

SUPREME COURT OF THE UNITED STATES

DOCKET NUMBER _____

UNITED STATES OF AMERICA,

Plaintiff-Respondent

v.

ASHLEY OWENS,

Defendant-Petitioner

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted by:



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QUESTIONS PRESENTED FOR REVIEW

1. Did the Lower Courts¹ violate the Due Process Clause when they sentenced Owens based on an unproven and inflated loss?
2. Did the Lower Courts violate the Equal Protection Clause when they sentenced Owens to a drastically different sentence than her substantively identical co-defendant?

¹ U.S. Western District Court of Louisiana (“Trial Court”) and U.S. Fifth Circuit Court of Appeal (“Fifth Circuit”), sometimes collectively referred to herein as the “Lower Courts.”

LIST OF PARTIES

1. Ashley Owens, Defendant and Petitioner;
2. United States of America, Prosecutor and Respondent.

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OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is unpublished.

JURISDICTION

This Honorable Court possesses jurisdiction because it is an application seeking review of the Fifth Circuit’s judgment – rendered on September 19, 2018 – which affirmed the Trial Court’s ruling.

CONSTITUTIONAL PROVISIONS, STATUTES AND POLICIES AT ISSUE

At issue in this matter are the Equal Protection Clause and Due Process Clause of the Fourth Amendment to the United States Constitution, as well as U.S.S.G. §2B1.1.

STATEMENT OF THE CASE

I. Facts and Proceedings Below

A. The Indictment

On October 26, 2016 the Defendant-Appellant, Ashley Owens (“Owens”) and co-defendant, Felicia Simpson (“Simpson”), were indicted for mail fraud, and conspiracy thereto, in violation of Title 18, United States Code, Sections 1341, *et seq.*²

Essentially, the Indictment contended that Owens, Simpson, and an unnamed party referred to as “Q.G.” engaged in a conspiracy to “clean” otherwise “dirty” automobile titles, wherein the parties’ alleged

² See, ROA.9-ROA.13 (Indictment).

roles were as follows:

- Q.G.→ Assemble and obtain title-related documents for automobiles, manufacture phony/fictitious “new” title information for automobiles – together constituting a bogus transfer of the subject automobiles – then mail them to Owens.³
- Owens→ Take the title-related documents she received from Q.G. to Simpson, who worked at Lagniappe Title (an authorized automobile title processor).⁴
- Simpson→ Use her employment at Lagniappe Title to access information and then obtain expedited automobile titles based on the allegedly false information provided by Q.G. and delivered by Owens.⁵

B. Owens’ Plea Agreement

On May 24, 2017, Owens pled guilty to Count # 1 of the Indictment.⁶ This was Owens’ first criminal conviction.⁷

Importantly, both Owens and the Government agreed that the subject loss (“Loss”) attributable to Owens’ alleged misconduct was greater than \$500,000, but less than \$1,500,000.⁸

C. Sentencing

On February 5, 2018, Owens was sentenced to 78 months in prison.⁹ Meanwhile, co-defendant, Simpson, was sentenced to mere probation.¹⁰

In rendering the sentence, the Trial Court departed from the agreement between Owens and the

³ See, ROA.9-ROA.13 (Indictment).

⁴ See, ROA.9-ROA.13 (Indictment).

⁵ See, ROA.9-ROA.13 (Indictment).

⁶ See, ROA.132-ROA.138 (Plea Agreement).

⁷ See, ROA.190 (PSR).

⁸ See, ROA.135 (Plea Agreement).

⁹ See, ROA.124 (Sentencing Minutes – Owens).

¹⁰ See, ROA.125 (Sentencing Minutes – Simpson).

Government that the portion of the Loss attributable to Owens' was less than \$1,500,000. Instead, the Trial Court determined the Loss was ~\$2,500,000.¹¹

More, the Loss amount used for Owens' sentencing was – by all accounts – in doubt. Indeed, the record demonstrates that Owens, the Government, the Probation Office, and even the Trial Court had serious questions about the sufficiency of proof, *vel non*, substantiating the Loss. For instance, *see* the following colloquy between the Trial Court and the Probation Office minutes prior to Owens' sentencing:

TRIAL COURT: At this time, the Court notes that there has been a third addendum to the presentence report filed, a copy having been provided to council in chambers conference before the commencement of this hearing on sentencing today...And, Mr. Garner, I would ask at this time that you briefly summarize what the U.S. Probation Office did under your supervision in order to get where we are today on the issue of restitution.

