No. 18-7139

IN THE SUPREME COURT OF THE UNITED STATES

JAMES CASTLEMAN GIPSON, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court permissibly relied at sentencing on factual information in petitioner's presentence investigation report, where petitioner neither properly disputed the facts set forth in the report nor presented any rebuttal evidence.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. C1-C7) is not published in the Federal Reporter but is reprinted at 746 Fed. Appx. 364.

JURISDICTION

The judgment of the court of appeals was entered on August 20, 2018. A petition for rehearing was denied on September 21, 2018 (Pet. App. D1-D2). The petition for a writ of certiorari was filed on December 19, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Northern District of Texas, petitioner was convicted of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Pet. App. B1. He was sentenced to 36 months of imprisonment, to be followed by three years of supervised release. Id. at B1-B2. The court of appeals affirmed. Id. at C1-C7.

1. In 2017, police officers in Parker County, Texas, arrested petitioner for burglary of a habitation. Presentence Investigation Report (PSR) ¶ 12. That same day, police officers and federal agents executed a warrant to search the recreational vehicle in which petitioner lived. D. Ct. Doc. 21, at 2 (Mar. 10, 2017); PSR ¶ 13. The federal agents found a loaded revolver and a pipe bomb inside the vehicle. D. Ct. Doc. 21, at 2; PSR ¶ 15.

A federal grand jury in the Northern District of Texas indicted petitioner on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Indictment 1-2. Petitioner pleaded guilty. Pet. App. B1.

2. The Probation Office prepared a presentence report that included a description of petitioner's criminal history. Applying the 2016 version of the Sentencing Guidelines, the Probation Office calculated a criminal history score of 4, corresponding to a criminal history category of III. PSR ¶¶ 31, 48. The Probation Office assigned petitioner criminal history points for a 2016

conviction for possession of methamphetamine and a 2013 conviction for theft. PSR ¶¶ 46-47.

The Probation Office also found "reliable information * * * that [petitioner] was involved in additional criminal conduct not considered in the guideline computations." PSR ¶ 42. It noted that petitioner had "acknowledged to agents during post-arrest statements that he distributed methamphetamine, and that he had several sources of supply for methamphetamine in Fort Worth." Ibid. It also observed that petitioner had three prior arrests for criminal conduct that did not factor into his criminal history score. PSR ¶¶ 49-51. One of those arrests was for burglary of a habitation, a charge that it explained was still pending. PSR ¶ 50. Another arrest was for the unlawful carrying of a weapon. PSR ¶ 49. The Probation Office stated that petitioner had "admitted in open court that he was guilty of th[at] offense," but that the charge had been dismissed as "part of a plea bargain." Ibid.

A third arrest was for an aggravated kidnapping in 2015. PSR ¶ 51. Relying on a sheriff's office incident report, the Probation Office recounted the following facts about that incident. The victim of the kidnapping had told officers that he had gone to the home of a friend, Robert Sandidge, to obtain methamphetamine; that petitioner, another man, and Sandidge's girlfriend were also present in the home; and that when the victim attempted to retrieve the drugs, petitioner struck him from behind, hit him in the face,

and stabbed him in the thigh. Ibid. The victim was forced to call his father to request $20,000 as ransom for his release, but petitioner agreed to accept the victim's father's truck instead. Ibid. After the victim was permitted to leave the home to retrieve the truck's title, his father contacted law enforcement. Ibid. The victim gave officers Sandidge's address and a description of petitioner and his numerous tattoos. Ibid. Sandidge consented to a search of his home, and the officers found droplets of blood inside. Ibid. Sandidge also told officers that petitioner and the victim had been present at his home and that a "verbal argument" had ensued after the victim "did not want to pay" for the drugs. Ibid. The Probation Office noted that petitioner "possessed numerous tattoos identified by [the victim] as tattoos observed at the time of his assault," but that the victim was unable to identify petitioner in a photographic line-up. Ibid. The Probation Office also noted that a state grand jury had returned a "no bill[]," declining to indict petitioner for aggravated kidnapping. Ibid.

