

No. _____

In The
Supreme Court of the United States

VALERIE LOUISE WILLIAMS,

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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Dated: September 13, 2018

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QUESTION PRESENTED FOR REVIEW

- I. Whether The Court Should Grant Certiorari to Provide Further Clarification as to the Presumption of Substantive Reasonableness for Downward Variances from the Advisory United States Federal Sentencing Guidelines.

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OPINION AND ORDER BELOW

The order appealed from is located at the CM/ECF Docket of the United States Court of Appeals for the Fourth Circuit Case No. 17-4686, Docket Entry No. 30, entered on June 25, 2018, which judgment upheld the judgment and sentence of the Middle District of North Carolina on October 27, 2017, for a criminal violation of 21 U.S.C. §§ 841(b)(1)(C) and 846. The Fourth Circuit also issued an unpublished per curiam opinion in No. 17-4686 at Docket Entry No. 29. (Appendix A)

JURISDICTIONAL STATEMENT

This petition for writ of certiorari is from the order and judgment entered on December 6, 2017 in the above referenced case by the Fourth Circuit Court of Appeals upholding the judgment of the United States District Court for the Middle District of North Carolina. Accordingly, the Court has jurisdiction over this petition for writ of certiorari matter pursuant to 28 U.S.C. § 1254 and 28 U.S.C. § 2101.

CONSTITUTIONAL PROVISIONS INVOLVED

"No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. amend V.

STATEMENT OF THE CASE

On September 26, 2016, Ms. Williams was named in a seven count indictment with five co-defendants. Count One charged Ms. Williams, Erika

Livingston-Archie, Shatikia Lashaunda Wilkins, Tocarla Bernetta Shaw, Candace J'Sara Livingston, and Candis O'Neill with conspiracy to possess with the intent to distribute oxycodone, in violation of 18 U.S.C. §§ 846 and 841(b)(1)(C). Unlike all of her co-defendants, Ms. Williams was not named in any other count. [J.A. at 11-16.]¹

On April 3, 2017, Ms. Williams pled guilty to Count One of the Indictment pursuant to a written Plea Agreement. [J.A. at 23-39.]

On September 26, 2017, the Government filed a position paper conceding that its evidence would establish a base offense level 30, with a marijuana drug equivalency calculation within 1,000 to 3,000 kilograms. [J.A. at 115-118.] The undersigned also filed a Sentencing Memorandum on behalf of Ms. Williams September 26, 2017 which concurred with the Government's assessment of the provable drug weight before the trial court. [J.A. at 119-124.]

On September 28, 2017, the trial court conducted a sentencing hearing in the case and sentenced Ms. Williams to 18 months of incarceration and 4 years of supervised release. [J.A. at 8.] On October 27, 2017, the written judgment was entered. [J.A. at 71-77.]

On November 3, 2017, Ms. Williams filed a timely notice of appeal. [J.A. at 78-79.] On June, 21, 2018, the Fourth Circuit Court of Appeals entered a judgment and opinion upholding the trial court's sentence.

¹ Factual citations concerning the record below are to the Joint Appendix which was filed with the United States Court of Appeals for the Fourth Circuit in File No. 17-4686.

STATEMENT OF THE FACTS

The Pre-Sentence Report described the conspiracy that Ms. Williams pled to as follows:

9. In 2012, the Winston-Salem Police Department, Winston-Salem, NC, began an investigation into a fraudulent prescription conspiracy in the Winston-Salem, NC, area. During the course of the investigation, investigators discovered that the conspiracy was large and encompassed numerous counties within the Middle District of North Carolina and elsewhere. As the investigation progressed, investigators ascertained through statements from co-conspirators and witnesses that Erika Livingston-Archie, Candace Livingston, **Valerie Williams**, Shatikia Wilkins, Candis O'Neill, and Tocarla Shaw were involved in the conspiracy.

10. Erika Livingston-Archie acted as the leader of the group. According to co-conspirators and/or witnesses' statements, Erika Livingston-Archie created and/or passed fraudulent prescriptions since 2007. Criminal records reflect that Erika Livingston-Archie passed fraudulent prescriptions of Oxycodone 30mg as far back as August 31, 2011. According to investigators, Erika Livingston-Archie possessed blank prescriptions, as well as a prescription medication which law enforcement later determined to be fraudulently obtained. Corroborating statements and evidence indicated that Erika Livingston-Archie created and printed fraudulent prescriptions using the name and United States Drug Enforcement Agency (DEA) number of legitimate medical providers. According to Juan Phelps, Erika Livingston-Archie kept a list of approximately 100 medical providers' names and DEA numbers. Co-conspirators and witness statements indicated that after generating the fraudulent prescriptions, Erika Livingston-Archie gave the fraudulent prescriptions to Candace Livingston, **Valerie Williams**, or Shatikia Wilkins for them to disperse to the drivers.

