

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Dimott v. United States

881 F.3d 232 (1st Cir. 2018) · No. Nos. 16-2289, 16-2319, 16-2368 · Decided February 2, 2018

SUMMARY

The First Circuit affirmed the dismissal of three untimely petitions under 28 U.S.C. § 2255 challenging Armed Career Criminal Act sentencing enhancements after *Johnson v. United States* and *Mathis v. United States*. The court held that the petitioners’ claims principally relied on *Mathis*, which did not restart the one-year limitations period, and that they had not established that their sentences were based on the ACCA residual clause invalidated by *Johnson*. The court also held that the timeliness issue could be considered for one petitioner despite the government’s failure to raise it in the district court.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lynch, Circuit Judge; Howard, Chief Judge; Torruella, Circuit Judge
JURISDICTION	Federal
DECIDED	February 2, 2018
DOCKET	Nos. 16-2289, 16-2319, 16-2368
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from the denials of three federal prisoners' motions for post-conviction relief under 28 U.S.C. § 2255.
STANDARD OF REVIEW	De novo review of the district courts' denials of the § 2255 petitions on procedural grounds.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Richard Dimott, Wayne N. Collamore, Charles H. Casey, Jr. v. United States

TOPICS

- federal habeas corpus
- post-conviction relief
- sentencing
- criminal procedure
- appellate procedure

PRACTICE AREAS

federal habeas corpus

criminal post-conviction relief

federal sentencing

criminal procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the petitioners' § 2255 motions were timely under 28 U.S.C. § 2255(f)(3) because they asserted rights newly recognized and made retroactive by Johnson II.
2. Whether a petitioner may use Johnson II to reset the limitations period when the substance of the challenge depends on Mathis's treatment of a prior conviction under the ACCA enumerated clause.
3. Whether the Government forfeited the timeliness defense by failing to raise it in the district court in Casey's case.
4. Whether a § 2255 petitioner bears the burden of proving that the sentencing court relied solely on the ACCA residual clause.

HOLDINGS

1. Dimott's and Collamore's petitions were untimely because their sentences were determined to rest on the ACCA enumerated clause, making their challenges Mathis claims rather than Johnson II claims, and Mathis did not reset the one-year limitations period under § 2255(f)(3).
2. The First Circuit could consider the timeliness of Casey's § 2255 petition despite the Government's failure to raise the defense in the district court.
3. A habeas petitioner asserting a Johnson II claim bears the burden of proving by a preponderance of the evidence that it is more likely than not that the petitioner was sentenced solely under the ACCA residual clause.
4. Casey failed to establish a Johnson II claim because he offered no evidence that the sentencing court relied solely on the ACCA residual clause; his petition therefore depended on the nonretroactive Mathis decision and was untimely.

KEY QUOTATIONS

“Because we find all three petitions time-barred, we do not reach the merits of the petitioners' argument that their predicate offenses no longer qualify under the ACCA because Johnson II voids the residual clause and Mathis renders Maine burglary a nongeneric offense that does not qualify under the enumerated clause.” (at 7-8)

“We hold that to successfully advance a Johnson II claim on collateral review, a habeas petitioner bears the burden of establishing that it is more likely than not that he was sentenced solely pursuant to ACCA's residual clause.” (at 23-24)

FACTUAL BACKGROUND

Each petitioner pleaded guilty to a federal firearm offense and had prior Maine burglary convictions that resulted in an ACCA sentencing enhancement. Their sentencing records did not expressly identify whether the enhancement rested on the ACCA's enumerated clause or residual clause. Dimott and Collamore's sentencing

judges later determined that their sentences had rested on the enumerated clause; the record concerning Casey's sentencing was silent. All three filed § 2255 petitions more than one year after their convictions became final, relying on Johnson II and Mathis to challenge their sentences.

PROCEDURAL HISTORY

Dimott, Collamore, and Casey each pleaded guilty to federal firearm offenses and received Armed Career Criminal Act sentencing enhancements based in part on Maine burglary convictions. Each later filed a § 2255 motion arguing that Johnson v. United States invalidated the ACCA residual clause and that Mathis v. United States made Maine burglary nongeneric. The district courts dismissed the petitions on procedural grounds, and the First Circuit affirmed all three dismissals.

DISPOSITION

affirmed

CASES CITED

- Johnson v. United States, 135 S. Ct. 2251 (2015)
- Mathis v. United States, 136 S. Ct. 2243 (2016)
- Welch v. United States, 136 S. Ct. 1257, 1268 (2016)
- United States v. Duquette, 778 F.3d 314, 317 (1st Cir. 2015)
- United States v. DiCarlo, 575 F.2d 952, 954 (1st Cir. 1978)
- Wood v. Spencer, 487 F.3d 1, 3 (1st Cir. 2007)
- Rodriguez v. Spencer, 412 F.3d 29, 32 (1st Cir. 2005)
- Delaney v. Matesanz, 264 F.3d 7, 10 (1st Cir. 2001)
- Felker v. Turpin, 518 U.S. 651, 664 (1996)
- Wood v. Milyard, 566 U.S. 463, 473-74 (2012)
- Day v. McDonough, 547 U.S. 198, 209 (2006)
- Stanley v. United States, 827 F.3d 562, 565-66 (7th Cir. 2016)
- Teague v. Lane, 489 U.S. 288, 309-10 (1989)
- United States v. Snyder, 871 F.3d 1122, 1128 (10th Cir. 2017)
- Feldman v. Perrill, 902 F.2d 1445, 1447 (9th Cir. 1990)
- Beeman v. United States, 871 F.3d 1215, 1221-22 (11th Cir. 2017)
- In re Moore, 830 F.3d 1268, 1272 (11th Cir. 2016)
- Oakes v. United States, 400 F.3d 92, 97 (1st Cir. 2005)
- Coulter v. Kelley, 871 F.3d 612, 618 (8th Cir. 2017)
- In re Williams, 759 F.3d 66, 69 (D.C. Cir. 2014)
- United States v. Geozos, 870 F.3d 890, 895-96 (9th Cir. 2017)
- United States v. Winston, 850 F.3d 677, 682 (4th Cir. 2017)

- United States v. Taylor, 873 F.3d 476, 481-82 (5th Cir. 2017)
- United States v. Miller, 478 F.3d 48, 50-52 (1st Cir. 2007)
- United States v. Bennett, 469 F.3d 46, 49-50 (1st Cir. 2006)
- United States v. Mastera, 435 F.3d 56, 60-62 (1st Cir. 2006)

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