

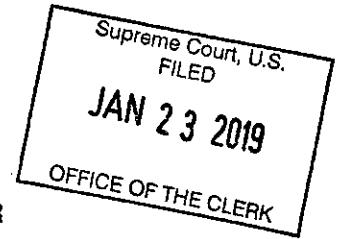
18-8629

No. _____

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



Rogelio Barajas — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. Court of Appeals for the Eleventh Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Rogelio Barajas

(Your Name)

Allenwood LSCI

PO Box 1000

(Address)

White Deer, PA 17887

(City, State, Zip Code)

(Phone Number)

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JURISDICTION

For cases from federal courts:

The date on which the United States Court of Appeals decided my case was October 26, 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: _____, 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. § 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).

STATEMENT OF THE CASE

In 2014, Mr. Barajas was living in Illinois but would frequently travel to his hometown in Mexico to see his family. During one of his trips to Mexico, he bet on a rooster fight and lost, resulting in a \$30,000 debt. Mr. Barajas feared that it would not be good for him if he did not pay the money back. Largely in order to work off the debt, Mr. Barajas started working for the person to whom he was indebted. This person wanted Mr. Barajas to transport drugs into the United States but Mr. Barajas could not do that. Instead, Mr. Barajas asked Ricky Cross if he was interested. Cross was a truck driver Mr. Barajas met through someone he had been in prison with. They became friends as they both enjoyed hunting. Cross told Mr. Barajas that he transported drugs in the past and was interested in making extra money by doing so again. With those prior conversations in mind, Mr. Barajas asked Cross if he wanted to make deliveries and Cross agreed. Mr. Barajas, who is bilingual in Spanish and English, acted as the intermediary by calling Cross to find out his availability and by giving Cross instructions regarding the deliveries. Mr. Barajas's sole role was to make phone calls to Cross. He never touched or transported any drugs and did not handle the logistics for the deliveries. He did not know the specific drugs involved, the quantity of what was being transported, or who was picking up the drugs from Cross. Mr. Barajas never paid Cross anything.

After Cross began cooperating with the Government in January 2016, he made and received recorded calls to and from Mr. Barajas. During those calls, Mr. Barajas referred to other individuals who wanted to know Cross's availability to make deliveries. Cross decided if he would make deliveries and declined work if he didn't want to do it. When Cross expressed hesitation about continuing

to be a driver, Mr. Barajas told Cross that the decision to drive was his. At some point, Cross told Mr. Barajas that Mike wanted to be a driver and would replace Cross. Mr. Barajas began speaking to Mike and eventually they arranged to meet, but throughout their conversations, Mr. Barajas explained that other people wanted him to make deliveries and in their last call, referred to his boss coming to the meeting. Mr. Barajas was arrested after meeting with Mike, who was in fact, an undercover officer. During the meeting with Mike, Mr. Barajas again explained that he came to meet Mike, and obtain information on behalf of others and also that there were other individuals who wanted to meet with him.

Mr. Barajas had no knowledge of the drug and quantity involved. Mr. Barajas's guideline range is driven by the fact that his offense involved 4.5 kilograms or more of methamphetamine and "Ice," which results in a Base Offense Level of 38. Although the Base Offense Level is correct, there is no evidence that Mr. Barajas knew that his offense involved methamphetamine, as opposed to another controlled substance, or was aware of the specific quantity that Cross was transporting. The Government refers to a conversation where Mr. Barajas and Cross discuss a delivery being a "big one" and that a future load would be three times greater, but this discussion does not prove that Mr. Barajas (or Cross) knew the drug or the specific amount involved.

Moreover, the quantity and purity of the methamphetamine are not factors that distinguish this case from others. A recent New York Times article states, "The cartels have inundated the market with so much pure, low-cost meth that dealers have more of it than they know what to do with." Frances Robles, Meth, the Forgotten Killer, Is Back. And It's Everywhere, N.Y. Times, Feb 13, 2018, <https://www.nytimes.com/2018/02/13/us/meth-crystal-drug.html>. The article goes on to quote a DEA spokesman as saying, "I have been involved with meth for the last 25 years. A wholesale plummet of price per pound, combined with

a huge increase of purity, tells me they have perfected the production or manufacturing of methamphetamine." Although the Government is correct that they do not have to prove Mr. Barajas's knowledge of drug type and quantity, the fact that Mr. Barajas did not know these specific details makes his Base offense Level less important to determining his culpability.

