

Appendix A

In re Johnson

United States Court of Appeals for the Eleventh Circuit

February 17, 2026, Filed

No. 26-10426

Reporter

2026 U.S. App. LEXIS 4711 *; 2026 LX 68230

In re: RONALD JOHNSON, Petitioner.

Prior History: Application for Leave to File a Second or Successive Motion to Vacate, Set Aside, or Correct Sentence, 28 U.S.C. § 2255(h) [*1] .

United States v. Johnson, 814 Fed. Appx. 526, 2020 U.S. App. LEXIS 16916, 2020 WL 2769055 (May 28, 2020)

Counsel: In re: RONALD JOHNSON, Petitioner, Pro se, JONESVILLE, VA.

For UNITED STATES OF AMERICA, Successive Habeas Respondent: U.S. Attorney Service - Middle District of Florida, U.S. Attorney, TAMPA, FL.

Judges: Before JORDAN, ROSENBAUM, and BRASHER, Circuit Judges.

Opinion

BY THE PANEL:

Pursuant to 28 U.S.C. §§ 2255(h) and 2244(b)(3)(A), Ronald Johnson has filed an application seeking an order authorizing the district court to consider a second or successive motion to vacate, set aside, or correct his federal sentence, 28 U.S.C. § 2255. Such authorization may be granted only if this Court certifies that the second or successive motion contains a claim involving:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C. § 2255(h). "The court of appeals may authorize the filing of a second or successive application only if it determines that the application [*2] makes a prima facie showing that the application satisfies the requirements of this subsection." *Id.* § 2244(b)(3)(C); see also Jordan v. Sec'y, Dep't of Corr., 485 F.3d 1351, 1357-58 (11th Cir. 2007) (explaining that this Court's determination that an applicant has made a prima facie showing that the statutory criteria have been met is simply a threshold determination).

Johnson is a federal prisoner serving a total sentence of life plus five years' imprisonment for distribution of a substance containing methoxyacetyl fentanyl and fentanyl that caused the death of one who used the substance, distribution of a mixture and substance containing a detectable amount of methoxyacetyl fentanyl, carrying a firearm in furtherance of a drug trafficking crime, and possession of a firearm by a convicted felon.

As a brief factual background, in 2021, Johnson filed his original § 2255 motion, which the district court denied with prejudice. In his application, Johnson seeks to raise six claims in a second or successive § 2255 motion. Johnson's first claim asserts that the "death results" sentencing enhancement under 21 U.S.C. § 841(b)(1)(C) must be submitted to a jury and that the victim's toxicology results, showing a mixture of "potentially lethal contributors," preclude the government from showing that, but for the methoxyacetyl [*3] fentanyl, the victim would not have died. Johnson indicates that this claim relies on a new rule of constitutional law, and cites Burridge v. United States, 571 U.S. 204, 210, 218-19, 134 S. Ct. 881, 187 L. Ed. 2d 715 (2014), Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000), and Alleyne v. United States, 570 U.S. 99, 133 S. Ct. 2151, 186 L. Ed. 2d 314 (2013), arguing that the methoxyacetyl fentanyl was not an independent cause of the victim's death and the government cannot show that it was a but-for cause of the death.

Johnson's second claim asserts that the jury was not informed that methoxyacetyl fentanyl was only listed as a Schedule I controlled substance after the date of his offense, nor was the jury informed whether the government proceeded under a controlled-substance-analogue theory. He indicates that this claim relies on a new rule of constitutional law, and cites Bouie v. Columbia, 378 U.S. 347, 350-54, 84 S. Ct. 1697, 12 L. Ed. 2d 894 (1964), United States v. Lanier, 520 U.S. 259, 265-66, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997), United States v. Harriss, 347 U.S. 612, 617, 74 S. Ct. 808, 98 L. Ed. 989 (1954), and Marks v. United States, 430 U.S. 188, 191-92, 195-96, 97 S. Ct. 990, 51 L. Ed. 2d 260 (1977), arguing that a conviction where the defendant did not have fair warning that his conduct was criminal violates Due Process. He also cites McFadden v. United States, 576 U.S. 186, 192-93, 197-98, 135 S. Ct. 2298, 192 L. Ed. 2d 260 (2015), arguing that the government must prove that he knew he was dealing with a controlled substance through knowledge of its controlled listing or its features that make it an analogue substance.

Johnson's third claim asserts that a scienter element of knowledge, or equivalent culpable state of mind, is presumed for elements of criminal statutes where Congress did not specify the requisite [*4] mental state, and that a strict-liability reading of criminal statutes is improper. He indicates that this claim relies on a new rule of constitutional law, and cites Staples v. United States, 511 U.S. 600, 610-15, 619, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994), United States v. X-Citement Video, Inc., 513 U.S. 64, 71-73, 115 S. Ct. 464, 130 L. Ed. 2d 372 (1994), and Morissette v. United States, 342 U.S. 246, 250-52, 72 S. Ct. 240, 96 L. Ed. 288 (1952), for the above contention.

