

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

FIDEL RIOS, JR.,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the 8th Circuit Court of Appeals and District Court for the Southern District of Iowa failed to adequately consider the sentencing factors set forth in 18 U.S.C. § 3553(a) when they imposed a sentence below the Guidelines range, but did not vary downward more based upon the life circumstances of the defendant.

LIST OF PARTIES

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

RELATED PROCEEDINGS

United States District Court (S.D. Iowa.);

United States v. Rios, No. 4:17-cr-00125-SMR-CFB-2 (August 24, 2018)

United States Court of Appeals (8th Circ.):

United States v. Fidel Rios, No. 18-3697 (August 24, 2018)

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PRAYER

Petitioner prays that a writ of certiorari be granted to review the judgment entered by the United States Court of Appeals for the Eighth Circuit for this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit in petitioner's case is attached to this petition as Appendix A. Court of appeals order denying rehearing is attached as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The district court's jurisdiction was based upon 18 U.S.C. § 3231. On March 26, 2018, Rios pled guilty to Conspiracy to Distribute Methamphetamine. Rios was sentenced on August 24, 2018 in Iowa's Southern District Court. Rios filed a timely notice of appeal which was granted on November 9, 2018 through a text order. The jurisdiction of the court of appeals was based upon 28 U.S.C. § 1291.

STATUTORY PROVISIONS INVOLVED

18 U.S. Code § 3553(a) – Imposition of a sentence

(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement—
 - (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S. Code § 3231 – District Courts

The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States.

Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof.

28 U.S. Code § 1254 - Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

- (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S. Code § 1291 - Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

STATEMENT OF THE CASE¹

This petition addresses the appellate and trial courts' abuse of discretion by failing to adequately consider the factors set forth in 18 U.S.C. 3553(a) when Petitioner received a downward variance of 15% from the minimum sentence set forth in the Sentencing Guidelines. Petitioner, Fidel Rios, Jr., seeks review of the district and appellate court decisions which resulted in his 306-month sentence. Petitioner argues the court abused its discretion when it sentenced him to an unnecessarily long sentence. Specifically, Mr. Rios pled guilty; however, he is challenging his 306-month sentence because even though the trial court sentenced him to less than the minimum Guidelines sentence, it failed to adequately weigh his life circumstances as a mitigating factor that would lead to a further downward variance. The failure to weigh his life circumstances appropriately with the methamphetamine guidelines resulted in a sentence that was higher than necessary and unreasonable. If the court had properly weighed his life circumstances along the Guidelines, the court would have entered a sentence closer to the 240-month mandatory minimum for this offense. A downward adjustment from 306 months is therefore appropriate due to Mr. Rios' unique circumstances.

The court in Rita v. U.S. held that a guideline sentence can be afforded a presumption of reasonableness while still giving higher courts the ability to correct mistakes in sentencing. Specifically, “[i]n sentencing, as in other areas, district

¹ The undersigned counsel is a CJA-appointed lawyer on this case and has been directed by Mr. Rios to submit this Petition for Writ of Certiorari. The undersigned counsel is not admitted to the Supreme Court Bar and appears before this Court under Supreme Court Rule 9. See 18 U.S.C. § 3006A(d)(7).

judges at times make mistakes that are substantive. At times, they will impose sentences that are unreasonable. Circuit courts exist to correct such mistakes when they occur.” U.S. v. Kane, 639 F.3d 1121, 1135 (8th Cir. 2011) (quoting Rita v. United States, 551 U.S. 338, 341 (2007)). When a district court fails to adequately consider the § 3553(a) factors, it cannot be said that any sentence imposed is reasonable. Though the sentence Mr. Rios received was below the 360-month minimum recommended by the Guidelines, it was above the mandatory minimum of 240 months for his specific offense. In this case, by merely paying lip service to the § 3553(a) factors, the district court sentenced Mr. Rios to 306 months, whereas if it had adequately considered the 3553(a) factors, it would have sentenced him to something closer to the 240-month minimum. Because the district court did not adequately consider the § 3553(a) factors, this sentence should be reviewed with more scrutiny and less deference to the district court.

