

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

UNITED STATES,
Respondent,

v.

WILLIAM GAUDET,
Petitioner.

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

PETITION FOR WRIT OF CERTIORARI

Submitted October 29, 2019 by:

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QUESTIONS PRESENTED

- I. WHETHER THE APPEALS COURT ERRED IN UPHOLDING THE DISTRICT COURT'S DENIAL OF THE PETITIONER'S MOTION *IN LIMINE* SEEKING TO EXCLUDE THE PRIOR TESTIMONY OF JENNY G. AND THE RESULTING CONVICTION.
- II. WHETHER THE APPEALS COURT ERRED IN UPHOLDING THE DISTRICT COURT'S DENIAL OF THE PETITIONER'S MOTION FOR A JUDGEMENT OF ACQUITTAL.
- III. WHETHER THE APPEALS COURT ERRED IN UPHOLDING THE DISTRICT COURT'S SENTENCING OF THE PETITIONER TO LIFE IN PRISON AS TO COUNT ONE AND THIRTY YEARS IN PRISON AS TO COUNT TWO.

PARTIES TO THE PROCEEDING

The only parties to the proceeding below in the United States Court of Appeals for the First Circuit were Petitioner William Gaudet, and Respondent, the United States of America.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	ii
INDEX TO APPENDICES.....	iii
TABLE OF AUTHORITIES.....	iii
OPINIONS BELOW.....	1
JURISDICTIONAL STATEMENT	1
STATEMENT OF CASE	2
1. Proceedings in the District Court	2
2. Proceedings in the First Circuit Court of Appeals	4
REASONS FOR GRANTING CERTIORARI.....	7
1. The First Circuit Court of Appeals Came Made Conclusions That Conflicts with the Federal Rules Evidence, Rule 403, and Supreme Court Precedent	7
2. The Appeals Court Erred In Affirming the District Court’s denial of Petitioner’s Motion for a Judgement of Acquittal, As Doing So Was Contrary the Requirements of 18 U.S.C. §§ 2423(a) and 2423(b).....	9

3. The First Circuit Court of Appeals Affirmation of the District Court’s Sentence Was Made In Conflict With the Federal Sentencing Guidelines and U.S. Supreme Court Precedent.....	10
CONCLUSION.....	13

INDEX TO APPENDICES

APPENDIX	APP. A1
APPENDIX A	APP. A1
APPENDIX B	APP. B1
APPENDIX C.....	APP. C1

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT CASES

<i>Old Chief v. U.S.</i> , 519 U.S. 172 (1997).....	7
<i>Unites States v. Dunnigan</i> , 507 U.S. 87 (1993).....	11
<i>United States v. Booker</i> , 543 U.S. 220 (2005)	12

CIRCUIT CASES

<i>Martinez v. Cui</i> , 608 F.3d 54 (1st Cir. 2010)	4
<i>United States v. Gaudet</i> , 933 F.3d 11 (1st Cir. 2019)	1, 13
<i>United States v. Shinderman</i> , 515 F.3d 5 (1st Cir. 2008)	113

UNITED STATES STATUTES

18 U.S.C. § 2423(a).....	2, 5, 6, 9
18 U.S.C. § 2423(b)	2, 5, 6, 9

18 U.S.C. § 3231	2
18 U.S.C. § 3553(a).....	12
28 U.S.C. § 1291	2
28 U.S.C. § 1254(2).....	2

OTHER AUTHORITIES

Federal Rule of Criminal Procedure 29	3, 10
Federal Rule of Evidence 403	4, 7, 8
Federal Rule of Evidence 413	8
Federal Rule of Evidence 414	8
USSG § 3C1.1	3, 11
USSG § 3C1.1, comment n. 1(c)	11

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the First Circuit in *United States v. Gaudet*, 933 F.3d 11 (1st Cir. 2019).

