

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH JAMES ROE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

PETITIONER'S MOTION TO PROCEED ON WRIT OF CERTIORARI

IN FORMA PAUPERIS

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Attorney for Petitioner
Joseph James Roe

**MOTION TO PROCEED ON WRIT OF CERTIORARI
IN FORMA PAUPERIS**

Pursuant to Rule 39 of this Court, Petitioner JOSEPH JAMES ROE requests leave to file the accompanying Petition for Writ of Certiorari without prepayment of fees or costs, and to proceed *in forma pauperis*.

Petitioner has previously been granted leave to proceed *in forma pauperis* in the United States Court of Appeals for the Sixth Circuit pursuant to 18 U.S.C. § 3006A. A copy of the Sixth Circuit Court's order appointing undersigned counsel for the direct appeal is appended hereto.

A handwritten signature in black ink, appearing to read "Susan K. Massey", is written over a horizontal line.

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Filed: January 22, 2019

Ms. Susan K Massey
Law Offices
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Brentwood, TN 37027

Re: Case No. 18-1891, *USA v. Joseph Roe*
Originating Case No. : 5:15-cr-20581-1

Dear Counsel,

This confirms your appointment to represent the defendant in the above appeal under the Criminal Justice Act, 18 U.S.C. § 3006A.

You must file your appearance form and order transcript within 14 days of this letter. The appearance form and instructions for the transcript order process can be found on this court's website. Please note that transcript ordering in CJA-eligible cases is a two-part process, requiring that you complete both the financing of the transcript (following the district court's procedures) and ordering the transcript (following the court of appeals' docketing procedures). Additional information regarding the special requirements of financing and ordering transcripts in CJA cases can be found on this court's website at <http://www.ca6.uscourts.gov/criminal-justice-act> under "Guidelines for Transcripts in CJA Cases."

Following this letter, you will receive a notice of your appointment in the eVoucher system. That will enable you to log into the eVoucher system and track your time and expenses in that system. To receive payment for your services at the close of the case you will submit your voucher electronically via eVoucher. Instructions for using eVoucher can be found on this court's website. Your voucher must be submitted electronically no later than 45 days after the final disposition of the appeal. *No further notice will be provided that a voucher is due.* Questions regarding your voucher may be directed to the Clerk's Office at 513-564-7078.

Finally, if you become aware that your client has financial resources not previously disclosed or is no longer eligible for appointed counsel under the Criminal Justice Act, please contact the Clerk or Chief Deputy for guidance.

Sincerely yours,

s/Ken Loomis
Administrative Deputy
Direct Dial No. 513-564-7067

cc: Ms. Cheryl Borkowski
Ms. Adriana Dydell
Ms. Regina R. McCullough
Mr. Joseph James Roe
Mr. David J. Weaver

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PETITION FOR WRIT OF CERTIORARI

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Joseph Roe

QUESTION PRESENTED

Whether a district court may impose a sentence enhancement under USSG § 3B1.1(a) for leadership role based on a factor not mentioned in the Sentencing Guideline or commentary, namely the court's belief that the defendant's role was "essential" to the crime.

PARTIES TO THE PROCEEDINGS

The parties to the proceedings are named in the caption of the case before this Court.

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA,
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**On Petition for Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

PETITION FOR WRIT OF CERTIORARI

Petitioner Joseph Roe respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's opinion is unreported, but is reproduced in Appendix A to this petition. The District Court's judgment is reproduced in Appendix B.

JURISDICTION

The Sixth Circuit issued its opinion on October 11, 2019. This petition is filed within 90 days of that date and is therefore timely. *See* Sup. Ct. R. 13.1 and 13.3. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, STATUTORY, AND GUIDELINES PROVISIONS INVOLVED

1. U.S. Const. amend V provides:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. USSG §3B1.1. Aggravating Role, provides:

Based on the defendant's role in the offense, increase the offense level as follows:

(a) If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, increase by 4 levels.

(b) If the defendant was a manager or supervisor (but not an organizer or leader) and the criminal activity involved five or more participants or was otherwise extensive, increase by 3 levels.

(c) If the defendant was an organizer, leader, manager, or supervisor in any criminal activity other than described in (a) or (b), increase by 2 levels.

