

No.

IN THE
Supreme Court of the United States

OCTOBER TERM, 2017

GEORGE JENKINS
Petitioner,
v.

UNITED STATES OF AMERICA,
Respondent.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
For the Eleventh Circuit**

PETITION FOR WRIT OF CERTIORARI

NOEL G. LAWRENCE, ESQUIRE
Counsel for Petitioner
Florida Bar No. 844251
101 East Union Street, Suite 200
Jacksonville, Florida 32202
Telephone: 904-356-9928
Facsimile: 904-356-6762
Email: nglawren@lpnlaw.com

STATEMENT OF THE ISSUE(S)

WHETHER THE SENTENCE IMPOSED IS UNREASONABLE

A. Whether a One Hundred Forty-four (144) month prison sentence for a first time non-violent, drug dealer is unreasonable.

LIST OF PARTIES

All parties appear in the caption of the case on the title page.

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APPENDIX A: Decision of the Eleventh Circuit Court of Appeals

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The petitioner, **GEORGE JENKINS**, respectfully prays that a writ of certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Eleventh Circuit, entered in the above entitled proceeding on July 12, 2018.

OPINION BELOW

The Opinion of the Court of Appeals for the Eleventh Circuit (App., *infra*, 1a-7a) is unpublished.

JURISDICTION

The Petitioner, **GEORGE JENKINS**, was prosecuted by an Indictment alleging violation of Federal Criminal Laws in the United States District Court for the Middle District of Florida, convicted and sentenced to 144 months. He appealed his conviction and sentence to the Eleventh Circuit Court of Appeals invoking the Court's jurisdiction under 28 U.S.C. § 1291. (Doc. 264) His sentence was affirmed by an Order entered July 12, 2018. (Doc. 312)

The jurisdiction of this Court to review the Judgment of the Eleventh Circuit Court of Appeals is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

No person shall be held to answer for a capital, or infamous crime, unless on presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. Fifth Amendment to the United States Constitution.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense. Sixth Amendment to the United States Constitution.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. Eighth Amendment to the United States Constitution.

STATEMENT OF THE CASE AND FACTS

I. Course of the Proceedings and Dispositions in the Court Below ¹

On November 16, 2016, the Federal Grand Jury returned a three-count Indictment naming as defendants, Marcelle Jenkins, ,George Jenkins, a/k/a “Wiggy”, Audrey Latrell Jenkins, Layton Franklin Thomas, a/k/a “Frank Thomas,” a/k/a “Joker”, Melinda Reeves, a/k/a “Trinity Outkast”, Michelle Ryder, and, Shanique Morgan a/k/a “Nanu” as defendants. (Doc. 1)

Count One charged from mid-2015 and continuing through mid-2016, in the Middle District of Florida, Georgia, and elsewhere, the named defendants did knowingly, willfully, and intentionally conspire with each other and other persons to distribute a controlled substance, in violation of 21 U.S.C. § 841(a)(1). (Doc. 1)

With respect to Marcelle Jenkins, George Jenkins, a/k/a “Wiggy,” Audrey Latrell Jenkins, Layton Franklin Thomas, a.k.a. “Frank Thomas,” a./k/a “Joker,” Melinda Reeves, a/k/a “Trinity Outkast,” the violation involved 50 grams or more of a mixture and substance containing a detectable amount of pure/actual methamphetamine, and is therefore punishable under 21 U.S.C. § 841(b)(1)(A).

With respect to Michelle Ryder, and Shanique Morgan, a/k/a “Nanu,” the violation

¹Most, if not all, of the statements herein were excerpted from the PSR, unless objected or irrelevant.

involved a mixture or substance containing a detectable amount of pure/actual methamphetamine, and is therefore punishable under 21 U.S.C. § 841(b)(1)(C). It was part of the conspiracy that the conspirators would perform acts and make statements to hide and cause to be hidden and concealed the purpose of the conspiracy and the acts committed in furtherance thereof, all in violation of 21 U.S.C. § 846. (Doc. 1)

Count Two charged on November 9, 2015, in the Middle District of Florida and elsewhere, George Jenkins, a.k.a. "Wiggy," and Melinda Reeves, a.k.a. "Trinity Outkast," did knowingly and intentionally distribute and aid and abet in the distribution of methamphetamine, which violation involved 5 grams or more of pure/actual methamphetamine, and is therefore punishable under 21 U.S.C. § 841(b)(1)(B), all in violation of 21 U.S.C. § 841(a)(1) and 18 U.S.C. § 2. (Doc. 1)

Count Three charged on December 21, 2015, in the Middle District of Florida and elsewhere, George Jenkins, a.k.a. "Wiggy," did knowingly and intentionally possess with intent to distribute methamphetamine, which violation involved 50 grams or more of pure/actual methamphetamine, and is therefore punishable under 21 U.S.C. § 841(b)(1)(A), all in violation of 21 U.S.C. § 841(a)(1). (Doc 1)The indictment also contained forfeiture allegations pursuant to 21 U.S.C. § 853. (Doc. 1)

On May 2, 2017, the defendant appeared before United States Magistrate Judge

Patricia D. Barksdale and, absent a written plea agreement, pleaded guilty to Counts One, Two, and Three of the Indictment. (Doc. 162) (Doc. 280) On May 8, 2017, United States District Judge Brian J. Davis accepted the defendant's guilty plea and adjudicated him guilty of those offenses, and scheduled the Sentencing in front of the assigned District Judge (Schlesinger). (Doc. 169)

Disposition

On September 27, 2017, Judge Schlesinger sentenced Defendant to, *inter alia*, One Hundred Forty-four months (144) imprisonment. (Doc. 256) (Doc. 279) The Defendant is currently in the custody of the U. S. Bureau of Prisons.