OPINIONS BELOW

The decision of the United States of Appeals for the First Circuit, attached as Appendix A, filed as *United States v. Gaudet*, can be found at 933 F.3d 11 (1st Cir. 2019). The decision of the District Court regarding Petitioner's *Motion In Limine* which the Court of Appeals reviewed is attached hereto as Appendix B, and was filed as *United States v. Gaudet*, No. 2:16-cr-173-GZS (D. Me. 2017). The sentence imposed by the District Court, also filed as *United States v. Gaudet*, No. 2:16-cr-173-GZS (D. Me. 2017).

JURISDICTIONAL STATEMENT

This is an appeal from the following orders by the First Circuit Court of Appeals and the United States District Court for the District of Maine: On November 16, 2017 the jury found William Gaudet guilty on counts one and two. On November 14, 2017 and November 16, 2017, the District Court denied the Petitioner's Motions for Acquittal. On May 1, 2018 the District Court sentenced Mr. Gaudet to, *inter alia*, a term of life imprisonment. On August 1, 2019, the First

Circuit affirmed William Gaudet's conviction for following the District Court denying the Petitioners' Motion *in Limine* to exclude the testimony of Jenny G. and the conviction that resulted from such testimony, as well as Petitioner's Motion for a Judgement of Acquittal and Petitioner's objection to the sentence imposed by the District Court. The District Court had jurisdiction under 18 U.S.C. § 3231. The First Circuit Court of Appeals had jurisdiction under 28 U.S.C. § 1291. This Honorable Court has jurisdiction under 28 U.S.C. § 1254(2).

STATEMENT OF CASE

1. Proceedings in the District Court

On December 14, 2016, the Government indicted William Gaudet on one count of Transportation of a Minor with the Intent to Engage in Criminal Sexual Activity under 18 U.S.C. § 2423(a), and one count of Travel with the Intent to Engage in Illicit Sexual Conduct under 18 U.S.C. § 2423(b). Petitioner pled not guilty to both counts.

On October 2, 2017 the Petitioner filed a Motion *In Limine* seeking to, *inter alia*, exclude the Government from introducing into evidence at trial a transcript or recording of the prior testimony of the Petitioner's now deceased daughter Jenny G., wherein she alleges that the Petitioner committed sexual abuse against her. With regard to the first incident, the transcript details Jenny G's testimony wherein she described an incident when she was 12 years old and the Defendant rubbed her

breast for approximately 10 minutes. The Petitioner's Motion *In Limine* also sought the exclusion of the state court conviction that resulted from said testimony. The Government filed their Response to Petitioner's *Motion in Limine* on October 16, 2017. The Petitioner filed his Reply to the Government's Response on October 24, 2017. Ultimately, in an Order dated November 9, 2017, the District Court denied the Defendant's *Motion in Limine* and permitted the Government to introduce the evidence in question.

The Petitioner's jury trial took place between November 13, 2017 and November 16, 2017. Following both sides presenting their evidence, Petitioner moved the District Court to grant his Motion for a Judgement of Acquittal, under Rule 29 of the Federal Rules of Criminal Procedure, arguing that the Government had not offered sufficient evidence for a jury to conclude that Petitioner was guilty. The District Court denied this motion. At the close of trial, the jury returned guilty verdicts on both counts. Petitioner renewed his earlier Rule 29 Motion, which was also denied.

On May 1, 2018, the District Court sentenced the Petitioner to a total term of imprisonment of life as to count one, and 360 months (30 years) on count two, to be served concurrent to one another but consecutive to the Petitioners' sentence imposed in New Hampshire. The District Court's sentence represented the maximum allowable as to both counts one and two.

2. Proceedings in the Circuit Court

On May 1, 2018, the Defendant timely filed his Notice of Appeal to the First Circuit Court of Appeals. On appeal, Petitioner made three arguments. First, Petitioner maintained that the past testimony of Jenny G. and New Hampshire conviction¹ was unfairly prejudicial, and with a low probative value.² Petitioner argued that the testimony and past conviction was therefore improperly admitted by the District Court. To support this position, Petitioner cited to *Martinez v. Cui*, which applies Rule 403 of the Federal Rules of Evidence to accusations of sexual assault. 608 F.3d 54 (1st Cir. 2010). Petitioner argued that to admit his past conviction and the testimony that related to different conduct unfairly led the jury to convict him.

