

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RODNEY MARTIN – PETITIONER

v.

UNITED STATES OF AMERICA – RESPONDENT
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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Question Presented

- I. The trial court sentenced Mr. Martin to 168 months in prison, but the court did not adequately address Mr. Martin's arguments or the Section 3553(a) factors. The court also did not adequately explain why 168 months was a sentence that was sufficient but not greater than necessary to comply with the purposes of Section 3553(a). Did the trial court improperly sentence Mr. Martin and did the appellate court improperly affirm the trial court?

List of Parties

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

Table of Contents

Question Presented	i
List of Parties	ii
Table of Contents	iii
Index to Appendices	iv
Table of Authorities Cited	v
Opinions Below	vi
Jurisdiction	vii
Constitutional and Statutory Provisions Involved	viii
Statement of the Case	1
Reasons for Granting the Petition	1
I. Mr. Martin's sentence is unreasonable because the court did not properly take into account the sentencing factors and the arguments made by Mr. Martin, and the appellate court erred in affirming the sentence.	1
Conclusion	9

Index to Appendices

Appendix A *United States v. Rodney Martin*, 17-2390 (November 20, 2018)

Table of Authorities Cited

Cases	
<i>Gall v. United States</i> , 552 U.S. 38; 128 S. Ct. 586; 169 L. Ed. 2d 445 (2007)	2
<i>United States v. Christman</i> , 607 F.3d 1110 (6th Cir. 2010)	3
<i>United States v. Conatser</i> , 514 F.3d 508 (6th Cir. 2008)	2
<i>United States v. Fenderson</i> , 354 Fed. Appx. 236 (6th Cir. 2009)	3
<i>United States v. Gapinski</i> , 561 F.3d 467 (6th Cir. 2009)	1
<i>United States v. Houston</i> , 529 F.3d 743 (6th Cir. 2008)	1, 7
<i>United States v. Jenkins</i> , 854 F.3d 181 (2d Cir. 2017)	4, 5
<i>United States v. Liou</i> , 491 F.3d 334 (6th Cir. 2007)	3
<i>United States v. Pittman</i> , 736 Fed. Appx. 551 (6th Cir. 2018)	7
<i>United States v. Richardson</i> , 437 F.3d 550 (6th Cir. 2006)	3
<i>United States v. Simmons</i> , 501 F.3d 620 (6th Cir. 2007)	3
<i>United States v. Yopp</i> , 453 F.3d 770 (6th Cir. 2006)	4
Statutes	
18 U.S.C. § 3553(a)	<i>passim</i>

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PETITION FOR WRIT OF CERTIORARI

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

Opinions Below

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished. It is attached as Appendix A.

Jurisdiction

The date on which the United States Court of Appeals for the Sixth Circuit decided Mr. Martin's case was November 20, 2018. No petition for rehearing was filed. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

18 U.S.C. § 3553(a)

Statement of the Case

Mr. Martin pleaded guilty to counts 2 and 3 in the indictment. (Indictment, RE 20, Page ID # 42-43.) The offenses were possession with intent to deliver cocaine and possession of a firearm in furtherance of a drug trafficking crime. (Indictment, RE 20, Page ID # 41-42.) Mr. Martin's guideline range was 262 to 327 months. (Amended Statement of Reasons, RE 78, Page ID # 502.) The court sentenced Mr. Martin to 108 months on count 2 and 60 months on count 3. (Judgment, RE 76, Page ID # 492.) These sentences are to be served consecutively. (Judgment, RE 76, Page ID # 492.) The court's stated reason for the downward variance was because the guidelines overstated the seriousness of Mr. Martin's prior criminal history. (Amended Statement of Reasons, RE 78, Page ID # 503-504.)

Reasons for Granting the Petition

- I. Mr. Martin's sentence is unreasonable because the court did not properly take into account the sentencing factors and the arguments made by Mr. Martin, and the appellate court erred in affirming the sentence.

Mr. Martin received a sentence that does not properly take into account the required sentencing factors. An examination of the reasonableness of a sentence considers both the procedural and substantive reasonableness of the sentence. *United States v. Gapinski*, 561 F.3d 467, 473 (6th Cir. 2009). A sentence may be determined to be procedurally unreasonable if it is marked by significant procedural error, such as failing to consider the factors of 18 U.S.C. § 3553(a). *United States v. Houston*, 529 F.3d 743, 753 (6th Cir. 2008).

A sentence is substantively unreasonable when “the district court selects a sentence arbitrarily, bases the sentence on impermissible factors, fails to consider relevant sentencing factors, or gives an unreasonable amount of weight to any pertinent factor.” *United States v. Conatser*, 514 F.3d 508, 520 (6th Cir. 2008). The guidelines are the starting point for the analysis. *Id.* But the sentencing court may not just presume that the guideline range is reasonable. *Id.* The sentencing court must consider all the relevant factors in Section 3553(a) and impose a sentence that is sufficient but not greater than necessary to comply with the purposes of Section 3553(a). *Id.*; *Gall v. United States*, 552 U.S. 38, 49-50; 128 S. Ct. 586; 169 L. Ed. 2d 445 (2007).

Under the law, the court must consider, in relevant part, the following factors:

- (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 kinds of sentence and the sentencing range established for –
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines[;]

* * *

- (5) any pertinent 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 victims of the offense. [18 U.S.C. § 3553(a).]

In the instant case, Mr. Martin's guideline range was 262 to 327 months. (Amended Statement of Reasons, RE 78, Page ID # 502.) The court sentenced Mr. Martin to 108 months on count 2 and 60 months on count 3. (Judgment, RE 76, Page ID # 492.) These sentences are to be served consecutively. (Judgment, RE 76, Page ID # 492.) The court's reason for the downward variance was because the guidelines overstated the seriousness of Mr. Martin's prior criminal history. (Amended Statement of Reasons, RE 78, Page ID # 503-504.)

While the court did provide a variance, with all due respect to the sentencing court, it did not give sufficient weight to the sentencing factors, specifically, the nature and circumstances of the offense and the history and characteristics of Mr. Martin. Further, the court did not adequately explain on the record its rationale in rejecting Mr. Martin's arguments for a lower sentence.

It is undisputed that when a defendant raises a particular argument in seeking a lower sentence, the record must reflect that the court considered the argument and explained the basis for rejecting the argument. *United States v. Liou*, 491 F.3d 334, 337 (6th Cir. 2007); *United States v. Richardson*, 437 F.3d 550, 554 (6th Cir. 2006); *United States v. Simmons*, 501 F.3d 620, 625 (6th Cir. 2007). Further, merely knowing about or reciting the sentencing factors is not sufficient to provide for meaningful appellate review. *United States v. Christman*, 607 F.3d 1110, 1121 (6th Cir. 2010). This was evident in *United States v. Fenderson*, 354 Fed. Appx. 236, 244 (6th Cir. 2009), in which the court vacated the defendant's sentence and remanded for resentencing. The district court had indicated that it reviewed and considered the

defendant's sentencing memorandum and demonstrated that the court knew and considered the Section 3553(a) factors. *Id.* at 243. But the appellate court determined that the district court did not create a record that indicated the weight that the court applied to any of the factors or the weight that it gave to the defendant's arguments. *Id.* at 244.

A district court is required to carefully consider on an individualized basis "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). Reasonableness is the appellate standard of review. *United States v. Yopp*, 453 F.3d 770, 774 (6th Cir. 2006). In *Yopp*, the court reversed a twenty-four month sentence imposed for a violation of supervised release because the record did not support the district court's sentence. *Id.* Similarly, in *United States v. Jenkins*, 854 F.3d 181, 196 (2d Cir. 2017), the court held that the defendant's sentence – despite being within the guidelines – was substantively unreasonable. The defendant was sentenced to 225 months within his guideline range of 210 to 262 months. *Id.* at 185-186. The United States Court of Appeals for the Second Circuit held that the defendant's sentence was "shockingly high" after reviewing what is known about non-production child pornography offenses. *Id.* at 189. It also held that the district court did not distinguish between the defendant's conduct and others who committed similar offenses. *Id.* at 190.

"Additional months in prison are not simply numbers. Those months have exceptionally severe consequences for the incarcerated individual. They also have consequences both for society which bears the direct and indirect costs of

incarceration and for the administration of justice which must be at its best when, as here, the stakes are at their highest.” *Id.* at 192. As it relates to Mr. Martin, the court held that the application of the career offender designation overstated the seriousness of the underlying offense. (Transcript, RE 84, Page ID # 590.) The court then sentenced Mr. Martin to a total of 168 months. (Transcript, RE, Page ID # 590.) The district court’s sentence was substantively unreasonable because the minimal nature of Mr. Martin’s prior offenses and the nature and history of the offense and Mr. Martin’s characteristics were not adequately considered by the court and addressed on the record. The court did not consider that a defendant who had been involved in the past with distributing kilograms of controlled substances would be in the same position as Mr. Martin, and there is vast difference between the two. Moreover, the court did not fully consider the detailed arguments presented in the sentencing memorandum that lengthy sentences are not necessary or productive in drug cases.

The United States Court of Appeals for the Fourth Circuit vacated a sentence when a district court did not address six of the defendant’s arguments at sentencing, including that the career offender guidelines were overly harsh and failed to deter others. *United States v. Blue*, 877 F.3d 513, 519 (4th Cir. 2017). Likewise, the sentences of two defendants were reversed in *United States v. Lynn*, 592 F.3d 572, 582 (4th Cir. 2010), because the court did not explain why it was rejecting the defendant’s arguments.

Mr. Martin presented evidence to the court to consider when fashioning a just sentence that relates to the devastation that career offender enhancements and

mandatory minimum sentences have on individuals and communities, as well as the fact that these “tough on drugs” campaigns do not lead to the deterrence touted when they were enacted. (Sentencing Memorandum, RE 73, Page ID # 281-288.) The United States Sentencing Commission has aptly critiqued the use of career offender status for those who are enhanced because of drug offenses. (Sentencing Commission Analysis, RE 73-2, Page ID # 340.) The Commission has examined recidivism rates, including that older people are less likely to reoffend, and found that those enhanced as a career offender because of drug offenses are less likely to reoffend when compared to those enhanced because of a crime of violence. (Sentencing Commission Analysis, RE 73-2, Page ID # 340.) Notably, drug career offenders are not meaningfully different than other federal drug offenders “and should not categorically be subject to the significant increases in penalties required by the career offender directive.” (Sentencing Commission Analysis, RE 73-2, Page ID # 302.)

The “war on drugs” and the changes that resulted in sentencing have led to the incarceration of hundreds of thousands of nonviolent, low-level drug offenders who would have routinely not received these lengthy sentences under past sentencing structures. (Sentencing Study, RE 73-3, Page ID # 402.) In fact, there was a 1100 percent increase in the number of incarcerated drug offenders between 1980 and 2007. (Journal Article, RE 73-4, Page ID # 450; Article, RE 73-5, Page ID # 476; Article, RE 73-6, Page ID # 483.) And while race is not a significant factor in determining if someone is more likely to sell or use drugs, the prisons paint a very different picture. (Journal Article, RE 73-4, Page ID # 450.) There is definitely a

bigger impact on nonwhite offenders, such as Mr. Martin, due to increased sentences. (See Sentencing Study, RE 73-3, Page ID # 410; Journal Article, RE 73-4, Page ID # 460-461.)

Critically, these increased sentences do not work. (Sentencing Study, RE 73-3, Page ID # 430; Journal Article, RE 73-4, Page ID # 458, 462, 463; Article, RE 73-6, Page ID # 486.) Congress as early as 1969 had noted that lengthening prison sentences did not show the expected overall decrease in drug law violations. (Sentencing Study, RE 73-3, Page ID # 405.) The National Academy of Sciences Panel has reached the same conclusion. (Sentencing Study, RE 73-3, Page ID # 413.) Now the United States Sentencing Commission – arguably the most knowledgeable organization on federal sentencing practices and effects – has reached the same conclusion and is advocating for change. (Sentencing Commission Analysis, RE 73-2, Page ID # 302.)

The district court did not address the substance of these arguments, and this is error. Cf. *United States v. Pittman*, 736 Fed. Appx. 551, 556 (6th Cir. 2018). Moreover, the sentence imposed is greater than necessary to comply with the purposes of sentencing. See *Houston*, 529 F.3d at 755. Based on an examination of the totality of the circumstances, the purposes of sentencing could be achieved with a shorter sentence. Mr. Martin's prior offenses, just like the current offense, were for incredibly small amounts of controlled substances. Mr. Martin's past offenses over-represented the seriousness of his criminal history and the likelihood that he would commit other crimes. The convictions were from many years ago when Mr. Martin

was a teenager and involved relatively small quantities of substances. He received very short periods of custody or probation for those convictions. The district court did not fully and adequately address the minimal drugs involved in the current offense, the overrepresentation of Mr. Martin's criminal history, and the numerous arguments against the imposition of onerous sentences in cases just like Mr. Martin's current situation.

Conclusion

It is beyond dispute that a district court's mandate is to impose a sentence sufficient, but not greater than necessary to comply with the purposes set forth in Section 3553. Mr. Martin's sentence is greater than necessary to comply with the statutory factors. At the time he was sentenced, Mr. Martin was working and was a valued and respected staff member. He had been fully compliant with his conditions of bond, including during the time frame that he was allowed to self-surrender. He had proven that he could and would be a positive and contributing community member. The court never explained why a sentence of five years, for example, would not serve the exact same purpose as the onerous sentence that Mr. Martin is now serving. District courts need guidance from this Court about how they must fully address defense arguments on the record. Accordingly, Mr. Martin respectfully requests that this Court grant his petition for a writ of certiorari.

02/11/2019
Date

Respectfully submitted,

/s/

Mary Chartier