

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PEDRO GORIS — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

--

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PEDRO GORIS
(Your Name)

555 GEO Dr. (MVCC / REG. # 45474-004
(Address)

Philipsburg, PA 16866
(City, State, Zip Code)

(N/A)
(Phone Number)

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QUESTION PRESENT

- I.- Whether Petitioner's sentence was both procedurally and substantively unreasonable.

LIST OF PARTIES

- All parties appear in the caption of the case on the cover page.
- All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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7. DIFFUSION LAYER

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$$\frac{d\langle \langle \mathbf{r}^2 \rangle \rangle}{dt} = \frac{1}{2} \frac{d\langle \langle \mathbf{r}^2 \rangle \rangle}{dt} + \frac{1}{2} \frac{d\langle \langle \mathbf{r}^2 \rangle \rangle}{dt}$$

$$\langle \langle \mathbf{r}^2 \rangle \rangle = \frac{1}{2} \frac{d\langle \langle \mathbf{r}^2 \rangle \rangle}{dt} + \frac{1}{2} \frac{d\langle \langle \mathbf{r}^2 \rangle \rangle}{dt}$$

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TABLE OF AUTHORITIES

Cases

United States v. Coppola,
671 F.3d 220, 253 (2nd Cir. 2012)

United States v. Harvey,
746 F.3d 87; (2nd Cir. 2014)

United States v. Maria,
186 F.2d 65, 72 (2nd Cir. 1999)

United States v. McIntosh,
753 F.3d 388, 393-94 (2d Cir. 2014)

United States v. Rigas,
583 F.3d 108, 123 (2d Cir. 2009)

United States v. Singh,
No. 16-1111-cr (Dic. 12, 2017)

United States v. Witte,
515 U.S. 389 (1995),

Statutes

8 U.S.C. § 1326(a).

28 U.S.C. § 3553(a)

Fed.R.App.P. 35(b)(1)(B)

Other Authorities

(Edward J Devitt, *Ten Commandments for a New Judge*).

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

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

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 01/29/2018.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 05/10/2018, and a copy of the order denying rehearing appears at Appendix C.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment of the United States Constitution.

300 *Journal of Health Politics*

STATEMENT OF THE CASE

Here, the only true is that Petitioner has been removed from the United States, just one time. The current case is the first reentry case in Petitioner's entire life.

When Petitioner was transferred from the state prison to Southern District of New York for the reentry case, several times Petitioner explained to his defense counsel that he was deported just one time and at that moment the Immigration Judge warned him that he could be sentenced up to two years if he desire return to the United States illegally. See **Exhibit ____**. The defense counsel brushed aside and minimized Petitioner's concerns.

On July 8, 1992, Petitioner was convicted and sentenced to a term of 60 months' imprisonment and on August 22, 1996, after finished his sentence, Petitioner was ordered to be remove from the United States. Petitioner illegally reentered into the United States territory in or about 2003, and remained without legal problem until the instant state case.

The Government magnified the Petitioner's Criminal History, creating a smoke screen to veil the reality in Petitioner's reentry case. Maliciously, the Government highlighted that, on October 6, 1990, Petitioner was convicted of sale and possession of marijuana, but did not indicate the sentence which Petitioner was punished to (no prison time).

It should be noted that Petitioner neither before nor after his 60-month sentence (for which he was deported on 1996) had served prison time. Moreover, the PSR for his 60-month sentence case, reflects no previous prison time.

THE OPINION OF THE PANEL OF THE SECOND CIRCUIT

On appeal, Petitioner relied on United States v. Witte, 515 U.S. 389 (1995), a procedurally similar case. But Panel of this Court dismissed the appeal. It distinguished *Witte* on the grounds that the sentence imposed on *Witte* was not in two separate proceedings. "In

this case, the conduct was separate: [Petitioner] illegally reentered the country and separately committed a controlled substance offense. Therefore, [Petitioner]'s reliance of *Witte* is not persuasive.

REASONS FOR GRANTING THE PETITION

This review for certiorari presented a narrow question with significant consequences. In Appeal, the panel determined, laying in United States v. Maria, 186 F.2d 65, 72 (2nd Cir. 1999), that "a District Court is free to require that a new sentence run consecutively to an undischarged term of imprisonment in order to 'achieve a reasonable punishment for the [new] offense.'" U.S.S.G. § 5G1.3(d). In the case at bar, the panel considered that the District Court's decision "was permissible because it was guided by a reasonable application of the relevant factors." And also cited United States v. Coppola, 671 F.3d 220, 253 (2nd Cir. 2012). Certiorari is required for the following reasons:

To explain the *Justices* the reasons why Petitioner's writ of certiorari should be granted by this Honorable Court, Petitioner is comparing his case with another re-entry case, United States v. Singh, No. 16-1111-cr (Dic. 12, 2017), also decided by the same sentencing judge and the consequences of this other case in the Court of Appeals.