11. Candace Livingston and **Valerie Williams** acted as managers/supervisors. According to statements from co-conspirators and/or witnesses, Candace Livingston and **Valerie Williams** were involved in the conspiracy since at least 2014. The managers/supervisors were responsible for passing the fraudulent prescriptions they received from Erika Livingston-Archie to the drivers. Additionally, Candace Livingston was responsible for finding recruiting runners and **Valerie Williams** was responsible for overseeing the drivers and runners while out making trips. Upon receiving the illegally

obtained narcotics from the main driver/drivers, the managers/supervisors sold the narcotics to third parties. According to co-conspirators and witnesses, each prescription bottle was sold for \$1,800. Upon selling the illegally obtained narcotics, the managers/supervisors paid the runners and drivers. The remaining profits were split equally between Erika Livingston-Archie, Candace Livingston, **Valerie Williams**, and Shatikia Wilkins.

12. Shatikia Wilkins acted as a supervisor and was the main driver for the group. According to the investigators, Shatikia Wilkins was given more access to Erika Livingston-Archie than other minor members of the conspiracy. Shatikia Wilkins admitted to law enforcement of being involved in the conspiracy since 2014. The Controlled Substance Reporting System (CSRS)²¹ linked Shatikia Wilkins to fraudulent prescriptions as far back as April 24, 2014. The drivers were responsible for taking a runner to and from the pharmacy. However, Shatikia Wilkins as the main driver was responsible for obtaining the filled prescriptions from the runners and other drivers. Shatikia Wilkins informed Erika Livingston-Archie, Candace Livingston, or **Valerie Williams** once the prescription was filled. During the notification of a successful pass, Erika Livingston-Archie, Candace Livingston, or **Valerie Williams** informed Shatikia Wilkins where to deliver the illegally obtained prescription. She also provided instructions to runners on how to avoid apprehension. On most occasions, the illegally obtained narcotics were delivered directly to Candace Livingston.

13. Tocarla Shaw and Candis O'Neill acted as runners. The investigation revealed at least 27 other runners being involved in the conspiracy. The runners were responsible for taking the counterfeit prescription they received from the driver into the pharmacy to be filled. Investigators noted that the runners were typically not given access to Erika Livingston-Archie, Candace Livingston, or **Valerie Williams**. Runners were typically paid \$100 for each successful pass of a fraudulent prescription. The runners received an additional \$50 if they allowed their identity to be used on the fraudulent prescription. Candis O'Neill began passing fraudulent prescriptions on April 28, 2014. Tocarla Shaw began passing fraudulent prescriptions on November 15, 2014.

14. As previously indicated, Erika Livingston-Archie, Candace Livingston, **Valerie Williams**, and Shatikia Wilkins split the profits equally after paying/reimbursing the drivers and runners. Information gathered from CSRS and the vehicle trackers revealed that Erika Livingston-Archie, Candace Livingston, **Valerie Williams**, and Shatikia Wilkins illegally

²¹ "The CSRS is a reporting system that requires all outpatient dispensers of controlled substances to report all controlled substance prescriptions that are filled." [J.A. at 84 n.1.]

obtained approximately 20,242 dosage units of Oxycodone 30mg between April 24, 2014, and April 27, 2015. The aforementioned drug amounts portray a one-year snapshot of this conspiracy and do not accurately represent the true amounts of illegally obtained narcotics encompassing this conspiracy which began in 2007.

[J.A. at 83-85].

As stated above, unlike her co-defendants, Ms. Williams was not charged with any other count in the indictment. [J.A. at 11-15.] The remainder of her co-defendants were charged with six additional counts based on evidence the government developed for specific acts on specific dates.

Count Two charged Erika Livingston-Archie and Candis Danielle O'Niell with unlawful possession with intent to distribute a detectable amount of oxycodone, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 on or about October 1, 2014.

Count Three charged Erika Livingston-Archie, Shatikia Lashaunda Wilkins, and Tocarla Bernetta Shaw with unlawful possession with intent to distribute a detectable amount of oxycodone, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 on or about December 14, 2014.