Mr. Rios grew up in a struggling household. His childhood was ruled by chaos and instability. Mr. Rios grew up with six sisters, but his father was deported multiple times. (Sent. Tr. p. 10). After his father’s deportation, Mr. Rios was forced into the role of the head of the household. *Id.* With that event, the weight of many responsibilities fell upon him, including the financial well-being of his family. *Id.* Mr. Rios was forced to witness family members engage in crime and had to navigate the ins and outs of the drug trade at a young age. *Id.* Mr. Rios is himself now a father. He has young children—children who will be in their late twenties and thirties upon his release if he were to serve the 306-month sentence. If this

happens, he will be absent from the lives of his children in just the same way his father was missing from his, perpetuating the cycle of recidivism and criminality that he inherited.

Petitioner argues the trial court and appellate court abused their discretion when imposing a 306-month sentence in this case. The courts also failed to consider the shortcomings of the Methamphetamine Guidelines and abused their discretion when imposing a sentence of more than 240 months. By acting thus, Mr. Rios claims the 8th Circuit denied him meaningful review.

ARGUMENT

I. THIS WRIT SHOULD BE GRANTED BECAUSE THE DISTRICT COURT AND COURT OF APPEALS FAILED TO ADEQUATELY CONSIDER THE SENTENCING FACTORS SET FORTH IN 18 U.S.C. 3553(a), EVEN THOUGH MR. RIOS' SENTENCE WAS BELOW THE GUIDELINES RANGE FOR HIS OFFENSE.

The sentencing factors in this case weigh in favor of sentence below the Guidelines range. The district court's failure to impose a sentence closer to the mandatory minimum in this regard was an abuse of discretion, because it failed to adequately consider the sentencing factors set forth in 18 U.S.C. 3553(a).

A. Standard of Review

Appellate review of a trial court's sentencing decision is for abuse of discretion. Gall v. U.S., 552 U.S. 38, 46 (2007) (citing U.S. v. Booker, 543 U.S. 220, 260-62 (2005)). "When we review the imposition of sentences, whether inside or outside the Guidelines range, we apply 'a deferential abuse-of-discretion standard.'" U.S. v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (citing United States v. Hayes,

518 F.3d 989, 995 (8th Cir. 2008) (quoting Gall, 128 S. Ct. at 597; U.S. v. Zelaya, 397 F3d. Appx. 279 (8th Cir. 2010))).

B. The District Court Abused its Discretion by Not Imposing a Sentence Closer to 240 Months, the Mandatory Minimum for this Offense.

“A district court abuses its discretion when it (1) ‘fails to consider a relevant factor that should have received significant weight’; (2) “gives significant weight to an improper or irrelevant factor”; or (3) “considers only the appropriate factors but in weighing those factors commits a clear error of judgment.” Feemster, 572 F.3d at 461 (citing United States v. Kane, 552 F.3d 748, 752 (8th Cir. 2009)) (overruled/judgement vacated on other grounds).

An improper sentence can result from either a procedural or substantive error. A procedural error includes “failing to calculate (or improperly calculating) the Guidelines range, treating the Guidelines as mandatory, failing to consider the S. 3553(a) factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence—including an explanation for any deviation from the Guidelines range.” Feemster, 572 F.3d at 461 (citing Gall, 128 S.Ct. at 597). “Before reaching the substantive reasonableness of the sentence, ‘we must first ensure that the district court committed no significant procedural error, such as ... failing to adequately explain the chosen sentence – including an explanation for any deviation from the guidelines range.’ U.S. v. Pepper, 518 F.3d 949, 951 (8th Cir, 2008) (quoting Gall, 128 S. Ct. at 597).