Based on a criminal history category of III and a total offense level of 13, the Probation Office calculated an advisory Guidelines range of 18 to 24 months of imprisonment. PSR ¶ 97. It noted, however, that under Sentencing Guidelines § 4A1.3 (2016), the district court "could consider an upward departure" on the ground that petitioner's "Criminal History Category of III does not adequately reflect his true criminal history." PSR ¶ 109. It

also noted that the court could consider "[a] non-guideline upward variance" in light of "the nature and circumstances of the offense, the seriousness of the offense, and the need to protect the public from further crimes by [petitioner]." PSR ¶ 111.

Petitioner objected only to the PSR's suggestions that the district court consider an "upward departure" or "variance." C.A. ROA 128. In response, the government noted that petitioner had "not challenge[d] any facts" set forth in the presentence report. Id. at 130. In an addendum to the report, the Probation Office maintained that "[t]he factors listed in paragraphs 109 and 111 of the Presentence Report [we]re appropriate to be considered for departure and a variance outside the advisory guideline range." Id. at 133.

3. Before the sentencing hearing, the district court notified the parties that it had "tentatively" determined that "a sentence of imprisonment significantly above the top of the advisory guideline imprisonment range would be appropriate for essentially those reasons given by the probation officer in the presentence report." C.A. ROA 43.

At the sentencing hearing, petitioner's counsel confirmed that "the only objection [to the presentence report] had to do with the paragraphs of the Presentence Report that suggested the possibility of a sentence above the top of the guideline range." Pet. App. A4. Finding "no further objections" to the report, the district court adopted "the facts set forth in the Presentence

Report as modified or supplemented by the addendum." Ibid. The court also adopted "the conclusions expressed in the Presentence Report," including its calculation of petitioner's advisory Guidelines range. Id. at A4-A5.

The district court asked petitioner's counsel whether he had any evidence to offer "on the subject of the possibility of a sentence above the top of the guideline range." Pet. App. A5. Petitioner's counsel responded that he had "[j]ust one character witness" -- petitioner's mother -- who proceeded to tell the court that she was ill and that petitioner helped her with chores. Id. at A5-A6. Petitioner's counsel also offered letters from a friend and from a neighbor about petitioner's commitment to his family. Id. at A7-A8.

After the district court stated that petitioner's criminal history was the court's "main concern," Pet. App. A9, petitioner's counsel acknowledged the existence of "three offenses that did not receive criminal history points and that were not taken into account into the guidelines calculation," id. at A10. Petitioner's counsel contended, however, that even if petitioner had "received two additional points for any one of those offenses, he would still be in Criminal History Category III, and we would have the same guidelines range." Ibid. Petitioner's counsel also contended that petitioner's arrest for aggravated kidnapping had resulted in "no bill[]" because "the grand jury did not think there was probable cause to go forward." Ibid. Petitioner's counsel argued

that "it would be hard now, looking at a cold record, and only a document, to conclude by a preponderance of the evidence, which is a higher standard [than probable cause], that that offense did take place when a group of citizens receiving a presentation from the prosecutor and looking at the evidence concluded that they could not go forward." Id. at A10-A11.

After hearing from petitioner's counsel, the district court determined that it "still ha[d] a concern about the criminal history," Pet. App. A12, and that "a sentence greater than the top of the advisory guideline range" was appropriate, id. at A14. The court described petitioner's "distribution of methamphetamine" on a "regular" basis as "certainly a matter of concern." Id. at A12. The court then recounted petitioner's prior convictions for theft and for possession of methamphetamine. Ibid. Emphasizing that petitioner's "criminal activity has picked up as he's grown older," the court also noted that petitioner had "admitted his guilt of the offense of unlawful carrying of a weapon." Id. at A12-A13. In addition, the court found, by "a preponderance of the evidence," that petitioner had participated in the "activity" underlying the pending charge for burglary of a habitation. Id. at A13. Finally, with respect to petitioner's arrest for aggravated kidnapping, the court found, by "a preponderance of the evidence," that although the offense had been "no billed," petitioner had "committed a significant part of the activities that he [had been] charged with," ibid. -- namely, striking, hitting, and stabbing the victim,

ibid., and "direct[ing] the [victim] to call his father and tell his father that they wanted a ransom," id. at A13-A14. Petitioner's counsel objected to consideration of "nonrelevant conduct," arguing that it violated petitioner's Fifth and Sixth Amendment rights. Id. at A14.