Commentary

Application Notes:

1. A "participant" is a person who is criminally responsible for the commission of the offense, but need not have been convicted. A person who is not criminally responsible for the commission of the offense (e.g., an undercover law enforcement officer) is not a participant.

2. To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants. An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.

3. In assessing whether an organization is “otherwise extensive,” all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive.

4. In distinguishing a leadership and organizational role from one of mere management or supervision, titles such as “kingpin” or “boss” are not controlling. Factors the court should consider include the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others. There can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy. This adjustment does not apply to a defendant who merely suggests committing the offense.

Background: This section provides a range of adjustments to increase the offense level based upon the size of a criminal organization (i.e., the number of participants in the offense) and the degree to which the defendant was responsible for committing the offense. This adjustment is included primarily because of concerns about relative responsibility. However, it is also likely that persons who exercise a supervisory or managerial role in the commission of an offense tend to profit more from it and present a greater danger to the public and/or are more likely to recidivate. The Commission’s intent is that this adjustment should increase with both the size of the organization and the degree of the defendant’s responsibility.

In relatively small criminal enterprises that are not otherwise to be considered as extensive in scope or in planning or preparation, the distinction between organization and leadership, and that of management or supervision, is of less significance than in larger

enterprises that tend to have clearly delineated divisions of responsibility. This is reflected in the inclusiveness of §3B1.1(c).

STATEMENT OF THE CASE

Petitioner Joseph Roe's struggles with alcohol and drug addiction began at age 10. Mr. Roe's drug problems worsened in the ensuing four decades, leading him through the revolving door of (largely) property crimes, jail sentences, release, and then parole violations resulting in more custodial time and often new charges. In 2014 Mr. Roe was living with his girlfriend, "SK." SK had a long-standing addiction to painkillers, which she had begun taking many years earlier after her neck was fractured in a car accident. SK got her opiate prescriptions from a local physician, Doctor Mark Buzzard. Dr. Buzzard also prescribed opiates for one of Mr. Roe's friends, co-defendant John Thorn.

Doctor Buzzard owned and operated a psychiatric and addiction treatment center in West Bloomfield, Michigan. The clinic was in reality a large scale "pill mill" which came to the attention of the DEA when a pharmacist alerted federal authorities to Dr. Buzzard's excessive prescribing. The DEA determined that between 2012 and December of 2015, Dr. Buzzard prescribed more than **2,006,635** unit dosages of controlled substances with an estimated street value of more than **\$13,000,000**.

Mr. Roe never met or communicated with Dr. Buzzard. Instead, he bought prescription opiates from SK, John Thorn, and three other patients of Buzzard's clinic and resold the pills at a profit. The five patients who sold their pills to Mr. Roe had long-standing issues with chronic pain and/or addiction; they were not otherwise healthy people newly introduced to opiate abuse. Mr. Roe did, however, enable the patients by giving them cash to pay for office appointments and to fill prescriptions. He sometimes

arranged rides to the clinic and to the pharmacy, and occasionally provided “dirty” urine should Dr. Buzzard ask the patient to provide a urine sample. According to the government’s estimates, Roe distributed, or helped to distribute, nearly 20,000 pills to buyers in Michigan, Kentucky and Tennessee.

The government filed a 33-count First Superseding Indictment charging Mr. Roe, Dr. Buzzard, and five codefendants with various drug trafficking offenses. All seven defendants ultimately entered guilty pleas to a single count of conspiracy with intent to possess and distribute controlled substances in violation of 21 U.S.C. §§ 841(a)(1) and 846, in exchange for the government’s agreement to dismiss the remaining drug charges.