The Offense Conduct

From approximately mid-2015, through approximately mid-2016, Marcelle Jenkins (M. Jenkins), along with his mother, Audrey Jenkins (A. Jenkins), and his brother, **George Jenkins (G. Jenkins)**, obtained high quality methamphetamine from sources of supply and distributed the drugs to others. The Drug Enforcement Administration (DEA) utilized various cooperating individuals (who had a history of purchasing distribution quantities of methamphetamine from the Jenkins) to infiltrate the drug trafficking organization. In so doing, authorities learned (among other things) that the Jenkins family used their residence in Alma, Georgia, as a meeting and distribution point.

The modis operandi employed by the Jenkins involved obtaining multi-ounce quantities of high quality methamphetamine from a source of supply and subsequently breaking the drugs down into smaller quantities for distribution in Georgia and in Nassau and Duval Counties in Florida by others, including Layton Franklin Thomas, Melinda Reeves, Michelle Ryder, and Shanique Morgan (M. Jenkins' girlfriend). **G. Jenkins**, and, M. Jenkins were responsible for providing methamphetamine to distributors but, on occasion, when they were not available, A. Jenkins provided the methamphetamine for them.

Further, while there are seven defendants named in the instant case, investigation revealed that Layton Franklin Thomas, Melinda Reeves, Michelle Ryder, and, Shanique Morgan's only relation to each other is that each distributed methamphetamine on behalf of the Jenkins family members. While those defendants may know each other, they did not work together to distribute methamphetamine; instead, they obtained drugs from the Jenkins and distributed the drugs independently.

The following is a chronological account of information developed and learned during law enforcement's investigation of the Jenkins family and individuals who worked for them to accomplish a common goal of distributing methamphetamine for profit.

During 2015, Thomas obtained multi-ounce, half-ounce, and, quarter-ounce

quantities of methamphetamine from Lena Leigh Davis (Davis)² on a regular basis. During that period, Davis obtained the methamphetamine from M. Jenkins or **G. Jenkins..** Sometimes Thomas pooled money with a number of the other individuals to purchase the methamphetamine from Davis. Through Davis, Thomas was introduced to M. Jenkins.

In late 2015, Melinda Reeves obtained ounce, half ounce, and quarter ounce quantities of methamphetamine from Davis on a regular basis. Reeves distributed the drugs to others in Jacksonville including Norman Dane Lloyd³, who later began distributing methamphetamine to his own customer base. On occasion, Reeves obtained methamphetamine from Kathy Meyer, an associate of Davis. In turn, Reeves distributed the methamphetamine to others.

On November 9, 2015, a cooperating individual (CI) contacted Reeves to purchase methamphetamine from her. Prior to cooperating with law enforcement, the CI had historically purchased drugs from Reeves and was aware of her involvement with methamphetamine. During their telephonic conversation, Reeves told the CI that Davis (her source of methamphetamine for this particular transaction) would arrive shortly

² Davis was named in Docket No: 3-16-cr-149-J-20JRK, which charged her with Conspiracy to Distribute Methamphetamine.

³ Lloyd was named in Docket No. 3:16-cr-193-J-20MCR, which charged him with conspiracy to distribute methamphetamine.

and that they could conduct the transaction at that time. The CI agreed to pick-up Reeves from her home and then drive to a Walmart store to conduct the transaction. However, while en route to the store, Davis contacted Reeves and changed the meeting location to Reeves' house. As such, the CI and Reeves returned to Reeve's house and met with Davis, who was accompanied by **G. Jenkins**. During this meeting, Davis removed a substance and a scale from a fanny pack, weighed and packaged it, and gave it to **G. Jenkins**, who in turn handed it to the CI in exchange for \$1,250. Authorities subsequently analyzed the substance and determined that it was 25.1 grams of pure/actual methamphetamine.

On November 17, 2015, a CI contacted Davis and coordinated the purchase of three ounces of methamphetamine. Davis discussed pricing with the CI and explained her source of supply was inflexible on the price, which was set at \$900 per ounce. The CI informed Davis the drugs would be provided to a third party customer for further street level distribution at \$1,000 per ounce

On November 19, 2015, Davis met with **M. Jenkins** and purchased three ounces of methamphetamine. She subsequently met with the CI at a Burger King in Callahan, Florida, where she gave the CI drugs in exchange for \$3,000. Authorities analyzed the drugs and determined that it was 78.2 grams of methamphetamine

On November 20, 2015, police in Hortense, Georgia, conducted a traffic stop

on a vehicle driven by Davis. G. Jenkins and another individual were passengers. A search of the vehicle revealed a drug ledger, a small amount of methamphetamine (less than one gram), and other drug related items. Further, **G. Jenkins** had \$4,800 in cash in his back pocket. Davis and **G. Jenkins** were arrested at the scene.

After Davis' arrest on November 20, 2015, Thomas began purchasing multi-ounce quantities of methamphetamine from M. Jenkins on a regular basis.

On December 23, 2015, police in Yulee, Florida, conducted a traffic stop on a vehicle driven by **G. Jenkins**. Ryder was a passenger in the vehicle. A search of the vehicle revealed a substance believed to be methamphetamine and crack cocaine. Authorities analyzed the unknown substance and determined that it was 61.8 grams of pure/actual methamphetamine. Also, the crack cocaine weighed 3.1 grams. Further, G. Jenkins had \$3,302 in cash in his front pocket.