In its recent decision in United States v. Singh, *supra*., the Court of Appeal for the Second Circuit found that a 60-month prison sentence for illegal reentry was both procedurally and substantively unreasonable.

Singh is a Guyana citizen who more than 20 years ago was convicted, for the first time, of an aggravated felony withing the meaning of the statute criminalizing the reentry offense. (8 U.S.C. § 1326). According to the District Court, between 1993 and 2014, *Singh* was also convicted of at least seven other larceny-related offenses. At the end of 2004, *Singh* was ordered by the Immigration Judge to be removed from the United States and eventually he was deported in 2010. After his first deportation, *Singh* illegally reentry into the United States territory and was arrested in 2012. Based on his early removal order, on May 2012 *Singh*

REASONS FOR GRANTING THE PETITION (Cont.)

was, once again, deported back to Guyana and sometime thereafter he reentered into the United States for a second time and in June 2014 *Singh* was arrested again, and was charged and prosecuted for illegal reentry into the United States, in violation of 8 U.S.C. § 1326.

In *Singh*, the Second Circuit began its discussion by setting forth the standard for procedural and substantive reasonableness, noting that especially with respect to substantive reasonableness, the Court's review is particularly deferential, and that it will set aside a sentence for substantive reasonableness only in "exceptional cases."

In concluding that Judge Forrest's sentence was substantively unreasonable, the Second Circuit placed particular emphasis on the size of the variance as well as on the nationwide statistics with respect to reentry sentences. It should be noted that, in *Singh*, the Court found that the average sentence for illegal reentry offenders in fiscal year 2013 was 18 months, and the median sentence was 12 months. Furthermore, only 1.2% of the sentences imposed for aggravated felony reentry had been above of the Guidelines range. Also, the panel reviewed *Singh* prior convictions, many of them had occurred decades ago.

In *Singh*, the Court next turned to its analysis of procedural reasonableness. First, the panel noted that Judge Forrest appeared to have made several factual errors during the sentencing proceedings. Judge Forrest implied that *Singh* had reentered into the United States three times, instead two, which, undoubtedly, may have impacted Judge Forrest's analysis of *Singh*'s likelihood to recidivate. Also, at sentencing, Judge Forrest highlighted that *Singh* had spent his life "back and forth" between the United States and his native Guyana, when in fact *Singh* had spent the majority of his entire life in the United States. Finally, the panel noted that Judge Forrest's characterization of *Singh*'s criminal history as being

REASONS FOR GRANTING THE PETITION (Cont.)

extensive was inconsistent with the factual record related to his prior convictions. Because a sentence based on factual inaccuracies is procedurally unreasonable, the Second Circuit ultimately determined that remand *Singh*'s sentence for clarification of the facts was appropriate.

Even though in the case at bar the Court of Appeal assured that Petitioner's reliance on *United States v. Witte*, 515 U.S. 389 (1995) is misplaced because in Petitioner's case the conducts were separated, the point in discuss, the vexed question here, is whether Petitioner's sentence was both procedurally and substantively unreasonable.

In the case at bar, as in *Singh*, Judge Forrest's sentence was procedural and substantive unreasonable. In the case at bar, as in *Singh*, Judge Forrest noted that she was "convinced" that Petitioner (Mr. Goris) would reenter the Untied States and commit additional crimes and that he had an unusually high likelihood of recidivism.

The severe limitation of Petitioner holding is unwarranted and merits review on certiorati.

The facts in *Singh* are analogous the case at bar. *Singh* also, as Petitioner, pleaded guilty to illegal reentry and both were expecting a non-guideline sentence according to the PSR's recommendation.

In the case at bar, the Honorable Forrest was total and absolutely wrong where assured, during the sentencing hearing, that even though she didn't know how Petitioner did it, Petitioner had illegally reentered several times into the United States territory. However, there are not record at all regarding such allegation. In fact, Petitioner asserts that after been deported back to the Dominican Republic in or about 1996, he returned and reentered illegally to the United States on or about 2003, remaining into the United States territory until the

REASONS FOR GRANTING THE PETITION (Cont.)

current state case. Petitioner was deported just one time in his entire life, and had returned illegally to the United States, after being deported, just one time: the current time.

Petitioner does not even know where PSR got this information from. Petitioner, after his first and unique deportation he returned illegally and never ever had abandoned the country. How Judge Forrest could assured that she was absolutely sure about this issue.

It should be noted that, nevertheless, the "supposed" record upon which the PSR relied Petitioner wrong Criminal History Category, contradicts Judge Forrest's assertion (the Government's assertion) that Petitioner was removed from the United States in March and April of 2012 and was encountered illegally in the United States for the ***third time*** on May 4, 2012. Then, Judge Forrest also asserted that on May 7, 2012 Petitioner was convicted for illegal reentry, sentenced to 75 days' imprisonment and removed from the United States on July 24, 2012.

