

No. _____

In the

Supreme Court of the United States

Jamal Marquise Collins,

Petitioner,

v.

United States of America,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether parties to a criminal proceeding must make timely objections to the unreasonableness of a sentence?

Subsidiary question: whether the case should be held pending *Holguin-Hernandez*, __U.S.__, 139 S.C.t 2666 (June 3, 2019), and potentially remanded in light of that forthcoming authority?

PARTIES TO THE PROCEEDING

Petitioner is Jamal Marquise Collins, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jamal Marquise Collins seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The written judgment of conviction and sentence was entered September 14, 2018, and is reprinted as Appendix A. The unpublished opinion of the Court of Appeals is available as *United States v. Collins*, 779 Fed. Appx. 282 (5th Cir. October 11, 2019) (unpublished). It is reprinted in Appendix B to this Petition.

JURISDICTION

The opinion and order of the Court of Appeals affirming the sentence was issued October 11, 2019. *See* [Appx. B]. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

FEDERAL STATUTES AND RULES INVOLVED

Section 3553(a) of Title 18 of the United States Code provides:

(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.[1]
- (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.

Federal Rule of Criminal Procedure 51 provides:

Preserving Claimed Error

- (a) **Exceptions Unnecessary.** Exceptions to rulings or orders of the court are unnecessary.
- (b) **Preserving a Claim of Error.** A party may preserve a claim of error by informing the court—when the court ruling or order is made or sought—of the action the party wishes the court to take, or the party's objection to the court's action and the grounds for that objection. If a

party does not have an opportunity to object to a ruling or order, the absence of an objection does not later prejudice that party. A ruling or order that admits or excludes evidence is governed by Federal Rule of Evidence 103.

STATEMENT OF THE CASE

A. District Court Proceedings

Petitioner Jamal Marquise Collins showed enormous academic promise in high school, *see* (Record in the Court of Appeals, 131)(PSR, ¶58), but had difficulty finding a decently paying job after he graduated, *see* (Record in the Court of Appeals, 132)(PSR, ¶¶61-68). He moved out of his mother's home and began to experience homelessness. *See* (Record in the Court of Appeals, 130-131)(PSR, ¶52). Though he worked a string of service sector jobs, he could not find one that paid more than minimum wages. *See* (Record in the Court of Appeals, 132)(PSR, ¶¶61-68).

Around that time, he began to accumulate theft convictions of various kinds. When he was 18, he sustained a misdemeanor conviction for taking \$150 from the register while working at the dollar store. *Record in the Court of Appeals*, 127). A few months later, he received a felony burglary conviction and, ultimately, a sentence of three years. *See* (Record in the Court of Appeals, 127-128). He sustained another misdemeanor trespass conviction at age 22 (the record does not show the underlying facts), and another misdemeanor theft conviction for stealing clothing a few months after that. *See* (Record in the Court of Appeals, 128).

After Mr. Collins pleaded guilty to violating 18 U.S.C. §922(g) (for stealing firearms from his worksite and selling them for \$150 apiece), *see* (Record in the Court of Appeals, 122-124), the district court called this criminal history "very disturbing," (Record in the Court of Appeals, 106). Though the Sentencing Guidelines called for a sentence of just 30-37 months imprisonment, the court

imposed 50 months. *See* (Record in the Court of Appeals, 108).

To explain the sentence, the district court recounted the defendant's criminal history, including a series of alleged violations of his state parole (for the prior burglary). *See* (Record in the Court of Appeals, 106-108). These alleged violations included an unadjudicated theft offense for which Mr. Collins suffered arrest on February 7, 2017. *See* (Record in the Court of Appeals, 107, 128)(PSR ¶37). The Presentence Report (PSR) contained no information about any of the conduct other than the bare allegations, the fact and date of the theft arrest, and the fact that the allegations had been presented in motions to revoke. *See* (Record in the Court of Appeals, 128)(PSR ¶37). In spite of this dearth of information, the court "f[ou]nd from a preponderance of the evidence that he did" commit the violations. (Record in the Court of Appeals, 107). It specifically found that he committed the theft offense referenced by the PSR, stating:

One of the violations was having committed the offense of theft of property of 100 to \$750, and apparently there were some other serious violations.

(Record in the Court of Appeals, 107).

After imposing sentence, the district court immediately asked the defendant and counsel whether they had reviewed a notice of the right to appeal. *See* (Record in the Court of Appeals, 112). Upon hearing that they had done so, the court abruptly ordered the defendant into custody and excused defense counsel. *See* (Record in the Court of Appeals, 112). Counsel responded with an objection "to the substantive and procedural reasonableness of the sentence." (Record in the Court of Appeals, 112).

The district ignored this objection entirely and proceeded to excuse the prosecutor. *See* (Record in the Court of Appeals, 112). It had earlier chastised defense counsel for failing to “remember[] what you want to say and say it all at one time and do it, instead of doing it piecemeal as you normally do.” (Record in the Court of Appeals, 104).