PROBATION OFFICER: Yes, sir, Your Honor. As indicated in your previous order, we investigated the victims in which the government had provided involving the vehicles that had known victims. We do acknowledge there are numerous victims. However, our investigation revealed that we were able to obtain documentation and speak to victims involving ten vehicles. Lexus Financial Services was one of those victims, seven vehicles that they were the rightful owners at the time of the fraud. They suffered a loss of \$268,300.⁴¹ Five Star Dodge suffered a loss involving two vehicles of \$10,000. And Credit Union and Loan Source suffered a loss of \$21,812.³⁹ involving one vehicle. The grand total of restitution that we were able to identify was \$300,112.⁸⁰...

TRIAL COURT: And the Court finds that, with the small response with over 100 vehicles potentially involved in restitution, that there were precious few that submitted corroborating information of sufficient kind and character to the Court to consider as evidence for restitution. Therefore, the original number that was used for calculating restitution drops from \$2,425,107.⁵⁰ to \$300,112.⁸⁰ ¹²

¹¹ See, ROA.120 (Sentencing Minutes – Owens).

¹² See, ROA.120 (Sentencing Transcript). (Emphasis added throughout).

So, even after various attempts, the amount of the Loss actually substantiated by the Government was only \$300,112.⁸⁰ – however, Owens was still sentenced as if the Loss was \$2,425,107.⁵⁰

D. The Fifth Circuit’s Affirmation

On September 19, 2018, the Fifth Circuit affirmed the Trial Court’s opinion *in-toto*.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. Introduction

This Application should be granted because the Lower Courts’ ruling – as it currently stands – sets a precedent for:

- (1) overly harsh sentences based upon unproven and inflated loss calculations; and
- (2) seriously unequal treatment of substantively identical co-defendants.

II. Summary

Owens’ sentence was based upon a total offense level of 28, with 16 points largely attributable to the loss allegedly amounting to \$2,450,107.⁵⁰ (“Loss”).¹³

In reality, however, the Loss (and offense level) should have been significantly lower: somewhere between \$300,112.⁸⁰ – on the low end – and \$1,500,000 – on the high end.

Specifically, the record demonstrates that all of the following individuals and entities had doubts and questions about the amount of the Loss: (i) Owens, as the criminal defendant; (ii) the Government, through its prosecutor; (iii) the U.S. Probation Office, through its investigating officer; and even (iv) the Trial Court, through its repeated queries for additional information.

As shown herein, if the correct amount of the Loss had been used by the Trial Court, Owens’

¹³ See, ROA.189 (PSR).

suggested guideline range would be a far cry from the 78 months she – a first time offender who accepted responsibility – was ultimately sentenced to serve.

III. Standard of Review

Owens preserved her objections to the amount of the Loss both before the PSR – in her plea agreement¹⁴ – and after the PSR – in her declaration submitted at sentencing.¹⁵ Accordingly, the standard of review is *de novo*.

However, even under the plain-error standard of review, Owens’ sentencing should be overturned. To meet the plain-error standard, Owens must show that (1) there is error; (2) the error was clear and obvious, not subject to reasonable dispute; and (3) the error affected her substantial rights. *Puckett v. United States*, 556 U.S. 129, 134–43, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009). Assuming those three prongs are satisfied, this Court has the discretion to remedy the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

IV. Clear and Obvious Error: The Loss was < \$1.5M.

A. Owens and the Government agreed the Loss was < \$1.5M

In her plea agreement, both Owens and the Government agreed the amount of the Loss was less than \$1,500,000:

¹⁴ See, ROA.132-ROA.138 (Plea Agreement).

¹⁵ See, ROA.123 (Declaration). It appears that the record on appeal is incomplete, as the declaration acknowledging as accepted by the trial court at sentencing is for some reason missing from the appellate record. Undersigned is currently searching for the stamped filed copy of declaration and upon receipt the same will be filed into this appellate record.

1. The Government and ASHLEY OWENS recommend that loss and restitution attributable to ASHLEY OWENS' conduct is greater than \$550,000 but less than \$1,500,000. The government and ASHLEY OWENS understand that this recommendation is not binding on the Court or Probation Office.

Indeed, the Trial Court – not Owens or the Government – decides the true amount of the Loss. However, Owens does respectfully submit that the stipulation between herself and the Government is instructive to understand the amount of the Loss which was – and was not – attributable to Owens.