Johnson's fourth claim asserts that the failure to properly instruct the jury about the scheduling of methoxyacetyl fentanyl permitted it to convict him without making a finding that the substance was federally controlled when he committed his offense, and permitted a conviction that exceeded the scope of his indictment. He indicates that this claim relies on a new rule of constitutional law, and cites Xiulu Ruan v. United States, 597 U.S. 450, 142 S. Ct. 2370, 213 L. Ed. 2d 706 (2022), arguing that the 21 U.S.C. § 841 means rea element, "knowingly or intentionally," covers whether he knew the controlled status of methoxyacetyl fentanyl, but the jury did not make any finding regarding when the substance was scheduled. He also cites United States v. Ward, 486 F.3d 1212, 1226-27 (11th Cir. 2007), and Stirone v. United States, 361 U.S. 212, 215-17, 80 S.

Ct. 270, 4 L. Ed. 2d 252 (1960), arguing that this instruction impermissibly and constructively amended his indictment.

Johnson's fifth claim asserts that the jury instruction that methoxyacetyl fentanyl was a Schedule I controlled substance "during the relevant period" improperly broadened the offense category from specific controlled substances (methoxyacetyl fentanyl and fentanyl) [*5] to a controlled substance generally, thereby changing the offense theory. He indicates that this claim relies on a new rule of constitutional law, and cites United States v. Narog, 372 F.3d 1243, 1247-48, 1262-63 (11th Cir. 2004), United States v. Keller, 916 F.2d 628, 634 (11th Cir. 1990), United States v. Peel, 837 F.2d 975, 979 (11th Cir. 1988), United States v. Behety, 32 F.3d 503, 508-09 (11th Cir. 1994), United States v. Dortch, 696 F.3d 1104, 1110-12 (11th Cir. 2012), United States v. Cancelliere, 69 F.3d 1116, 1121 (11th Cir. 1995), United States v. Madden, 733 F.3d 1314, 1322-23 (11th Cir. 2013), United States v. Miller, 471 U.S. 130, 140, 105 S. Ct. 1811, 85 L. Ed. 2d 99 (1985), and Stirone, 361 U.S. at 217-19, arguing that this instruction unconstitutionally broadened the crimes charged in his indictment.

Johnson's sixth claim asserts that he suffered ineffective assistance of trial counsel who did not object to the jury instructions disputed above, and ineffective assistance of appellate counsel who did not raise and brief the strongest arguments concerning his above claims. He indicates that this claim relies on a new rule of constitutional law, and cites Strickland v. Washington, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), Smith v. Robbins, 528 U.S. 259, 285-86, 120 S. Ct. 746, 145 L. Ed. 2d 756 (2000), Knight v. Fla. Dep't of Corr., 936 F.3d 1322, 1323-25, 1349-55 (11th Cir. 2019), and various pre-2021 Supreme Court and Eleventh Circuit cases cited above, arguing that, because neither his trial nor appellate counsel properly argued his underlying claims set out above, Johnson suffered prejudice at trial, sentencing, and on appeal, while the government benefitted from a lower burden of proof.

In Ruan, the Supreme Court considered the mens rea requirement of 21 U.S.C. § 841, which makes it a federal crime, "[e]xcept as authorized[,] . . . for any person knowingly or intentionally . . . to manufacture, distribute, or dispense . . . a controlled substance." [*6] 597 U.S. at 454 (alterations in original) (quotation marks omitted). The Court held that § 841's "knowingly or intentionally" mens rea applies to the statute's "except as authorized" clause, such that once a defendant meets her burden of

producing evidence that her conduct was "authorized," the government must prove beyond a reasonable doubt that she knowingly or intentionally acted in an unauthorized manner. *Id.* at 457.

In interpreting § 841, the Court started with the presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state and continued that the presumption is strengthened when a statute contains a general scienter provision, as § 841 does by requiring knowing or intentional conduct. *Id.* at 457-59. Then, the Court looked to analogous cases in which it had applied the term "knowingly" as used in one part of a statute to another element or section of that same statute, thus reinforcing its conclusion that § 841's "knowingly or intentionally" mens rea applies to the statute's "except as authorized" clause. *Id.* at 460-61.

The Supreme Court's interpretation of a substantive criminal statute, using established rules of statutory construction, cannot announce a new rule of constitutional law under [*7] § 2255(h). *In re Blackshire*, 98 F.3d 1293, 1294 (11th Cir. 1996).

Here, Johnson's first, second, and third claim do not meet the statutory criteria. Caselaw that was available during a prior § 2255 motion does not qualify as a new rule of constitutional law and, under these claims, Johnson cites Supreme Court cases that were previously available to him. See 28 U.S.C. § 2555(h)(2). His fifth and six claims fail for this same reason, and because they cite to non-qualifying Eleventh Circuit decisions. See 28 U.S.C. § 2555(h)(2). His fourth claim fails for both reasons above and because *Ruan* does not set a new rule of law that is constitutional in nature but interprets the criminal law statute 21 U.S.C. § 841. *Ruan*, 597 U.S. at 457-68; *Blackshire*, 98 F.3d at 1294; See 28 U.S.C. § 2555(h)(2). Nor did the Supreme Court make *Ruan* retroactive to cases on collateral review. See *Ruan*, 597 U.S. at 457-68; 28 U.S.C. § 2555(h)(2).

Accordingly, because Johnson has failed to make a prima facie showing of the existence of either of the grounds set forth in 28 U.S.C. § 2255, his application for leave to file a second or successive motion is hereby DENIED.