The district court sentenced petitioner to 36 months of imprisonment. Pet. App. A14. The court explained that the sentence "adequately and appropriately address[ed] all the [sentencing] factors" set forth in 18 U.S.C. 3553(a), Pet. App. A14, and that the sentence was "sufficient, but not greater than necessary[,] to achieve the objectives of sentencing, particularly of punishment, deterrence, and protection of the public," id. at A14-A15. Petitioner's counsel objected to the sentence "as procedurally and substantively unreasonable for the reasons stated" in his objection to the presentence report and at the sentencing hearing. Id. at A17.

4. A divided panel of the court of appeals affirmed in an unpublished opinion. Pet. App. C1-C7.

a. On appeal, petitioner argued that the district court erred in "rely[ing] solely on facts gleaned from an offense report to establish [his] guilt * * * for an offense of which he was later no-billed, absent some explanation for the grand jury's decision." Pet. C.A. Br. 2; see id. at 12-13. In rejecting that argument, the court of appeals explained that a district court's factual findings at sentencing are reviewed for clear error. Pet.

App. C3. And it determined that the presentence report "bore sufficient indicia of reliability to support" the district court's finding that petitioner "committed 'a significant part of the activities'" relating to his arrest for aggravated kidnapping. Ibid.

The court of appeals observed that the report "explained how witness testimony corroborated the victim's assertion that [petitioner] was present at the scene of the alleged attack," Pet. App. C3, and that petitioner "himself possessed 'numerous tattoos identified by [the victim] as tattoos observed at the time of his assault,'" ibid. (brackets in original). The court further reasoned that, although "the victim did not positively identify [petitioner] as his assailant in a photo lineup," the victim "apparently did not disagree with the witness testimony cited in the [presentence report] that placed [petitioner] at the scene of the attack, nor did the victim disagree that the tattoos he identified match the tattoos found on [petitioner]." Ibid. The court also noted that petitioner had "put forth no evidence" to show that the "'information in the PSR relied on by the district court [wa]s materially untrue.'" Ibid. (citation omitted).

Accordingly, "given the evidence cited in the PSR and the absence of any contradictory evidence," the court of appeals determined that the presentence report was a "sufficient basis" for the district court's finding. Pet. App. C3. The court rejected petitioner's reliance on the "grand jury's no-bill,"

explaining that "[a] grand jury's no-bill is a decision not to charge the accused with a particular offense, not a judgment that no unlawful conduct whatsoever occurred." Id. at C3-C4. The court reasoned that, "[i]n this case, the district court did not find that [petitioner] committed the offense of aggravated kidnapping"; "[r]ather, it simply found by a preponderance of the evidence that [petitioner] 'committed a significant part of the activities that he was charged with then.'" Id. at C4. "Th[at] determination," the court of appeals explained, "was in no way irreconcilable with the grand jury's decision not to indict [petitioner] for a particular offense." Ibid.

b. Judge Higginson dissented. Pet. App. C4-C7. In his view, the presentence report's "assertion that [petitioner] was the kidnapper was not sufficiently reliable." Id. at C5.

ARGUMENT

Petitioner contends (Pet. 21-22) that the district court erred in relying on factual information in the presentence report about the conduct leading to his arrest for aggravated kidnapping in 2015. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. Although a narrow circuit conflict exists on whether a bare objection to factual statements in a presentence report requires the government to introduce evidence to support those statements, this Court has repeatedly and recently denied petitions for writs of certiorari raising that issue, and

this case in any event does not implicate the conflict because petitioner made no objection to the accuracy of the facts set forth in the presentence report. In addition, this case would be a poor vehicle for further review because any error in the district court's reliance on those factual statements did not affect petitioner's sentence. Further review is not warranted.

