate offenses occurred on occasions different from one another; and that since those things did not happen in his case, he should be resentenced without the ACCA enhancement.")].

REASONS FOR GRANTING THE WRIT

The Petitioner is seeking a Certificate of Appealability ("COA"), and brings before the Court a single issue: whether Supreme Court caselaw issuing forth after his § 2255 - and after his COA request - can entitle him to that very COA. Specifically, he seeks to avail himself of the holding in Erlinger v. United States, 144 S. Ct. 1840 (2024), that requires a unanimous jury to determine beyond a reasonable doubt whether past offenses were committed on separate occasions for supporting an enhancement under the Armed Career Criminal Act ("ACCA"); and he will show below that such was not done in his case, despite his requests otherwise.

The Petitioner was sentenced on May 18, 2007, to two counts of Burglary of a Habitation. [see Appendix B at 21 ("(3) a 2007 conviction for two counts of Burglary of a Habitation...."); Appendix E at 01-02 (showing convictions and sentences entered for case nos. 366-81981-06 and 366-81692-06 on May 18, 2007)]. The offenses occurred on April 28, 2006, and March 15, 2006, respectively. [Appendix E at 01-02]. The Court counted these as two offenses supporting a conviction under the ACCA. [Appendix B at 21]. The Petitioner contends that a jury should have made that determination. [id. at 24 ("Movant also argues...that a jury must find or the Defendant must admit that ACCA predicate offenses occurred on occasions different from one another;..."); cf. Appendix A at 02 ("Aguilera's three prior burglary convictions were for offenses that were committed sequentially, not simultaneously, and therefore were offenses that occurred on 'occasions different from one another.'")].

When raising this issue in his first § 2255 motion, the district

court held it was "bound by legal precedent." [Appendix B at 25]. It then based that precedent upon an unpublished Fifth Circuit opinion** that held a court could make an independent determination of whether past offenses occurred on different occasions. [id.; see United States v. Williams, 2023 WL 2239020, at *1 (5th Cir. 2023) (per curiam)]. The district court then ruled that the Williams decision "carrie[d] more weight than [the] Movant's arguments," but qualified the ruling "until such time as this issue is addressed by the U.S. Supreme Court." [Appendix B at 26].

On June 06, 2024, the Fifth Circuit denied the issuance of a COA based on this same issue, simply stating the Petitioner did not raise an issue of the denial of a constitutional right. [Appendix C].

On June 21, 2024, this Court issued the Erlinger decision, recognizing a defendant "was entitled to have a jury resolve ACCA's occasions inquiry unanimously and beyond a reasonable doubt." [id., 144 S. Ct. 1840, ____].

As shown, the Petitioner has preserved this argument, which this Court has now deemed colorable. The question is whether the standard governing the issuance of a COA has been met.

In order to obtain a COA, the Petitioner must make a "substantial showing of the denial of a constitutional right." [28 U.S.C. § 2253(c)(2)]. In the case at hand, the district court's failure to sustain the Petitioner's repeated claims that a jury was to decide the "occasions" dispute violated his Fifth and Sixth Amendment rights - a constitutional right doubly denied. Petitioner contends he has made the requisite showing.

** It is not lost on Petitioner that the district court alleged it was bound by purported precedent, which it then attributed to an unpublished decision.

Further, though the parties "disagree vigorously about whether [the Petitioner's] burglaries took place on at least three different occasions" [quoting Erlinger, 144 S. Ct. at ____], it is now settled that when "[p]resented with evidence about the times, locations, purpose, and character of those [predicate] crimes, a jury might have concluded that some or all occurred on different occasions." [id.]. Erlinger mandates as much to now be the jury's domain.

Lastly, because the Petitioner is at his initial § 2255 stage, he must address retroactivity^{**}. He points to the Fifth Circuit's determination that a similar case, Rehaif, "supplie[s] a new rule of law that applies retroactively to initial § 2255 petitions...." [United States v. Kelley, 40 F.4th 250, ____ (5th Cir. 2022) (addressing Rehaif v. United States, 139 S. Ct. 2191 (2019))]. Similar to Rehaif, Erlinger addresses a requisite to apply the ACCA that invokes constitutional considerations, as well as it presents a new right. Like Rehaif, Erlinger should be retroactively available to be applied to initial § 2255 petitions. For the Petitioner, his initial § 2255 should be availed of Erlinger, thereby presenting the "substantial showing of the denial of a constitutional right."

He respectfully requests this Honorable Court grant this petition and issue a certificate of appealability; or, in the alternative, grant this petition, vacate the appellate court's denial, and remand for further proceedings consistent with Erlinger.

^{**} Petitioner does not raise retroactivity as a claim at this time.

CONCLUSION

WHEREFORE, the Honorable Court is respectfully requested to grant this petition and issue a certificate of appealability; or, in the alternative, grant this petition, vacate the appellate court's denial, and remand for further proceedings consistent with Erlinger.

Respectfully Submitted,

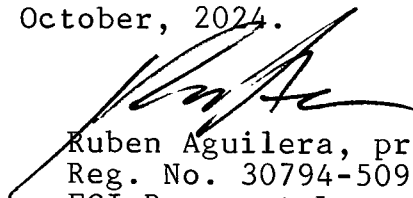


Ruben Aguilera, pro se
Reg. No. 30794-509
FCI Beaumont Low
P.O. Box 26020
Beaumont, TX 77720

DECLARATION

I, RUBEN AGUILERA, do hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 08th day of October, 2024.



Ruben Aguilera, pro se
Reg. No. 30794-509
FCI Beaumont Low
P.O. Box 26020
Beaumont, TX 77720

