

IN THE SUPREME COURT OF THE UNITED STATES

JOHN GREGORY LAMBROS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether petitioner's motion under Rule 60(b) of the Federal Rules of Civil Procedure was properly recharacterized as a second or successive motion under 28 U.S.C. 2255.

(I)

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No. 02-7346

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OPINION BELOW

The decision of the court of appeals is unpublished, but is reported at 40 Fed. Appx. 316.

JURISDICTION

The judgment of the court of appeals was entered on July 1, 2002. A petition for rehearing was denied on August 22, 2002. The petition for a writ of certiorari was filed on November 1, 2002. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

STATEMENT

After a jury trial, petitioner was convicted in the United States District Court for the District of Minnesota of conspiracy

to distribute cocaine, in violation of 21 U.S.C. 846 and 841(a)(1) (Count 1), and possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) (Counts 2-4). He was sentenced to concurrent terms of life imprisonment (Count 1), 10 years' imprisonment (Counts 2 and 3), and 30 years' imprisonment (Count 4), to be followed by various terms of supervised release. The court of appeals affirmed petitioner's convictions, vacated the life sentence on Count 1, and remanded for resentencing. United States v. Lambros, 65 F.3d 698 (8th Cir. 1995), cert. denied, 516 U.S. 1082 (1996) (No. 95-7058). On remand, the district court resentenced petitioner to 360 months' imprisonment on Count 1 to be followed by eight years' supervised release. The court of appeals affirmed. United States v. Lambros, 124 F.3d 209 (8th Cir. 1997) (unpublished) (per curiam), cert. denied, 522 U.S. 1065 (1998) (No. 97-6966).

Petitioner filed several motions for post-conviction relief in the district court and the court of appeals, all of which were denied. Petitioner then filed a motion pursuant to Fed. R. Civ. P. 60(b) seeking to overturn, among other things, his 1997 resentencing. The district court dismissed the motion as an unauthorized successive collateral attack on his judgment of conviction and sentence. The court of appeals affirmed. 40 Fed. Appx. 316.

1. In the mid-1970s, petitioner was involved in a large-scale

conspiracy to import and distribute cocaine in Minnesota. During his arrest, petitioner assaulted a United States Marshal. Petitioner later pleaded guilty in the United States District Court for the District of Minnesota to possession of two pounds of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1), and to assaulting a federal officer, in violation of 18 U.S.C. 111 and 1114. Then-Chief Judge Devitt of the District of Minnesota sentenced petitioner to ten years' imprisonment on the assault charge and five years' imprisonment on the drug charge, to run concurrently. The court of appeals affirmed. United States v. Lambros, 544 F.3d 962, 963-965 (8th Cir. 1976), cert. denied, 430 U.S. 930 (1977) (No. 76-827).¹

Before the imposition of sentence in this case, petitioner was arrested and charged in a separate indictment in the District of Minnesota with conspiracy to distribute heroin and five counts of distributing heroin. After a jury trial, petitioner was convicted on the conspiracy count and on two distribution counts, and was sentenced by Judge Alsop to 15 years' imprisonment, to run consecutively to his earlier sentences. The court of appeals affirmed. United States v. Lambros, 564 F.2d 26, 27 & n.1 (8th Cir. 1977), cert. denied, 434 U.S. 1074 (1977) (No. 77-5789).

¹ The court of appeals later affirmed the district court's denial of petitioner's collateral challenge to the validity of his guilty pleas. See United States v. Lambros, 614 F.2d 179, 180-181 (8th Cir. 1980).

2. In 1989, petitioner was arrested and charged with conspiracy to distribute cocaine, in violation of 21 U.S.C. 846 and 841(a)(1) (Count 1), and possession of cocaine with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) (Counts 2-4). Petitioner fled from the United States in 1991, but he was arrested in Brazil. After unsuccessfully contesting extradition, in June 1992, petitioner was returned to United States custody. In January 1993, he was convicted on all counts and was sentenced by then-District Judge Murphy to a mandatory term of life imprisonment on the conspiracy count under 21 U.S.C. 841(b)(1)(A), and to 10 years' imprisonment on two possession counts, and to 30 years' imprisonment on the third possession count, all to run concurrently. The court of appeals vacated petitioner's life sentence on Count 1 on ex post facto grounds (because Section 841(b)(1)(A) had been enacted after the conspiracy had ended) and remanded for resentencing. United States v. Lambros, 65 F.3d 698, 699-700 (8th Cir. 1995).

On remand, the case was reassigned for the limited purpose of resentencing to District Judge Robert G. Renner because of Judge Murphy's intervening appointment to the Eighth Circuit Court of Appeals. Between 1969 and 1977, Judge Renner had served as the United States Attorney for the District of Minnesota. In that capacity, he had signed the two indictments against petitioner that had led to petitioner's convictions in the 1970s for possessing