

NO. _____

In The
Supreme Court of the United States

ALANDIS D. PATTERSON,

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

Scarlet B. Moore
Counsel of Record
ATTORNEY AT LAW
Post Office Box 17615
Greenville, South Carolina 29606
(864) 214-5805

Counsel for Petitioner

Dated: March 4, 2019

QUESTIONS PRESENTED

1. Did the trial court err in overruling the Petitioner's objection to the Application of a two-level increase pursuant to U.S.S.G. Section 2G1.1(c)(1), and Application of the cross reference of criminal sexual abuse, which enhanced his sentence pursuant to his Presentence Investigation Report?
2. Did the trial court err in overruling the Petitioner's objection to the Application of U.S.S.G. Section 4A1.2(a)(1) to his conviction for simple possession of marijuana in the Petitioner's Presentence Investigation Report?
3. Did the trial court err in sustaining the Government's objection to the acceptance of responsibility reductions in this case?
4. Did the trial court err in denying the Petitioner's request for a variance and/or relief pursuant to 18 U.S.C. § 3553(a), sentencing factors?

LIST OF PARTIES TO THE PROCEEDING

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The opinion below is an unpublished opinion that affirmed the order of the trial court. The opinion was filed on December 3, 2018. App. 1a-6a

JURISDICTION

The date on which the United States Court of Appeals decided the case was December 3, 2018. No petition for rehearing was timely filed by counsel for the Petitioner. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- 18 U.S.C. § 1591(a)(1) & (a)(2)
- 18 U.S.C. § 1591(b)(1)
- 18 U.S.C. § 1594(c)
- 18 U.S.C. § 2241(a) & (b)
- 18 U.S.C. § 2242
- 18 U.S.C. § 3553(a)
- U.S.S.G. § 2A3.1(b)(1) & (b)(4)(B)
- U.S.S.G. § 2G1.1(a)(2) & (b)(1) & (c)(1)
- U.S.S.G. § 3E1.1(a)
- U.S.S.G. § 4A1.1(c)
- U.S.S.G. § 4A1.2(a)(1)

STATEMENT OF THE CASE

The above captioned matter involves the appeal of the Petitioner's criminal conviction and sentence of incarceration as a result thereof in the United States

District Court for the District of South Carolina. The Petitioner plead guilty to violations of U.S. Code Title 18 U.S.C. Section 1591(a)(1) and (a)(2), and 1594(c), Conspiracy to Commit Commercial Sex Trafficking, on February 21, 2017, pursuant to an Information filed against him. (Jt. Appendix Vol. I, pp. 26-49.) The Petitioner was sentenced to imprisonment for a total term of 240 months, with the mandatory special assessment fee, a special assessment of \$5,000.00 for an individual convicted of a crime of sex trafficking, and restitution to the victim of \$50,000.00. (Jt. Appendix Vol. I, p. 218.) The litigation in this matter commenced on December 13, 2016, with the filing of the Superseding Indictment against Mr. Patterson, and was concluded on or about December 4, 2017 with his sentencing. Final Judgment was entered in this case December 18, 2017. The Petitioner filed a notice of appeal on December 19, 2017. In an unpublished opinion filed on December 3, 2018, the Fourth Circuit Federal Court of Appeals affirmed the conviction and sentence of the Petitioner.

STATEMENT OF THE FACTS

On or about December 13, 2016, a Superseding Indictment was filed against the Petitioner in this matter, charging him with fourteen (14) counts of violations of the United States Code, in the following particulars: one count each of 18 U.S.C. § 371, § 1591(a)(1), § 2423(e), § 2423(a), § 2421, § 922(g)(1), § 922(g)(9), § 924(a)(2), § 924(d), § 924(e), § 981(a)(1)(C), § 1594, § 2428, § 2461. Additionally, an Information was filed against him on February 21, 2017, charging him with violations of 18 U.S.C. § 1594(c), § 1594(d), § 1594(e), and 18 U.S.C. § 2461(c). The Petitioner entered a plea agreement with the State, to plead guilty to one count of Conspiracy to Commit