In January 2016, Tina Rayos⁴ (Rayos) and Meyer traveled to the Jenkins' residence in Alma, Georgia, and purchased two and a half ounces of methamphetamine from A. Jenkins for \$1,800. Rayos was a Nassau County, Florida, based methamphetamine distributor who began purchasing methamphetamine from Meyer and **G. Jenkins** in September 2015. Between September 2015 and December

⁴Tina Rayos is named in Docket No. 3:16-cr-155-J-20PDB, which charged her with Conspiracy to Distribute Methamphetamine.

2015 Rayos purchased at least 24 ounces of methamphetamine from G. Jenkins. The total amount purchased from Meyer is unknown.

On January 9, 2016, M. Jenkins and Morgan were arrested after Alma, Georgia, authorities found (among other things) marijuana, Tramadol pills, and \$9,916 in their hotel room. M. Jenkins remained in custody, and while incarcerated, he used cellular telephones (smuggled into the jail on his behalf) to continue his involvement in trafficking methamphetamine with A. Jenkins, **G. Jenkins**, and other conspirators.

On February 25, 2016, a CI met with coconspirator Kathy Meyer⁵ at Myer's residence and purchased a substance believed to be methamphetamine in exchange for \$250. During their contact, Meyer told the CI that G. Jenkins previously told her that the CI had been arrested. The CI subsequently departed Meyer's home. Authorities analyzed the substance believed to be methamphetamine and determined that it was 4.0 grams of pure/actual methamphetamine. Investigation revealed that Meyer obtained her methamphetamine from **G. Jenkins**.

On March 9, 2016, a CI met with Meyer at a Winn Dixie store located in

⁵

Kathy Meyer is named in Docket No. 3:16-cr-177-J-20JBT, which charged her with Conspiracy to Distribute Methamphetamine.

Hilliard, Florida, and purchased a substance believed to be methamphetamine in exchange for \$2,500. Authorities analyzed the substance and determined that it was 82.7 grams of methamphetamine. Investigation revealed that Meyer obtained her methamphetamine from **G. Jenkins**.

On March 24, 2016, a CI contacted Meyer for the purpose of arranging a time to meet so that the CI could purchase methamphetamine. The pair agreed to meet at the Winn Dixie grocery store in Hilliard, Florida. However, while en route to meet with the CI, Meyer was stopped by the Florida Highway Patrol for speeding. A probable cause search of Meyer's vehicle revealed a glass pipe that is commonly used to smoke illicit substances and a substance believed to be methamphetamine. Authorities analyzed the substance and determined that it was 78.86 grams of methamphetamine. Investigation revealed that Meyer had obtained the drugs from **G. Jenkins**. (Following Meyer's arrest, she began cooperating with authorities and assisted with their investigation of the Jenkins family. Her interactions with them were captured via an audio and video recording device).

On March 25, 2016, Meyers made contact with **G. Jenkins** and arranged to meet with him to provide money for methamphetamine that he had given her on consignment. The pair agreed to meet at **G. Jenkins'** residence. When Meyer arrived, A. Jenkins contacted **G. Jenkins** and alerted him to Meyer's presence. **G. Jenkins**

arrived a short while later and Meyers gave him the money she owed him. Also, **G. Jenkins** gave Meyer a small quantity of marijuana. This meeting was captured on an audio and video recording device.

In April 2016, M. Jenkins contacted Meyer and directed her to meet with **G. Jenkins** and A. Jenkins at their home in Alma, Georgia, so that they could collectively speak to her about continuing to distribute multi-ounce quantities of methamphetamine on their behalf in the Charlton County, Georgia, area. Meyer recorded the phone call which captures A. Jenkins stating that M. Jenkins would be participating in the meeting via cell phone from the jail.

On April 20, 2016, Meyer contacted A. Jenkins as she was en route to meet with A. Jenkins and **G. Jenkins**. During the call, Meyer told A. Jenkins that she had already sold all of the methamphetamine provided to her and was in need of “two” more. A. Jenkins indicated that she would attempt to get more drugs for Meyer to distribute, and the call ended. Later, Meyer met with A. Jenkins and **G. Jenkins** at their Alma residence and M. Jenkins joined the meeting, *via* phone from jail. M. Jenkins, who was running the methamphetamine operation from the jail, agreed to front four ounces of methamphetamine to Meyer, which would be provided to Meyer by A. Jenkins the following day. Further, M. Jenkins advised that he expected payment for the drugs in three or four days.

On April 21, 2016, Meyer exchanged several text messages with M. Jenkins with one such text advising Meyer that M. Jenkins was unable to get the promised methamphetamine to her through A. Jenkins because Morgan (his girlfriend), was unable to take it to her.

On April 27, 2016, Meyer advised agents that the night before one of M. Jenkins' customers gave her \$1,620 to deliver to A. Jenkins. The customer owed the money to M. Jenkins. Meyer contacted **G. Jenkins** and they agreed to meet at the Jenkins' home in Alma, Georgia.

During the meeting, Morgan gave Meyer a substance that appeared to be methamphetamine. Via phone from the jail, M. Jenkins asked Meyer to inspect the substance and report on its quality. Meyer advised that the substance looked good. M. Jenkins subsequently instructed Meyer to give Morgan the money from his customer, and she complied. Thereafter, M. Jenkins stated that he would set Meyer up with more methamphetamine in the future, and he reminded her that payment for the drugs just provided would be due in a few days. A. Jenkins was present during this meeting and showed Meyer a black light that had been installed over the stove. A. Jenkins advised the light was going to be used to inspect the quality of the methamphetamine. Authorities analyzed the substance provided to Meyer and determined that it was 79 grams of pure/actual methamphetamine.

On April 28, 2016, Meyer received a call from M. Jenkins inquiring about when he could expect payment for the methamphetamine that he provided to her on consignment. M. Jenkins told Meyer that he was expecting a shipment of methamphetamine and that he needed money owed to him to pay for it. Meyer told M. Jenkins *via* text message that she would make the payment the following day. Meyer sent **G. Jenkins** the same message.