The Government is correct that Mr. Barajas was Cross's sole contact, but then states, "there was no one directing Barajas during these conversations." However, as explained above, there was someone directing Mr. Barajas and Mr. Barajas told Cross that "they" wanted him to make deliveries. The Government argues, "In this instance, Barajas knew they were transporting illegal controlled substances, he recruited at least one accomplice (the U/C [Mike], if not also Cross), and he knew the nature of his and others' participation in the offense. That Mr. Barajas knew that illegal controlled substances were transported is insufficient to warrant a role adjustment; that simply shows he is guilty of being involved in the conspiracy. To the extent the Court finds that Mr. Barajas recruited Cross, that sole factor is insufficient to warrant an aggravating role adjustment when Mr. Barajas acted as an intermediary (and translator) between Cross and the person Mr. Barajas owed money to. In United States v. Martinez, the Eleventh Circuit found that the fact that Martinez was directly involved in the wire transfer of more than half of the drug proceeds and along with his co-conspirators "utilized other individuals to mail and receive drug shipments" was insufficient to establish an aggravating role enhancement. 584 F.3d 1002, 1027-1029; see Also United States v. Yates, 990 F.2d 1179, 1182 (11th Cir. 1993) ("The mere status of a middleman or distributor does not support enhancement under Section 3B1.1 for being a supervisor, manager or leader. Section 3B1.1 requires the exercise of some authority in the organization, the exertion of some degree of control, influence, or leadership.") (citation omitted). Beyond the recruitment of Cross, the Government fails to explain

how Mr. Barajas's conduct, in the overall scheme of the conspiracy, satisfies the factors the Court should consider.

Rather than an aggravating role adjustment, Mr. Barajas believes that he is entitled to a mitigating role adjustment. Section 3B1.2 provides for up to a four-level decrease in the offense level for "a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity." USSG §3B1.2, comment. In determining whether to make an adjustment, the guidelines list several factors the Court should consider:

- The degree to which the defendant understood the scope and structure of the criminal activity;
- The degree to which the defendant participated in planning or organizing the criminal activity;
- The degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
- The nature and extent of the defendant's participating in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts;
- The degree to which the defendant stood to benefit from the criminal activity

(USSG §3B1.2)

Mr. Barajas has admitted that he was involved in a drug conspiracy, but there is no evidence that he was aware of the scope and structure of the overall conspiracy beyond his role of serving as an intermediary between Cross and the person Mr. Barajas owed money to. Besides communicating with Cross, Mr. Barajas did not participate in the planning or organizing of the methamphetamine deliveries. There is no evidence that he manufactured, packaged, or transported any drugs. He also did not have any decision-making authority regarding the deliveries. Mr. Barajas's role was to communicate information to Cross and what he communicated to Cross came from someone else. Finally, Mr. Barajas

received nominal payments for his role. Given Mr. Barajas's limited role as an intermediary, he should receive a minimal participant role adjustment, even if the Court finds that he should also receive an aggravating role adjustment. See United States v. Perry, 340 F.3d 1216 (11th Cir. 2003) (appreciating, though not holding, that a role enhancement and a role reduction may coexist).

A sentence above ten years would lead to an unwarranted disparity between Mr. Barajas and other individuals discussed in the Presentence Report. Although Mr. Barajas does not know how much time Cross will receive for his role in the conspiracy, it is reasonable to assume that he will be rewarded for his cooperation against Mr. Barajas, and serve significantly less than ten years. Ivan Yassiel-Mendez, the person who provided the methamphetamine to Cross, received a 78-month sentence. (PSR at p.2). Hector Mendoza, the individual who retrieved the methamphetamine from Cross on January 27, 2016, was prosecuted in DeKalb County and received a ten-year sentence, but will likely serve significantly less than ten years given Georgia's parole guidelines. See Exhibit B- Hector Ramirez Conviction Documents. Finally, the person who instructed Mr. Barajas and to whom he owed money, was not arrested.