Conversely, the Government argued that the testimony at issue was relevant, and therefore passed any Rule 403 scrutiny. In doing so, the Government contended that the District Court had not abused its discretion, and that even though the testimony was prejudicial, it was not unfairly prejudicial.

Second, Petitioner argued that the District Court erred when it denied Petitioner's Motions for Acquittal. This argument involved inconsistencies in two separate interviews conducted with the alleged victim, T.G, over a period of

¹ Petitioner is currently serving a sentence on a New Hampshire state court matter.

² At the time of Petitioner's trial, Jenny G. was deceased and therefore unavailable to testify.

several months. Petitioner also argued that the Government had not satisfied its burden under 18 U.S.C. §§ 2423(a), and 2423(b), to show that Petitioner had intended to travel in interstate commerce, as is required by the Statute.

The Government countered that the testimony at issue was properly admitted, and therefore the District Court correctly denied the motion.

Finally, Petitioner argued that the life sentence and thirty-year sentence that were imposed by the District Court, which was increased due to Petitioner allegedly offering false testimony were also done in error. Petitioner pointed out that, to apply the enhancement for perjury under U.S.S.G. § 3C1.1, there must be an independent finding that the testimony was offered willfully. Petitioner went on to argue that the District Court failed to take into account all factors when sentencing Petitioner to the maximum allowable sentence, including Petitioner's advanced age.

The Government took the position that the sentence was appropriate, that the Petitioner did commit perjury, that the District Court correctly found so, and that the sentence was not issued in an abuse of discretion.

On August 1, 2019, the First Circuit Court of Appeals issued its decision, authored by Judge David J. Barron, wherein it upheld the decision of the District Court.

As it pertains to the Petitioners contention that the testimony of Jenny G.

was admitted in evidence, the First Circuit held that Jenny’s testimony was “directly probative” to Petitioner’s intent. App. A12. It also held that any issues with T.G.’s testimony could be dismissed due to Jenny T’s testimony “corroborating” T.G.’s testimony. App. A12-A13.

The First Circuit held that there was sufficient, credible evidence for the District Court to conclude that Petitioner’s Motion for a Judgement of Acquittal should be denied. App. A5-A9. In reviewing the evidence, the First Circuit took the evidence in a “verdict-friendly” light. After weighing the testimony admitted at trial, the denial of motion for judgement of acquittal was affirmed by the Appeals Court. Notably, the First Circuit found that while both 18 U.S.C. §§ 2423(a), and 2423(b) require that the Government prove beyond a reasonable doubt that Petitioner travelled through interstate commerce, they had satisfied that burden through other evidence. App. A7-A9.

In terms of the sentence that the District Court handed down, the First Circuit stated that because Petitioner provided willful and deliberate testimony, that the District Court was “well-positioned to assess” the evidence presented, and that the sentence should stand. App. A15- A16. The Appeals Court also disposed of Petitioner’s argument that his advanced age and other mitigating factors did not need to be considered because the District Court had already considered those factors. App. A17.

This appeal follows.

REASONS FOR GRANTING WRIT

1. The First Circuit Court of Appeals Came Made Conclusions That Conflicts with the Federal Rules Evidence, Rule 403, and Supreme Court Precedent.

This Honorable Court should grant Certiorari because the First Circuit Court of Appeals issues a decision that conflicts with the purpose of Rule 403 of the Federal Rules of Evidence, and, subsequently, the precedent of This Honorable Court.

Rule 403 of the Federal Rules of Evidence states that “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger . . . unfair prejudice . . .” Fed. R. Evid. 403. 403 is always a fact specific inquiry, and courts are generally provided latitude to make such determinations. Still, Rule 403 exists to ensure that those who would be treated unfairly certain evidence are not done so when such evidence has a low probative value or is unreliable.

