

No. _____

In the
Supreme Court of the United States

James Wilks,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Did the District Court enter a plainly unreasonable sentence for revocation of supervised release when it did not properly balance the sentencing factors?

PARTIES TO THE PROCEEDING

Petitioner is James Wilks, who was the Defendant-Petitioner in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner James Wilks seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is located within the Federal Appendix at *United States v. Wilks*, No. 17-10551, 718 Fed. App'x 300 (5th Cir. 2017) (per curiam). It is reprinted in Appendix A to this Petition. The district court did not issue a written opinion.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on April 9, 2018. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This petition involves 18 U.S.C. § 3553(a), which provides:

(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (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;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

- (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines 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
- (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(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.[1]

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

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

Tex. Pen. Code § 3553(a).

STATEMENT OF THE CASE

This is a direct appeal from a judgment revoking supervised release and imposing a revocation sentence.

On March 9, 2009, James Wilks, Petitioner, was sentenced in the Northern District of Texas to 60 months imprisonment followed by 10 years supervised release. His supervised release commenced on May 3, 2013. In 2017, the district court signed a petition for offender under supervision, which alleged several violations of supervised release, including: use and possession of marijuana; use and possession of methamphetamine; and failure to attend and participate in a substance abuse treatment and other programs. Petitioner pleaded “true” to each of the allegations.

Defense counsel asked the district court to continue Petitioner on supervised release. As counsel explained, Petitioner is a combat veteran, who served the U.S. Army as a sniper in Iraq, and suffers from Post-Traumatic Stress Disorder (PTSD). Since returning from combat, he has been on a downward spiral and needs mental health treatment. Defense counsel argued that Petitioner has the “will to succeed.” Petitioner’s father testified on his son’s behalf and Petitioner, when he allocuted, explained his plan for recovery.

The district court sentenced Petitioner to 18 months imprisonment followed by 60 months supervised release, which was twice the top of the policy statement range of 3 to 9 months. In doing so, the district court expressed its frustration toward Petitioner:

Now, my comments.

Mr. Wilks, you have exhausted my patience, and I have to say, I don't care what it is you've done or life you've lived, there are a lot of people that have had a worse life than you have, and you have to accept the authority of the United States Government over you. You haven't been. You've given the middle finger to your government that you served at one time because you said, I can do this. I don't care what you say. I can go ahead and do as I please, and you come in here and ask for mercy and gotten it on multiple occasions, and I see no reason to give you any more mercy, and I will assure you, if I'm still on this bench and you come back before me, I'll give you another 18 month sentence.

So this is up to you. You've got to stop acting like a child. I don't care what your excuses are or how much trauma you've had. It's still your responsibility to change your behavior and stop violating the laws. And you're not just violating the laws a little bit. These are serious violations.

You were initially found guilty of a crime that could have sent you to prison and you would still be there facing ten more years. I showed you a lot of mercy that day, and you've basically thrown it back at me. I'm out of sympathy for you -- well, I won't say that. Of course, I have sympathy, but I'm out of mercy.

Defense counsel objected to the district court's sentence as both procedurally and substantively unreasonable.

The Fifth Circuit affirmed. This petition follows.

REASONS FOR GRANTING THIS PETITION

I. The district court imposed a substantively unreasonable sentence upon Petitioner.

The Court will not uphold a sentence imposed by the district court upon revocation of supervised release if the sentence was imposed in violation of law or was plainly unreasonable. *United States v. Headrick*, 963F.2d 777, 779 (5th Cir. 1992). Under the “plainly unreasonable” standard, the Court will follow a two-step process. *Id.* The Court will first determine whether the district court committed any significant procedural error. *United States v. Kippers*, 685 F.3d 491, 497 (5th Cir. 2012). If the Court finds no significant procedural error, the Court will then consider the “substantive unreasonableness” of the district court’s imposed sentence. *Miller*, 634 F.3d at 843. A non-Guidelines sentence can be substantively unreasonable if the district court: (1) did not account for a factor that should have received significant weight, (2) gave significant weight to an irrelevant or improper factor, or (3) represented a clear error of judgment in balancing the sentencing factors. *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013). Here, the district court’s sentence was plainly unreasonable because the court did not adequately consider the history and characteristics of Petitioner.

The policy statement range, in this case, was 3 to 9 months. When the district court sentenced Petitioner to 18 months imprisonment—twice the top of the range—the court did so in frustration. The court, in its own words, stated, “I don’t care what it is you’ve done or life you’ve lived.” The court again stated, “I don’t care what your excuses are or how much trauma you’ve had.” Both of these statements were made

during the court's comments explaining its upward variance. And both statements reflect a failure of the court to adequately consider Petitioner's history and characteristics, which the legislature included in 18 U.S.C. § 3553(a) to help ensure a sentence "not greater than necessary" to achieve the legislature's sentencing purposes. 18 U.S.C. § 3553(a).

The legislature entrusts sentencing with district courts that *do* care about what a defendant has done or the life he's lived. Courts should also consider the trauma a defendant has suffered. Here, none of these aspects of Petitioner's history and characteristics were considered, reflected in the court's own words. The court even went further to foreshadow another, identical sentence of 18 months for any future infraction without regard for what future conduct would elicit such a sentence: "I will assure you, if I'm still on this bench and you come back before me, I'll give you another 18 month sentence."

Had the district court adequately considered Petitioner's history and characteristics, it would have taken into account Petitioner's military service in Iraq, his PTSD, and his plan to get his life back on track. The court would also await a future infraction before determining what the proper sentence should be. In short, the court's emotions interfered with its application of the proper sentencing factors in this case, and Petitioner should be resentenced with an appropriate balancing of those factors.

CONCLUSION

Petitioner requests that this Court grant his Petition for Writ of Certiorari and allow him to proceed with briefing on the merits.

Respectfully submitted,

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