1. The court of appeals correctly upheld the district court's reliance on factual information in the presentence report whose accuracy petitioner did not dispute.

a. Congress has provided that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." 18 U.S.C. 3661. That provision codifies the "longstanding principle that sentencing courts have broad discretion to consider various kinds of information" to tailor each sentence to the particular defendant involved. Pepper v. United States, 562 U.S. 476, 488 (2011) (quoting United States v. Watts, 519 U.S. 148, 151 (1997) (per curiam)).

Under the Due Process Clause, a criminal sentence may not be based on "materially false" information that the offender did not have an effective "opportunity to correct." Townsend v. Burke, 334 U.S. 736, 741 (1948). Otherwise, however, a sentencing judge is "largely unlimited either as to the kind of information he may consider, or the source from which it may come." United States v.

Tucker, 404 U.S. 443, 446 (1972); see Williams v. New York, 337 U.S. 241, 246 (1949) (citing reliance on reports prepared by federal probation officers as "[a] recent manifestation of the historical latitude allowed sentencing judges"). To ensure that a defendant receives due process, the Sentencing Guidelines require that whenever a "factor important to the sentencing determination is reasonably in dispute, the parties shall be given an adequate opportunity to present information to the court regarding that factor," and that the court will rely on information only if it determines that the "information has sufficient indicia of reliability to support its probable accuracy." Sentencing Guidelines § 6A1.3(a) (2016).

When factual information in a presentence report is not "reasonably in dispute," however, a district court may accept it as true. Federal Rule of Criminal Procedure 32(i)(3)(A) authorizes a district court, without further inquiry, to adopt "any undisputed portion of the [PSR] as a finding of fact." For "any disputed portion of the [PSR] or other controverted matter," the court "must * * * rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing." Fed. R. Crim. P. 32(i)(3)(B).

b. The district court followed those procedural requirements in determining petitioner's sentence. Petitioner did not contest the accuracy of any of the facts set forth in the

presentence report, including the facts of the alleged aggravated kidnapping in 2015. His written objections to the report addressed only the Probation Office's suggestion that either an upward variance or an upward departure under Sentencing Guidelines § 4A1.3 (2016) might be appropriate. C.A. ROA 128. Petitioner did not dispute the account of the 2015 incident that the report drew from a contemporaneous police report -- namely, that petitioner had struck, hit, and stabbed the victim and had demanded a ransom from the victim's father. PSR ¶ 51; see Pet. App. A13-A14. In the absence of a timely objection, see Fed. R. Crim. P. 32(f), neither the government nor the court was aware of any need to litigate the factual information in the report, which the court then adopted at the beginning of the sentencing hearing, Pet. App. A4.

Petitioner's objection at the sentencing hearing -- lodged after the district court had already "adopt[ed] as the fact findings of the Court the facts set forth in the Presentence Report as modified or supplemented by the addendum," Pet. App. A4 -- also did not call into question the accuracy of those facts. That objection rested entirely on the grand jury's "no bill[]" decision, id. at A10, of which the Probation Office and the court were already aware, PSR ¶ 51; see Pet. App. A13. And in citing the grand jury's decision, petitioner disputed only whether petitioner had committed the "offense" presented to the grand jury. Pet. App. A11. As the court of appeals explained, however, "the district court did not find that [petitioner] committed the offense

of aggravated kidnapping"; "[r]ather, it simply found by a preponderance of the evidence that [petitioner] 'committed a significant part of the activities that he was charged with then.'" Id. at C4. And petitioner cites no authority for the proposition that the district court was procedurally barred from doing so.

In any event, even if petitioner's objection at the sentencing hearing served belatedly to place the already adopted facts set forth in the presentence report in "dispute" for purposes of Rule 32, the district court complied with that Rule by making an express finding that petitioner had struck, hit, and stabbed the victim and had demanded a ransom from the victim's father. Pet. App. A13-A14; see Fed. R. Crim. P. 32(i)(3)(B). At best, petitioner was arguing that the facts as recounted by the Probation Office were insufficient to support a finding that he engaged in the conduct. But particularly in light of petitioner's failure to present "any actual contradictory evidence," it was "not clear error" for the court to rely on the factual information in the PSR. Pet. App. C3. Contrary to petitioner's contention (Pet. 23-25), that reliance "was in no way irreconcilable with the grand jury's decision not to indict [petitioner] for a particular offense." Pet. App. C4. That is because, as the court of appeals explained, "[a] grand jury's no-bill" is "not a judgment that no unlawful conduct whatsoever occurred." Id. at C3-C4.