This Honorable Court has provided limited guidance on how Rule 403 should be applied. “Such improper grounds certainly include generalizing from a past bad act that a defendant is by propensity the probable perpetrator of the current crime.” *Old Chief v. U.S.*, 519 U.S. 172, 180 (1997). Additionally, This Honorable Court has not taken up a 403 analysis since *Old Chief*, which was

decided over twenty years ago. The courts below would benefit greatly from a Rule 403 clarification by This Honorable Court.

In its opinion, The First Circuit took the position that Petitioner's *Motion in Limine* was properly rejected. App. A.9-A14. In doing so, the Appeals Court gave great deference to the District Court. App. A.9. However, given the ruling of the District Court, this deference was made in error. Importantly, Jenny T's testimony was not made regarding any incident involving T.G. or any other member of Petitioner's family. It was limited to her experiences, and she was not available to be cross examined at trial. App. A.2-A.3. This fact alone indicates the low probative value of Jenny's testimony.

Ultimately, the determinations of the District Court and of the Appeals Court were made contrary to Rule 403. While Rules 413³ and 414⁴ exist just to admit evidence of this very nature, when it came to this case, Rule 403 should have been applied in order to keep out the testimony at issue. Jenny T's past testimony and Petitioner's New Hampshire State Court convictions clearly had the effect of shocking the conscience of the jurors, and were only probative for propensity. Notably, these convictions do not show any propensity for Petitioner to cross state lines in order to commit sex crimes, as is required by 18 U.S.C. §§ 2423(a) and

³ Rule 413 of the Federal Rules of Evidence allows for a court to admit evidence of a past committed sexual assault.

⁴ Rule 414 of the Federal Rules of Evidence allows for a court to admit evidence of a past committed child molestation.

2423(b). Furthermore, there were available to the Government less unfairly prejudicial evidence, including the testimony of T.G.. To permit the past conviction and testimony of Jenny G. to be admitted, the District Court all but ensured that the jurors would develop a negative perspective of the Petitioner, and they were likely to find him guilty, regardless of the quality of evidence presented.

2. The Appeals Court Erred In Affirming the District Court's denial of Petitioner's Motion for a Judgement of Acquittal, As Doing So Was Contrary the Requirements of 18 U.S.C. §§ 2423(a) and 2423(b)

Next, This Honorable Court should grant Certiorari because the First Circuit Court of Appeals erred when it affirmed the dismissal of Petitioner's Motion for a Judgement of Acquittal. When it denied that motion, the Appeals Court failed to observe that a critical portion of the Statute under which Petitioner was prosecuted had not been satisfied and no evidence was offered to support this. This amounts to clear error, which This Honorable Court should reverse, as the decision of the Appeals Court failed to follow the law of the Federal Government.

18 U.S.C. §§ 2423(a) states that:

[a] person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, . . . with the intent that the individual engage in . . . any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

Similarly, 18 U.S.C. § 2423(b) provides that, "[a] person who travels in interstate commerce . . . for the purpose of engaging in any illicit sexual conduct with

another person shall be fined under this title or imprisoned not more than 30 years, or both.” 2423(b) and 2324(b) both require “intent” or “purpose” of engaging in the illegal sexual conduct, meaning that a separate intention is required, aside from any intention to otherwise engage in sexual conduct.

Rule 29 of the Federal Rules of Criminal Procedure states that on a Motion for a Judgment of Acquittal a “court may reserve decision on the motion . . .” F. Crim. P. 29. This gives courts discretion to determine if the evidence presented at trial was sufficient to uphold a guilty verdict.

At trial, Petitioner maintained that he did travel through interstate commerce, and that his intention at the time of the alleged incidents was to bring his children whale watching. App. A7. Rather than requiring that the Government provide proof, or show proof that Petitioner had a history of travelling across State lines in order to engage in illicit sexual activity, the First Circuit looked to its own case law and determined that intention could be inferred based on prior alleged illicit sexual conduct, which did not involve travelling through interstate commerce. App. A8-A9.