The Presentence Investigation Report (“PSR”) recommended a four-level increase in the base offense level, asserting that Mr. Roe was an organizer or leader pursuant to USSG § 3B1.1(a). Defense counsel refuted the PSR’s assertion that Mr. Roe had “recruited” patients to obtain drugs from Dr. Buzzard.¹ It was acknowledged that Mr. Roe had taken advantage of an opportunity to divert drugs. However, counsel argued that Dr. Buzzard, and not Mr. Roe, was the de facto leader or organizer of the opioid diversion conspiracy. There was no evidence that Dr. Buzzard and Mr. Roe had worked in concert

¹ Defense counsel submitted affidavits (filed under seal) from the five patients who sold pills to Mr. Roe, describing their various medical problems and their relationships with Dr. Buzzard. All five had legitimate medical problems including chronic pain and addictions. Moreover, not all of the pills Dr. Buzzard prescribed were diverted to Mr. Roe. The patients kept varying amounts of the prescribed medications for their own use. The district court partially granted this defense objection, ordering that the PSR be amended to state that Mr. Roe “identified,” rather than “recruited” the patients.

or even knew each other. While Mr. Roe occasionally helped patients with rides and money for prescriptions, and bought some of their pills for resale, he had not "managed" or controlled these people in the sense envisioned in USSG §3B1.1(a). Dr. Buzzard reaped the greatest profits, and without his willingness to disregard his Hippocratic oath no diversion could have occurred.

The district court imposed the four-level USSG §3B1.1(a) enhancement over Mr. Roe's objections. Referring to Guideline Application Note 4, the court commented on the relative positions of Mr. Roe and Dr. Buzzard:

So I'm on 3B1.1 aggravating role A. If he was an organizer or a leader of a criminal activity that involved five or more participants or was otherwise extensive increased by four levels. And application note 4 says somebody doesn't have to be a kingpin or a boss and that factors that should be considered is whether they had decisionmaking authority, the nature of the participation, the claimed right to a larger share of the fruits of the crime.

Dr. Buzzard is -- was living in some sort of almost dilapidated house in West Bloomfield. I mean, if we look at who shared in the fruits of this crime, we're looking at who shared in the fruits of the crime. And I'm looking at Mr. Roe when I say that.

So I think -- let's disregard how many patients were recruited patients. We can just look at or was otherwise extensive. And this was an extensive ongoing large scale opioid pill mill. And your client was the central figure in it and had the connection between patients, pills, transportation, sells in Tennessee and elsewhere. So I have no doubt that the case material support this enhancement. So the objection is denied.

The district court emphasized Mr. Roe's "essential role" in the offense as the primary factor in its decision to enhance his sentence by four levels under § 3B1.1(a). The district court's comments reveal the importance it placed on Mr. Roe's function in distributing the drugs, and indicate that, in the court's view, Mr. Roe and Dr. Buzzard were equally culpable:

But distribution has to be interrupted. And the doctors are a part of it. They're in thick as thieves and they need to be held accountable. But they can't get these pills onto the street without the assistance of someone like Mr. Roe because they are not on the street corners.

On appeal, the Sixth Circuit upheld the district court's imposition of the enhancement citing Mr. Roe's "key role in ensuring that the drugs transitioned from pharmacies to the streets." Appendix A, Sixth Circuit Opinion at p. 1.

REASONS FOR GRANTING THE WRIT

I. THE COURT SHOULD GRANT CERTIORARI TO ENSURE CERTAINTY AND FAIRNESS IN GUIDELINE SENTENCING, AND TO PROVIDE GUIDANCE TO LOWER COURTS APPLYING USSG § 3B1.1.

Sentencing Guideline § 3B1.1 allows for an increase in a the base offense level where a defendant is found to have acted as a leader or organizer in the crime. The government bears the burden of establishing the elements of a §3B1.1 enhancement by a preponderance of the evidence. *United States v. Lewis*, 68 F.3d 987 (6th Cir. 1995). The District Court is obliged to make an explicit factual finding as to whether or not the government has met its burden of proof. *United States v. Torres*, 47 F.3d 1172 (6th Cir. 1995). Factors relevant to determining leadership role include “the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense . . . and the degree of control and authority exercised over others.” *United States v. Castilla-Lugo*, 699 F.3d 454, 460 (6th Cir. 2012) (quoting USSG § 3B1.1, cmt. n. 4). See also, *United States v. Lalonde*, 509 F.3d 750 (6th Cir. 2007).

Here the district court emphasized Mr. Roe’s “essential role” in the offense as the primary factor in its decision to enhance his sentence by four levels under § 3B1.1(a).