Count Four charged Erika Livingston-Archie, Shatikia Lashaunda Wilkins, and Tocarla Bernetta Shaw with unlawful possession with intent to distribute a detectable amount of oxycodone, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 on January 25, 2015.

Count Five charged Erika Livingston-Archie, Shatikia LaShauda Wilkins, and Candace J'Sara Livingston with unlawful possession with intent to distribute a

detectable amount of oxycodone, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 on October 31, 2015.

Count Six charged Erika Livingston-Archie and Shatikia Lashaunda Wilkins with unlawful possession with intent to distribute a detectable amount of oxycodone, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 on November 20, 2015.

Count Seven charged Erika Livingston-Archie, Shatikia Lashaunda Wilkins, and Candace J'Sara Livingston with unlawful possession with intent to distribute a detectable amount of oxycodone, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C) and 18 U.S.C. § 2 on January 14, 2016.

While Ms. Williams and three of her co-defendants pled guilty to the charges, the two individuals deemed most culpable by the government's investigators exercised their constitutional rights to a trial and prevailed. On April 28, 2014, the jury returned a not guilty verdict for Erika Livingston-Archie and Candace J'Sara. [J.A. at 83.]

On August 21, 2017, the other codefendants who pled guilty were sentenced. [J.A. at 83.] Shatika Lashaunda Wilkins was sentenced to six months imprisonment, followed by five years supervised release. [J.A. at 83.] Tocarla Bernetta Shaw was sentenced to five years probation. [J.A. at 83.] Candis Danielle O'Neill was sentenced to five years probation. [J.A. at 83.]

At the sentencing hearing, the trial judge departed from his usual procedure and gave the parties his preliminary thoughts in order to aid the parties' presentations and comments to the Court. [J.A. at 48-51.]

The trial court first stated that sat through the trial of Ms. Livingston and Ms. Livingston-Archie, and while he understood the jury's verdict on the grounds of proof beyond a reasonable doubt, "I will say, having heard the evidence, that I have very little doubt in my mind as to Ms. Livingston and Ms. Livingston-Archie's involvement in leadership in this conspiracy." [J.A. at 48-49.]

The trial court then stated that "after hearing the evidence as well as reviewing the presentence report, I don't have much doubt in my mind about Ms. Williams' guilt with respect to this, nor do I have much doubt in my mind that with respect to Ms. Williams, the leadership adjustment is properly applied." [J.A. at 49.] Although this did not mean she was "the top member of the conspiracy", she was a "very significant part" of it. [J.A. at 49.] The trial court then stated that, in his view, oxycodone and heroin, "at least according to what I'm seeing, are crimes that are both on the rise and very serious." [J.A. at 49.]

On the other hand, the trial court stated:

[I]t is certainly troubling to try to fashion a sentence when the most culpable in the conspiracy are not present to receive a just punishment for their actions. And in no way do I think this conspiracy could have been committed or probably even thought of by Ms. Williams had it not been for the work of Livingston and Livingston-Archie.

[J.A. at 49-50.]

The trial judge then concluded his preliminary thoughts by expressing his difficulties in fashioning a just sentence for Ms. Williams:

So, I'm really caught in a significant conundrum in fashioning a sentence in MS. Williams' case. On the one hand, Ms. Williams, for her role in the offense, as well as the fact that while ms. Williams may have originally given a statement, she ultimately chose not to cooperate, are

factors that would suggest, at a minimum, that Ms. Williams' sentence, considering all the factors under 3553(a), should be significantly different from the sentence imposed on her co-conspirators. On the other hand, a lengthy sentence for someone like Ms. Williams, who, in spite of the leadership role, was, to some degree, a follower of those who ran the conspiracy, and given the fact that it does not appear that substance abuse was, at least to some degree, a driving factor in her commission of the offense, and I weight – and, as a result of that, weigh very heavily her voluntary participation in substance abuse beginning in September of 2015, and apparently, continuing into 2017.

[J.A. at 50-51.]

In the discussion that followed, the undersigned argued that Ms. Williams' participation in the case was roughly equivalent to that of Ms. Wilkins, who received a six month sentence, and that Ms. Williams' sentence should be equivalent to that of Ms. Wilkins, taking into account any reduction she received for testifying on behalf of the Government. [See J.A. at 53-57.] In addition, the undersigned pointed to the fact that Ms. Williams was completely compliant with her terms and conditions of release, unlike Ms. Wilkins prior to her sentencing. [J.A. at 55-56.] The undersigned argued that in light of this behavior, that a sentence of probation and an extended period of supervised release would meet the sentencing factors under 18 U.S.C. § 3553(a). [J.A. at 56.]