Moreover, “[a]ssuming that the district court’s sentencing decision is procedurally sound, the appellate court should then consider the substantive

reasonableness of the sentence imposed under an abuse-of-discretion standard.” Gall, 128 S. Ct. at 586. In addressing substantive error, the reviewing court must “take into account the totality of the circumstances, including the extent of any variance from the guidelines range.” Feemster, 572 F.3d at 461 (citing Gall, 128 S.Ct. at 597). “No objection is needed to preserve an attack on the substantive reasonableness of a sentence.” U.S. v. Bain, 586 F.3d 634, 641 (8th Cir. 2009) (quoting United States v. Wiley, 509 F.3d 474, 476-77 (8th Cir. 2007)).

What the United States Supreme Court said in Rita holds true today: “In sentencing, as in other areas, district judges at times make mistakes that are substantive. At times, they will impose sentences that are unreasonable. Circuit courts exist to correct such mistakes when they occur.” U.S. v. Kane, 639 F.3d 1121, 1135 (8th Cir. 2011) (quoting Rita v. United States, 551 U.S. 338, 341 (2007)). The Supreme Court has unequivocally stated that “federal courts of appeals review federal sentences and set aside those they find ‘unreasonable.’” Rita, 551 U.S. at 341. “[W]e believe that the Supreme Court meant what it said in the Rita opinion and elsewhere about our duty to correct sentencing mistakes.” Kane, 639 F.3d at 1135 (citing U.S. v. Irey, 612 F.3d 1160, 1165 (11th Cir. 2010)). As the Eleventh Circuit stated in Irey, “substantive review exists, in substantial part, to correct sentences that are based on unreasonable weighing decisions.” Irey, 612 F.3d at 1194.

The Federal Sentencing Guidelines are only advisory in nature; that is, they serve as a starting point for the court to consider in fashioning a sentence. Rita v.

U.S., 551 U.S. 338, 358 (2007). Even with the availability of the Guidelines, the court is required to tailor the sentence in light of other statutory concerns.

Kimborough v. U.S., 552 U.S. 85, 101 (2007). The guidelines are a benchmark that then filters through the factors specified in 18 U.S.C. 3553(a). See Rita, 551 U.S. at 358. Some factors that the Court must consider in 3553(a) include:

The nature and circumstances of the offense and the history and characteristics of the defendant;
The need for the sentence imposed;
The kinds of sentences available;
The need to avoid unwarranted sentencing disparity; and
The need to provide restitution.
18 U.S.C. §3553(a).

The Court is to consider these factors in fashioning an appropriate sentence, but can also impose a different sentence based on policy disagreements with the guidelines.

Kimborough, 552 U.S. at 101; see also Spears v. U.S., 555 U.S. 261 (2009). The keystone of sentencing is what is sufficient: “[t]he Court shall impose a sentence sufficient, but not greater than necessary” to serve the purposes of sentencing. 18 U.S.C. 3553(a); Gall, 552 U.S. at 43.

At sentencing, Mr. Rios provided a multitude of reasons why the Court should impose a sentence of 240 months, the mandatory minimum sentence for his offense. The Court did not give enough weight to these factors and committed an abuse of discretion when it imposed a 306-month sentence, notwithstanding the fact that the sentence was already below the Guidelines range.

B. The Methamphetamine Guidelines are not Empirically Sound and Not in Line with the Commission’s Stated Purposes.

The question of whether the Federal Sentencing Guidelines for distribution of Methamphetamine are sound and should be strictly followed is a legal lightning rod in the federal judiciary. It is not a secret that the Federal Sentencing Guidelines relating to meth are quite severe. “The severe sentences mandated by the ADAA are triggered by weight ‘as the sole proxy to identify major and serious dealers, ignoring the role of the offender.’” U.S. v. Hayes, 948 F. Supp.2d 1009, 1021 (N.D. Iowa 2013) (citing Kimbrough v. U.S., 552 U.S. 85, 95 (2007)). The Anti-Drug Abuse Act of 1986 has been sharply criticized by many in the legal community. Justice Scalia compared the commission who created these severe sentences based on weight of drugs to a “sort of junior varsity Congress,” suggesting that “the Commission lacked expertise in penology and responded quickly to political pressure.” Mistretta v. U.S., 488 U.S. 361, 427 (1989).

