ORIGINAL

No. 03-7418

Supreme Court, U.S.
FILED
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IN THE

SUPREME COURT

OF THE UNITED STATES

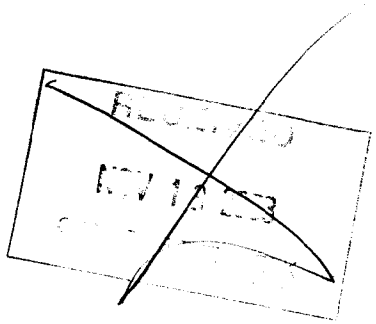
OCTOBER TERM, 2003

In re YUESEYUAN CRUEL

ON WRIT OF HABEAS CORPUS AD SUBJICIENDUM

PETITION FOR AN EXTRAORDINARY WRIT UNDER THE SUPREME COURT'S ORIGINAL ACTION

Yueseyuan Cruel #96075-071
Federal Correctional Institution, Edgefield
501 Gary Hill Road
Edgefield, S.C. 29824



QUESTIONS PRESENTED

1. WAS THE SEARCH OF CRUEL'S HOME ILLEGAL AND ITEMS SEIZED IN VIOLATION OF THE CONSTITUTION BY FEDERAL AND STATE AUTHORITIES?

2. DID CRUEL WAIVE HIS RIGHT TO PROTECTION UNDER THE CONSTITUTION AGAINST ILLEGAL SEARCH AND SEIZURE BY PLEADING GUILTY?

3. DOES THE RECORD ESTABLISH INEFFECTIVE ASSISTANCE OF COUNSEL?

STATEMENT OF REASONS

Petitioner appealed his case to the Fourth Circuit Court of Appeals alleging, (1) his plea was invalid because of illegal search and seizure, (2) lack of jurisdiction, (3) ineffective assistance of counsel, and (4) erroneous presentence report. The court affirmed , United States v. Cruel, No. 02-4305, 2003 WL 115122 (4th Cir. Mar. 14, 2003)(unpublished)(see attached).

Petitioner avers that this adjudication by the Fourth Circuit satisfies the three prongs provided by Supreme Court Rules 20.1 and 20.4 in that:

1. The writ will be in aid of this Court's appellate jurisdiction by clarifying the ruling in Stefanelli v. Minard, 342 US 117, where the Supreme Court ruled, "The security of one's privacy against arbitrary intrusion by the police, which is at the core of this amendment, is basic to a free society, and is therefore implicit in concept of ordered liberty and as such enforceable against states through due process clause, and, were a state affirmatively to sanction such a police incursion into privacy, it would run counter to guaranty of Amendment 14." Any adverse rulings from the lower courts that would imply that the 4th Amendment can be impaired by a construction thought necessary to meet changing demands of law enforcement should be considered a violation of the Constitution and an infringement of rights.

2. The exceptional circumstances and adequate relief in another for or another court is satisfied because Petitioner is incarcerated in the district in which he was tried and convicted.

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

YUESEYUAN CRUEL,
Defendant-Appellant.

No. 02-4305

Appeal from the United States District Court
for the District of South Carolina, at Greenville.
Henry M. Herlong, Jr., District Judge.
(CR-99-625)

Submitted: February 26, 2003

Decided: March 14, 2003

Before WILKINS, Chief Judge, and LUTTIG and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Yueseyuan Cruel, Appellant Pro Se. David Calhoun Stephens, Assistant United States Attorney, Greenville, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Yueseyuan Cruel pled guilty to making, uttering, and possessing counterfeit securities drawn on American Federal Bank, and aiding and abetting, in violation of 18 U.S.C. §§ 2, 513 (2000). He was sentenced, within a properly calculated guideline range, to thirty months of imprisonment. On appeal, he alleges that: (1) his plea was invalid because the Secret Service's search of his home was illegal; (2) the Secret Service and the district court lacked jurisdiction over him; (3) his trial counsel was ineffective; and (4) his presentence report ("PSR") was erroneous. For the reasons that follow, we affirm.

First, because Cruel pled guilty to the offense, he has waived his right to appeal from the allegedly illegal search of his home. *See Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Second, the Secret Service had authority to arrest Cruel under 18 U.S.C. § 3056(c)(1) (2000), and the district court had authority to adjudicate the matter under 18 U.S.C. § 3231 (2000). Third, because the record does not conclusively establish ineffective assistance of trial counsel, this claim fails on direct appeal. *See United States v. King*, 119 F.3d 290, 295 (4th Cir. 1997). Finally, because Cruel did not object to the PSR below, we review the claim only for plain error, Fed. R. Crim. P. 52(b); *United States v. Olano*, 507 U.S. 725, 732 (1993), and find none. Accordingly, we affirm Cruel's conviction and sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED