No. 18-___

IN THE

# Supreme Court of the United States

TRAVEON SHAQUILLE MARTIN,
*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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## QUESTION PRESENTED

Whether the district court clearly erred in denying a three-level reduction in Petitioner's offense level for acceptance of responsibility under U.S.S.G. § 3E1.1.

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## PETITION FOR WRIT OF CERTIORARI

Petitioner Traveon Shaquille Martin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

## OPINION BELOW

The Fourth Circuit's unpublished opinion is available at __ F. App'x __, 2018 WL 4276033, 2018 U.S. App. LEXIS 25442 (4th Cir. 2018); *see also infra*, Pet. App. 1a.

## JURISDICTION

The Fourth Circuit issued its opinion on September 7, 2018. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

## SENTENCING GUIDELINE PROVISION INVOLVED

Section 3E1.1 of the United States Sentencing Guidelines provides for a two-level decrease in the offense level "[i]f the defendant clearly demonstrates

acceptance of responsibility for his offense[.]" U.S.S.G. § 3E1.1(a). If the defendant qualifies for the two-level decrease under Subsection (a) and the offense level prior to the decrease is level 16 or greater, Subsection (b) of § 3E1.1 provides for an additional one-level decrease "upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently[.]" U.S.S.G. § 3E1.1(b).

## STATEMENT OF THE CASE

### A. District Court Proceedings

This case arose after Petitioner, Traveon Shaquille Martin, sold 0.3 grams of crack cocaine to a confidential informant on October 25, 2016. Three days later, Petitioner sold another 0.15 grams of crack cocaine to the same confidential informant. However, Petitioner was not arrested at the time. On April 18, 2017, two officers with the Raleigh Police Department saw Petitioner walking down the street and attempted to arrest him on unrelated warrants. When he noticed the officers approaching, Petitioner tried to run away, but one of the officers pushed him to the ground. Petitioner managed to stand up while struggling with the officers. During the struggle, Petitioner struck one of the officers, causing scratching and bruising to her neck. He also reached towards his waistband several times. The officers believed that Petitioner was attempting to retrieve a gun. They

again pushed him to the ground and subdued him with a taser. After handcuffing him, the officers removed a stolen, loaded .38 caliber revolver from Petitioner's waistband. They also found 2 grams of crack cocaine and $173 in his pants pocket. (Appellate Joint Appendix 113; hereinafter "J.A.").

A federal grand jury in the Eastern District of North Carolina subsequently returned a four-count indictment against Petitioner on charges of distributing a quantity of cocaine base (Counts One and Two), possessing a firearm as a felon (Count Three) and possessing a stolen firearm (Count Four). Petitioner pled guilty to the charges without a plea agreement on October 30, 2017, less than three months after the indictment issued. (J.A. 17-43).

While awaiting sentencing, Petitioner was detained at the Brunswick County Jail. On November 21, 2017, Petitioner was waiting in line at the jail to receive his breakfast. The officer handing out the food trays noticed that a button on Petitioner's uniform was undone. This oversight constituted an infraction of the jail's rules. For this reason, the officer declined to give Petitioner a food tray. When the officer told Petitioner he would not receive breakfast, Petitioner "snapped" and slapped the tray from the officer's hands. During the ensuing altercation, Petitioner punched the officer several times, knocking him to the floor. As a result, the officer sustained cuts and abrasions to his face, neck and mouth, and a laceration on his scalp requiring stitches. The officer also said he briefly lost consciousness. The jail's surveillance cameras recorded the incident. Petitioner was subsequently charged in state court with felony assault inflicting physical injury on a law

enforcement, probation, or parole officer, misdemeanor assault on a government official, and simple assault. (J.A. 72-73; 115-116).

Following the plea, the probation office prepared a presentence investigation report in Petitioner's case. (J.A. 109-123). The presentence report assigned a base offense level of 14 because Petitioner was a prohibited person. The report also applied several specific offense characteristics that increased the base offense by twelve levels. Although Petitioner had pled guilty, the probation officer declined to reduce the offense level for acceptance of responsibility under U.S.S.G. § 3E1.1, citing Petitioner's new criminal conduct of assaulting the Brunswick County Jail officer. (J.A. 120, ¶ 55). Accordingly, the probation officer determined that the total offense level was 26, which, combined with Petitioner's criminal history category of IV, yielded an advisory guideline imprisonment range of 92 to 115 months. (J.A. 120, ¶ 58).

Petitioner objected to the loss of acceptance of responsibility. He pointed out that he had entered a timely plea of guilty and had fully accepted responsibility for the offense conduct. Based on his objection, Petitioner contended that the total offense level should be 23, with an advisory guideline range of 70 to 87 months. (J.A. 113-114).

At sentencing, Petitioner pursued his objection to the loss of acceptance. Counsel for Petitioner argued that he had "accepted responsibility for the incident that brought him to the court today," namely the "two drug distributions and possession of the firearm." (J.A. 51). Counsel noted that he "pled straight up as

soon as he could and from the day one when I met him . . . indicated that he accepts responsibility for his actions." (J.A. 52). Moreover, counsel said, he "readily admitted he did . . . fight with the officers at the time he was arrested and he's very sorry for that. He did not ever intend to injure the officers or hurt them with a gun." (J.A. 52). Counsel explained that "Mr. Martin was trying to reach for the gun to throw it away because he didn't want to get hurt and he didn't want anybody else to get hurt with it." (J.A. 52). With regard to the assault of the officer at the jail, counsel said Petitioner was already "facing a significant amount of time if he's convicted in Brunswick County in the State Department of Corrections, which would obviously follow any sentence that he would receive from this Court." (J.A. 51). Given that the "incident that occurred at Brunswick County is going to be dealt with at the state level," counsel for Petitioner asked the district court to "still award him the three levels of acceptance today despite the –what happened at Brunswick County so he can just deal with that and the state." (J.A. 52).

The government declined to press for loss of acceptance of responsibility, noting that Petitioner "did come in and plead straight up without the benefit of a plea agreement" and that he "came in fairly soon." (J.A. 52). When requested by the court, the government presented a copy of the jail surveillance video. The government also introduced photographs of the officer's injuries. (J.A. 90-95). After viewing the video recording, the court announced, "Okay. The objection to the guideline application is denied." (J.A. 55).

Having overruled the objection, the court determined that the total offense level was 26 and the criminal history category was IV, for a guideline imprisonment range of 93 to 115 months. (J.A. 55). After hearing further argument from the parties as to an appropriate sentence, and after allowing Petitioner the opportunity to speak, the court ultimately denied the government's request for an upward departure, but varied upwards and imposed a sentence of 130 months of imprisonment on Counts One and Two and 120 months of imprisonment on Counts Three and Four, to be served concurrently. The court also imposed concurrent three-year terms of supervised release on each of the four counts. (J.A. 81; 96-105). Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit. (J.A. 106).

**B. Court of Appeals Proceedings**

On appeal to the Fourth Circuit, Petitioner argued that the district court erred by declining to decrease the offense level by three levels under U.S.S.G. § 3E1.1. The Fourth Circuit rejected this argument and affirmed the judgment of the district court. This petition followed.

## THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The question of whether the district court erred in denying the three-level reduction under U.S.S.G. § 3E1.1 was presented to the Fourth Circuit. The Court of Appeals rejected Petitioner's appeal and affirmed the district court. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court's consideration.

## REASONS FOR GRANTING THE PETITION

The Court of Appeals erred in affirming the district court's decision denying the reduction to Petitioner's offense level under U.S.S.G. § 3E1.1. Section 3E1.1 of the Sentencing Guidelines reduces the offense level "[i]f the defendant clearly demonstrates acceptance of responsibility for his offense" and "timely notif[ies] the authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently." U.S.S.G. § 3E1.1(a)-(b). "The acceptance of responsibility reduction essentially codifies the judicial practice of sentencing more leniently defendants who evidence contrition and cooperate with law enforcement authorities," thereby saving the government from expending valuable resources proving its case. *United States v. Frazier*, 971 F.2d 1076, 1084 (4th Cir. 1992). To qualify for the reduction, the defendant must prove by a preponderance of the evidence "that he has clearly recognized and affirmatively accepted personal responsibility for his criminal conduct." *United States v. Nale*, 101 F.3d 1000, 1005 (4th Cir. 1996).

In determining whether a defendant qualifies for the reduction, the sentencing court weighs the following factors:

> (A) truthfully admitting the conduct comprising the offense(s) of conviction, and truthfully admitting or not falsely denying any additional relevant conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Note that a defendant is not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to obtain a reduction under subsection (a). A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to

> obtain a reduction under this subsection. However, a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with acceptance of responsibility;
>
> (B) voluntary termination or withdrawal from criminal conduct or associations;
>
> (C) voluntary payment of restitution prior to adjudication of guilt;
>
> (D) voluntary surrender to authorities promptly after commission of the offense;
>
> (E) voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense;
>
> (F) voluntary resignation from the office or position held during the commission of the offense;
>
> (G) post-offense rehabilitative efforts (e.g., counseling or drug treatment); and
>
> (H) the timeliness of the defendant's conduct in manifesting the acceptance of responsibility.

U.S.S.G. § 3E1.1 cmt. n.1. The court may also consider any other relevant factor. *See id.* (stating that the court is "not limited to" the factors listed in the application note). The defendant's plea of guilty prior to trial, combined with truthful admissions regarding the offense and any relevant conduct, constitutes "significant evidence of acceptance of responsibility for the purposes of subsection (a)." U.S.S.G. § 3E1.1 cmt. n.3; *see also United States v. Hargrove*, 478 F.3d 195, 202 (4th Cir. 2007) (pleading guilty and truthfully admitting relevant conduct an "important" factor for the sentencing court to consider); *accord United States v. Kise*, 369 F.3d 766, 774 (4th Cir. 2004) (holding that the court clearly erred in denying acceptance

of responsibility for defendant who demonstrated willingness to assist law enforcement and submit to mental health treatment).

Applying the relevant factors to the instant case, Petitioner demonstrated that he had fully accepted responsibility for his federal offense by pleading guilty without a plea agreement less than three months after the indictment issued. (J.A. 17-43). The government confirmed that "Mr. Martin did come in and plead straight up without the benefit of a plea agreement," which was "fairly soon" after the indictment. (J.A. 52-53). For this reason, the government declined to press for loss of acceptance of responsibility. Petitioner's early decision to plead guilty spared government resources by avoiding needless preparation for trial, as well as court resources, by permitting the court to focus on other matters. *See* U.S.S.G. § 3E1.1(b). Petitioner's prompt plea constitutes "significant evidence of acceptance of responsibility," *id.* at § 3E1.1 cmt. n.3, and was an "important" factor that the court failed to fully weigh. *Hargrove*, 478 F.3d at 202.

In denying acceptance of responsibility, the district court focused exclusively on Petitioner's assault of the Brunswick County jail officer. Although "voluntary termination or withdrawal from criminal conduct" is a factor the court may consider, see U.S.S.G. § 3E1.1 cmt. n.1(B), the court erred in weighing this factor so heavily against Petitioner under the circumstances of this case for several reasons. First, the evidence showed that Petitioner suffered from untreated bipolar disorder. *See, e.g.,* J.A. 71 (counsel stating that Petitioner "has been diagnosed with bipolar, but has never been treated or seen"); J.A. 77 (court acknowledging that Petitioner

had bipolar disorder); J.A. 117 (recounting bipolar disorder). Counsel for Petitioner told the court that he "really desperately needs mental health treatment and anger management and he's willing to do that." (J.A. 71). In all likelihood, Petitioner's bipolar disorder factored into the assault on the jail officer. Counsel for Petitioner explained that "he couldn't even tell me exactly what happened. I mean, he knows he was being denied a food tray because the snap on his uniform was undone and that's an infraction at the jail and he realizes it should have been snapped and he realized he wasn't going to get a food tray, but he just—he snaps" and "basically blanked out." (J.A. 72). Counsel said Petitioner's untreated bipolar was "a travesty" that was "one of the big reasons that contribute[d]" to the assault. In addition, Petitioner himself apologized to the officer and said that he had "just snapped." (J.A. 73). Given that Petitioner's untreated bipolar disorder likely contributed to the assault, the court should have considered whether this new incident of "criminal conduct" warranted a complete denial of acceptance of responsibility.

This is particularly true where Petitioner was facing "a significant amount" of additional incarceration for the assault in state court. Based on the incident in the Brunswick County Jail, North Carolina prosecutors charged Petitioner with felony assault inflicting physical injury on a law enforcement, probation, or parole officer, misdemeanor assault on a government official, and simple assault. As counsel for Petitioner noted, any additional sentence Petitioner received in state court would be consecutive to his federal sentence. Because the assault was already

"going to be dealt with at the state level," additional punishment was simply unnecessary. (J.A. 52).

The purpose of § 3E1.1 is to sentence more leniently those defendants who cooperate and plead early, thereby saving the government and the court from expending valuable resources. U.S.S.G. § 3E1.1; *Frazier*, 971 F.2d at 1084. A defendant is "not required to volunteer, or affirmatively admit, relevant conduct beyond the offense of conviction in order to obtain a reduction." U.S.S.G. § 3E1.1 cmt. n.1(A). Here, Petitioner cooperated and pled guilty without the benefit of a plea agreement early in the process. After pleading guilty and while waiting to be sentenced, Petitioner "snapped" and committed a wholly different state offense, separate and apart from his federal crime. This unfortunate incident was likely triggered by Petitioner's untreated mental illness. Without the reduction for acceptance of responsibility, Petitioner derived no benefit for his cooperation and early entry of his plea, in contravention of the primary purpose of § 3E1.1. Under these circumstances, the district court clearly erred in denying the reduction for acceptance of responsibility, and the Court of Appeals erred in affirming the district court. *See Kise*, 369 F.3d at 774 (holding that the court clearly erred in denying acceptance of responsibility for defendant who demonstrated willingness to assist law enforcement and to submit to mental health treatment). Denial of acceptance of responsibility resulted in an improper three-level increase to the offense level, resulting in a miscalculation of the guideline imprisonment range. Miscalculation of the guideline range constitutes significant procedural error by the district court.

*Gall v. United States*, 552 U.S. 38, 51 (2007). For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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