“The current guidelines distinguish between two forms of methamphetamine powder: actual and mixture.” Hayes, 948 F. Supp. 2d at 1024. The ratio reflected by the guidelines for penalties for a pure vs. mixed meth substance is 10:1. It is commonly recognized that “no other drug is punished more severely based on purity.” Hayes, 948 F. Supp.2d at 1025 (citing Amy Baron-Evans, Deconstructing the Meth Guidelines, Presentation for the Sentencing Resource Counsel, Federal Public and Community Defenders, at 12, available at txn.fd.org/Meth.pps). These shortcomings have led courts in the Eighth Circuit to depart significantly from the guidelines, which punish meth far too harshly by using an outdated methodology

focused on drug purity. U.S. v. Hayes, 948 F. Supp. 2d 1009, 1014-15 (N.D. Iowa 2013); U.S. v. Nawanna, 321 F. Supp. 3d 943, 955-58 (N.D. Iowa 2018).

The problem is the Guidelines were never supposed to be static, but “evolutionary in nature, and policy disagreements provide a valuable function in the process of constantly improving them.” Hayes, 948 F. Supp. 2d at 1031. Courts have realized this, and in light of the flaws some have reduced the guideline range for Methamphetamine cases by one-third as a starting point. *Id.* As the Honorable Mark W. Bennett stated, “[t]his one-third reduction is a good starting point and a reasonable way to express my policy disagreement with the Guidelines.” *Id.* “After reducing the Guidelines range by one-third to account for my policy disagreement, I will reserve the ability to adjust the figure upwards or downwards as I weigh the 18 U.S.C. section 3553(a) factors.” *Id.*, see also Spears v. U.S., 555 U.S. 261, 261-68 (2009).

It would have been appropriate for the District Court in this case to begin its Guideline analysis by reducing the range of the sentence by one-third. Doing so would have given Mr. Rios a low-end Guideline range of 240 months, the mandatory minimum in this case. Instead, the Court only reduced the low-end Guideline calculation by fifteen percent, a variance of 54 months, resulting in the given sentence of 306 months. This conflicts with the directive provided by § 3553: that the court is only to “impose a sentence that is sufficient, but not greater than necessary, to support the purposes [of sentencing].” 18 U.S.C. § 3553(a). A 240-month sentence is sufficient in this case; a 306-month sentence is greater than

necessary. The district court should have given a larger variance in light of the policy disagreements that have been exhibited in the Eighth Circuit. Given these shortcomings, the court committed an unreasonable weighing decision when only giving a fifteen percent variance and abused its discretion by not imposing a variance of one third, 120 months, as a starting point to account for the shortcomings of the Methamphetamine Guidelines. A variance of one-third would have resulted in the argued-for sentence of 240 months.

C. Mr. Rios' Life Circumstances as an 18 U.S.C. § 3553(a) Factor: His Upbringing and Responsibility to his Family

It was Mr. Rios's upbringing that forced his entry into the drug business. He spent significant portion of his childhood with neither a father, nor a father-figure. (Sent. Tr. p. 10). His dad was deported multiple times sending stress cascading throughout Mr. Rios' family. *Id.* Upon each deportation, he was again forced to shoulder the load of caring for his family. *Id.* Even at a young age, he was forced to take charge and provide for them. *Id.* As in so many other cases, these pressures sent him searching for stability in the arms of the drug trade.

There was also a dearth of good role models in Mr. Rios' life as a child. Throughout his younger years, many people in his family used drugs, while some were even in the business of manufacturing and trafficking them. *Id.* Mr. Rios saw this; to him, the drug business *was* the family business. *Id.* Having good role models can change a life. Family and friends that a person can look up to are critical to the development of children and young adults. Unfortunately for Mr. Rios, the people

who were supposed to educate him, protect him, and form him were engaged in the drug business themselves. *Id.*

In light of his personal history, it is wholly unsurprising that Mr. Rios ended up in the drug trade. It was the only path he knew that would provide reasonable security for him and his six sisters; and sadly, he went with what he knew. After he was convicted of drug trafficking for the first time, Mr. Rios ended up in prison. When he got out, he tried making something of his life. He tried finding a job and getting a better education. *Id.* However, as a branded felon, finding a good job and getting an education proved extraordinarily difficult. So, he again returned to what he knew: selling and trafficking drugs. *Id.* This cycle has now culminated in the district court's imposition of a greater-than-necessary 25.5 year, or 306-month, sentence.