In response, the trial judge pointed to the serious nature of the illegal distribution of opiates, and the fact that Ms. Williams did not have the same level of cooperation that Ms. Wilkins had. [J.A. at 56-57]. The undersigned then observed, and the trial court agreed, that Ms. Williams was not twice as culpable as Ms. Wilkins. [J.A. at 58.]

The trial judge then stated that he was considering a sentence of 18 months followed by 48 months of supervised release, with the condition of 24 months of a curfew. [J.A. at 59.] After the court called a break, and the undersigned conferred with Ms. Williams, the undersigned requested that the Court to go lower than that amount. [J.A. at 62.] Ms. Williams made a statement to the court in which she expressed the desire to stay on the road to recovery that she had been on, moving forward with her life, continuing to work, and remaining sober. [J.A. at 63-64.]

The trial court then imposed a sentence of eighteen months and four years of supervised release. [J.A. at 65.]

On direct appeal, the Fourth Circuit upheld the sentence in an unpublished per curiam decision. The Fourth Circuit's opinion explained:

Ultimately, the court carefully evaluated the § 3553(a) factors and gave due consideration to Williams' arguments in mitigation when imposing the downward variant sentence. See United States v. Jeffery, 631 F.3d 669, 679 (4th Cir. 2011) (observing that "district courts have extremely broad discretion when determining the weight to be given each of the § 3553(a) factors"). Accordingly, we conclude that Williams has failed to rebut the presumption of reasonableness accorded her sentence and affirm the district court's judgment.

June 21, 2018 Opinion at 3, United States v. Williams, No. 17-8646.

STATEMENT OF REASONS FOR GRANTING CERTIORARI

I. The Court Should Grant Certiorari to Provide Further Clarification as to the Presumption of Substantive Reasonableness for Downward Variances from the Advisory United States Federal Sentencing Guidelines.

In 1984, Congress established the U.S. Sentencing Commission in order to address "[f]undamental and widespread dissatisfaction" with the then-prevailing

regime of discretionary sentencing. Mistretta v. United States, 488 U.S. 361, 365–366, (1989). It charged the Commission with reducing “the great variation among sentences imposed by different judges upon similarly situated offenders” and the resulting “uncertainty as to the time [each] offender would spend in prison.” Mistretta, 488 U.S., at 366, 109 S. Ct. 647. The Sentencing Guidelines are the product of that mandate. The United States Sentencing Guidelines ensure “uniformity in sentencing ... imposed by different federal courts for similar criminal conduct” and “proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of different severity.” Rita v. United States, 551 U.S. 338, 349 (2007) (internal quotation marks omitted).

The Guidelines today play a central role in federal sentencing. They are, “in a real sense[,] the basis for the sentence.” Molina–Martinez v. United States, 578 U.S. —, —, 136 S. Ct. 1338, 1345 (2016) (quoting Peugh v. United States, 569 U.S. —, —, 133 S. Ct. 2072, 2083 (2013)). Although no longer binding on federal courts, see United States v. Booker, 543 U.S. 220, 245 (2005), the Guidelines nonetheless “provide the framework for the tens of thousands of federal sentencing proceedings that occur each year,” Molina–Martinez, 578 U.S., at —, 136 S.Ct., at 1342. A district court must “begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” Gall v. United States, 552 U.S. 38, 49–50, (2007). The court must entertain the parties’ arguments and consider the factors set forth in 18 U.S.C. § 3553(a) as possible grounds for deviation from the Guidelines range, 552 U.S., at 49–50, and “may not presume the ... range is reasonable,” id., at 50.

But it must explain any deviation from the range on the record, and it must "ensure that the justification is sufficiently compelling to support the degree of the variance." Id. A district court that incorrectly calculates the Guidelines range commits reversible procedural error, see Gall, 552 U.S., at 51.

A sentencing court has flexibility in fashioning a sentence outside of the Guidelines range." See Rita v. United States, 551 U.S. 338, 356 (2007)). In United States v. Gall, 552 U.S. 38 (2007), the Court held that in reviewing substantive reasonableness, the Court "may consider the extent of the deviation [from the guidelines range], but must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance." Gall, 552 U.S. at 51.

The factors to be considered by the Court in determining a sentence are set out in 18 U.S.C. § 3553(a), which states in relevant part:

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;
 - 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 sentences and the sentencing range established for – the applicable category of offense committed by the applicable category of defendant as set for in the guidelines...issued by the Sentencing Commission;

- 5) any pertinent policy statement...issued by the Sentencing Commission...;
- 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.

