

IN THE
Supreme Court of the United States

KEVIN KHAALIQ BEAMON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court may impose a significant upward variance at sentencing upon revocation of supervised release on an individual who had never before served a significant jail sentence and whose violation conduct all stemmed from substance addiction.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Kevin Khaaliq Beamon respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Fourth Circuit's Opinion affirming Petitioner's sentence is attached at Pet. App. 1a. The Mandate of the Fourth Circuit is attached at Pet. App. 6a.

JURISDICTION

The Fourth Circuit issued its opinion on March 28, 2018. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Congress requires a district court to "consider[] the factors set forth in [Title 18] Section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7)" when imposing a sentence upon revocation of supervised release.

18 U.S.C. § 3583(e).

Those factors are

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(4) the kinds of sentence and the sentencing range established for—

...

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct;

(7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a).

STATEMENT OF THE CASE

On January 14, 2014, the District Court for the Eastern District of North Carolina sentenced Petitioner, Mr. Kevin Khaaliq Beamon, to a 13-month term of imprisonment and 3 years of supervised release after his guilty plea to possessing with intent to distribute a quantity of heroin.

Mr. Beamon served his time in prison. Unfortunately, upon release, he struggled with drug addiction, with several of his drug tests demonstrating marijuana use. Eventually, the United States Probation Office moved to revoke his supervised release based on admitted marijuana use. The Probation Office later amended the motion, alleging criminal conduct that occurred in May, 2016.

As his attorney noted, even this criminal conduct can be traced back to Mr. Beamon's substance abuse. He was driving his girlfriend's car in Fayetteville, North Carolina, with her as a passenger. He got mad after a phone call and shot the car's dashboard. His girlfriend became upset, and he pointed the gun at her. She left the car and eventually talked to the police, who went to Mr. Beamon's home and arrested him.

At his revocation hearing, Mr. Beamon admitted to the allegations of drug use and criminal conduct. The district court, with no objection from the parties, established an advisory Guidelines range of 4-10 months of imprisonment.

The hearings presented multiple arguments in support of a sentence either within or below this range as sufficient to punish Mr. Beamon:

- Mr. Beamon was on supervised release for over two years, during which time he maintained steady employment and respected any curfews imposed by the Court. His violations all stemmed from his underlying drug addiction.
- Mr. Beamon had never served a lengthy sentence before, so the revocation sentence did not need to be exceptionally long in addition to the 71-month sentence imposed to have a significant deterrent effect.
- Mr. Beamon's girlfriend, who was with him in the car that day, understood the nature of the offense, forgave him, and actually submitted a letter on his behalf at the sentencing. She stated under oath that he was not "in his right state of mind that day in the car" and that his actions did not reflect his true nature.
- She was not alone. Mr. Beamon's family continued to support him through his struggles with addiction, providing additional mechanisms to prevent future recidivism.
- Mr. Beamon has a six-year-old son to whom he is extremely dedicated, providing him with another external incentive against recidivism beyond any that a lengthy sentence could create.

The district court held that Mr. Beamon's conduct, including discharging a firearm, was more "egregious" than that contemplated by the relevant 4-10 month Guidelines range. It imposed a 19-month sentence, almost double the top of the range.

Mr. Beamon timely appealed the sentence as substantively unreasonable. The Fourth Circuit affirmed the sentence in an unpublished per curiam decision, holding that the district court's decision to impose a significant upward variance was not substantively unreasonable.

This petition follows.

REASONS FOR GRANTING THE PETITION

The Fourth Circuit has “decided an important federal question in a way that conflicts with relevant decisions of this Court.” Sup. Ct. R. 10(c). In *Gall v. United States*, this Court held that appellate courts must review sentences for substantive reasonableness. 522 U.S. 38, 51 (2007). That review requires vacating a sentence when it unreasonable in light of the sentencing factors that Congress established at 18 U.S.C. § 3553(a). The district court upwardly varied from the advisory Guidelines range in this case, resulting in a sentence greater than necessary to satisfy the relevant sentencing factors. The Fourth Circuit declined to vacate the sentence as substantively unreasonable. This Court’s review is necessary to correct the Fourth Circuit’s error and affirm the principle established in *Gall*.

When a district court imposes a sentence outside of the advisory Guidelines range, the individual facts and circumstances of the case must, in light of the Section 3553(a) factors, support that sentence. *Id.* at 50. A “major departure” from that range, such as the one imposed here, requires “a more significant justification than a minor one.” *Id.* The appellate courts, in those instances, “must more carefully scrutinize the reasoning offered by the district court in support of the sentence [because] [t]he farther the [district] court diverges from the advisory guideline range, the more compelling the reasons for the divergence must be.” *United States v. Tucker*, 473 F.3d 556, 561 (4th Cir. 2007)(internal quotations omitted).

Applying the facts of this case to the relevant statutory sentencing factors demonstrates that the district court substantively erred in doubling the top of Mr. Beamon's advisory Guidelines range. *See* 18 U.S.C. § 3583(e)(cross-referencing certain factors from 18 U.S.C. § 3553). The district court had an obligation to consider, in relevant part,

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant; [as well as]
- (2) the need for the sentence imposed—

...

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant;

...

18 U.S.C. § 3553(a).

Application of these factors demonstrates that the district court substantively erred in imposing the upward variance on Mr. Beamon. The district court justified the variance based on its classification of his behavior as egregious. This justification impermissibly ignores the fact that Mr. Beamon's girlfriend—the owner of the car that he shot—did not agree and actually supported Mr. Beamon at the sentencing. She understood something that the district court should have also understood based on the evidence and argument at the sentencing: Mr. Beamon's actions, while bad, did not represent him as a person. Instead, they derived from his tragic substance addiction. This addiction contextualized “the nature and

circumstances of the offense,” making it less “egregious” and more tragic. 18 U.S.C. § 3553(a)(1). It also demonstrated that Mr. Beamon’s “history and characteristics” supported a lower sentence than that imposed. *Id.*

Additionally, Mr. Beamon had never before served a significant criminal sentence. Following the advice of the Guidelines and imposing a 10-month sentence would have been sufficient “to protect the public” and to “provide adequate deterrence.” *Id.* § 3553(a)(2)(B)-(C). Adding nine months to that sentence resulted in a sentence greater than necessary.

Finally, Mr. Beamon was a dedicated and loving father who had been on supervised release for years without any incidents unrelated to his substance addiction. The district court did not credit these facts at all. It did not sentence Mr. Beamon as a whole person as the law required it to do. It sentenced one morning in May, 2016. It sentenced the instant of a man not in his right mind shooting a dashboard. That instant is relevant, but it is not the whole story. Not even close. By doubling Mr. Beamon’s Guidelines range based on that one incident, the district court impermissibly gave “excessive weight” to one factor in the sentencing process and did not reach “a fair and just result in light of the relevant facts and law.” *United States v. Green*, 436 F.3d 449, 457 (4th Cir. 2006).

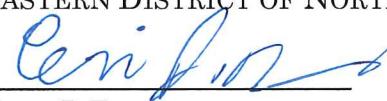
In short, the district court imposed a substantively unreasonable sentence on Mr. Beamon. The Fourth Circuit affirmed that sentence, in contravention of this Court’s guidance. This Court should grant review to correct that error.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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