

# SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA  
Plaintiff

v.

SHAWN J. GIESWEIN  
Defendant

case no. 18-5538

## CERTIFICATE OF GROUNDS

I hereby declare that the grounds are limited to Supreme Court precedent that are substantial to the fairness and integrity of the judicial proceedings. The substantial grounds was not previously presented in this cert. due to Mr. Gieswein's attorney not raising the grounds. The grounds substantially effect Mr. Gieswein's right to life, liberty and the pursuit of happiness.

It takes four Justices to grant a Cert. and Mr. Gieswein's Cert was viewed by Six Judges. Mr. Gieswein's case should be presented to all Nine Justices for review.

Nov. 4, 2018

Date

  
SHAWN GIESWEIN

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CERTIFICATE

This court ruled in Rosales-Mireles that: "An error resulting in a higher range than the Guidelines provide usually establishes a reasonable probability that a defendant will serve a prison sentence greater than 'necessary' to fulfill the purposes of incarceration, 18 U.S.C. 3553(a). (See Molina-Martinez, 578 U.S.) That risk of unnecessary deprivation of liberty particularly undermines the fairness, integrity, or public reputation of judicial proceedings in the context of a plain Guidelines error because Guidelines miscalculations ultimately results from judicial error... Moreover, remands for resentencing are relatively inexpensive proceedings compared to remands for retrial." U.S. v. Rosales-Mireles, no. 16-9493 (S. Ct. June 18, 2018)

Mr. Gieswein's Guideline range has fallen from 188-235 months to 92-115 months, first error, then to 63-78 months, second error, yet Mr. Gieswein's sentence has remained at 240 months

This court ruled in Beckles that: "when Guidelines ranges change—because the Guidelines themselves change, or because the court is informed of an error it made in applying them—sentences change, too." Molina-Martinez 136 S. Ct. 1338, Peugh 133 S. Ct. 2072, Beckles 137 S. Ct. 886 (2017)

"The Guidelines anchor every sentence imposed in federal district courts." Molina-Martinez 136 S.Ct 1338, Peugh 133 S.Ct 2072, Beckles 137 S.Ct. 886. (2017)

The Guidelines recommend that Mr. Gieswein's sentences "shall run concurrently" U.S.G. 5G1.2(c).

The district court never determined what the Guidelines recommended under Chapter 5 of the Guidelines in Mr. Gieswein's case and failure to do so results in procedural error.

"A sentencing court must correctly determine whether the Guidelines recommend concurrent sentences, and failure to do so results in procedural error." U.S. v. Whitehead JR. 660 Fed. Appx. 219, no. 15-4783 (4th Cir. 2016)

The Guidelines state in Chapter 3, part D that: "counts that are grouped together are treated as constituting a single offense."

The district court could not sentence Mr. Gieswein to consecutive sentences unless the counts are ungrouped and separated, to prevent double counting (See Application notes 2, Chapter 3 part D.) "The two counts are not grouped together pursuant to this guideline, and, to avoid unwarranted double counting."

"When multiple counts have been grouped the relevant statutory maximum sentence for all of the counts in a group is maximum limit for the count with the highest statutory maximum. (See U.S.G. 5G1.2(c)). In other words, the highest offense level for any count in the group is the applicable offense level for the entire

group, and the highest statutory maximum sentence for any count in the group is the applicable statutory maximum for sentencing purposes. (See U.S.S.G 3D1.2, 5G1.2(c))." U.S. v. McClain, 2015 U.S. App. Lexis 23291, no. 15-1545 (6<sup>th</sup> Cir. 2015)

The Statutory Maximum in Mr. Gieswein's case is 120 months.

There is no extraordinary circumstances in Mr. Gieswein's case and the guidelines account for his criminal history and his enhancements.

"An upward variance is not supposed to reduplicate punishment already meted out by the United States Sentencing Guidelines' range itself." U.S. v. Brown 892 F.3d 385 (D.C. Cir. 2018)

Like Rosales-Mireles, "the circumstances of [Mr. Gieswein's] case are exceptional under this court's precedent, as they are reasonably likely to have resulted in a longer prison sentence than necessary and there are no countervailing factors that otherwise further the fairness, integrity, or public reputation of judicial proceedings."

"What reasonable citizen wouldn't bear a rightly diminished view of the judicial process and its integrity if courts refused to correct obvious errors of their own devise that threaten to require individuals to linger longer in federal prison than the law demands." Judge Neil M. Gorsuch

NOV. 4, 2018  
Date

Shawn J. Gieswein  
SHAWN J. GIESWEIN

SUPREME COURT OF THE UNITED STATES

I certify that I sent a Motion for Rehearing on Oct. 3 2018 and that this petition is presented to be in Good faith and not for delay. I recieved a letter from the Office of the clerk of the Supreme Court on Dec. 4, 2018 that stated I must submit to this office in corrected form within 15 days of the date of this letter. Nov. 30 2018.

I hereby declare under penalty and perjury that I placed this petition in the prison mail system on Nov. 3, 2018.

Nov. 4, 2018  
Date

Shawn Gieswein  
SHAWN GIESWEIN