

IN THE
Supreme Court of the United States

MARVIN EARL BLANKS, JR.,
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

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QUESTION PRESENTED

Whether the district court fulfilled its obligation under 18 U.S.C. § 3553(c) to announce the reasons for its sentencing decision where the court never addressed Petitioner's nonfrivolous arguments in favor of a lower sentence.

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Petitioner Marvin Earl Blanks, Jr. respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's unpublished opinion is available at 746 F. App'x 278 (4th Cir. 2019); *see also infra*, Pet. App. 1a.

JURISDICTION

The Fourth Circuit issued its opinion on January 3, 2019. Pet. App. 1a. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3553(c) of Title 18 of the United States Code provides in relevant part that at the time of sentencing, the district court "shall state in open court the reasons for its imposition of the particular sentence."

STATEMENT OF THE CASE

A. District Court Proceedings

On September 8, 2016, police officers in Lumberton, North Carolina responded to a reported robbery. The victim told the police that two men had robbed him at gunpoint. The victim later identified Petitioner as one of the robbers. According to the victim, Petitioner pushed him to the ground and pointed a gun at him while the second man took the victim's cellphone and cash. The police soon located and arrested Petitioner at a nearby convenience store. When the police searched him, Petitioner had the victim's cellphone and a stolen gun. Review of Petitioner's criminal history showed that he had previously been convicted of a felony. (Appellate Joint Appendix 33-34; 71-72; hereinafter, "J.A.").

On June 15, 2017, a federal grand jury in the Eastern District of North Carolina indicted the Petitioner on one count of possession of stolen firearms and one count of possession of a firearm by a felon. (J.A. 9-11). Petitioner subsequently pled guilty to both counts without a plea agreement. (J.A. 12-45).

At sentencing, the district court determined that Petitioner's total offense level was 23 and his criminal history category was IV, for a guideline imprisonment range of 70 to 87 months. (J.A. 50). Neither party objected to the district court's calculation of the advisory range. (J.A. 51). The remainder of the hearing, therefore, focused on sentencing considerations.

Counsel for Petitioner argued that a sentence at the bottom of the guideline range was sufficient to "be both punitive and promote respect for the law, as well as

to provide him with the opportunity to rehabilitate himself and to ensure that he is no longer a threat to the community upon his release.” (J.A. 51-52). Addressing deterrence, counsel asserted that even a low-end sentence “sends the message that punishment is going to be severe for anyone who, like [Petitioner], is a felon in possession of a firearm” and “certainly would not encourage people to engage in this behavior.” (J.A. 52). Counsel noted that when she first met with Petitioner, he “immediately advised that he wanted to plead guilty” and thus had “not wasted the Court’s time and resources.” (J.A. 52). Although Petitioner was “no stranger to the system,” she pointed out that he had never served “any real significant amounts of time,” and that he was “now facing the longest sentence . . . that he’s ever had.” (J.A. 51). Counsel for Petitioner emphasized that he regretted his actions, but knew he could not “go back and change things.” (J.A. 51). Instead, counsel said Petitioner was “taking this as an opportunity to get himself on the right path.” (J.A. 51). Specifically, Petitioner planned “to move forward and use this time to better himself, to pursue an education, and to pursue a trade that will allow him to be self-employed and a benefit to his community when he is released.” (J.A. 51). For these reasons, counsel requested a sentence at the bottom of the guideline range.

Petitioner personally addressed the court, stating that he “first . . . wanted to apologize to the Court.” (J.A. 52). He continued: “I made a mistake, and I’m learning from my mistake. And the punishment that is imposed upon me, I’m going to have to serve the time, and I take full responsibility for the actions that I

committed.” (J.A. 52-53). Petitioner added that he was “just trying to learn from [his] mistakes” and that he wanted to “better [him]self.” (J.A. 53).

Counsel for the United States argued that a sentence “toward the top” of the guideline range was appropriate in light of Petitioner’s criminal history, which included arrests for “nine assaults of various types” and convictions for two assaults: a misdemeanor conviction for assault on a female and a felony conviction for assault with a deadly weapon with intent to kill. The government noted that the one felony assault conviction “ha[d] some age” and described it as a “senseless crime for \$200 where he assaulted [a woman].” (J.A. 53). After Petitioner was released from prison for that crime, the government said he “was doing pretty well—only minor infractions—until this [federal] crime—which is just a senseless and unexplainable act of violence, chasing **this man with a gun** and holding it to his head and robbing him of a few dollars.” (J.A. 53). The government argued that Petitioner’s case was “much worse than a gun sitting in a console of a car, your most common felon in possession cases.” (J.A. 53). Accordingly, the government requested a sentence at the top of the guideline range.

After summarizing the offense conduct, the district court agreed with the government that Petitioner’s crime was “an atypical case in the sense of a possession of a firearm by a felon and possession of [a] stolen firearm.” (J.A. 55-56). The court further agreed that the offense conduct was “very serious” and “utterly senseless and dangerous.” (J.A. 56). The court said it did not “think a sentence at the bottom of the advisory guideline range would be sufficient in light of the need

for specific deterrence and just punishment.” (J.A. 56). “Those two, in particular,” the court continued, “warrant a sentence, having fully considered all of the 3553(a) factors, of 84 months.” (J.A. 57). Accordingly, the court imposed a sentence of 84 months on each count, to be served concurrently, along with three years of supervised release. (J.A. 57). In announcing its sentence, the court never addressed the mitigating arguments made by counsel on Petitioner’s behalf.

The court entered its judgment on June 13, 2018. (J.A. 6; 60-67). Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit.

B. Court of Appeals Proceedings

On appeal to the Fourth Circuit, Petitioner argued that the district court committed significant procedural error by failing to respond or acknowledge the mitigating arguments made by Petitioner and by failing adequately explain the sentence. The Fourth Circuit rejected this argument and affirmed the judgment of the district court. This petition followed.

THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

The question of whether the district court committed procedural error by failing to address Petitioner’s nonfrivolous mitigating arguments and by failing to adequately explain its sentence was presented to the Fourth Circuit. The Court of Appeals rejected Petitioner’s argument and affirmed the district court. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court’s consideration.

REASONS FOR GRANTING THE PETITION

The Court of Appeals erred in affirming the district court's judgment. Under 18 U.S.C. § 3553(c), a district court must, at the time of sentencing, "state in open court the reasons for its imposition of the particular sentence." This statutory requirement "reflects sound judicial practice" because sentencing decisions "are reasoned decisions" and "[c]onfidence in a judge's use of reason underlies the public's trust in the judicial institution." *Rita v. United States*, 551 U.S. 338, 356 (2007). To be sure, the court's public explanation of its sentencing decision "helps provide the public with the assurance that creates that trust." *Id.* Thus, it is well established that a sentencing judge "must adequately explain the chosen sentence to allow for meaningful appellate review and to promote the perception of fair sentencing." *Gall v. United States*, 552 U.S. 38, 50 (2007). Failing to adequately explain the chosen sentence constitutes "significant procedural error." *Id.* at 51.

To adequately explain a sentencing decision, the judge must "set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority." *Rita*, 551 U.S. at 356. Where the defendant "presents nonfrivolous reasons for imposing a different sentence" the judge must "go further and explain why he has rejected those arguments." *Id.* at 357. "By articulating reasons, even if brief, the sentencing judge not only assures reviewing courts (and the public) that the sentencing process is a reasoned process but also helps that process evolve." *Id.* at 358.

Here, Petitioner presented several nonfrivolous arguments in favor of a lower sentence. First, he drew the court's attention to his criminal history and his relative inexperience with incarceration. Although he was "no stranger to the [criminal justice] system," Petitioner had never been in custody for "any real significant amounts of time." (J.A. 51). Indeed, with a single exception, Petitioner had been convicted of only misdemeanors. For most of these misdemeanors, Petitioner received probation or only days in custody. (J.A. 72-76). The lone exception was the 46 to 65-month state sentence he received on a consolidated felony judgment for assault, robbery, burglary, and conspiracy. (J.A. 75). Petitioner had no prior federal convictions. Thus, as counsel for Petitioner told the court, "[h]e's now facing the longest sentence . . . that he's ever had." (J.A. 51). As such, counsel asserted that a low-end sentence was "sufficient to be both punitive and promote respect for the law," given Petitioner's history. (J.A. 51-52).

Further, counsel emphasized that Petitioner had taken full responsibility for his actions by "immediately advis[ing] that he wanted to plead guilty." (J.A. 52). Thus, he had "not wasted the Court's time and resources" by filing pre-trial motions or otherwise contesting the charges. Instead of requiring the government to prove its case, counsel said that Petitioner "wants to move forward and use this time to better himself" to "get himself on the right path." (J.A. 51). Specifically, Petitioner wanted to "pursue an education . . . and . . . a trade that will allow him to be self-employed and a benefit to his community when he is released." (J.A. 51). When he personally addressed the court, Petitioner likewise said that he took "full

responsibility for the actions that [he] committed." (J.A. 53). He added, "I'm just trying to learn from my mistakes and better myself." (J.A. 53). In light of Petitioner's cooperation and positive attitude, counsel asserted that a sentence at the bottom of the guideline range was sufficient to "provide him with the opportunity to rehabilitate himself and to ensure that he is no longer a threat to the community upon his release." (J.A. 52).

Finally, counsel noted that a sentence at the bottom of the guideline range was still "nearly six years." (J.A. 51). That amount of time, counsel argued, "sends the message that punishment is going to be severe" for felons who possess firearms and "certainly would not encourage people to engage in this behavior." (J.A. 52). Accordingly, counsel maintained that a sentence at the bottom of the guideline range adequately deterred others, as well as Petitioner, from engaging in criminal conduct, and would be sufficient to satisfy the § 3553(a) factors. For all of these reasons, counsel pressed for a sentence at the bottom of the guideline range of 70 to 87 months.

In response, the district court addressed none of Petitioner's arguments. Although the court claimed that it had "considered all arguments that [counsel for Petitioner] has made," the court never indicated what those arguments were or why they had been rejected. (J.A. 54). Instead, the court said only that it did not "think a sentence at the bottom of the advisory guideline range would be sufficient in light of the need for specific deterrence and just punishment." (J.A. 56). The court found that "[t]hose two, in particular" warranted a sentence of 84 months, which was

nearly the top of the advisory range. (J.A. 57). But in announcing its sentence, the court said nothing about Petitioner's relatively limited exposure to custodial sentencing, his inexperience with the federal system, his cooperation with the federal prosecution, or his positive attitude towards rehabilitation. Nor did the court address Petitioner's contention that a lower guideline sentence would satisfy the sentencing objectives of deterrence, just punishment, and protection of the public.

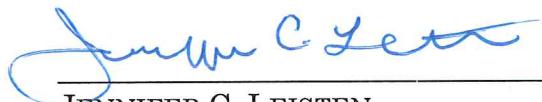
In short, the sentencing court failed to address or acknowledge Petitioner's "nonfrivolous reasons for imposing a different sentence" and failed to "explain why [it] rejected those arguments" in a sufficiently detailed manner to permit meaningful appellate review. *Rita*, 551 U.S. at 357; *accord Gall*, 552 U.S. at 50. Because failure to adequately explain the chosen sentence constitutes "significant procedural error," the district court erred in sentencing Petitioner. *Id.* at 51. The Court of Appeals likewise erred in affirming the judgment. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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