If Mr. Rios had a father and a normal childhood, he probably would never have started dealing drugs in the first place. Most devastating in this case is the fact that his young children will now grow up without a father of their own. This puts his children at tremendous risk to descend into the cycle of crime that Mr. Rios fell into. Although to some the five-year difference between 240 and 306 months seem small, to Fidel Rios and his children the difference is massive.

The district court is required to impose a sentence that is sufficient, but not greater than necessary, to support the purposes of sentencing after weighing the factors in section 3553(a). 18 U.S.C. § 3553(a). Twenty years is sufficient time to receive an education and training, participate in counseling and treatment, and to

protect society from further offenses. The 306-month sentence imposed by the court in this case does not serve these purposes any better than a 240-month sentence would. However, that extra five years is a lot to Mr. Rios given the average male life span of 78.6 years. That extra five years is also a lot to his children, who deserve a role model and father to provide for them in exactly the ways Mr. Rios lacked growing up.

The district court did not afford the proper amount of weight to Mr. Rios' past or circumstances surrounding his early life. In fact, the court didn't give it any consideration at all. The district court's only variance at sentencing surrounded disagreement with the Methamphetamine guidelines, meaning not even a one-day variance was given which accounted for Mr. Rios's tragic upbringing and premature transition into adulthood. (Sent. Tr. p. 19). The Court's failure to give this factor any weight was an unreasonable weighing decision. Thus, the Court abused its discretion imposing the 306-month sentence in this case without weighing this factor.

As counsel for the defendant pointed out at the sentencing hearing, twenty years is a long time. (Sent. Tr. p. 12). In the last twenty years there have been four presidents, September 11, and two major U.S. wars in the Middle East. Twenty years is well over twenty-five percent of the average male lifespan of 78.6 years, and when you consider statistics about the effect incarceration has on a life-span, it's well above that. (DCD538 p. 7). Some research indicates that each year spent in prison shortens life expectancy by 2-years. (DCD538 p. 7) (citing Incarceration

Shortens Life Expectancy, Emily Wildra, Article, Prison Policy Initiative, Available at http://www.prisonpolicy.org/blog/2017/06/26/life_expectancy). A twenty-year sentence allows Mr. Rios to receive the training and education he needs, and will give him plenty of time to think about his actions and how they have led him to miss all the important events in the lives of his children. A twenty-year sentence still gives Mr. Rios the opportunity to put his life together and become a productive member of society when he is released. Twenty years in prison puts Mr. Rios in his fifties upon release. Considering the ages of his children, twenty years is a high price to pay. It is for these reasons that this Court should reverse the sentence of the district court and opinion of the court of appeals and remand the case for Mr. Rios to be given a sentence in light of these factors and considerations surrounding his childhood history and the Methamphetamine Guidelines. Such a sentence would be one that is sufficient, and not greater than necessary, to support the purposes of sentencing. 18 U.S.C. § 3553(a).

II. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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ATTORNEY FOR PETITIONER

Dated: November 12, 2019.

No. _____

SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA,
Respondent.

PROOF OF SERVICE

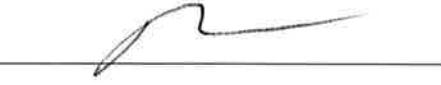
I, Nicholas Sarcone, do swear or declare that on this date, November 12, 2019, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Solicitor General of the United States Room 5614
Department of Justice, 950 Pennsylvania Ave., N.W.
Washington D.C. 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12, 2019.



Nicholas Sarcone

APPENDIX A – Court of Appeals Opinion

United States Court of Appeals
For the Eighth Circuit

No. 18-3697

United States of America

Plaintiff - Appellee

v.