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The Sixth Circuit upheld the district court's imposition of the enhancement, noting Mr. Roe's "key role in ensuring that the drugs transitioned from pharmacies to the streets." Appx. A, Sixth Circuit Opinion at p. 1.

The commentary and application notes pertaining to § 3B1.1 are extensive, and nowhere is the significance of the defendant's role mentioned as a relevant consideration. While the sentencing court has considerable latitude under the Guidelines, its discretion is not unlimited. "[T]o ensure certainty and fairness in sentencing, district courts must operate within the framework established by Congress." *United States v. Rosales-Miralez*, __ U.S. __, 138 S.Ct. 1897, 1903, 201 L.Ed.2d 376 (2018), citing and quoting *United States v. Booker*, 543 U.S. 220, 264, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). "Courts must begin their analysis with the Sentencing Guidelines and remain cognizant of them throughout the process." *Peugh v. United States*, 569 U.S. 530, 541, 133 S.Ct. 2072, 186 L.Ed.2d 84 (2013), quoting, *Gall v. United States*, 552 U.S. 38, 50, n. 6, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007) (emphasis in original).

A defendant's importance in connection with a crime does not, however, mean that s/he exercised managerial control over other participants or otherwise served as a leader

for purposes of § 3B1.1. The Tenth Circuit has considered this distinction in several cases challenging the application of a § 3B1.1(a). In *United States v. Torres*, 53 F.3d 1129 (10th Cir. 1995), the Court of Appeal stressed that a defendant's "relative importance to the organization" is distinct from "whether he was a leader or organizer who exhibited control over . . . other individuals," as required for a § 3B1.1(a) enhancement. *United States v. Torres, supra*, 53 F.3d at 1143. See also, *United States v. Sallis*, 533 F.3d 1218, 1223 (10th Cir. 2008), emphasizing that "[Section] 3B1.1(a) is an enhancement for organizers or leaders, not for important or essential figures." The Sixth Circuit's decision to uphold the enhancement in Mr. Roe's case appears to be in direct conflict with the approach taken in the Tenth Circuit which has clearly held that "relative importance" or "essential role" is not relevant to § 3B1.1.


This Court has never addressed the question of whether a sentencing court commits procedural error where it enhances a sentence under § 3B1.1(a) based on considerations not mentioned in the guideline or the commentary. Further guidance is needed to ensure fair sentencing for the thousands of defendants subject to a significant increase in their sentences based on a § 3B1.1 enhancement. Additionally, as the Court recently observed, the "public legitimacy of our justice system relies on procedures that are "neutral, accurate, consistent, trustworthy, and fair," and that, "provide opportunities for error correction." *United States v. Rosales-Miralez, supra*, 138 S.Ct. at 1908, quoting Bowers & Robinson, *Perceptions of Fairness and Justice: The Shared Aims and Occasional Conflicts of Legitimacy and Moral Credibility*, 47 Wake Forest L.Rev. 211,

215–216 (2012). A grant of certiorari in Mr. Roe’s case would serve these fundamental aims.

CONCLUSION

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

Respectfully submitted,


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January 9, 2020

Attorney for Petitioner
Joseph James Roe

APPENDIX A

United States v. Roe

Decided Oct 11, 2019

No. 18-1891

10-11-2019

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOSEPH JAMES ROE, Defendant-Appellant.

GRIFFIN, Circuit Judge.

NOT RECOMMENDED FOR PUBLICATION
File Name: 19a0512n.06 ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN BEFORE: MOORE, McKEAGUE, and GRIFFIN, Circuit Judges. GRIFFIN, Circuit Judge.

In this criminal sentencing appeal, defendant Joseph James Roe claims the district court erred in applying U.S.S.G. § 3B1.1(a)'s four-level "organizer or leader" enhancement and in imposing a below-Guidelines sentence. We affirm.

I.