2. Although a narrow conflict exists among the courts of appeals on whether a bare objection to factual statements in a

presentence report requires the government to introduce evidence to support those statements, that conflict is not implicated in this case and does not warrant the Court's review. This Court has repeatedly and recently denied petitions for writs of certiorari raising substantially the same issue. See, e.g., Williams v. United States, 138 S. Ct. 504 (2017) (No. 17-5739); Peru v. United States, 138 S. Ct. 61 (2017) (No. 16-8398); Gutierrez v. United States, 136 S. Ct. 583 (2015) (No. 15-5043); Marroquin-Salazar v. United States, 136 S. Ct. 80 (2015) (No. 14-9992); Rodriguez v. United States, 568 U.S. 1196 (2013) (No. 12-6838); Navejar v. United States, 565 U.S. 1236 (2012) (No. 11-7052); Bolt v. United States, 562 U.S. 1222 (2011) (No. 10-5738); Moreno-Padilla v. United States, 562 U.S. 1140 (2011) (No. 10-5128); Del Carmen v. United States, 562 U.S. 1091 (2010) (No. 09-11245); Alexander v. United States, 562 U.S. 1066 (2010) (No. 10-5229); Godwin v. United States, 556 U.S. 1132 (2009) (No. 08-7920); O'Garro v. United States, 555 U.S. 1140 (2009) (No. 08-6259). The same result is warranted here.

a. Consistent with the Fifth Circuit's approach, a majority of the courts of appeals have held that, notwithstanding a defendant's objection to a presentence report's factual statements, a district court may rely on the report "'without more specific inquiry or explanation'" unless the defendant makes "an affirmative showing [that] the information is inaccurate." United States v. Love, 134 F.3d 595, 606 (4th Cir.) (citation omitted),

cert. denied, 524 U.S. 932 (1998); see United States v. Cyr, 337 F.3d 96, 100 (1st Cir. 2003); United States v. Campbell, 295 F.3d 398, 406-407 (3d Cir. 2002), cert. denied, 537 U.S. 1239 (2003); United States v. Caldwell, 448 F.3d 287, 290 (5th Cir. 2006); United States v. Lang, 333 F.3d 678, 681 (6th Cir. 2003); United States v. Mustread, 42 F.3d 1097, 1101-1102 (7th Cir. 1994); see also United States v. Brown, 52 F.3d 415, 424-425 (2d Cir. 1995), cert. denied, 516 U.S. 1068 (1996).* Those decisions reflect the understanding that the presentence report, developed by an officer of the court after a thorough investigation, bears sufficient indicia of reliability that its findings ordinarily cannot be overcome by a bare objection, unsubstantiated by any proffer of evidence. See Caldwell, 448 F.3d at 291 n.1; Cyr, 337 F.3d at 100; United States v. Coonce, 961 F.2d 1268, 1278-1280 (7th Cir. 1992); Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 26.6(a), at 1119 (2d ed. 1992) ("[T]he general rule throughout this country [is] that when matters contained in a [presentence] report are contested by the defendant, the defendant has, in effect, an affirmative duty to present evidence showing the

* Contrary to petitioner's contention (Pet. 17-18), neither Brown nor any other Second Circuit decision cited in the petition for a writ certiorari shows that the Second Circuit is aligned with the minority view on this issue. In all three cases petitioner cites (ibid.), the Second Circuit upheld the district court's reliance on the presentence report. See Brown, 52 F.3d at 424-425 (New York presentence report); United States v. Streich, 987 F.2d 104, 107 (2d Cir. 1993) (per curiam); United States v. Helmsley, 941 F.2d 71, 97-98 (2d Cir. 1991), cert. denied, 502 U.S. 1091 (1992).

inaccuracies contained in the report.") (citation and internal quotation marks omitted).