B. Proceedings on Appeal

Petitioner appealed, contending that the district court erred in basing his sentence on the mere fact of a theft arrest. This arrest, he noted, arose from an incident about which the PSR provided no more detail than the date of arrest, name of alleged offense, and jurisdiction. Reliance on such scant detail, he contended, contravened the precedent of the court below. *See United States v. Johnson*, 648 F.3d 273, 277 (5th Cir. 2011). Although he conceded that he did not provide an elaborate post-sentencing objection, he urged the court to relax its standards for preserving a reasonableness claim given the manifest disinterest of the district court in entertaining it. Specifically, he noted that the district court ignored the objection when made and excused the prosecutor. Further, it had actively discouraged him from elaborating an objection after it was made.

The court of appeals, however, found the objection inadequate and applied plain error review. *See* [Appx. B, at 1-2]. Finding the district court’s comments about the arrest “ambiguous” it declined to find that any error was clear or obvious. *See* [Appx. B, at 2]. It did not provide any information about how it would have resolved the case on plenary review. *See* [Appx. B, at 2].

REASONS FOR GRANTING THE PETITION

I. **There is a reasonable probability of a different result if the court below is instructed to reconsider its decision in light of *Holguin-Hernandez*, __U.S.__, 139 S.Ct. 2666 (June 3, 2019).**

The length of a federal sentence is determined by the district court's application of 18 U.S.C. §3553(a). *See United States v. Booker*, 543 U.S. 220, 261 (2005). A district court must impose a sentence that is adequate, but no greater than necessary, to achieve the goals set forth in 18 U.S.C. §3553(a)(2). *See* 18 U.S.C. §3553(a)(2). The district court's compliance with this dictate is reviewed for reasonableness. *See Rita v. United States*, 551 U.S. 338, 359 (2007). In *Gall v. United States*, 552 U.S. 38 (2007), this Court emphasized that all federal sentences, “whether inside, just outside, or significantly outside the Guidelines range” are reviewed on appeal “under a deferential abuse-of-discretion standard.” *Gall*, 552 U.S. at 51. This encompasses both substantive reasonableness claims – claims that the sentence is, for whatever reason, simply too long – and procedural reasonableness claims – claims that assert errors in the sentencing process. *See id.*

The court below regarded the defendant's claim of procedural unreasonableness unpreserved, due to its lack of specificity. *See* [Appx. B at 1-2]. Applying plain error review, it then affirmed for want of a showing of clear or obvious error. *See* [Appx. B at 2]. It did not say that it would have affirmed in the face of an adequate objection. *See* [Appx. B at 2].

This Court will decide whether substantive reasonableness challenges require specific objection in *Holguin-Hernandez v. United States*, __U.S.__, 139 S.Ct. 2666

(June 3, 2019)(granting certiorari). The court below did not treat the claim below as one involving substantive reasonableness, *see* [Appx. B at 1-2], but the forthcoming opinion *Holguin-Hernandez* may nonetheless affect the outcome below. The Petitioner and the government have both argued that substantive reasonableness objections are futile, meaningless exercises. *See* Brief for the Petitioner in *Holguin-Hernandez v. United States*, No. 18-7739, at 23 (Filed July 29, 2019), *available at* https://www.supremecourt.gov/DocketPDF/18/18-7739/117355/20190927163222298_18-7739%20-%20Holguin-Hernandez%20Opening%20Brief%20FINAL.pdf; *last visited January 9, 2020*; Brief for the United States in *Holguin-Hernandez v. United States*, No. 18-7739, at 28 (Filed 2019) (“...no reason exists to think that such a formulaic objection would prompt any further consideration by the district court.”), *available at* https://www.supremecourt.gov/DocketPDF/18/18-7739/109674/20190729165823270_18-7739bsUnitedStates.pdf; *last visited January 9, 2020*.

In the event that the Court embraces these arguments – presented by both parties -- in the forthcoming opinion, the result will be a new precedent holding that the adequacy of an objection must be evaluated in light of its potential utility. Thus, in *Holguin-Hernandez*, the parties contend that stating the grounds for a lesser sentence should suffice as a substantive reasonableness objection because offering a formal post-sentencing objection is generally futile. Similarly here, the defense offered a spare procedural reasonableness objection, but did not elaborate further.

The court below held this inadequate, but did not consider the evidence that further elaboration would have been futile: the court’s decision to ignore the decision utterly and summarily terminate the proceedings rather than rule, and the court’s prior admonishment not to make “piecemeal” objections.

It is thus reasonably probable that the opinion in *Holguin-Hernandez* could change the standard of review in this case. And the sole ground for decision below – the absence of clear or obvious error – relies entirely on the plain error standard of review. *See United States v. Olano*, 507 U.S. 725, 732 (1993). Under these circumstances, it is appropriate to hold the instant petition, and if *Holguin-Hernandez* results in a relevant opinion, grant the instant petition, vacate the judgment below and remand for reconsideration. *See Lawrence v. Chater*, 516 U.S. 163, 167 (1997).

CONCLUSION

Petitioner requests that this Court grant his Petition for Writ of Certiorari.

Respectfully submitted,

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