As part of a multiple-defendant criminal conspiracy, Roe obtained and distributed nearly 20,000 prescription narcotics in Michigan, Kentucky, and Tennessee. The scheme was straightforward. Dr. Mark Buzzard unscrupulously used his opiate-addiction clinic in suburban Detroit to facilitate the distribution of controlled substances to the illegal market. Defendant played a key role in ensuring the drugs transitioned from pharmacies to the streets—he arranged transportation for the "patients" to Dr. Buzzard's clinic, provided money to cover their costs associated with their visits, and supplied urine samples to make sure they qualified as "patients"

2 *2 in need of certain prescription drugs. The "patients" would then sell all or a portion of their prescriptions to Roe, who would arrange for their distribution—mostly in Tennessee where the drugs were sold for substantial profit. Aided by a concerned pharmacist who reported Dr. Buzzard's extraordinary prescription practice, the Drug Enforcement Agency discovered and dismantled the scheme.

A grand jury indicted seven individuals on various drug trafficking charges for their respective roles in the conspiracy, including Dr. Buzzard and Roe. Defendant pleaded guilty to conspiracy to possess with intent to distribute and to distribute controlled substances in violation of 21 U.S.C. § 846, and the government agreed to dismiss his other charges. The presentence report recommended classifying defendant as an organizer or leader under U.S.S.G. § 3B1.1(a), thus increasing his offense level by four. Over Roe's objection, the district court adopted this recommendation, and calculated his Guidelines range as 235 to 240 months. It then varied downward and imposed a 144-month sentence. Roe appeals, objecting to the 3B1.1(a) enhancement and claiming his sentence is substantively unreasonable.

II.

Section 3B1.1(a) of the Sentencing Guidelines increases by four a defendant's offense level if "the defendant was an organizer or leader of a criminal activity that involved five or more participants." The government must establish this adjustment applies by a preponderance of the evidence. *United States v. Mack*, 808 F.3d 1074,

1085 (6th Cir. 2015). We review a district court's factual findings for clear error, and its legal conclusion that a person was an organizer or leader under Section 3B1.1 deferentially. *United States v. Washington*, 715 F.3d 975, 983 (6th Cir. 2013).

We have repeatedly held that "[i]n general, a defendant must have exerted control over at least one individual within a criminal organization for the enhancement of § 3B1.1 to be *3 warranted." *United States v. Vandenberg*, 201 F.3d 805, 811 (6th Cir. 2000) (internal quotation marks omitted); *see also United States v. Baker*, 559 F.3d 443, 449 (6th Cir. 2009). To decide whether a defendant was an "organizer or leader," the Guidelines direct district courts to consider a number of factors, including "the exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others." § 3B1.1 cmt. n.4. "A district court need not find each factor in order to warrant an enhancement." *United States v. Castilla-Lugo*, 699 F.3d 454, 460 (6th Cir. 2012).

Ample evidence supports the district court's application of the 3B1.1(a) enhancement. Not only did Roe make sure that Dr. Buzzard's "patients" had access to the clinic (both physically and monetarily), he then bought their prescriptions, and supervised the interstate distribution of their prescribed narcotics. As the district court appropriately observed, "this was an extensive ongoing large scale opioid pill mill. . . . [Roe] was the central figure in it and had the connection between patients, pills, transportation, [and sales]." Because he "organiz[ed] key features of the conspiracy and direct[ed] the actions of his coconspirators," *United States v. Sierra-Villegas*,

774 F.3d 1093, 1101 (6th Cir. 2014), we accord the district court's conclusion the deference it deserves.

To his credit, Roe conceded below that he played a significant role in the conspiracy. Yet he argues the district court erred because without Dr. Buzzard prescribing the drugs in the first instance, the conspiracy would not have succeeded. That may be true, but as we have noted in another pill mill case, this I-was-culpable-but-not-as-culpable argument is inconsistent with 3B1.1's language. "[T]here can, of course, be more than one person who qualifies as a leader or organizer of a criminal conspiracy. Although [other defendants] all played important roles in the *4 operation, that does not exonerate [him] from a sentencing enhancement premised on [his] leadership actions." *United States v. Sadler*, 750 F.3d 585, 594 (6th Cir. 2014) (internal quotation marks and some alterations omitted); *cf. United States v. Sexton*, 894 F.3d 787, 796 (6th Cir. 2018) ("That [a co-defendant] may have been the actual brains behind the operation . . . does not preclude [the defendant] from being a leader when there is sufficient other evidence of [his] leadership role.").

Thus, we find no reversible error in the district court's application of the 3B1.1(a) sentencing enhancement.

III.