A sentence is substantively reasonable if it is supported by the factors laid out in 18 USC §3553(a). Gall v. United States, 552 US 38, 56 (2007); see also United States v Pugh, 515 F.3d 1179, 1191 (11th Cir. 2008). Section 3553(a) "requires judges to take into account the Guidelines together with other sentencing goals" in fashioning an appropriate sentence. See United States v. Booker, 543 US 220, 259-60 (2005). Section 3553(a) embodies a crucial parsimony principle, directing courts to impose a sentence "sufficient, but not greater than necessary," to comply with the purposes of sentencing set forth in §3553(a)(2).

After Booker, the district court must properly calculate the sentencing guideline range and consider any upward or downward departure motions. Then,

the district court must consider the guidelines, along with the other §3553 factors, and impose a reasonable sentence. "In short, after Booker, 'the district courts, while not bound to apply the Guidelines, must consult those Guidelines, and take them into account when sentencing.'" United States v. Crawford, 407 F.3d 1174, 1178 (11th Cir. 2005)(quoting Booker, 543 US at 264). After considering the guidelines, the court is free to impose a more severe or less severe sentence as long as the sentence is reasonable. Crawford, 407 F.3d at 1179. A sentence is substantively unreasonable if, in light of the §3553(a) factors, it is somehow outside the range of reasonable sentences available for the offense and the offender. Pugh, 515 F.3d at 1191.

Although the district court imposed a downward variance of 31 months, Mr. Barajas's sentence of 204 months' imprisonment is substantively unreasonable because it is greater than necessary in light of the factors in 18 USC §3553(a). Mr. Barajas's limited role, which has been discussed extensively above, weighed in favor of a significant downward variance. This is particularly so given that Mr. Barajas's guideline range was driven by the quantity of methamphetamine involved even though he had no knowledge of the drug or quantity at issue. Thus, the advisory guideline range overstated Mr. Barajas's role in the offense.

Mr. Barajas became involved in the drug conspiracy because of a debt he owed and his fear of what would happen to him if he did not repay the debt. It was the person who Mr. Barajas was indebted to who gave him the instructions he conveyed to Cross. There is no evidence that prior to incurring the debt, Mr. Barajas was involved in drug trafficking. Mr. Barajas only involved Cross because Cross had previously expressed an interest in making extra money by transporting drugs. Mr. Barajas never pressured Cross to do anything and had no control over when Cross worked or Cross's compensation. Thus, Mr. Barajas's role was really to communicate with Cross rather than to manage him.

By imposing a 204-month sentence, the district court also failed to adequately

consider many of Mr. Barajas's positive traits, such as his devotion to his aging parents and children, the fact that he was 50 years old, and that the cyst in his brain would make his prison sentence more difficult to endure.

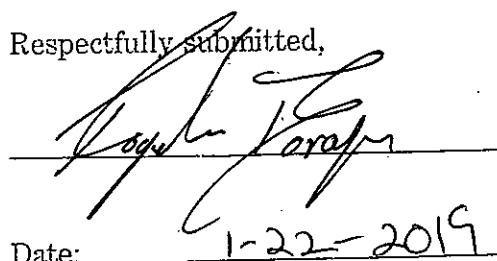
"While there are many competing considerations in every sentencing decision, a sentencing judge must have some understanding of the diverse frailties of humankind. In deciding what sentence will be sufficient, but not greater than necessary to further the goals of punishment, a sentencing judge must have generosity of spirit, that compassion which causes one to know what it is like to be in trouble and in pain." United States v. Singh, 877 F.3d 107, 121 (2d Cir. 2017) (citations and quotations omitted). Although the district court varied downward, all of the factors in Mr. Barajas's case warranted more than a 3-month downward variance. Mr. Barajas's requested sentence of 120 months' imprisonment would have met the goals of punishment while recognizing Mr. Barajas's frailties. Instead, the district court imposed a substantively unreasonable sentence of 204 months' imprisonment and as a result, Mr. Barajas is entitled to resentencing.

For the foregoing reasons, Mr. Barajas respectfully requests that the Court vacate his sentence and remand the case back to the district court for resentencing.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Taylor Farapz". The signature is fluid and cursive, with a long, sweeping line for the first name and a more compact, stylized "Farapz" for the last name.

Date: 1-22-2019