Because all elements of a crime must be proven beyond a reasonable doubt, the District Court erred in denying Petitioners’ Motion for a Judgment of Acquittal, and the First Circuit erred in affirming that denial.

3. The First Circuit Court of Appeals Affirmation of the District Court’s Sentence Was Made In Conflict With the Federal Sentencing

Guidelines and U.S. Supreme Court Precedent

Finally, This Honorable Court should grant Certiorari because the First Circuit Court of Appeals affirmed a sentencing decision that was made in error and ultimately conflicts with the U.S. sentencing guidelines and the opinion of This Honorable Court. In sentencing Petitioner to life in prison on count one and 30 years in prison on count two, the District Court exceeded its discretion when it determined that Petitioner had committed perjury in giving his testimony.

Petitioner was sentenced under Section 3C1.1 of the U.S. Sentencing Guidelines, which states:

If (1) the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction, and (2) the obstructive conduct related to (A) the defendant's offense of conviction and any relevant conduct; or (b) a closely related offense, increase the offense level by 2 levels.

The comments to this section, in pertinent part, state that “committing suborning, or attempting to suborn perjury” is an example of the type of conduct to which this enhancement applies. USSG Section 3C1.1, comment., n. 1(c) (Nov. 1989). This Honorable Court has stated, in determining what constitutes perjury for purposes of this sentencing enhancement, “we rely upon the definition that has gained general acceptance and common understanding under the federal criminal perjury statute, 18 U.S.C. Section 1621.” *U.S. v. Dunnigan*, 507 U.S. 87, 94 (1993). Under 18 U.S.C. Section 1621, “[a] witness testifying under oath or

affirmation [commits perjury] if he gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory.” *Id.*

This Honorable Court has clarified that the when applying the Federal Sentencing Guidelines, “[a]ny fact (other than a prior conviction) which is necessary to support a sentence exceeding the maximum authorized by the facts established by a plea of guilty or a jury verdict must be admitted by the defendant or proved to a jury beyond a reasonable doubt.” *United States v. Booker*, 543 U.S. 220, 244 (2005). While that case pertained to sentences that exceed the maximum, it shows This Honorable Court’s hesitation towards excessive sentencing.

The sentencing court committed a procedural error in determining the Defendant’s sentence as they failed to properly consider the factors set forth in Section 3553(a) of the Sentencing Guidelines. 18 U.S.C. § 3553(a). Notably, § 3553(a) sets forth numerous factors aimed at guiding the sentencing court in “impos[ing] a sentence sufficient, but not greater than necessary,” to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment, to deter criminal conduct, and to protect the public. 18 U.S.C. § 3553(a)(1)-(2).

The First Circuit stated that it upheld the sentence that the District Court had imposed because it found “no error in the District Court’s application of the

obstruction of justice enhancement.” App. A.16. This determination was itself, an error. Importantly, there was no finding of perjury, independent of the sentence imposed by the District Court. While the Appeals Court cited its own precedent, *U.S. v. Shinderman*, that precedent permits for a determination of perjury without an independent finding, and therefore also should be overturned. 515 F.3d 5 (1st Cir, 2008).

Furthermore, the sentence handed down by the District Court was greater than what was necessary given the seriousness of the alleged crime, the need for deterrence of similar crimes, and other considerations listed under § 3553(a)(1)-(2). By affirming an excessive sentence, the First Circuit committed a procedural error that This Honorable Court should reverse.

CONCLUSION

For all of the above reasons, this court should grant a Writ of Certiorari to the United States Court of Appeals for the First Circuit so that it may review and vacate the decision below in *United States v. Gaudet*, 933 F.3d 11 (1st Cir. 2019), and remand the case with instructions that follow this Petition.

DATED at Portland, Maine, this 29th day of October, 2019.

Respectfully submitted,

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