

NO. \_\_\_\_\_

**IN THE SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM 2018

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OMAR SOSA-GONZALEZ, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

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**PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE FIRST CIRCUIT**

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**PETITION FOR WRIT OF CERTIORARI**

Petitioner, OMAR SOSA-GONZALEZ, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

**OPINION BELOW**

A copy of the judgment and published opinion of the United States Court of Appeals for the First Circuit in this case is included in appendix A and B, respectively.

## **JURISDICTION**

The United States Court of Appeals for the First Circuit entered its judgment on August 14, 2018. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1), which grants the United States Supreme Court jurisdiction to review by writ of certiorari all final judgments of the courts of appeals.

## **STATUTORY PROVISIONS INVOLVED**

The Petitioner, Omar Sosa-Gonzalez, was the subject of a Two Count Indictment rendered by a District of Puerto Rico Grand Jury on April 11, 2017. The Petitioner was charged in Counts One and Two, that is, a violation of **Title 18 U.S.C. §§ 922(g)(1) and 922(o)**.

## **STATEMENT**

On June 14, 2017, the defendant pled guilty to the two counts of the Indictment. Count 1 charged Convicted Felon in Possession of a Firearm and Ammunition, in violation of 18 U.S.C. § 922(g)(1); and Count 2 charged Possession of a Machine-gun, in violation of 18 U.S.C. § 922(o).

Pursuant to the terms of the Plea Agreement accorded under the provisions of Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the base offense level was determined to be 22, because the offense involved a machine-gun and the

defendant committed the instant offense after sustaining a conviction for a controlled substance offense. USSG § 2K2.1(a)(3). Pursuant to a written plea agreement, the government would recommend a three (3) level reduction for acceptance of responsibility. USSG §3E1.1. The total offense level was 19. The parties did not stipulate as to any Criminal History Category for the defendant.

At sentencing, each party could recommend an imprisonment sentence within a Guidelines Sentencing Range (GSR) derived from a total offense level of 19 and the applicable Criminal History Category. The parties agreed that any recommendation by either party for a term of imprisonment below or above that range would constitute a material breach of this Plea and Forfeiture Agreement.

The criminal previous convictions calculations resulted in a subtotal criminal history score of nine (9). According to the sentencing table in USSG Chapter 5, Part A, a criminal history score of nine (9) establishes a criminal history category of IV. Based upon a total offense level of nineteen (19) and a criminal history category of IV, the guideline imprisonment range is 46 to 57 months.

The district court judge imposed an imprisonment term of sixty-six (66) months.

### **REASONS FOR GRANTING THE WRIT**

This case involves the Federal Sentencing Guidelines and the 18 U.S.C. § 3553(a) sentencing factors. In a published eleven (11) page opinion the Court of

Appeals for the First Circuit affirmed the district Court judgment and rejected the issues raised on appeal that the judgment of the sentencing court was unreasonable because the district court did not adequately explain the upward variance and the sentencing factors were not adequately considered.

In this case the parties agreed upon using U.S.S.G. § 2K2.1(a)(3) because it was the appropriate guideline given the specific facts of Defendant-Appellant's case. The parties agreed to a total adjusted offense level of 19. The amended PSR calculated a total offense level of 19. Petitioner agreed to waive his right to appeal if the district court imposed a sentence of fifty-seven months or less. Finally, the District Court applied a total offense level of 19, what was agreed by the parties in the plea agreement, but sentenced the Appellant-Defendant to sixty-six (66) months of imprisonment, nine (9) months higher than the agreement submitted by the parties. The term of imprisonment is procedurally and substantively unreasonable.

Section 3553(a) of Title 18 specifies the factors courts are to consider in imposing a sentence. The list of factors is preceded by what is known as the parsimony principle, a broad command that instructs courts to "impose a sentence sufficient, but not greater than necessary, to comply with" the four identified purposes of sentencing: just punishment, deterrence, protection of the public, and rehabilitation. *Ibid.* A sentencing court is then directed to take into account "the nature and circumstances of the offense and the history and characteristics of the

defendant," as well as "the need for the sentence imposed" to serve the four overarching aims of sentencing. §§ 3553(a)(1), (2)(A)-(D); see *Gall v. United States*, 552 U.S. 38, 50, n. 6, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007). The court must also consider the pertinent guidelines and policies adopted by the Sentencing Commission. §§ 3553(a)(4), (5); see *id.*, at 50, n. 6, 128 S.Ct. 586.

The court of appeals has decided an important question of federal law that conflicts with relevant decisions of this Court, as stated above. Finally, this Court should grant certiorari in the interests of justice.

### CONCLUSION

For all of the foregoing reasons the petitioner, Omar Sosa-Gonzalez, respectfully requests that this Court grant the petition for writ of certiorari, and accept this case for review. In the alternative, Mr. Sosa-Gonzalez requests that his petition be granted, his sentence vacated and his case remanded.

Respectfully submitted, in San Juan, Puerto Rico, on Monday, September 17, 2018.

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