Fidel Rios, Jr., also known as Lito

Defendant - Appellant

Appeal from United States District Court
for the Southern District of Iowa - Des Moines

Submitted: May 17, 2019

Filed: August 14, 2019

[Unpublished]

Before SMITH, Chief Judge, WOLLMAN, and KOBES, Circuit Judges.

PER CURIAM. _____

After supplying significant amounts of methamphetamine to a drug trafficking operation in Des Moines, Fidel Rios, Jr. pleaded guilty to conspiracy to distribute a controlled substance in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A), 846, and 851. Rios conceded at sentencing that the applicable range for his crime under the

APPENDIX A- Court of Appeals opinion

U.S. Sentencing Guidelines was 360 months to life in prison. The district court¹ granted a fifty-four month downward variance from the bottom of this range, resulting in a sentence of 306 months. Rios appeals, claiming his sentence is substantively unreasonable because the district court should have varied downward even more. We affirm the district court.

We review the substantive reasonableness of a sentence under an abuse of discretion standard. United States v. Feemster, 572 F.3d 455, 461 (8th Cir. 2009) (en banc). An abuse of discretion occurs where a court “(1) fail[s] to consider a relevant factor that should have received significant weight; (2) giv[es] significant weight to an improper or irrelevant factor; or (3) consider[s] only the appropriate factors but in weighing them, commit[s] a clear error of judgment.” United States v. Stoner, 795 F.3d 883, 884 (8th Cir. 2015).

Rios first argues that the district court abused its discretion by giving insufficient weight to the flaws in the Guidelines’ treatment of methamphetamine offenders. At Rios’s sentencing hearing, the district court made special mention of its belief that the Guidelines are generally too strict in this context. Sent. Tr. at 17-18. Yet it also went on to note “that this is a harder argument to make” for Rios because he was “a leader” in the organization and “had so much methamphetamine above and beyond even the highest base offense level” Id. at 17. The court further explained: “You’re not the person with 50 grams of meth and one prior. You’re the guy with hundreds of pounds of very pure meth and one prior, and you were still on supervised release at the time you rounded up all these people and got back into drug trafficking.” Id. at 18.

¹ The Honorable Stephanie M. Rose, United States District Judge for the Southern District of Iowa.

APPENDIX A- Court of Appeals opinion

District courts are not required to vary downward for methamphetamine offenders. See United States v. Sharkey, 895 F.3d 1077, 1082 (8th Cir. 2009) (holding that a district court did not abuse its discretion in declining to vary downward from the Guidelines' in the methamphetamine context). And Rios's claim is particularly unconvincing, where his sentence is already fifty-four months below the advisory guidelines range. See United States v. Merrell, 842 F.3d 577, 585 (8th Cir. 2016) ("[W]hen a district court has sentenced a defendant below the advisory guidelines range, it is nearly inconceivable that the court abused its discretion in not varying downward still further") (quotation omitted). Add to this Rios's leadership role in the conspiracy and the significant amount of drugs he trafficked, and we conclude that Rios's sentence is not substantively unreasonable.

Rios next argues that the district court abused its discretion by failing to properly weigh his difficult upbringing and ongoing family responsibilities. We disagree. At sentencing, Rios's counsel advanced much the same mitigation case he makes on appeal: his father's absence had a negative impact on his life, he was adversely influenced by family members in the drug business, and a long prison sentence will continue this cycle and harm his young children. Sent. Tr. at 9-14. The district court indicated that it considered these arguments, see id. at 15, but decided that they were outweighed by such factors as Rios's leadership role, the late date of his guilty plea, and the quantity of drugs involved. Id. at 18. "Where a district court in imposing a sentence makes an individualized assessment based on the facts presented, addressing the defendant's proffered information in its consideration of the § 3553(a) factors, such sentence is not unreasonable." (cleaned up). United States v. Meadows, 866 F.3d 913, 920 (8th Cir. 2017).

We affirm.