On April 29, 2016, M. Jenkins called Meyer, and Meyer advised that she was en route to Alma to deliver the money to A. Jenkins. At the house in Alma, Meyer gave A. Jenkins \$2,100 as directed by M. Jenkins.

On May 2, 2016, M. Jenkins called Meyer and advised, in substance, that he had additional methamphetamine available and wanted Meyer to get some of it.

Between May 3 and May 4, 2016, M. Jenkins called and texted Meyer on several occasions concerned about methamphetamine that he recently had distributed to various customers that turned out to be of poor quality. M. Jenkins asked Meyer to collect the methamphetamine and return it to A. Jenkins who would return it to the source of supply in order to get M. Jenkins' money back. M. Jenkins expressed concern to Meyer that if things were not made right with his customers, there was a real danger of violence and retaliation.

On May 5, 2016, M. Jenkins called Meyer and told her to look under the

driver's seat of her vehicle. When she did, she found a plastic bag containing methamphetamine on the floorboard under the driver's seat. Meyer spoke with M. Jenkins who advised that an associate of his put the methamphetamine there and M. Jenkins wanted Meyer to take it to A. Jenkins to be returned to the supplier. M. Jenkins advised that if the drugs were not returned that day, the supplier would retaliate. Authorities analyzed the substance and determined that it was 84.7 grams of methamphetamine. Analysis of the substance corroborated M. Jenkins report of it being of a poor quality.

On June 13, 2016, A. Jenkins was arrested by authorities with the Bacon County Sheriff's Office, Alma, Georgia. At the time of her arrest, A. Jenkins possessed two cellular telephones that were used to aid her and her son's methamphetamine distribution ring.

On September 6, 2016, the Folkston Police Department conducted a traffic stop. Thomas was a passenger in the vehicle. After a drug detecting canine alerted on the vehicle, officers searched the car and recovered 97 grams of methamphetamine, a pipe, and two sets of digital scales.

George Jenkins Summary

George Jenkins acknowledged that he is accountable for at least 1.5 kilograms but less than 4.5 kilograms of actual methamphetamine, which equates to base

offense level 36. This amount is based on drug quantities seized from the defendant and co-conspirators, transactions conducted by the defendant, and statements made by co-conspirators.

The PSR further stated:

Victim Impact

This is a Title 21 offense and there is no identifiable victim.

Adjustment for Obstruction of Justice

The probation officer has no information indicating the defendant impeded or obstructed justice

Adjustment for Acceptance of Responsibility

The defendant was interviewed by the probation officer and provided a statement wherein the defendant admitted involvement in the offense and expressed remorse for his actions

Offense Level Computation

As the offense level is determined largely on the basis of the basis of the quantity of substance involved, counts 1, 2 and 3 are grouped for guideline calculation purposes. USSG §3D1.2(d)

Count Group 1: Conspiracy to distribute a controlled substance, specifically, 50 grams or more of a mixture and substance containing a detectable amount of pure/actual methamphetamine

Base Offense Level: The guideline for a violation of 21 U.S.C. §§ 846 and 841 (a)(1) is USSG §2D1.1. According to §2D1.1(a)(5), the base offense level is the level specified in the Drug Quantity Table set forth at §2D1.1(c). As the defendant is accountable for at least 1.5 kilograms of actual methamphetamine, but less than 4.5 kilograms of actual methamphetamine, the base offense level is 36. USSG

§2D1.1 (c)(2). 36

xvi

Specific Offense Characteristics: None 0

Adjustment for Role in the Offense: None 0

Adjustment for Obstruction of Justice: None 0

Adjusted Offense Level (Subtotal): 36

Chapter Four Enhancement: None 0

Acceptance of Responsibility: The defendant has clearly demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. USSG § 3 E1.1 (a). -2

Acceptance of Responsibility: The defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the intention to enter a plea of guilty. Accordingly, the offense level is decreased by one additional level. USSG § 3 E1.1 (b). -1

Total Offense Level: 33

REASON FOR GRANTING THE PETITION

ARGUMENT(S)

I. THE SENTENCE IMPOSED IS PROCEDURALLY AND SUBSTANTIVELY UNREASONABLE.

A. Booker and Its Progeny: Reasonableness at Sentencing in an

Advisory Guidelines System.

The remedial portion of United States v. Booker, 543 U.S. 220, 125 S. Ct. 738, 764 (2005), excised the portions of the Sentencing Guidelines which made them mandatory, and held that District Courts should consider the Guidelines, but are not bound by them. The Supreme Court later clarified that the Guidelines should be "the starting point and the initial benchmark," but that ultimately, the sentence imposed must be procedurally and substantively reasonable.⁶ Gall v. United States, 552 U.S. 38, 49-50 (2007); Rita v. United States, 551 U.S. 338, 127 S. Ct. 2456 (2007). See also United States v. Campbell, 491 F.3d 1306, 1314 (11th Cir. 2007). The Supreme Court has held that if the sentence is within the applicable voluntary guideline range, the Appellate Court may apply a presumption of reasonableness to the sentence. See Rita, 551 U.S. at 347-51. However, the Eleventh Circuit has decided not to apply that presumption, instead concluding that in this Circuit, a guideline sentence is not presumptively reasonable. See, e.g., Campbell, 491 F.3d at 1313.

