

No. 19-5182

IN THE SUPREME COURT OF THE UNITED STATES

GEOVANNY ANTONIO LOYOLA-VILLEGAS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

NOEL J. FRANCISCO
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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Petitioner contends (Pet. 5-12) that the court of appeals erred in applying plain-error review to his claim that his sentence is substantively unreasonable. He notes (Pet. 6, 12) that a similar issue is pending before this Court in Holguin-Hernandez v. United States, cert. granted, No. 18-7739 (June 3, 2019), and contends (Pet. 12) that this Court should likewise grant review in his case. Contrary to his contention, the petition for a writ of certiorari should be denied.

1. Petitioner was convicted of illegally reentering the United States after having been removed, in violation of 8 U.S.C. 1326. Pet. App. A1. At sentencing, he requested a prison term

below his advisory Sentencing Guidelines range of 24 to 30 months of imprisonment. Sent. Tr. 2-4. The district court denied that request and sentenced petitioner to 24 months of imprisonment. Id. at 4-5. Petitioner did not object to that sentence after it was imposed. Id. at 5; see Pet. App. A1-A2.

On appeal, petitioner contended that his sentence is substantively unreasonable because it is greater than necessary to accomplish the sentencing objectives set forth in 18 U.S.C. 3553(a). Pet. App. A2. The court of appeals stated that, because petitioner did not object to the substantive reasonableness of his sentence in the district court, "plain error review applie[d]." Ibid. (citing United States v. Heard, 709 F.3d 413, 425 (5th Cir.), cert. denied, 571 U.S. 973 (2013)). The court determined, however, that petitioner's substantive-reasonableness claim failed because petitioner had not demonstrated any error. See id. at A2-A3. The court explained that circuit precedent foreclosed petitioner's argument that his sentence was substantively unreasonable on the ground that the illegal-reentry guideline, Sentencing Guidelines § 2L1.2 (2016), "counts a defendant's criminal history twice." Pet. App. A3 (citing United States v. Duarte, 569 F.3d 528, 529-531 (5th Cir.), cert. denied, 558 U.S. 931 (2009)). And the court further determined that petitioner "ha[d] not shown that his sentence reflects an improper balancing of the sentencing factors." Ibid.

2. For the reasons set forth in the government's merits brief in Holguin-Hernandez, a criminal defendant who has advocated for a shorter term of imprisonment at sentencing need not separately object after the sentence is announced in order to preserve a claim that a longer term of imprisonment is substantively unreasonable. Gov't Br. at 15, 20-31, Holguin-Hernandez, supra (No. 18-7739).¹ The government therefore agrees that the court of appeals erred in stating that plain-error review applied to petitioner's claim that his sentence is substantively unreasonable. However, because the decision below did not depend on the plain-error standard of review, no reason exists to grant review or to hold this petition for the Court's decision in Holguin-Hernandez.

Plain error requires a complaining party to establish that (1) the district court committed an error; (2) the error is "clear" or "obvious" under the law at the time of review; and (3) the error "affect[ed] [the party's] substantial rights." United States v. Olano, 507 U.S. 725, 732-735 (1993). If the complaining party does so, a court may exercise its discretion to correct an error if "the error seriously affects the fairness, integrity, or public reputation of judicial proceedings." Id. at 732 (brackets, citation, and internal quotation marks omitted).

¹ We have served petitioner with a copy of the government's brief in Holguin-Hernandez.

The panel in this case concluded that petitioner's substantive-reasonableness challenge failed because petitioner did not establish that the district court committed any legal error at all. See Pet. App. A2-A3. In particular, the court determined that petitioner's argument based on Sentencing Guidelines § 2L1.2's purported double-counting lacked merit and was foreclosed by circuit precedent. See id. at A3. The court further determined that petitioner had "not shown that his sentence reflects an improper balancing of the sentencing factors." Ibid. Together, those findings refute any claim of error, even without the additional limits that plain-error review imposes on relief for forfeited claims. See Gall v. United States, 552 U.S. 38, 56 (2007) (explaining that a substantive-reasonableness claim asserts that "the District Judge abused his discretion in determining that the § 3553(a) factors supported [the] sentence").

Because petitioner could not make out even a threshold showing of error, his substantive-unreasonableness claim would fail under any standard of review. The plain-error standard of review thus did no work in this case, and the Court's decision in Holguin-Hernandez will therefore have no effect on the correctness of the decision below. The petition for a writ of certiorari should accordingly be denied.²

² The government waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General

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