The Eighth Circuit has held that when a defendant objects to a factual statement in the presentence report, the government must present evidence to prove the disputed fact, even if the defendant's objection is unsupported by any rebuttal evidence. See, e.g., United States v. Hartstein, 500 F.3d 790, 796 (2007), cert. denied, 552 U.S. 1102 (2008). At the same time, however, the Eighth Circuit "recognize[s] that the Sentencing Guidelines do not mandate a full evidentiary hearing when a defendant disputes a [presentence report's] factual representation." United States v. Stapleton, 268 F.3d 597, 598 (2001). The Ninth, Eleventh, and D.C. Circuits appear to have rejected reliance on disputed factual statements in a presentence report, at least in certain instances. See United States v. Showalter, 569 F.3d 1150, 1160 (9th Cir. 2009); United States v. Martinez, 584 F.3d 1022, 1027 (11th Cir. 2009); United States v. Price, 409 F.3d 436, 444 (D.C. Cir. 2005). And the Tenth Circuit has taken varying positions on the question. Compare United States v. Ary, 518 F.3d 775, 787 (2008) ("When a defendant objects [to a fact stated in the presentence report], the government must prove that fact at the sentencing hearing by a preponderance of the evidence."), with United States v. Warren, 737 F.3d 1278, 1285-1286 (2013) (holding that "a district court is free to rely on" a presentence report's "recitation of facts underlying" a defendant's prior arrests unless the defendant

"presents 'information to cast doubt on' th[ose] facts") (citation omitted), cert. denied, 572 U.S. 1078 (2014), and United States v. Barnett, 828 F.3d 1189, 1192-1193 (2016) (holding that the district court permissibly relied on the presentence report because, although the defendant had objected to the report's findings, he had failed to make specific allegations of factual inaccuracy).

b. The narrow conflict among the courts of appeals would not warrant this Court's review even if this case implicated it. As noted, this Court has repeatedly and recently denied petitions for writs of certiorari raising substantially the same issue, and the same result is warranted here. See p. 15, supra.

In any event, this case does not implicate the conflict. As explained above, see pp. 12-13, supra, petitioner did not properly dispute the factual information in the presentence report describing the conduct underlying the alleged aggravated kidnapping. It is accordingly far from clear that any circuit would preclude the sentencing court from relying on the Probation Office's recounting of those facts. See, e.g., United States v. Bledsoe, 445 F.3d 1069, 1073 (8th Cir. 2006) (cited at Pet. 18) (court could rely on factual allegations in presentence report where the defendant "objected not to the facts themselves, but only to the report's recommendation based on those facts") (citation and internal quotation marks omitted); Warren, 737 F.3d at 1286 (10th Cir.) (court properly relied on presentence report where defendant's objection did not raise "factual inaccuracies"

in the report); Price, 409 F.3d at 444 (D.C. Cir.) (cited at Pet. 16-17) (the government's "burden is triggered whenever a defendant disputes the factual assertions in the [presentence] report") (emphasis added).

3. Finally, this case would be a poor vehicle for further review because any error in the district court's reliance on factual information in the presentence report about the alleged aggravated kidnapping was harmless. See Fed. R. Crim. P. 52(a).

The district court sentenced petitioner to 36 months of imprisonment, an upward variance from the advisory Guidelines range of 18 to 24 months. Pet. App. A14. The court determined that such a variance was appropriate in light of the court's "concern about [petitioner's] criminal history." Id. at A12. In recounting that history, the court cited not just the conduct underlying petitioner's arrest for aggravated kidnapping, but also his "regular" distribution of methamphetamine, his prior convictions for theft and for possession of methamphetamine, his admission that he had unlawfully carried a weapon, and his pending charge for burglary of a habitation. Id. at A12-A13. The court also found that petitioner's "criminal activity has picked up as he's grown older." Id. at A12. The court therefore determined that a sentence of 36 months was "sufficient, but not greater than necessary[,] to achieve the objectives of sentencing, particularly of punishment, deterrence, and protection of the public." Id. at A14-A15. No sound basis exists to conclude that petitioner's

sentence would have been different if the court had not considered the conduct underlying petitioner's arrest for aggravated kidnapping.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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