We "consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." *Gall v. United States*, 552 U.S. 38, 51 (2007). A district court imposes a substantively unreasonable sentence by "selecting the sentence arbitrarily, basing the sentence on impermissible factors, failing to consider pertinent § 3553(a) factors, or giving an unreasonable amount of weight to any pertinent factor." *United States v. Webb*, 403 F.3d 373, 385 (6th Cir. 2005) (footnotes omitted). A sentence within the Guidelines range is entitled to a presumption of reasonableness and where, as here, a below-Guidelines sentence is imposed, "simple logic compels the conclusion

that . . . defendant's task of persuading us that the more lenient sentence . . . is unreasonably long is even more demanding." *United States v. Curry*, 536 F.3d 571, 573 (6th Cir. 2008).

Roe has not satisfied this "heavy burden." *United States v. Greco*, 734 F.3d 441, 450 (6th Cir. 2013). The district court carefully considered the § 3553(a) factors, mentioning several aspects of Roe's circumstances that justified a significant sentence for a "terribly serious offense." This includes Roe's pivotal role in distributing the
 5 prescription drugs and involving his own son *5 in the conspiracy, as well as his repeated parole violations, and extensive criminal history. Yet the district court acknowledged—and gave significant weight to—Roe's own personal struggles with addiction and his family obligations and granted him a "profound downward variance from 20 years to 12 years."

Defendant faults the district court for not going further. In his view, the district court should have imposed a sentence that was less than Dr. Buzzard's 72-month sentence. After all, Dr. Buzzard, in Roe's view, was "by far the most culpable defendant in this case"—he prescribed more than two million dosages of controlled

substances, was better educated, willfully violated his professional obligations, and did not struggle with addiction. But nothing in § 3553(a) requires a district court to consider sentencing disparities among coconspirators. *Id.* at 450-51. And even if the district court was required to do so, it rationally differentiated between the two given the extensive differences in their "range of culpability" and "a range of criminal histories that . . . are tremendously important in the factors of deterrence and protecting the public."

Considering the totality of the circumstances, including the Guidelines, the § 3553(a) factors, the nature of the offense, and Roe's background, the district court did not abuse its discretion in imposing a below-Guidelines sentence of 144-months.

IV.

For these reasons, we affirm the district court's judgment.

APPENDIX B

UNITED STATES DISTRICT COURT

Eastern District Of Michigan

UNITED STATES OF AMERICA

v.

Joseph James Roe

§ JUDGMENT IN A CRIMINAL CASE

§

§

§ Case Number: 0645 5:15CR20581 (1)

§ USM Number: 51394-039

§ **Byron H. Pitts**

§ Defendant's Attorney

THE DEFENDANT:

<input checked="" type="checkbox"/>	pleaded guilty to count(s)	1 of the Superseding Indictment
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	
<input type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	

The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
21 U.S.C. § 841(a)(1) Conspiracy to Possess With Intent to Distribute and to Distribute Controlled Substances	12/31/2015	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s)
- ☒ Count(s) 2 through 19, and 33 ☐ is ☒ are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

07/26/2018

Date of Imposition of Judgment

s/Judith E. Levy

Signature of Judge

JUDITH E. LEVY**UNITED STATES DISTRICT JUDGE**

Name and Title of Judge

July 27, 2018

Date

DEFENDANT: Joseph James Roe
CASE NUMBER: 0645 5:15CR20581 (1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

144 months.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
- The Court recommends the defendant be placed at FCI-Milan, Milan, Michigan, or the next closest institution to his family.
- The Court recommends the defendant complete a comprehensive drug treatment program while incarcerated with the Bureau of Prisons.
- The Court recommends the defendant participate in the Inmate Financial Responsibility Program (IFRP).

- ☒ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Joseph James Roe
CASE NUMBER: 0645 5:15CR20581 (1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : 36 months.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

DEFENDANT: Joseph James Roe
CASE NUMBER: 0645 5:15CR20581 (1)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: Joseph James Roe
CASE NUMBER: 0645 5:15CR20581 (1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall participate in a program approved by the probation department for substance abuse, which may include testing to determine if the defendant has reverted to the use of drugs or alcohol, if necessary.

