00-6254

ORIGINAL

Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES

No. 2000 -

GEORGE KOST,
Petitioner,

v.

JAKE MENDEZ, WARDEN,
Respondent.

PETITION FOR WRIT OF HABEAS CORPUS

By: George Kost
Reg. No. 08339-016
USP Allenwood
P.O. Box 3000
White Deer, PA 17887

Questions For Review

With respect to the findings in Richardson v. U.S., 526 U.S. 813.

1. Were essential elements, that comprise continuing series, absent from the pleading of § 848 indictment?

2. Was it by law, impermissible to use unindicted allegations as essential elements that comprise continuing series in § 848 prosecutions?

3. If the answer to questions 1, 2, or both is "Yes", as a result, did defendant incur substantial prejudice?

4. Where a confusing array of possibilities existed, should the jury have been instructed to unanimously agree on essential elements of continuing series?

Statement In Aid Of Court's Appellate Jurisdiction And Reasons For Not Applying To District Of Incarceration

As early as 1993 I presented in my original § 2255 issues related in law to the issues presented herein.

These issues were dismissed without written analysis.

Similar issues were also raised in a § 2241 in the district of my incarceration in 1995. This writ was forwarded to the sentencing court where it was construed as a § 2255 and dismissed as successive, again without addressing these issues.

In light of this Court's (Supreme Court's) holding in Richardson v. United States, 526 U.S. 813 (1999), which is in support of these issues, I timely applied to the Third Circuit for leave to file a successive § 2255. This was denied by the gatekeeper panel for reasons discussed at length herein. Although this might not preclude me from submitting a § 2241 to the district of my incarceration, a court held answerable to the Third Circuit, it would place me in the impossible position of asking the district court to disagree with, and in effect, overturn a position already maintained by the Higher Court. In other words, the law of this case has already been established, and to proceed in any other manner would be a waste of the affected court's time and resources, to say nothing of the months of hardship I would endure for the same reasons.

As a pro se litigant, I have no idea how many people a ruling on the merits of these issues might affect, however,

one, if not more, human beings are possibly being made to suffer from unfair trials resulting from the prejudice that the Richardson holding was made to no longer permit. To now allow me to be procedurally barred forever from review under such a holding for reasons I contend a reasonable jury would reject is fundamentally unfair.

An order of the gatekeeper is not appealable and I truly have no reasonable chance of getting relief in any other court, while at the same time, I have an issue that is affected by a holding of this Court, and I argue that under that holding, my incarceration is by law in need of correction.

For all the above reasons I argue that my cause is extraordinary and should be considered as extraordinary by the discretionary appellant powers of the Supreme Court, and I pray that this Court causes an inquiry to be made on the merits herein.

Jurisdictional Statement

Jurisdiction for this petition is invoked pursuant to Title 28 U.S.C. § 2241 for the following reasons.

1. Petitioner Kost is in service of a life sentence for violating the laws of the United States, to wit: operating a continuing criminal enterprise, Title 21 U.S.C. § 848.

2. Following the Court's opinion in Richardson v. United States, 526 U.S. 813 (1999), Kost is being imprisoned in violation of the Constitution and laws of the United States.

3. In 1988 a jury convicted Kost of violating Title 21 U.S.C. §§ 841, 846, and 848. The appeal raised only sentencing issues and was denied, U.S. v. Kost, 888 F.2d (3rd Cir. Table 1988).

4. In August 1988 the Third Circuit decided Echeverri v. U.S., 854 F.2d, and held that a jury not instructed to be unanimous on the violations of a continuing series, in certain circumstances is error.

5. In 1993 Kost filed his original § 2255, raising among other issues, issues related in law to the Echeverri holding. This action was denied, however the denial did not address these issues and was affirmed.

6. In 1995 Kost filed a § 2241, raising issues similar to his original § 2255. This petition was transferred to the sentencing court where it was construed as a § 2255 and denied as successive.

7. In 1998 Kost filed a second § 2241 raising unrelated issues. This was denied and Kost appealed. While awaiting a response to this appeal the Supreme Court decided the Richardson case. Richardson was in support of portions of Kost's original § 2255 that were denied, but never addressed. Kost timely supplemented this appeal in light of Richardson.

The order of this appeal directed Kost that a § 2255 was the proper course of action.

8. With the A.E.D.P.A. now in effect, Kost petitioned the Third Circuit for leave to file a successive § 2255, raising that Richardson directly affected his case and also supported several claims in his original § 2255.

The Third Circuit denied Kost leave on the grounds that Richardson was existing law in this Circuit since U.S. v. Echeverri, 854 F.2d 638 (1988). This Order is not appealable.

9. Kost has argued since 1993 that the requisite violations that comprise the continuing series are absent his indictment, and that their absence caused his defense substantial prejudice. Richardson has now ruled these violations are essential elements of § 848. Still, this issue has never been submitted to a

written legal analysis of its merit, and Kost has nothing to appeal from.

Kost now seeks habeas corpus relief from the Supreme Court, and prays this Court to review the lawfulness of his restraint from the issues herein.

Kost also points out that his circumstances are no less extraordinary for the purpose of review than those of a person sitting on death row exhausting appeals and waiting to die. He is fifty-eight years of age sitting in the thirteenth year of a life without parole sentence waiting to die.

Statement Of The Facts

I'm a pro se litigant, and I would ask as a prerequisite that the following be construed liberally.

For appellant purposes, I'm in the jurisdiction of the Third Circuit, and in 1988 they made a finding in a case titled, U.S. v. Echeverri, 854 F.2d 638. The finding was that a jury, not instructed to be unanimous as to the violations of a continuing series, of § 848, under certain circumstances, is error. The emphasis was on the circumstances, and that limited to the particular circumstances of Echeverri.

In 1999 the supreme Court upheld Echeverri with their finding in Richardson v. U.S., 526 U.S. 813. Richardson explains why Echeverri was correctly decided. In that explanation it was made