Commercial Sex Trafficking, pursuant to the Information and waiving his right to presentment to the Grand Jury. (Jt. Appendix Vol. I, pp. 21-25; 26; 27-49.) The Petitioner received and reviewed the Presentence Investigation Report (PSR) prepared by the United States Probation Office. (Jt. Appendix Vol. II pp. 224-249.) The Petitioner through counsel raised several objections to the PSR. (Jt. Appendix Vol. I, pp. 50-60.) The Government filed a Response and Memorandum Aid of Sentencing and Conditional Motion for an Upward Variance and/or Departure on July 19, 2017. (Jt. Appendix Vol. II, pp. 250-279.) The Petitioner appeared before Honorable Bruce Howe Hendricks on December 4, 2017 for a sentencing hearing. (Jt. Appendix Vol. I, pp. 61-195.) The Petitioner was sentenced to imprisonment for a total term of 240 months, with the mandatory special assessment fee, a special assessment of \$5,000.00 for an individual convicted of a crime of sex trafficking, and restitution to the victim of \$50,000.00. (Jt. Appendix Vol. I, p. 218.)

REASONS FOR GRANTING THE PETITION

The Petitioner respectfully submits that this Honorable Court should grant his Petition and review the opinion of the Fourth Circuit Federal Court of Appeals, due to the fact that the opinion of the Fourth Circuit is contrary to the case law of the Ninth Circuit Federal Court of Appeals, regarding the issue of the cross reference contained in the U.S. Sentencing Guidelines. The Petitioner further submits that the trial court made errors of law and fact, which errors were affirmed by the Fourth Circuit Federal Court of Appeals, regarding the calculation of the Petitioner's sentence.

The trial court erred in overruling the Petitioner's objection to the Application of a two-level increase pursuant to U.S.S.G. Section 2G1.1(c)(1), and Application of the cross reference of criminal sexual abuse, which enhanced his sentence pursuant to his Presentence Investigation Report.

The Petitioner objected in the trial court to the application of a two level increase to his base offense level established by U.S.S.G. Section 2G1.1(a)(2) as provided for in paragraph 47 of his PSR. (Jt. Appendix, Vol. II p. 239.) Further, he also objected to the application of the cross reference at paragraphs 48, 49 and 50 of his PSR. (Jt. Appendix, Vol. II p. 240.) As an initial matter, the Petitioner asserts that the trial court should have applied a standard of "clear and convincing evidence" as opposed to a "preponderance of the evidence" standard. The basis of Mr. Patterson's objections and his request for a heightened standard of review are set forth herein below.

Mr. Patterson entered a guilty plea to an information charging him with engaging in a conspiracy to commit commercial sex trafficking in violation of 18 U.S.C. Section 1591(a)(1) and (a)(2), all in violation of 18 U.S.C. Section 1594(c). (Jt. Appendix Vol. I, pp. 26-49.) The applicable United States Sentencing Commission Guidelines for a violation of 18 U.S.C. Section 1594(c) is U.S.S.G. Section 2G1.1(a)(2).

Section 2G1.1(a)(2) establishes a base offense level of 14 and provides as follows:

(a) Base Offense Level:

- (1) 34, if the offense of conviction is 18 U.S.C. 1591(b)(1); or
- (2) 14, otherwise.

(b) Specific Offense Characteristic

(1) If (A) subsection (a)(2) applies; and (B) the offense involved fraud or coercion, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) or 18 U.S.C. § 2242, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

(d) Special Instruction.

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of a commercial sex act or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

U.S.S.G. 2G1.1

In the instant matter, the applicable base offense level pursuant to Section 2G1.1(a)(2) is 14. Further, Section 2G1.1(b)(1) requires a four level enhancement if the “offense involved fraud or coercion....” Assuming the application of his enhancement is warranted, the Petitioner’s base offense level would be 18.

In the instant matter, an additional two level increase was applied purportedly pursuant to Section 2G1.1(c)(1). Section 2G1.1(c)(1) provides: “(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b) or 18 U.S.C. § 2242, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).” There is no language set forth in Section 2G1.1(c)(1) that provides for an additional two level increase. A review of the application notes provides as follows:

4. Application of Subsection (c)(1).—

(A) Conduct Described in 18 U.S.C. § 2241(a) or (b).—For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2241(a) or (b) is: (i) using force against the victim; (ii) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or

kidnapping; (iii) rendering the victim unconscious; or (iv) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct. This provision would apply, for example, if any dangerous weapon was used or brandished, or in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol.

