No. 03-10442

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
APR 07 2004
OFFICE OF THE CLERK

David Carroll (pro se) — PETITIONER
(Your Name)

vs.

Bobby Compton; Warden — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

No court has ruled on the merits of issues presented herein.
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR Extraordinary Writ of Habeas Corpus

David Carroll
(Your Name)

USP LEE COUNTY, P.O. BOX 305
(Address)

JONESVILLE, VA. 24263-0305
(City, State, Zip Code)

N/A
(Phone Number)

STATEMENT OF THE CASE

On January 21, 2003, Petitioner filed a 28 §2255(a) motion to the District Court, Alexandria Division, (Appx. B) to correct his sentence imposed on, June 9, 1995. §2255(a) reads in relevant part: A person in custody under a sentence of a court established by act of congress claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution ... or that the court was without jurisdiction to impose such sentence ... may move the court which imposed the sentence to vacate, set aside or correct the sentence.

The motion was forwarded to the court of appeals and no opinion was mailed to the Petitioner.

The Fourth Circuit Court of Appeals, mailed Petitioner forms for applying for a 'Certificate of Appealability' (COA). On February 24, 2003, Petitioner applied for a (COA) and stated: Or, alternatively, a remand to the district court according to the above jurisdictional language of §2255(a). (Appx. C) The Appeals Court denied the request for a (COA) and did not address Petitioner's claim that §2255, §2244 gatekeeping provisions did not apply to his subject-matter jurisdictional argument. (Appx. A)

In June 2003, Petitioner filed a writ of certiorari with the court (Appx. D). Question I, of the petition was: Did the lower courts err by refusing to address, and or, correct Petitioner's contentions that the district court lacked subject-matter jurisdiction to adjudicate the merits of and impose a sentence for recidivism at the original sentencing?

The clerk of the court for the Supreme Court refused to file the petition stating that: Denial of authorization by a court of appeals to file a second or successive petition for a writ of habeas corpus may not be reviewed on certiorari.(Appx. E).

In August 2003, Petitioner filed a Rule 22 motion to Chief Justice Rehnquist arguing that the clerk of the court erred by refusing to submit his petition for

review by the court, due to Petitioner's subject-matter jurisdictional argument and the lack of subject-matter jurisdiction can be raised at any time the error is noticed. (Appx. F) The clerk of the court again returned the petition with the same above statement. (Appx. G).

The repeated above denials and refusals are the exceptional circumstances that projects this petition pursuant to §§2241, 1651, to the court.

On December 15, 2003, this court decided **Castro v. United States, No. 02-6683.** The first holding of the court in **Castro** addressed the gatekeeping provision's language of 28 §2244(b)(3)(E), which reads: "Grant or denial of an authorization by a court of appeals to file a second or successive application ... shall not be the subject of a petition for ... a writ of certiorari." The lower courts had determined that **Castro's** initial §2255 was a second or successive and recharacterized it as such. **Castro** argued below and to this court that it [§2255] was his first. The court agreed with **Castro** and held it had jurisdiction to hear **Castro's** certiorari and was not barred by the above provision.

As stated earlier, Petitioner filed a §2255(a) motion to correct his sentence that he claims was imposed without the court having subject-matter jurisdiction. The §2255(a) motion was filed with the District Court, Alexandria Division, with a jurisdictional statement stating that: "Because subject-matter jurisdiction cannot be forfeited the gatekeeping restraints of §2255 are inapplicable and this motion is properly filed with the Clerk of the District Court, Eastern District of Virginia, Alexandria Division, the original court of jurisdiction. (Appx. B)

Petitioner argued in the district court that the court was without subject-matter jurisdiction to adjudicate the merits of recidivism under 21 §841 and impose a mandatory life sentence. He argued the lack of subject-matter jurisdiction can be raised at any time the error is noticed. Petitioner argued that in order for the court to proceed to a recidivist hearing for count nine of the indictment for a mandatory life sentence that according to, 21 §841(b)(1)(A)(iii), the element of

fifty grams or more of cocaine base must be submitted to the jury, for the government to prove beyond a reasonable doubt that it existed. Which was not followed in the instant case. As stated above, the district court mailed no opinion or order to Petitioner and forwarded his §2255(a) motion to appellate court.

