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AUG 25 2000
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IN THE
UNITED STATES SUPREME COURT

CASE NO. 00-5468

IN RE: ANDREW STEPHENS
PETITIONER, PRO-SE

MOTION TO SUPPLEMENT THE PLEADING

Come now, Petitioner, Andrew Stephens, with motion to supplement the pleadings of the Habeas Corpus now before this court, pursuant to Supreme Court Rule 15(d). Based upon the subsequent decision in **CHARLES C. APPRENDI JR., VS NEW JERSEY, 120 US 2348 (2000)**, after Petitioner filed the Habeas Corpus Petition into this court, request to submit this supplemental pleading should be granted.

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STATEMENT OF SUPPLEMENT

Petitioner moves the court to hear and decide the issues presented in this supplemental motion, pursuant 28 U.S.C. §2242, Habeas Corpus procedure. The issues were not available to Petitioner at the time of filing the original action in the District Court, or during the appeal process. The New Rule of Constitutional Law under CHARLES C. APPRENDI VS NEW JERSEY, 120 S CT 2348 (2000), was ruled on after the appeal process had become final, and Petitioner continued the appeal process to this court by way of Habeas Corpus. The issue's as presented is due to be decided during the litigation of the Habeas Corpus now before this court.

STATEMENT OF ISSUES

ISSUE I

IS THE NEW RULE OF CONSTITUTIONAL LAW UNDER THE APPRENDI DECISION RETRACTIVE FOR COLLATERAL REVIEW FOR JUDGEMENTS THAT ARE FINAL PRIOR TO THE APPRENDI DECISION?

ISSUE II

SHOULD THE RULE OF LENITY BE APPLIED UNDER THE APPRENDI DECISION FOR DRUG QUANTITY NOT AVERRED IN THE INDICTMENT?

ISSUE III

DOES THE PENALTY UNDER 21 U.S.C. §841(b)(1)(B) FOR DRUG QUANTITY HAVE A MAXIMUM PENALTY WITHIN THE STATUTORY MAXIMUM PENALTY?

ISSUE IV

CAN THE DEFENDANT BE ENHANCED FOR POSSESSION OF A GUN WITHOUT BEING INDICTED?

enhancement under that guideline penalty must be removed.

SUMMARY

This court must issue an order clarifying the retroactivity of the Apprendi decision to collateral cases. The New Rule of Constitutional Law is a watershed rule of criminal procedure that implicates the violation of fundamental fairness in pre-existing criminal proceedings.

In all fairness to the fundamental right of being sentenced only upon evidence of factual elements of an offense by the jury, that is alleged in an indictment, quantity allegation of drugs should and must become a part of the element of an offense, and the verdict of guilt must be decided upon the allegation of quantity by a jury. The business as usual approach by the prosecutors, probation officers and lower courts of sentencing defendants on evidence not found by the jury, under the preponderance of the evidence standard, is due to be declared a violation of a Constitutional Right, with immediate orders to the prosecutors to charge quantity for drugs in the indictments, so that a defendants may prepare himself for a proper defense.

As shown in issue II and III, leniency must be given when the indictment does not aver quantity in a drug prosecution, and Petitioner must be re-sentenced under the lower penalty of (b)(1)(B), with the maximum penalty for quantity not to exceed the minimum penalty for quantity under (b)(1)(A).

The gun enhancement penalty under U.S.S.G. §2D1.1(b)(1), is Un-Constitutional under the promulgation of Apprendi, and is due to be removed from Petitioner's sentence.

RELIEF

Petitioner prays, that this Honorable Court grants relief by:

1. Order the application of Apprendi to be retroactive to collateral cases that have became final prior to that decision;

2. Order the vacating of Petitioner's sentence, with resentencing to apply to the rule of lenity under §841(b)(1)(B);

3. Make a determination on the maximum penalty for quantity, within the maximum statutory penalty of §841(b)(1)(B);

4. Order re-sentencing under (b)(1)(B), with quantity calculation not to exceed the minimum quantity penalty of (b)(1)(A);

5. Order the removal of the enhancement penalty for gun possession under 18 U.S.S.G. §2D1.1(b)(1), and declare that penalty enhancement UnConstitutional.