(B) Conduct Described in 18 U.S.C. § 2242.—For purposes of subsection (c)(1), conduct described in 18 U.S.C. § 2242 is: (i) threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (ii) victimizing a victim who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

U.S.S.G. Section 2G1.1, Application Note 4.

Nothing set forth in Section 2G1.1(c)(1) or its application note authorizes an additional two level enhancement. Thus, none is warranted and the Petitioner's base offense level pursuant to Section 2G1.1 would remain at a level 18.

The Petitioner entered a guilty plea and accepted responsibility for his actions. (Jt. Appendix Vol. I, pp. 26-49.) Although the trial court ultimately found that the Petitioner should not be given credit for acceptance of responsibility, the Probation Officer who prepared the PSR gave him credit for a 3-point reduction. (Jt. Appendix Vol. II, p. 240.) The Petitioner's base offense level was appropriately reduced by three levels pursuant to U.S.S.G. Section 3E1.1(a) and (b). As a result of the aforementioned, the Petitioner's base offense level would be a level 15.

Paragraphs 48, 49 and 50 of the Petitioner's PSR applies a cross reference that substantially increases Mr. Patterson's base offense level. Paragraph 48 sets forth the reason for applying the cross reference as follows:

Cross Reference: Since the offense involved conduct described in Title 18 U.S.C. Section 2241(a) or (b) or 18 U.S.C. Section 2242, pursuant to U.S.S.G. Section 2G1.1(c)(1), U.S.S.G. Section 2G1.3 is cross referenced to Section 2A3.1 (Criminal Sexual Abuse.) The base offense level for U.S.S.G. Section 2A3.1(a)(2) is 30.

(Jt. Appendix Vol. II, p. 240.)

The aforementioned cross reference, in addition to the six level enhancement applied pursuant to U.S.S.G. Sections 2A3.1(b)(1) and 2A3.1(b)(4)(B), increases the Petitioner's base offense level to 36. This is more than double the appropriate base offense level established under Section 2G1.1. Because of the disproportionate effect this has on the Petitioner's sentence, he respectfully requests this Court apply a higher standard of clear and convincing evidence to support the application of the cross reference and this enhancement.

This Honorable Court has in the past considered whether a heightened standard of review should apply at a sentencing hearing. For example, in *United States vs. Chandia*, 675 F.3d 329, 338 (4th Cir. 2012), the Fourth Circuit considered whether post-*Booker* the due process clause required a district court to find uncharged conduct by a heightened standard of proof before using it as a basis for determining a defendant's sentence in a case in which a terrorism enhancement was being applied. Ultimately, the *Chandia* Court did not find that a heightened standard was required. However, there still exists a split amongst the circuits

regarding whether a heightened standard of review should apply in instances in which there is a disproportionate effect on a defendant's sentence when an enhancement is applied. For example, post-*Booker*, the Ninth Circuit Federal Court of Appeals takes the position that clear and convincing evidence should be applied as the standard of review in such instances:

As a general rule, the party seeking to adjust an offense level must establish by a preponderance of the evidence that the adjustment is merited. *See United States v. Charlesworth*, 217 F.3d 1155, 1158 (9th Cir.2000). However, a sentencing factor that has "an extremely disproportionate effect on the sentence relative to the offense of conviction" may require a district court to find that factor by clear and convincing evidence, rather than by a preponderance of the evidence. *See United States v. Munoz*, 233 F.3d at 1117, 1127 (9th Cir.2000).

United States v. Gonzalez, 492 F.3d 1031, 1039 (9th Cir. 2007); see also *United States vs. Zitlalpopoca-Hernandez*, 632 Fed.Appx. 335 (2015) (sex trafficking case in which U.S.S.G. Section 2G1.1(c)(1) was applied and the cross reference was used to enhance the defendant's sentence).

In the instant case, the cross reference that is being applied is based on two statutes that the Petitioner did not plead guilty to: 18 U.S.C. § 2241 and § 2242. The elements of those two statutes are now at issue before this Appellate Court in determining whether the trial court erred in calculating the Petitioner's sentencing guidelines range and ultimately his sentence of incarceration.

It would violate the Petitioner's due process rights if a heightened standard of review were not applied herein. "As the Supreme Court has cautioned, sentencing factors should be elevated to the 'tail which wags the dog of the substantive offense.'"

Blakely v. Washington, 542 U.S. 296, 307, 124 S.Ct. 2531 (2004). Mr. Patterson is now being subjected to additional charges that he has not been convicted. The effect is an eighteen (18) level increase to his base offense level under the Sentencing Guidelines. Thus, the Petitioner respectfully asserts that the trial court should have found that a clear and convincing evidence standard was warranted and applied the same.

Even if this Court finds that the trial court did not err in applying the preponderance of the evidence standard to this issue, the Petitioner objects to the application of the cross reference and its enhancements. As set forth hereinabove, Section 2G1.1, Application Note 4, provides guidance as to when to apply the aforementioned cross reference. Specifically, the cross reference is to be applied in instances in which the underlying offense involves conduct described in 18 U.S.C. Sections 2241(a), 2241(b) or 2242. Application note 4 specifically sets forth the factors to be considered by the Court.

In determining whether the offense conduct involved is described in 18 U.S.C. Sections 2241(a) or (b) the court is to consider whether the conduct

“is engaging in, or causing another person to engage in, a sexual act with another person by: i) using force against the victim; ii) threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping; iii) rendering the victim unconscious; iv) administering by force or threat of force, or without the knowledge or permission of the victim, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.”

U.S.S.G. Section 2G1.1, Application Note 4(A). Similarly, in determining whether the offense conduct described in 18 U.S.C. Section 2242 the court is also to consider:

(i) threatening or placing the victim in fear (other than by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury, or kidnapping); or (ii) victimizing a victim who is incapable of appraising the nature of the conduct or who is physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act.

U.S.S.G. Section 2G1.1, Application Note 4(B).

It is undisputed that the Petitioner did not render the victim in this matter unconscious nor did he administer a drug or intoxicant to the victim by force or threat of force and/or without her knowledge or permission. It is also undisputed that the victim in this matter was capable of understanding the conduct, was physically able to decline participation, as well as to communicate her unwillingness to engage in any such conduct. Thus, at issue herein is whether or not the Petitioner used force against the victim and or placed the victim in fear, and or threatened the victim and or placing her in fear that she would be subject to death, serious bodily injury or kidnapping.

The facts and circumstances of the underlying conduct in the instant matter do not warrant the application of the aforementioned cross reference to U.S.S.G. Section 2A3.1. The Petitioner and the victim were in a romantic relationship with each other. (Jt. Appendix Vol. I, p. 81.) Their romantic relationship was consensual and lasted approximately three years. (Jt. Appendix Vol. I, p. 155.) The victim admitted to law enforcement officers that in 2013 she approached Mr. Patterson and told him she needed money. (Jt. Appendix Vol. I, p. 83, 111-112.) The victim met a “Madame” who taught her the prostitution business and the victim admitted that she voluntarily began participating in prostitution without any influence, coercion or

threats from Mr. Patterson. (Jt. Appendix Vol. I, p. 83.) During the course of three years, the victim voluntarily engaged in prostitution while maintaining a romantic relationship with Mr. Patterson. (Jt. Appendix Vol. I, p. 110.) While the victim indicated that Mr. Patterson received some of her proceeds from engaging in prostitution, she also admitted that she would work at the hotel with others (not Mr. Patterson). (Jt. Appendix Vol. I, p. 94.) The victim would post her own ads on backpage.com to gain customers. There is evidence that the victim took selfies and posted them on backpage.com on her own, without Mr. Patterson, to gain customers. (Jt. Appendix Vol. I, p. 44.) Mr. Patterson would often leave the victim at the hotel on her own, where she voluntarily engaged in prostitution. The victim was free to leave and could have done so at any time. The victim claims that she and Mr. Patterson had a volatile relationship, but the victim left Mr. Patterson without being prevented from doing so by Mr. Patterson. The victim explained to law enforcement that when she and Mr. Patterson engaged in physical altercations she would leave him, and Mr. Patterson did not prevent her from doing so. In fact, the victim ended their relationship and there was no indication that she was not free to leave nor did she state that she was prohibited by Mr. Patterson from ending their relationship.

In 2015, the victim left Mr. Patterson and went to Atlanta and began prostituting for another individual. (Jt. Appendix Vol. I, p. 116.) She voluntarily rekindled her relationship with Mr. Patterson a year later, indicating that she cared for him and wanted to be with him. (Jt. Appendix Vol. I, p. 116.) Further, after Mr. Patterson's arrest in 2015, Mr. Patterson's jail calls reveal that the victim maintained

contact with Mr. Patterson. (Jt. Appendix Vol. I, p. 116.) In the Fall of 2015, the victim continued to talk on the phone with Mr. Patterson via calls to and from the jail. The victim indicated that she would post money on his canteen. She continued to use Mr. Patterson's vehicle and informed him when she was going to be in Greenville, SC. The victim also voluntarily continued to pay for Mr. Patterson's expenses. In fact, the victim made arrangements for Mr. Patterson to make bond. (Jt. Appendix Vol. I, p. 116.) The victim actually coordinated Mr. Patterson's release. There is no indication the victim was being forced in any manner by Mr. Patterson to continue to engage in a relationship with him. If the victim was being forced to do anything, was in fear, and or threatened and or in fear that she would be subject to death, serious bodily injury or kidnapping she would not have maintained contact with him or made arrangements for his release from incarceration.

As indicated above, application of the cross reference requires this Court to find the factors relevant to 18 U.S.C. Sections 2241 and 2242. As stated *supra*, the application of this cross reference requires a finding that the Petitioner used force against the victim and or threats and or placing the victim in fear of that any person (or herself) would have been subjected to death, serious bodily injury or kidnapping. The facts and circumstances of this case do not support such a finding. While the victim described physical altercations between herself and Mr. Patterson, she voluntarily engaged in prostitution for herself and others. The victim reported being at hotel rooms on her own without Mr. Patterson during the course of their relationship; and she was free to come and go as she pleased. She also indicated that

she prostituted for the Petitioner because she was worried that he would find someone else to work for him, not because she was afraid for her safety or had been threatened with physical violence.

The cross reference should not be applied in this case, because the facts of the case do not support such a finding. Even if this Court finds that the facts support the application of the cross-reference, the cross-reference was never intended by Congress to be applied in the manner that it has been applied against the Petitioner in this matter. The case of *U.S. v. Lin*, No. 15-10152 (9th Circuit) is instructive to this matter, with very similar facts and circumstances. In *Lin*, the Defendant plead guilty to the same offense as the Petitioner at bar – one count of conspiracy to commit sex trafficking, a violation of 18 U.S.C. § 1594(c). The probation office applied the cross reference in Lin’s case – contrary to Lin’s counsel’s advice that his base level offense would only be a 14. Lin moved to withdraw his guilty plea in this case, based on the attorney’s erroneous advice regarding the base level of 14: the probation office calculated the base level offense at 34. The Ninth Circuit ultimately found that the trial court’s denial of Lin’s motion to withdraw his guilty plea was a moot issue, as the court found that the application of the cross reference was error and held that the district court erred in calculating Lin’s base offense level. The Ninth Circuit found that the common sense plain language of the guidelines, and the Sentencing Commission’s commentary, all show that the cross reference only applies to defendants who are subject to a fifteen-year mandatory minimum sentence under 18 U.S.C. § 1591(b)(1). Because Lin plead guilty to an offense (as did the Petitioner at

bar) that was not subject to a mandatory minimum sentence, the Ninth Circuit found that the trial court erred, and the error was not harmless. The matter was remanding for resentencing of Lin in light of the Appellate Court's opinion.

Therefore, the Petitioner respectfully requests that this Court remand this matter for re-sentencing, as the trial court erred in applying the cross-reference to the PSR.

The trial court erred in overruling the Petitioner's objection to the Application of U.S.S.G. Section 4A1.2(a)(1) to his conviction for simple possession of marijuana in the Petitioner's Presentence Investigation Report.

The trial court erred in overruling the Petitioner's objection to the Application of U.S.S.G. Section 4A1.2(a)(1) to his conviction for simple possession of marijuana in the Petitioner's Presentence Investigation Report, paragraph 34. (Jt. Appendix Vol. II, p. 237.) The application of U.S.S.G. Section 4A1.2(a)(1) to his conviction for simple possession of marijuana, resulting in an additional criminal history point being added to his criminal history is erroneous, because his conviction for simple possession of marijuana does not qualify as a "prior sentence" of imprisonment as required by U.S.S.G. Sections 4A1.1(c) and 4A1.2(a), and the application notes thereto. (Jt. Appendix Vol. II, p. 237.) Therefore, the trial court erred and this matter should be remanded for re-sentencing of the Petitioner.

The trial court erred in sustaining the Government's objection to the acceptance of responsibility reductions in this case.

The Petitioner in this matter plainly accepted responsibility for his actions in this matter, and the trial court erred in sustaining the Government's objection to the acceptance of responsibility reductions in this case. The probation officer who

prepared the PSR clearly found that the Petitioner is entitled to the reductions, due to his admission of his behavior as outlined in the criminal conduct as charged, as well as entering a timely guilty plea in this case. (Jt. Appendix Vol. II, p. 17.) The guilty plea soliloquy supports this finding, as well. (Jt. Appendix Vol. I, p. 27-49.) Therefore, the trial court erred, and this matter should be remanded for re-sentencing of the Petitioner.

The trial court erred in denying the Petitioner's request for a variance and/or relief pursuant to 18 U.S.C. § 3553(a), sentencing factors.

The trial court erred in its application of the factors detailed in 18 U.S.C. Section 3553(a). This section provides the Court with the factors it should consider after calculating the advisory sentencing guidelines range. The sentencing guidelines range is only one factor of several the Court is to consider in determining and imposing an appropriate sentence. *See Kimbrough vs. United States*, 552 U.S. 85 (2007); *Gall vs. United States*, 552 U.S. 38 (2007). The Court “must make an individualized assessment based on the facts presented;” thereby imposing a “sentencing sufficient, but not greater than necessary....” *Gall*, 552 U.S. at 50; 18 U.S.C. Section 3553(a). Thus, the Court is directed by Section 3553(a) to also consider the following:

- (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) & (5) the kinds of sentence and the sentencing range established for—[the applicable advisory sentencing guidelines range and category offense];
- (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.A. Section 3553.

The Petitioner is thirty-three (33) years old and has limited criminal history. He graduated from high school and began attending college. Mr. Patterson completed at least two years of college at Morris College in Sumter for Broadcast Media. He did an additional year at SC State. Mr. Patterson has been gainfully employed, and has primarily worked in the restaurant industry. He is a father and desires to play an active role in the lives of his children. (Jt. Appendix Vol. II, pp. 224-249.)

Due to the denials of the trial court of the Petitioner's objections to the PSR, the Petitioner's sentencing range was calculated at a range of 235 to 293 months. The co-Defendant of the Petitioner, who admittedly trafficked a minor, was facing a sentence of approximately seven (7) years – creating a sentencing disparity that is inequitable given the facts and circumstances of the Petitioner's case. The Petitioner's co-defendant's conduct involved that of a minor, while the Petitioner's did

not. Further, as indicated above, the Petitioner's conduct was related to his personal and romantic relationship with a victim that was over the age of majority. A sentence below the advisory sentencing guidelines range would deter any future criminal conduct and would protect the public.

Clearly, a sentence below the advisory sentencing guidelines is warranted under the facts and circumstances of this case and the Petitioner respectfully requests this Honorable Court to remand this matter for re-sentencing for a proper application of the sentencing guidelines and factors.

CONCLUSION

Wherefore, the Petitioner, Alandis D. Patterson, respectfully prays that this Honorable Court will grant his Petition for Writ of Certiorari.

Respectfully Submitted,

s/ Scarlet B. Moore
Attorney for Petitioner
P.O. Box 17615
Greenville, S.C. 29606
(864) 214-5805
(864) 752-0930 (FAX)

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