If this Supreme Court finds that the District Court made no procedural errors at sentencing, it must determine whether, considering the totality of the

⁶ While defendant acknowledges that the Statutory minimum mandatory precludes a sentence below One Hundred Twenty (120) months, the additional Twenty-four (24) months makes the final sentence all the more unreasonable since the mandatory minimum is far more than a reasonable sentence. See PSR, ¶ 109.

circumstances, the sentence was substantively unreasonable. Id. A review of the substantive reasonableness of a sentence requires a determination as to whether the sentence is supported by the factors laid out in 18 U.S.C. § 3553(a). Gall, 552 U.S. at 56. See also United States v. Pugh, 515 F.3d 1179, 1191 (11th Cir. 2008). Section 3553(a) "requires Judges to take into account the Guidelines together with other sentencing goals" in fashioning an appropriate sentence. See Booker, 543 U.S. at 259-60. Section 3553(a) principle, directing Courts to impose a sentence "sufficient, but not greater than necessary," to comply with the purposes of sentencing set forth in § 3553(a)(2). See Id.; see generally ABA Standards Of Criminal Justice § 18-24 (sentences imposed), taking into account the gravity of the offense, should be no more than necessary to achieve the social purposes for which they are authorized). This provision requires the District Court to consider each of the following seven relevant factors in imposing sentence:

- (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 applicable sentencing guideline range];
- (5) any pertinent [sentencing guidelines] policy statement;
- (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 victim of the offense.

Id.

After Booker, the District Court must properly calculate the sentencing guideline range and consider any upward or downward departure motions. Then, the District Court must consider the Guidelines, along with the other §3553 factors, and impose a reasonable sentence. "In short, after Booker, 'the District Courts, while not bound to apply the Guidelines, must consult those Guidelines, and take them into account when sentencing.'" United States v. Crawford, 407 F.3d 1174, 1178 (11th Cir. 2005) (quoting Booker, 125 S. Ct. at 767). After taking the Guidelines into account, the Court is free to impose a more severe or less severe sentence than called

for by the Guidelines as long as the sentence is reasonable. Crawford, 407 F.3d at 1179. The sentencing court may not presume that a guideline sentence is reasonable. Nelson v. United States, 129 S. Ct. 890, 892 (2009). A sentence is substantively unreasonable if, in light of the §3553(a) factors, it is somehow outside the range of reasonable sentences available for the offense and the offender. Pugh, 515 F.3d at 1191. This is what has occurred in Mr. Jenkins' case.

Mr. Jenkins' sentence of One Hundred Forty-four months imprisonment is substantively unreasonable. Although it is true that the One Hundred Forty-four month sentence was close to the applicable guideline range, the sentence is not presumptively reasonable. United States v. Hunt, 459 F.3d 1180 (11th Cir. 2006); United States v. Talley, 431 F.3d 784 (11th Cir. 2005). Indeed, the Eleventh Circuit Court and others have held that a sentence in the guideline range can produce an unreasonable result. United States v. Hunt, 459 F.3d 1180, 1184 ("There are, however, many instances where the guideline range will not yield a reasonable sentence"); United States v. Jimenez-Beltre, 440 F.3d 514, 518 (1st Cir. 2006)(en banc); United States v. Lazenby, 439 F.3d 928 (8th Cir. 2006). See also Nelson, 129 S. Ct. at 892.

In Jimenez-Beltre, the First Circuit explained:

Yet the guidelines are still generalizations that can point to outcomes

that may appear unreasonable to sentencing Judges in particular cases. Some of the guidelines in particular cases were not reflections of existing practice but were deliberate deviations or turned tendencies into absolutes. Others have been affected by directions from Congress. Booker's remedial solution makes it possible for courts to impose non-guideline sentences that override the guidelines, subject only to the ultimate requirement of reasonableness.

Jimenez-Beltre, 440 F.3d at 518 (citation omitted).

In light of this authority, the fact that Mr. Jenkins' sentence is within or close to the guideline range does not make it reasonable. In Rita v. United States, 551 U.S. 338 (2007), the Supreme Court held that Courts of Appeals may adopt an appellate presumption that a sentence in the guideline range is reasonable. 551 U.S. at 346-47. However, the Court did not require the Courts of Appeals to create and apply such a presumption. Since this Court has already rejected such a presumption and the decision in Rita does not mandate the presumption there is no appellate presumption that the guideline sentence is reasonable in this case. Hunt, 459 F.3d at 1185.

Although the defendant's criminal history category is mathematically correct at category III, the aggregation of that point total has produced an anomalous conclusion about the seriousness of his past criminal history. Unlike the typical drug trafficker, the defendant has no prior trafficking or distribution offenses. Furthermore, he has no prior felony convictions of any kind.

The defendant's four criminal history points arrive from two prior misdemeanor convictions for possession of less than one ounce of marijuana – the first of which occurred approximately eight years ago. Both offenses involved user-quantities of marijuana, indicative of a marijuana dependency that began at age 18 (PSR ¶ 87). The defendant received no jail time for either conviction. Accordingly, these factors are more than sufficient to sustain an objection as substantial over-representation of the defendant's criminal history.

Additionally when evaluating a defendant's role in an offense, the District Court must consider the totality of the circumstances, USSG § 3B1.2, comment n.3 (C), assessing "first, the defendant's role in the relevant conduct for which [he] has been held accountable at sentencing, and, second, [his] role as compared to that of other participants in [his] relevant conduct." Rodriguez De Varon, 175 F.3d at 940. The District Court is under no obligation to make "specific subsidiary findings," but it must "clearly resolve [] any disputed factual issues" and make "the ultimate determination of the defendant's role in the offense." Id. At 939-40 (emphasis omitted). The commentary to USSG § 3 B1.2 confirms the fact-intensive nature of this inquiry. The commentary provides a non-exhaustive list of factors for the District Court to consider, including, among other things, "the degree to which the

defendant understood the scope and structure of the criminal activity,” “the degree to which the defendant participated in planning or organizing the criminal activity,” “the degree to which the defendant exercised decision-making authority,” “the nature and extent of the defendant’s participation in the commission of the criminal activity,” and “the degree to which the defendant stood to benefit from the criminal activity.” USSG § 3B1.2, cmt. n.3 (C). “The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative.” Id.

The District Court herein wholly impermissibly fails to conduct any inquiry, much less an incomplete inquiry.

B. Mr. Jenkins’ Sentence Was Substantively Unreasonable

As argued to the District Court, a near Guidelines sentence in this case was substantively unreasonable. Mr. Jenkins was essentially a first time offender and the Sentencing Commission itself acknowledges that the guidelines could be lower for true first offenders, as opposed to those who are in category I for criminal history because their convictions are too old to count.

The Sentencing Commissions's 2004 Report on Recidivism indicates that “[p]ossible sentencing reductions for ‘first offenders’ are supported by the

recidivism data and would recognize their lower re-offending rates." Recidivism:

The Criminal History Computation of the Federal Sentencing Guidelines

http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf, at 15.

Rather than following the parsimony principle and imposing a sentence sufficient to meet the goals of sentencing, the District Court instead imposed a sentence which was longer than necessary to accomplish those goals. The sentence imposed by the District Court in this case was substantively unreasonable, and this Supreme Court should vacate that sentence and remand the case to the sentencing Judge for resentencing. Given Mr. Jenkins' personal history and characteristics, the statutory directives contained in 18 U.S.C. § 3553(a) would be satisfied by a material below-guideline sentence, and the imposed sentence of One hundred Forty-four months was unreasonable.

An offender characteristic or other circumstance identified in Chapter Five, Part H (Offender Characteristics) or elsewhere in the guidelines is not ordinarily relevant in determining whether a departure is warranted, may be relevant to this determination if such offender characteristic or other circumstance is present to an exceptional degree. USSG §5K2.0(a)(4)

The defendant respectfully objected to the conclusion that there are no factors that may warrant a downward departure, according to the advisory guidelines, and avers that the following factors may warrant grounds for downward departure.

According to USSG §5K2.0(a)(4), [a]n offender characteristic, or other circumstance identified in Chapter Five, Part H (Offender Characteristics), or elsewhere in the guidelines, as not ordinarily relevant in determining whether a departure is warranted, may be relevant to this determination if such offender characteristic, or other circumstance, is present to an exceptional degree. There is a combination of offender characteristics, and other circumstances, that distinguish this case from the typical cases contemplated by the Sentencing Commission, that may suggest a downward departure from the advisory guideline sentencing range. USSG §5K2.0(c).

Mental and emotional conditions may be relevant in determining whether a departure is warranted, if such conditions, individually, or, in combination with other offender characteristics, are present to an unusual degree, and, distinguish the case from the typical cases covered by the guidelines. USSG §5H1.3. Mental and Emotional Condition (Policy Statement). In this case, there are aspects of the defendant's mental and emotional health that may take this case out of the heartland, and are salient to a departure consideration at sentencing.

The presentence report indicates beginning in the first grade, the defendant was diagnosed with attention deficit disorder, and was designated as a special education student throughout his entire school history; a condition for which he was prescribed Ritalin. There is current social science literature which demonstrates a link between the condition of attention deficit disorder and early and long term criminal conduct.⁷ Aggravating this circumstance is the fact that the defendant's mother developed a drug addiction early in his childhood, prompting the defendant to be reared by his grandmother. Consequently, it appears likely that the defendant's emotional difficulties, and his foray into drug addiction and criminal behavior were coterminous with his learning disability. Accordingly, the defendant's mental and emotional outlook may have been historically compromised leading up to the time of the commission of the instant offenses, and may represent a factor that the court may find warrants a departure from the applicable guideline imprisonment range.

When evaluating a defendant's role in an offense, the District Court must consider the totality of the circumstances, USSG § 3B1.2, comment n.3 (C), assessing "first, the defendant's role in the relevant conduct for which [he] has been held accountable at sentencing, and, second, [his] role as compared to that of other

⁷ ADHD and Crime: Considering the Connections, from www.medscape.org/view/article/719862.

participants in [his] relevant conduct.” Rodriguez De Varon, 175 F.3d at 940. The District Court is under no obligation to make “specific subsidiary findings,” but it must “clearly resolve [] any disputed factual issues” and make “the ultimate determination of the defendant’s role in the offense.” Id. at 939-40 (emphasis omitted). The commentary to USSG § 3B1.2 confirms the fact-intensive nature of this inquiry. The commentary provides a non-exhaustive list of factors for the District Court to consider, including, among other things, “the degree to which the defendant understood the scope and structure of the criminal activity,” “the degree to which the defendant participated in planning or organizing the criminal activity,” “the degree to which the defendant exercised decision-making authority,” “the nature and extent of the defendant’s participation in the commission of the criminal activity,” and “the degree to which the defendant stood to benefit from the criminal activity.” USSG § 3B1.2, cmt. N.3 (C). “The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative.” Id.

The Eleventh Court itself has cautioned District Courts against applying any *per se* rules for a minor role reduction. Cruikshank, 837 F.3d at 1194. In Cruikshank, the Court disapprove of the District Court’s suggestion that the drug quantity involved in the offense was so large “that no participant in the scheme could ever have been eligible

for a minor-role reduction.” Id. The Court has held that it was “legal error for the District Court to say that this is the only factor to be considered in a case like this one.” Id. at 1195. Because the stakes were high for the defendant in Cruikshank - he had sought a six-level reduction in his offense level - the Court remanded for resentencing, instructing the District Court on remand to “perform an inquiry based on the totality of the circumstances, taking into account the variety of factors laid out in De Varon” and the guidelines commentary. Id.

Cruikshank’s logic applies here. When the District Court summarily overruled Jenkins’ objection to the lack of a minor role reduction, the District Court suggested that it treated all conspiracy-to-traffic-drugs cases uniformly because in all such cases, “[i]t takes all of these individuals working together.” (Doc. 279, 9). The Cruikshank Court intimated, quite subtly, that it “d[oes]n’t provide the minor role reduction “ in any of these cases,” of which the Court had seen “about a hundred.” Id. The District Court gave no [other] reason for declining to give a minor role reduction. Thus, like in Cruikshank, the District Court apparently hinged its rejection of a minor role reduction on a single factor rather than a consideration of the totality of the circumstances. See Cruikshank, 837 F.3.d at 1194-95. This is impermissible. See Id.

Moreover, the single factor the District Court herein apparently relied upon - that co-conspirators in a drug trafficking enterprise are all essential to the execution

of the offense -cannot, under the guidelines, be determinative of whether to give a minor role reduction. See USSG § 3 B1.12, cmt. n.3(C) (“The fact that a defendant performs an essential or indispensable role in the criminal activity is not determinative.”). This misapplication of law, especially when paired with the District Court’s failure to consider the totality of the circumstances, constitutes clear error. See Rodriguez De Varon, 175 F.3d at 945.

The quantity of methamphetamine attributable to the defendant is at least 1.5 kilograms, approximating a quantity of drugs close to the minimum threshold for the assignment of a base offense level of 36. Although the defendant has acquiesced to this determination in the factual basis relating to his plea, the quantity of drugs specifically identifiable in the presentence report is approximately 1.34 kilograms, with the balance of the quantity necessary to eclipse the threshold for level 36 being contingent upon the statements of co-conspirators⁸. Consequently, in all probability, the defendant was involved with not much more than the 1.5 kilograms required for a placement at level 36. Therefore, the seriousness of nature and circumstances of

⁸ Specific quantities of drugs are enumerated in the PSR at ¶¶ 13, 15, 16, 18, 19, 21-23, 30, 35, & 37. They are aggregated to be 1,342.61 grams, or 1.34 kilograms of methamphetamine

his offense would be distinguishable from other traffickers who distributed closer to the high threshold limit of 4.5 kilograms of actual methamphetamine.

Similarly, with a total of four criminal history points, the defendant has the lowest criminal history point total for designation at criminal history category III⁹. Since the range of points for this category is from 4 to 6, the defendant's criminal history can be substantially differentiated from an otherwise comparable defendant whose criminal history point total is 6. This distinction in gradation in the accumulation of criminal history points is probative because the Sentencing Commission has relied upon metrical coefficients in determining the seriousness of the defendant's criminal history.¹⁰

As reflected in the presentence report, due to the defendant's mother's addiction to drugs, she relinquished custody of the very young defendant to his now 65 year-old grandmother. The defendant's mother subsequently became a convicted felon, and was first incarcerated on December 8, 2004, when the defendant was age 15. Her criminal history includes convictions and sentences for possession of cocaine,

⁹ According to the Sentencing Table, 4, 5, 6, criminal history points establish criminal history Category III. USSG Ch.5, Pt. A - Sentencing Table.

¹⁰ The specific factors included in §4A1.1 and §4A1.3 are consistent with the extant empirical research assessing correlates of recidivism, and patterns of career criminal behavior. USSG Ch.4, Pt. A, intro. comment.

possession of marijuana, possession with intent to distribute marijuana, possession of cocaine, and possession with intent to distribution cocaine.¹¹ At the time of the instant conspiracy offense, the defendant's mother was on parole in the State of Georgia for theft by receiving stolen property. Her parole expiration date was scheduled to be March 17, 2018. Given her personal instability and inaccessibility as a mother during the defendant's formative years, the defendant lacked the necessary direction for proper emotional development as a child.

According to the advisory guidelines, the lack of guidance as a youth, and similar circumstances indicating a disadvantaged upbringing, are not relevant grounds in determining whether a departure is warranted. USSG §5H1.12. Lack of Guidance as a Youth and Similar Circumstances (Policy Statement). The existence and uniqueness of this factor in this case, however, may suggest that a sentence according to the advisory guidelines system may create a sentence that is greater than necessary to satisfy the statutory purposes of sentencing.

Moreover, because the defendant is faced with the certainty of a mandatory 10-year term of imprisonment, any period of imprisonment beyond the statutory minimum mandatory sentence would produce no additional statutory benefit to society, and would be superfluous, given the length of such a sentence. Criminological research to

date generally indicates that increases in the certainty of punishment, as opposed to the severity of punishment, are more likely to produce deterrent benefits¹². Consequently, it is anticipated that a sentence that is at variance with the advisory guidelines system would produce a sentence that is sufficient but not greater than necessary to satisfy all of the purposes of 18 U.S.C. 3553(a)(2)(A)(1)-(7).

Statistical Information

The Sentencing Commission (“Commission”) maintains statistics on a combination of variables impacting the actual sentences imposed within the nation, the circuit, and the district that largely define the comparative configurations of those sentences. A synopsis of the data is instructive in determining what constitutes a conventional range for the heartland” of sentences imposed for particular offenses.

According to the database, for fiscal years 2014-2016, the national average sentence for defendants sentenced in methamphetamine cases was 88 months¹³. The median sentence of imprisonment for the same period was 70 months. In 2015, the rate of non-government sponsored below range sentences for methamphetamine

¹² Wright, Valerie Ph.D., Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment, The Sentencing Project. November 2010.