For example, in Owens' sworn declaration,¹⁶ she explained to the Court (as she had previously done to the Government) that her involvement in the subject scheme was minimal. Specifically, in a scheme which allegedly covered over 100+ vehicles, Owens' entire involvement was limited to her acting as a mere courier for approximately 10 vehicles.¹⁷ In total, Owens received approximately \$1,000.00 for her involvement in the alleged scheme.¹⁸

B. The U.S. Probation Office and the Trial Court also had doubts about the amount of the Loss.

At sentencing, the Trial Court acknowledged there were issues of proof, *vel non*, relating to the amount of the Loss. Specifically, through a line of questioning between the Trial Court and the U.S. Probation Office, the record reveals the amount of the Loss established by the Government was merely \$300,112.⁸⁰ – even less than what Owens and the Government had agreed to in Owens' plea agreement, and far less than the ~\$2,500,000 figure ultimately used by the Trial Court in sentencing Owens to 78

¹⁶ See, ROA.123 (Owens Declaration).

¹⁷ See, ROA.123 (Owens Declaration).

¹⁸ See, ROA.123 (Owens Declaration).

months in prison.

Problematically, much of this information surrounding the amount of the Loss was provided to Owens' counsel via an amended PSR and off-record discussions related thereto minutes prior to sentencing. *See*, Dec. 18, 2017, Transcript; pp. 2-6:

TRIAL COURT: At this time, the Court notes that there has been a third addendum to the presentence report filed, a copy having been provided to council in chambers conference before the commencement of this hearing on sentencing today...And, Mr. Garner, I would ask at this time that you briefly summarize what the U.S. Probation Office did under your supervision in order to get where we are today on the issue of restitution.

PROBATION OFFICER: Yes, sir, Your Honor. As indicated in your previous order, we investigated the victims in which the government had provided involving the vehicles that had known victims. We do acknowledge there are numerous victims. However, our investigation revealed that we were able to obtain documentation and speak to victims involving ten vehicles. Lexus Financial Services was one of those victims, seven vehicles that they were the rightful owners at the time of the fraud. They suffered a loss of \$268,300.⁴¹ Five Star Dodge suffered a loss involving two vehicles of \$10,000. And Credit Union and Loan Source suffered a loss of \$21,812.³⁹ involving one vehicle. The grand total of restitution that we were able to identify was \$300,112.⁸⁰...

TRIAL COURT: And the Court finds that, with the small response with over 100 vehicles potentially involved in restitution, that there were precious few that submitted corroborating information of sufficient kind and character to the Court to consider as evidence for restitution. Therefore, the original number that was used for calculating restitution drops from \$2,425,107.⁵⁰ to \$300,112.⁸⁰ ¹⁹

While the Trial Court acknowledged there were serious issues of proof as to the amount of the Loss for restitution purposes, the amount of the Loss used for sentencing purposes was not adjusted.

C. The error affected Owens' substantial rights.

¹⁹ Emphasis added throughout.

If the Trial Court had used the same Loss amount it applied for restitution, then Owens' total offense level would have been reduced from 28 to 24.²⁰ Likewise, at a 24, Owens' guideline range would have been, at most, 51-63 months.²¹

V. **The error creates serious concern for the fairness, integrity and public reputation of judicial proceedings.**

Owens – a first-time offender – was sentenced to 78 months. Meanwhile, her alleged co-conspirator, Simpson, pled guilty to the exact same charge but was sentenced to mere probation.²² How two defendants with identical criminal histories could plead guilty to the same charge and receive such differing sentences is concerning.²³

The inconsistent sentences imposed upon Owens and Simpson for the same alleged misconduct calls into question the fairness, integrity and public reputation of judicial proceedings. *See again, Puckett v. United States*, 556 U.S. 129, 134–43, 129 S.Ct. 1423, 173 L.Ed.2d 266 (2009).

Conclusion on Following Page

²⁰ *See*, U.S.S.G. §2B1.1.

²¹ *Id.*

²² *See*, ROA.125 (Simpson Sentencing Minutes).

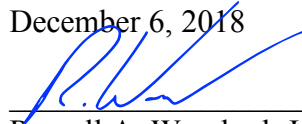
²³ Meanwhile, the other alleged co-conspirator, Q.G. – the orchestrator of the entire alleged scheme – was sentenced to an unknown amount of time. *See, U.S. v. Grant*, W.D. La. Monroe Div. 3:16-00172.

CONCLUSION

Petitioner prays that this Court vacate her sentence and remand for resentencing, or for such relief as to which she may be justly entitled.

Respectfully submitted,

December 6, 2018



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