The defendant shall submit his person, residence, office, vehicle(s), papers, business or place of employment, and any property under his control to a search. Such a search shall be conducted by a United States Probation Officer at a reasonable time and in a reasonable manner based upon a reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to such a search may be grounds for revocation; the defendant shall warn any residents that the premises may be subject to searches.

DEFENDANT: Joseph James Roe
CASE NUMBER: 0645 5:15CR20581 (1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$100.00	Waived	Waived	N/A

- ☐ The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|---|-------------------------------|--|
| <input type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

The Court waives the imposition of a fine, the costs of incarceration and the costs of supervision, due to the defendant's lack of financial resources.

DEFENDANT: Joseph James Roe
CASE NUMBER: 0645 5:15CR20581 (1)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A** ☒ Lump sum payments of \$ 100.00 due immediately. (Special Assessment)
- ☐ not later than _____, or
- ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B** ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C** ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D** ☐ Payment in equal 20 (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E** ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F** ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ Defendant shall receive credit on «dft_his_her» restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:
- Please see Page 8

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT Assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: Joseph James Roe
CASE NUMBER: 0645 5:15CR20581 (1)

ADDITIONAL FORFEITED PROPERTY

Under 21 U.S.C. § 853 and Rule 32.2 of the Federal Rules of Criminal Procedure, Defendant shall forfeit the following property to the United States:

1. 2350 Yax Street, Monroe, Michigan (PARCEL ID: 07-351-004-00);
2. 3853 E. Stein Road, La Salle, Michigan (PARCEL ID NO: 580913041810);
3. 328 Harrison Street, Monroe, Michigan (PARCEL ID NO: 29-00343-000);
4. One (1) 1969 Chevrolet Camaro Z28 VIN: 124379N560347 (Asset ID: 16-DEA-617281);
5. One (1) 1978 Pontiac Firebird Trans Am VIN: 2W87Z8N150421 (Asset ID: 16-DEA-617267);
6. One (1) 2000 Chevrolet Corvette VIN: 1G1YY22GXY5105587 (Asset ID: 16-DEA-617277);
7. One (1) 2011 Dodge Ram 1500 Truck VIN: 1D7RV1CT7BS601360 (Asset ID: 16-DEA-617280);
8. One (1) 2014 Chevrolet Corvette VIN: 1G1YA2D74E5112175 (Asset ID: 15-DEA-616340);
9. Thirty-Five Thousand Four Hundred Twenty-Three Dollars and Sixty-Five Cents (\$35,423.65) in United States Currency from Monroe Bank and Trust account XXXXX8121 (Asset ID: 15-DEA-615990); and
10. Six Thousand Dollars (\$6,000.00) in United States Currency seized on or about October 21, 2014 (Asset ID: 15-DEA-605075).

Defendant shall pay a \$495,144.00 forfeiture money judgment to the United States.

The forfeiture orders entered in this case are incorporated by reference.

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOSEPH JAMES ROE,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

CERTIFICATE OF SERVICE

I, Susan K. Massey, a member of the Bar of this Court, hereby certify that my business address is 9462 Winston Drive, in the City of Brentwood, Williamson County, Tennessee, telephone (615)661-0661; that on January 9, 2020, I served, pursuant to Supreme Court Rule 29, one true copy of the PETITION FOR A WRIT OF CERTIORARI and MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS in the above-entitled matter on the following parties by placing same in an envelope addressed as follows:

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

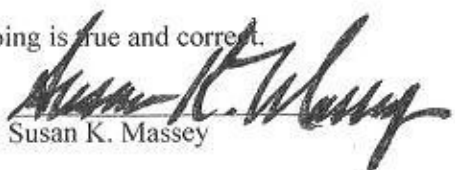
Mr. Joseph J. Roe
Reg. No. 51394-039
FCI Elkton
8730 Scroggs Road
Lisbon, OH 44432
(Petitioner)

Regina R. McCullough
U.S. Attorney's Office
211 W. Fort Street
Suite 2001
Detroit, MI 48226

The envelope was then sealed and deposited in the United States Mail at Brentwood, Tennessee with postage thereon fully prepaid. All persons required to have been served have been served.

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

Signed on January 9, 2020


Susan K. Massey