¹³ SOURCE: This was produced using the U.S. Sentencing Commission's Interactive Sourcebook (isb.ussc.gov) using the Commission's fiscal year 2014-2016 Datafiles, USSCFY2014-USSCFY2016.

traffickers was 22.5 percent of all cases¹⁴. The average reduction in their sentences was 33.6 percent, from the otherwise applicable advisory guideline range

The advisory guidelines imprisonment range, as determined by the probation office, is 168 to 210 months. Due to the operation of the mandatory minimum term of 10 years imprisonment, a sentence of 120 months is assured. If the court were to grant a variance based on the national average reduction, a likely sentence would be approximately 111 months, which would still exceed the national average sentence of 88 months. Such a sentence would also be just nine months shy of the minimum required in this case. A comparison between the average sentences imposed nationally, and the proposed guideline imprisonment range, strongly suggests that a sentence under the advisory guidelines system that might create an unwarranted sentencing disparity, and would constitute a sentence that is greater than necessary under the provisions of 18 U.S.C. 3553(a)(6)¹⁵.

Status as “True” First Time Offender

The Sentencing Reform Act of 1984 requires that the Guidelines reflect the appropriateness of imposing a sentence other than imprisonment for the first-time

¹⁴ United States Sentencing Commission Quick Facts – Methamphetamine Trafficking Offenses.

¹⁵ Case law provides that for the purpose of avoiding unwarranted sentencing disparities, the court should look to “national disparities between defendants with similar records who have been found guilty of similar conduct.” United States v. Conatser, 514 F.3d 508, 521 (6th Cir. 2008).

offender who has not been convicted of a crime of violence or otherwise serious offense¹⁷. The Sentencing Commission has determined that those who, like Mr. Jenkins, are not only first time offenders under the Guidelines, but who also have no prior major arrests are the least likely to commit further offenses¹⁸. They have the lowest recidivism rate at 6.8 percent, and are described in the Commission's report as "easily the most empirical group of guideline federal offenders who are the least likely to re-offend."

Consequently, any consideration that the Court may have regarding most of the factors listed at 18 U.S.C. § 3553(a)(2), such as the need to afford adequate deterrence, is very likely stated by the fact of Mr. Jenkins' status as a "true" first-time offender, whose present attitude and reflections demonstrate his rectification over the past 11-12 months without any incidents while being detained.

Last but not least, the District Court herein simply impermissibly failed to recognize the unsupported science of converting methamphetamine to marijuana equivalency.

¹⁷ Alternative Sentencing in the Federal Criminal Justice System, from World Wide Web, http://www.ussc.gov/research_and_statistics/research_projects/2009020206_alternatives.pdf, p.4, Jan. 2009.

¹⁸ United States Sentencing Commission, *Recidivism and the "First Offender"* (May 2004), at 17. Available at www.ussc.gov/publicat/Recidivism_FirstOffender.pdf. The Committee notes that there are two other groups that, under the Guidelines, are technically first offenders, those who have arrests and no convictions and those who have convictions which, for one reason or another, are not counted. Both have higher recidivism rates than those who have never been arrested.

The sentencing guidelines treated one gram of meth as the equivalent of two grams of cocaine or 0.4 grams of heroin. That was the original posture back in 1999, and this was a value judgment, that one gram of meth was twice as big as cocaine but only four-tenths as harmful as the same weight of heroin.

Over the years we have had – the meth punishments have increased 2,500 percent relative to these other serious drugs and now one gram of meth, the actual, is now considered the equivalent of 100 grams of cocaine or 20 grams of heroin. Now the study indicates that heroin and cocaine users are 400 percent more likely and 160 percent more likely respectively, to require emergency room visits than comparable methamphetamine users.

Nevertheless, these unfound ratios remain in effect. As applied, the 1.5 gram of meth attributed to Mr. George Jenkins is considered the same as 4.5 million doses of cocaine or 4.45 million doses of heroin.

The methamphetamine guidelines are excessive.

CONCLUSION

The petition for a writ of certiorari should be granted

Respectfully submitted



NOEL G. LAWRENCE, ESQUIRE
Florida Bar No.: 844251
101 East Union Street, Suite 200
Jacksonville, Florida 32202
Telephone: 904-356-9928
Facsimile: 904-356-6762
Email: nglawren@lpnlaw.com
Counsel for George Jenkins

No.
IN THE
Supreme Court of the United States
OCTOBER TERM, 2017

GEORGE JENKINS ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Petitioner, **GEORGE JENKINS**, asks leave to file the enclosed Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit without prepayment of costs and to proceed in forma pauperis in accordance with Supreme Court Rule 39, and 18 U.S.C. § 3006A(d)(6). The filing of this petition is a continuation of the representation of the Defendant under a Criminal Justice Act appointment of the undersigned for the Middle District of Florida by the United States District Court and the Eleventh Circuit. In accordance with 18 U.S.C. § 3006A(d)(6), no affidavit as required by Supreme Court Rule 39, need be filed.

WHEREFORE, Petitioner, GEORGE JENKINS, asks for leave to proceed in forma pauperis. DATED this
24th day of September 2018.



Attorney for Petitioner
Florida Bar No. 844251
101 E Union Street, Suite 200
Jacksonville, Florida 32202
Telephone: 904-356-9928
Facsimile: 904-356-6762
Email: nell@lpnlaw.com

IN THE
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OCTOBER TERM, 2017

GEORGE JENKINS,

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UNITED STATES OF AMERICA,

Respondent.

PROOF OF SERVICE

I, NOEL G. LAWRENCE do declare that on this date, 24th of September, 2018, pursuant to Supreme Court Rules 29.3 and 29.4, I have served the attached MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding, or that party's counsel, and on every other person required to be served by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Hon. Noel Francisco
Solicitor General Designate of the United States
Department of Justice - Room 5614
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001



AFFIANT