18 U.S.C. § 3553(a).

"Reviewing the reasonableness of the resulting sentence is a 'complex and nuanced' task that 'requir[es] us to consider the extent to which the sentence imposed by the district court comports with the various, and sometimes competing, goals of § 3553(a).'" United States v. Tucker, 473 F.3d 556, 561 (4th Cir. 2007) (quoting United States v. Moreland, 473 F.3d 424, 433 (4th Cir. 2006)) "The reasonableness of a sentence ultimately will turn on the particular factors of each case." Id.

In this case, the Fourth Circuit applied a presumption of reasonableness to uphold the District Court's sentence.

Since its holding in United States v. Gall, the Court has allowed Circuits to apply a presumption of reasonableness for a sentence within the Guidelines range, but not apply a presumption of unreasonableness for a sentence outside of the Guidelines range. Gall v. United States, 552 U.S. 38, 51 (2007). Petitioner brings this petition asking the Court to reconsider this scheme of appellate review and give more guidance to the lower courts concerning the appropriateness of applying a presumption of reasonableness to uphold the extent of a district court's variance below an advisory Guidelines range. Petitioner respectfully contends that, even with the extensive variance downward in this action, that it was not substantively reasonable given the nature of the sentences of her codefendants.

CONCLUSION

For the above stated reasons, Petitioner respectfully requests that the Court grant this petition for Writ of Certiorari to the Fourth Circuit Court of Appeals, find that the sentence imposed in this case is substantively unreasonable, remand for resentencing, and grant whatsoever other relief may be just and proper.

Respectfully submitted this the 13th day of September, 2018.

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APPENDIX

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 17-4686

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

VALERIE LOUISE WILLIAMS,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. William L. Osteen, Jr., District Judge. (1:16-cr-00340-WO-6)

Submitted: June 21, 2018

Decided: June 25, 2018

Before DIAZ and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Seth A. Neyhart, STARK LAW GROUP, PLLC, Chapel Hill, North Carolina, for Appellant. Matthew G.T. Martin, United States Attorney, Greensboro, North Carolina, Kimberly F. Davis, Special Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Winston-Salem, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A

PER CURIAM:

Valerie Louise Williams pled guilty, pursuant to a plea agreement, to conspiracy to possess with intent to distribute a quantity of oxycodone, in violation of 21 U.S.C. § 846 (2012). The district court imposed a sentence of 18 months' imprisonment, 79 months below the bottom of Williams' advisory Sentencing Guidelines range. On appeal, Williams argues that her sentence is substantively unreasonable. We affirm.

We review a criminal sentence, "whether inside, just outside, or significantly outside the Guidelines range," for reasonableness "under a deferential abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 41 (2007); *see United States v. Blue*, 877 F.3d 513, 517 (4th Cir. 2017). Because Williams "does not claim that the district court committed any procedural error," our review "is limited only to [the] substantive reasonableness" of her sentence in light of "the totality of the circumstances." *United States v. Howard*, 773 F.3d 519, 528 (4th Cir. 2014) (internal quotation marks omitted). "Any sentence that is within or below a properly calculated Guidelines range is presumptively [substantively] reasonable. Such a presumption can only be rebutted by showing that the sentence is unreasonable when measured against the 18 U.S.C. § 3553(a) factors." *United States v. Louthian*, 756 F.3d 295, 306 (4th Cir. 2014) (citation omitted).

Williams argues that her sentence is greater than necessary to promote the goals of sentencing and that the court should have imposed a sentence similar to those of her codefendants. When selecting Williams' sentence, the court considered that, although Williams had a very significant leadership role, she ultimately followed the directions of the two individuals who ran the conspiracy. The court weighed heavily Williams'

voluntary participation in substance abuse treatment and her early withdrawal from the criminal conduct, but also noted that selling oxycodone is a very serious crime and that the need for deterrence is paramount. The court considered the sentences of Williams' codefendants but adequately distinguished Williams' particular circumstances. Ultimately, the court carefully evaluated the § 3553(a) factors and gave due consideration to Williams' arguments in mitigation when imposing the downward variant sentence. *See United States v. Jeffery*, 631 F.3d 669, 679 (4th Cir. 2011) (observing that "district courts have extremely broad discretion when determining the weight to be given each of the § 3553(a) factors").

Accordingly, we conclude that Williams has failed to rebut the presumption of reasonableness accorded her sentence and affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED