No. 18-8531

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OMAR SHARIF BEASLEY — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Omar Sharif Beasley (09867041)
(Your Name)

FCI Otisville P.O. Box 1000
(Address)

Otisville, NY. 10963-1000
(City, State, Zip Code)

N/A
(Phone Number)

QUESTIONS PRESENTED

I. Did the District Court For The District of Minnesota (district court) fail to give proper consideration to sentencing guidelines and policies while the United States Court of Appeals For The Eighth Circuit (Court of Appeals) did not ensure compliance?

A. Did the district court properly consider all statutory sentencing factors?

B. Did the court of appeals ensure compliance in reviewing reasonableness of sentence imposed?

II. Did the district court fail to put on record the reason for imposing the chosen sentence as applied by policies and as cautioned by the Court of Appeals?

A. Did the district court fail to indicate how petitioner's assistance was evaluated?

B. Did the district court's failure to articulate sentencing reasonings allow for appellate review to promote the perception of fair sentencing?

III. As a result of the above, taken individually or cumultively, is a significant sentence disparity created, affecting the integrity and public reputation of the courts in the Eighth Circuit in a normal case that requires relief by the Supreme Court in the manner of resentencing for a reasonable and proportionate sentence?

LIST OF PARTIES

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

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix "A" to this petition and is reported at 738 Fed. Appx. 379; 2018 U.S. App. LEXIS 27556 (United States v. Beasley, No. 17-2113).

JURISDICTION

The date on which the United States Court of Appeals decided my case was September 27, 2018.

A timely petition for rehearing was denied by the United States Court of appeals on December 11, 2018. A copy of the order denying rehearing appears at Appendix "B" (2018 U.S. App. LEXIS 34898).

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 3553 - See Appendix "C"
18 U.S.C. § 3553(a) - See Appendix "C"
21 U.S.C. § 841(a)(1) - See Appendix "D"
21 U.S.C. § 841(b)(1)(B) - See Appendix "D"
21 U.S.C. § 841(b)(1)(C) - See Appendix "D"
21 U.S.C. § 846 - See Appendix "E"
U.S.S.G. § 3B1.1(a) - See Appendix "F"
U.S.S.G. § 4B1.1(b) - See Appendix "G"
U.S.S.G. § 5K1.1 - See Appendix "H"

STATEMENT OF THE CASE

On December 2, 2015, Omar Shariff Beasley, herein "petitioner," pled guilty to Count 1 of the indictment against him. Petitioner pled guilty to one count of Conspiracy with Intent to Distribute Controlled Substances, in violation of 21 U.S.C. § 841(a)(1).

In April 2014, petitioner connected with several individuals in Minnesota who were engaged in distribution of controlled substances throughout the state of Minnesota. Petitioner's involvement in the conspiracy continued until his arrest in April 2015. Starting on the day of his arrest, petitioner began cooperating with law enforcement. On May 21, 2015, a month after his arrest, and after extensive meetings between petitioner and the U.S. Attorney's Office and various law enforcement agencies, the U.S. Attorney's Office secured an indictment charging 41 defendants, including petitioner, with a variety of counts related to the drug conspiracy. On December 2, 2015, petitioner entered a plea of guilty as to Count 1, noted above.

As noted in the Presentence Investigation Report ("PSR" herein), the offense level for petitioner's crime was 42 and his criminal history category was VI.

During the two years between his indictment and sentencing, petitioner stood by his agreement, waiting in a county jail where there were no programs, job opportunities or even the limited type of freedom of movement that inmates in the Bureau of Prisons have. He remained at the county jail, serving time that many inmates refer to as "dead time" due to the lack of activities and resources available.

When sentencing finally arrived, the Government moved for a 6-level reduction in the offense level as recognition for the

substantial assistance he provided. The resulting guidelines range was 188-235 months. The district court granted the motion but imposed a sentence of 300 months, 65 months above the guidelines range set forth in the motion.

The district court failed to give weight to petitioner's substantial assistance. Further, the district court failed to consider any of the 18 U.S.C. § 3553(a) factors that call for a downward variance. This resulted in a sentence that was highly disparate to petitioner and those of his co-defendants and others in the Eighth Circuit and other Federal circuits. The sentence imposed, 300 months, was more than double most of the 41 co-defendants, 39 of whom had been sentenced by the time petitioner appeared for sentencing. The sentence imposed, a mere 60 months from the bottom of petitioner's Guidelines range, failed to sufficiently weigh in the considerations of 18 U.S.C. § 3553(a). And, despite the Government's motion for a downward departure based on USSG § 5K1.1, requesting a sentence in the range of 188-235 months, the district court did not factor the motion in his sentence, despite granting the motion.

On appeal to the Eighth Circuit Court of Appeals, petitioner raised two issues: (1) whether the district court gave him the benefit of his extraordinary and substantial assistance and (2) whether the sentence imposed was reasonable, particularly given the disparate nature of the sentence to those of his co-defendants and other like-situated defendants.

An opinion affirming the district court's sentence was issued on September 27, 2018. That opinion did not address the first issue addressing the district court's failure to give credit for substan-

-tial assistance. Further, that opinion fails to address the disparate nature of the sentence imposed and failure of the district court to state the bases for the disparate sentence.

Petitioner filed a motion for rehearing with the court of appeals on April 9, 2018. On September 27, 2018 the court denied petitioner's motion, again failing to meaningfully address either of the issues presented by petitioner, essentially reciting many of the stipulated facts contained within the PSR and affirming the district court's lack of appropriate explanation of the obvious sentencing disparities.

REASONS FOR GRANTING THE PETITION

The district court is to give proper consideration to all sentencing guidelines factors and policies set forth by the Sentencing Commission, the courts of appeal are to act as a check to ensure this compliance is occurring, yet both continously fail to ensure compliance to 18 U.S.C. § 3553(a)(6) by sentencing and upholding sentences that are disproportionate without any reasonable justification for such disparities. When challenged, the court of appeals often merely restate the same factors cited by the district court and offer no explanation for their decisions or simply gloss over and ignore plain issues confronting them. This is the case here. In particular, courts are not cautious enough to clearly state on the record the reason for a sentence imposed when there are mitigating factors, such as a § 5K1.1 motion, that need to have the full weight of evaluation noted to produce a reasonable and justified sentence of a defendant. When looking to avoid unwarranted sentencing disparities, the court should also take into account historical sentencing as provided by the Sentencing Commission's annual report on percentages of defendants in, above, or below guidelines ranges and the median sentence being handed down.

When a defendant such as this petitioner comes along, the lower courts should be extra cautious in their refusal to state specific reasons why any hypothetical guideline ranges will not be followed given the Government's proposal of such a guidelines range. By focusing only on the facts of the conduct and/or the criminal activity of a case, the court allows appellate review of its lack of consideration on record of highly mitigating factors, such

as a defendant's substantial assistance resulting in the guilty plea of not one or two co-conspirators - but forty (40), some of whom were not even known the Government until the defendant provided assistance, some of whom were set up by a defendant. Minus such regard on record for mitigating factors and it's high percent of weight for aggravating factors, the court errors in its selection of a sentence without justification to such a sentence. The court of appeals rubber stamps or remains silent on these issues, affording defendants no proper recourse, making claims of this nature ripe for and worthy of Supreme Court review.

I. District court failed to give proper consideration to sentencing guidelines and policies while the court of appeals did not ensure compliance.

A. The district court did not properly consider all statutory sentencing factors.

During sentencing, the district court improperly considered the sentencing factors as applied to this case. Specifically, the court stated "I have assessed others with the same kind of range and same kind of criminal history, and I don't feel that this sentence is an unwarranted sentencing disparity." (Sent. Hearing Tr. p. 21 11.19-21)(targeting 18 U.S.C. § 3553(a)(5)). One opinion as stated in Gall v. United States by the Supreme Court iterated:

> [T]he District Court 'slighted' the factors set out in 18 U.S.C. § 3553(a)(3),(4), and (5)(2000 ed. and Supp. V) - namely, the Guidelines sentencing range, the Commission's policy statements, and the need to avoid sentencing disparities. Gall v. United States, 552 U.S. 69 (2007)

The focus here is on 18 U.S.C. § 3553(a)(6), the need to avoid unwarranted sentencing dispraities, much as that was a factor in

Gall as well. Had the district court properly considered and assessed others, it would have found that the sentence imposed was disparate compared to Garza in Garza v. United States, 2016 U.S. Dist. LEXIS 89795 (2016). Keeping in mind that petitioner in this case was sentenced on May 10, 2017 to 300 months, the Sixth Circuit had already ruled on Garza. Based on an assessment of these two defendants having the same role as an organizer/leader, the same career enhancement (§ 4B1.1(b)), the same criminal history category of VI, and the same sentencing range of 360-Life, this would fall squarely in line with the district court's assessment standards noted. However, Garza was convicted of 520 kilograms of cocaine and 260 kilograms of heroin resulting in a marijuana equivalence of 360,000 kilograms which is precisely 348,200 kilograms more than petitioner. While the Sixth Circuit handed Garza a sentence of 180 months, the Eighth Circuit felt compelled to give this petitioner a sentence 167 percent higher, creating a conflict between federal circuits as to sentences provided defendants in nearly identical circumstances.

B. The court of appeals did not ensure compliance in reviewing reasonableness of sentence imposed.

During the time of appeal, the court had the opportunity to review de novo the Sentencing Commission report for all sentences imposed before, during, and after the timeframe of petitioner's sentencing to ensure reasonableness and clearly counter the district court's assessment of other sentences. A search of cases on the LEXIS legal library available to petitioner which meet cases handling similar statutes (21 U.S.C. § 841(a)(1)), enhancements (§3B1.1(a) or 4B1.1(b)), and/or criminal history category (VI), reveals

plenty of sentences across the country that result in a disparate sentence imposed on this petitioner. Case examples:

United States v. Wilson, 2018 U.S. Dist. LEXIS 6826
Career Offender, Criminal History VI, 188-235 (108)
United States v. Pena, 2017 U.S. Dist. LEXIS 156500
Career Offender, Criminal History VI, 262-327 (200)
United States v. Williams, 2017 U.S. Dist. LEXIS 131642
Career Offender, Criminal History VI, 188-235 (188)
United States v. Harry, 2018 U.S. Dist. LEXIS 94853
Over 1800kg "ice" meth., Criminal History VI, 360-Life (280)
United States v. Benfiet, 2017 U.S. Dist. LEXIS 115641
Career Criminal, Criminal History VI, Life (135)
Turner v. United States, 2017 U.S. Dist. LEXIS 160866
Criminal History VI, [Life] 360-Life (240)
Garza v. United States, 2016 U.S. Dist. LEXIS 89795
Career Criminal, Criminal History VI, 360-Life (280)

As shown, most cases find that sentencing a defendant (number in parenthesis) at or below the low end of the guidelines range as reasonable and sufficient without a governmental motion for substantial assistance and even more so when the government moves to eliminate the mandatory minimum of Life.

II. The district court failed to put on record the reason for imposing the chosen sentence as applied by policies and as cautioned by the 8th Circuit Court of Appeals.

A. The district court failed to indicate how petitioner's assistance was evaluated.

Relevant sentencing guidelines and policy statements found in U.S.S.G. § 5K1.1 provide:

> The appropriate reduction shall be determined by the court for reasons stated ... the court's evaluation of the significance and usefulness of

> the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered. U.S.S.G. § 5K1.1(a)(1). See also United States v. Haack, 403 F.3d 997, 1004-1005 (2005).

As noted in Haack, the 8th Circuit Court of Appeals found that the defendant's minimal cooperation which resulted in an excessive departure left "little room for greater departures for defendants who actually participate in controlled buys..." Haack, 403 F.3d at 1006. The Government placed significant weight on petitioner's cooperation and stated openly in court that he had, in fact, participated in a controlled purchase (Sent Hrg. Tr. p. 14 11.1-2). During the sentencing it was the Government who provided oral record of the evaluation of petitioner's assistance, recommending a sentence guidelines range based on their § 5K1.1 motion for a 6 level reduction and their resultant sentence request of 235 months (Sent. Hrg. Tr. p.4 11, 23-25, p. 5 11. 1-4). The district court remained silent at all points about any evaluation of assistance similar to what the 8th Circuit Court of Appeals found in United States v. Stewart. The court of appeals could not determine that the district court reasonably exercised its discretion in sentencing for Stewart which resulted in the sentence being vacated and remanded for resentencing. See United States v. Stewart, 509 F.3d 450, 2007 U.S. App. LEXIS 28005 (2007). This same lack of record for the court's evaluation of petitioner's cooperation and its resulting impact on his sentence would require similar actions to take place.

Relating this to the sentencing disparities noted above (see I), the court should look to United States v. Benfiet, which

the 8th Circuit district judge Honorable Daniel L. Hovland presided over. In his case, Benfiet was a career criminal and the Government supplied information certifying that he was qualified and required a mandatory minimum sentence of Life. Given the Life requirement, the Government then supplied a § 5K1.1 motion for his assistance to serve a two-fold purpose that 1) eliminated the mandatory Life sentence and 2) amended the guideline range to 262-327 months. The Government then recommended a sentence of 240 months which reflected the goal of a one-third reduction of a 360 month term (which is what the district used for a base on a substantial assistance reduction from Life). The court went on to actually sentence Benfiet to 135 months, which represents a sentence that is 45 percent lower than this petitioner's sentence even though the mandatory sentence was Life for Benfiet. See United States v. Benfiet, 2017 U.S. Dist. LEXIS 115641. As the 8th circuit Court of Appeals has held, "[a] substantial assistance reduction is judged by the degree and quality of the assistance actually provided..." See, United States v. Peterson, 2007 U.S. App. LEXIS 26470, 2007 WL 3376981 at *2. As such, petitioner in this matter should have recieved a sentence that could be considered properly and quantifiably proportionate to the assistance provided and in line with other defendants across the country.

B. Failure to articulate sentencing reasoning allows for appellate review to promote the perception of fair sentencing.

After the district court ran through the guidelines range calculations, it did not follow the precautions the 8th Circuit Court of Appeals has voiced concern on previously. In United States v. Rublee, the court of appeals "realize[d] that there may be situations when

sentencing factors may be so complex ... that the determination of a precise sentencing range may not be necessary or practical. However, in those cases the court should be careful to identify potential applicable ranges, the reason why a specific range is not being selected ... then decide if a traditional departure is appropriate under Part K...". Rublee, 665 F.3d 835, 1003 (2011). That court noted that it could apply an additional 2 point enhancement in this case for a stash house, but would not since no other parties were seeking its application. The Government requested a 6 level reduction in compliance with its § 5K1.1 motion which the court had granted, yet the court never stated any reasons why either potential ranges were not being selected. In setting its ending calculation at a range of 360-Life and sentencing the petitioner to 300 months, the district court should then have specified it reasons for the sentence imposed. This requirement has been found in many districts for many years. See, United States v. Thompson, 170 Fed. Apps. 846 (2006, CA4 SC)(if the court imposes sentence outside Guidelines range, district court must state its reasons for doing so); United States v. Lente, 647 F.3d 1021 (2011, CA10 NM)(if sentence is outside U.S. Sentencing Guidelines Manaul range, specific reasons for imposition of a sentence different from that described, which reasons must also be stated with specificity in written order...); United States v. Richardson, 437 F.3d 550, 2006 FED App. 59P (2006, CA6 Mich)(Federal district court is obligated in each case to communicate clearly its rationale for imposing specific sentence); United States v. Luna-Mora, 180 Fed. Appx. 847, 127 S. Ct. 312, 166 L.Ed.2d 234 (2006, US) (U.S. district court which is sentencing defendant is required to

state in open court reasons for its impostition of particular sentence ... it is required to state specific reasons for imposition of sentence different from that described.).

Despite the clear issues noted above, when brought to the attention of the Court of Appeals for the 8th Circuit, that court glossed over each issue presented, even ignoring it's own cautions in Rublee, and rubber stamping the improper actions of the district court, making this claim ripe for Supreme Court review.

CONCLUSION

Petitioner pled guilty to one count of Conspiracy with Intent to Distribute Controlled Substances, in violation of 21 U.S.C. § 841(a)(1), for activity he engaged in from April 2014 through April 2015. Petitioner quickly and thoroughly provided substantial assistance to law enforcement. His substantial assistance aided in the indictment of several individuals and is believed to have secured pleas by the remaining forty co-defendants in his indictment.

The district court imposed a 300-month sentence, just 60 months from the bottom of the sentencing guidelines set forth in the pre-sentence report. It is also a sentence 65 months above the sentencing guidelines set forth in the Motion for Substantial Assistance.

The sentence fails to give adequate consideration for the depth and quantity of substantial assistance provided. The court of appeals has abdicated it role as a check on the district court by ignoring it's own orders and rubber-stamping the district court's errors. Additionally, the lower courts have failed to consider significant factors under 18 U.S.C. § 3553(a) that called for a downward variance. Finally, the sentence imposed is unjustly disparate from the sentences of the co-defendants and other like-situated defendants in petitioner's circuit and across the country.

Accordingly, petitioner, Omar Beasley, respectfully requests this Honorable Court grant a writ of certiorari in this matter.

Dated this 5 day of February, 2019.

Respectfully submitted,

Omar Shariff Beasley

OMAR SHARIFF BEASLEY