The appellate court essentially recharacterized the motion as a second or successive and mailed Petitioner forms to request a [COA]. Petitioner, in his motion to the appellate court continue that: "The gatekeeping restraints of §2255 motions does not apply to §2255(a) motions that argue, lack of subject-matter jurisdiction to impose a sentence can be raised at any time. (appx)C The appellate court refused to address the argument. (Appx. A)

Petitioner's petition to the Supreme Court in Question I asked: Did the lower courts err by refusing to address, and or, correct Petitioner's contentions that the district court lacked subject- matter jurisdiction to adjudicate the merits of and impose a sentence for recidivism at the original sentencing? It is obvious that the lower courts and the clerk of the Supreme Court was applying the gatekeeping provisions of §§2255, 2244, as they interpreted it. In his 'Reason to Grant Petition' for his certiorari, Petitioner also asked the court to grant the petition to answer the question that: "2255 is a procedure that does not bar issues of the lack of subject- matter jurisdiction, and, which is properly filed with the court of original jurisdiction over the complaint. (Appx. P pg. X) Put another way as the court in **Castro**,

> Does §§2255, 2244 gatekeeping provisions bar claims of lack of subject-matter jurisdiction filed in the district court of conviction and sentence under §2255(a)?

Petitioner, as **Castro**, did not argue to the Supreme Court of a denial of a [COA]. That was not the subject of his certiorari. **Petitioner** argued that the lower courts; refused to address if the gatekeeping provisions applied to his contentions that the lower court lacked subject-matter jurisdiction to impose a mandatory life sentence.

(CF. Adamo Wrecking Co. v. United States, 434 U.S. 275, 282-83.

Petitioner avers that because the lower courts refused to address his claims in [Appx. B] and the clerk of the Supreme Court refused to file his certiorari and his

Rule 22 motion to the C. Justice, this petition pursuant §§2241, 1651 is the only avenue to test the legality of his detention as contended in the attached (Appendix A, B, C). Due to the above exceptional circumstances this petition should be granted.

REASONS FOR GRANTING THE PETITION

Comes now, David Carroll, Pro se, petitioning the Court to grant an original Writ of Habeas Corpus pursuant to 28 § 2241, 1651.

Petitioner raised in his attached motions (appx. B, C. D.) that the District Court lacked subject-matter jurisdiction to impose a mandatory life sentence for recidivism under 21 § 841(b). Petitioner asserts that because the government failed to request the required quantity of substance to be submitted to the jury and the District Court failed to instruct the jury, the government must prove beyond a reasonable doubt fifty grams or more of cocaine base existed. He should not have been subjected to and ultimately sentenced to mandatory life for count nine of the indictment And, that fifty grams of cocaine base is a threshold statutory requirement to be proved by the government before the jury, to establish the District Court's subject-matter jurisdiction for mandatory life for recidivism.

Petitioner contends that the Supreme Court should exercise its appellate authority to answer several questions avoided by the lower courts. (1) Does the District Court has subject-matter jurisdiction over a recidivist hearing requiring a mandatory life sentence under 21 §841(b) if the required drug quantity was not submitted to the jury to be proved beyond a reasonable doubt by the Government? If not, (2)Does §§2244, 2255 gatekeeping provisions apply to §2255(a) motions alleging the District Court was without subject-matter jurisdiction to impose a mandatory life sentence under §841(b)? And, if it's interpreted that Congress intended for §2244 to apply (3) Does §2244 conflict with the language of §2255(a) and the Supreme Court's constitutional holdings that the lack of subject-matter jurisdiction can be raised anytime the error is noticed?

§§2244, 2255 places a (1) year statutory limitation on second or successive §2255 motions.

§2255(b)(1) newly discovered evidence...

(b)(2) a new rule of law, made retroactive...

Petitioner contends that §2255(b)(1) and (2) above should not apply to §2255(a)

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

FILED
March 7, 2003

No. 03-116
CR-94-519-A

In Re: DAVID CARROLL

Movant

ORDER

Movant has filed a motion pursuant to 28 U.S.C. Section 2244 for authorization to file a successive application for relief.

The Court denies the motion.

Entered at the direction of Judge Widener, with the concurrence of Judge Luttig and Judge Traxler.

For the Court,

/s/ Patricia S. Connor

CLERK

Appx A.