Neither the Government nor the Honorable Forrest, not even his own defense counsel (rendering, by the way, ineffective assistance of counsel), had took a few minutes to analyze the supposed Petitioner's prior removal proceedings and illegal reentries.

As the record clearly reflects, the Government alleges that Petitioner was removed from the United States in March and April of 2012¹ and was encountered illegally in the country for the ***third time*** on May 4, 2012. According with the record, the Government asserts that on May 7, 2012, Petitioner was convicted of illegal reentry and sentenced to 75 days' imprisonment and then removed from the United States on July 24, 2012. This assertion is simply illogical and absurd.

How could Petitioner been found illegally into the United States on March of 2012 and

¹ How a defendant could be deported back to the Dominican Republic twice in just two months?

REASONS FOR GRANTING THE PETITION (Cont.)

also in April of 2012? The Government can't allege now that was a clerical error and should say March *or* April because, then, there was not a *third time* illegal reentry. Moreover, in the hypothetical scenario that Petitioner would have been found illegally in the United States on May 4, 2012, there are several other questions to find: 1) it's possible to find Petitioner illegally into the United States on May 4, 2012 and in just three (3) days, on May 7, 2012, he was charged, prosecuted and convicted for illegal reentry?; 2) how serious could be the supposed Petitioner's previous offenses when a Federal Judge gave him just 75 days' imprisonment for a *third reentry*? Obviously, there is something wrong.

In the case at bar, the petition for writ of certiorari should be granted because this case presents the very similar situation of *Singh's* case and, moreover, because there are too many issue to review and check over again.

First and foremost, when this Honorable Court examine the record will note that the Court of Appeal also asserts that the Sentencing Judge, previously to take her decision, "observed that both of the offenses at issue were serious; that [Petitioner] had been convicted of several other serious offenses and had served at least one substantial prison sentence²; that this was not [Petitioner's] first conviction for entering the United States Illegally; that [Petitioner] had "been deported a number of times" and "reentered illegally a number of times"; and that there was "[no]thing in the record [to] indicate[] the [[Petitioner]] ha[d] changed" or "that [he] w[ould] not try to reenter again. This Judge Forrest's assertion was the *quid pro quo*" for the Court of Appeals to consider that Judge Forrest's decision was no abuse of discretion. But the Court of Appeals rests its decision in a false assertion from the Honorable Forrest.

2 Then, it does mean that Petitioner was removal from the United States just one time, because the other offenses were not "aggravated felony" and did not carried removal proceedings.

REASONS FOR GRANTING THE PETITION (Cont.)

In *Singh*, the sentencing judge (Honorable Forrest) stressed at sentencing that "she was "convinced" *Singh* would reentry the United States and commit additional crimes and that he had an 'unusually high likelihood of recidivism.'" The Judge also stated that "she did not believe this was a 'heartland' reentry case in light of *Singh's* prior convictions," noting that she did not think that *Singh* could "live here honestly" and that he had "no right to be present on U.S. soil. In *Singh*, the Court of Appeals concluded that his sentence was substantive unreasonable. *Singh's* Circuit review *Singh's* prior convictions and note that none of them, contrary to Judge Forrest's assertion, involved violence or narcotics trafficking, many of them had occurred decades ago.

In the other hand, in the case at bar, the sentencing judge (Honorable Forrest) stressed at sentencing the same words, more or less, that in *Singh's* sentencing. In the case at bar, similar that in *Singh's* case, Judge Forrest's vehemence simply exaggerated.

In *Singh's* case, the Court of Appeals noted that Judge Forrest appeared to have made several factual errors during the sentencing hearing, implying that *Singh* had reentered the United States three times, instead of two, which may have impacted her analysis of *Singh's* likelihood to recidivate. Same thing in the case at bar.

Finally, in *Singh's* case, the Circuit expounded on the judicial qualities most important for sentencing, and emphasized the important role of mercy in sentencing proceedings. The Circuit noted that a judge must have "some understanding of the diverse frailties of humankind," "compassion," and a "generosity of spirit" when she renders a sentence. The Panel quoted *Ten Commandments for a New Judge*: "Be kind. If we judges could possess but one attribute, it should be a kind and understanding heart. The bench is not place for cruel or callous people, regardless of their other qualities and abilities." (Edward J Devitt, *Ten*

REASONS FOR GRANTING THE PETITION (Cont.)

Commandments for a New Judge).

For all those reasons, Petitioner's case is analogous to *Singh* and it deserves to receive the same result: "a full resentencing and would ultimately impose a fair sentence."

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,


Date: Aug 07, 2018