

No. _____

In the

Supreme Court of the United States

PAUL ANTHONY MONTANEZ,

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

Kevin Joel Page
Assistant Federal Public Defender

Federal Public Defender's Office
Northern District of Texas
525 S. Griffith Street, Suite 629
Dallas, TX 75202
214.767.2746
Joel_Page@fd.org

QUESTIONS PRESENTED

- I. Did the district court impose a plainly unreasonable sentence upon Mr. Montanez?

PARTIES TO THE PROCEEDING

Petitioner is Paul Anthony Montanez, who was the Defendant-Appellant in a court of appeals below. Respondent, the United States of America, was the Plaintiff-Appellee in a court of appeals below.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
TABLE OF AUTHORITIES	iv
PETITION FOR A WRIT OF CERTIORARI.....	1
OPINIONS BELOW	1
JURISDICTION.....	1
STATUTORY AND RULES PROVISIONS.....	1
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THIS PETITION.....	5
I. The district court’s above-Guidelines sentence was plainly unreasonable.	5
CONCLUSION.....	6

TABLE OF AUTHORITIES

Cases	Page(s)
<i>United States v. Headrick</i> , 963F.2d 777, 779 (5th Cir. 1992)	5
<i>United States v. Chandler</i> , 732 F.3d 434 (5th Cir. 2013)	5
<i>United States v. Kippers</i> , 685 F.3d 491 (5th Cir. 2012)	5
<i>United States v. Miller</i> , 634 F.3d 841 (5th Cir. 2011)	5
<i>United States v. Montanez</i> , ____ F. App'x ____, 2019 WL 6833844 (5th Cir. December 13, 2019)	1
 Statutes	
18 U.S.C. § 3553(A)	1, 6
28 U.S.C. § 1254(1)	1

PETITION FOR A WRIT OF CERTIORARI

Petitioner Paul Anthony Montanez seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is *United States v. Montanez*, ____ F. App'x ____, 2019 WL 6833844 (5th Cir. December 13, 2019). It is reprinted in Appendix A to this Petition. The district court's judgment is attached as Appendix B.

JURISDICTION

The opinion and judgment of the Fifth Circuit were entered on December 13, 2019. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY AND RULES PROVISIONS

This Petition involves 18 U.S.C. § 3553(a), which states:

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—
 - ...
- (5) any pertinent policy statement—
 - ...
- (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.

STATEMENT OF THE CASE

Appellant Paul Anthony Montanez was arrested in a sting operation that caught him sending sexually explicit text messages to an undercover officer posing as a 13-year-old girl and arranging to meet the “girl” for a sexual encounter.

Montanez pled guilty to a one-count indictment that charged him with enticement of a child. Montanez’s amended Presentence Report (“PSR”) calculated Montanez’s guideline sentencing range to be 121–151 months. However, the PSR described several factors that may have warranted an upward departure from the guideline range. Montanez objected to the PSR’s assertion that upward departure was possibly warranted, raising three objections. First, Montanez argued that several of the factors cited by the PSR in favor of the upward departure were already accounted for in Montanez’s guideline range. Second, Montanez argued that other factors were of *de minimus* nature in comparison to the offense of conviction. Third, Montanez explained how, even if the uncharged behavior cited by the PSR had actually been charged, his guideline range would have only been raised to 168 to 210 months’ imprisonment.

At sentencing, the Government argued for a sentence of 20 years. Montanez argued for a sentence of 168 months, the bottom end of the guideline range that would have applied if all of the uncharged behavior been charged. The district court, however greatly exceeded these recommended sentences, imposing a sentence of 300 months. Montanez restated his objections, but the district court overruled them.

On appeal, Montanez argued that his sentence was substantively unreasonable.¹

The Fifth Circuit disagreed. This petition follows.

¹ On appeal, Montanez also contested the district court's imposition of a condition of supervised release forbidding Montanez from using video game consoles or possessing copyrighted materials. A court of appeals resolved this issue in favor of Montanez, affirming the sentence with instructions that the condition be narrowly interpreted so as only to forbid Montanez from playing video game consoles that are capable of facilitating play between players via the internet. Montanez does not challenge the ruling of the Fifth Circuit on this issue.

REASONS FOR GRANTING THIS PETITION

I. **The district court's above-Guidelines sentence was plainly unreasonable.**

The Court will not uphold a sentence imposed by the district court upon revocation of supervised release if the sentence was imposed in violation of law or was plainly unreasonable. *United States v. Headrick*, 963F.2d 777, 779 (5th Cir. 1992). Under the “plainly unreasonable” standard, the Court will follow a two-step process. *Id.* The Court will first determine whether the district court committed any significant procedural error. *United States v. Kippers*, 685 F.3d 491, 497 (5th Cir. 2012). If the Court finds no significant procedural error, the Court will then consider the “substantive unreasonableness” of the district court’s imposed sentence. *Miller*, 634 F.3d at 843. A non-Guidelines sentence can be substantively unreasonable if the district court: (1) did not account for a factor that should have received significant weight, (2) gave significant weight to an irrelevant or improper factor, or (3) represented a clear error of judgment in balancing the sentencing factors. *United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013). Here, the district court’s sentence was plainly unreasonable because it represented a clear error of judgment in balancing the sentencing factors.

Montanez’s guideline sentencing range was 121 to 151 months. Even if all of Montanez’s uncharged behavior had been accounted for in a guideline range, the resultant range would have been only 168 to 210 months. The government’s own recommendation was for Montanez to be sentenced to 240 months. The district court’s sentence that was almost twice the number at the top of Montanez’s guideline range

and five years longer than the sentenced argued for by the government was “greater than necessary” to achieve the legislature’s purposes for sentencing. 18 U.S.C. § 3553(a).

CONCLUSION

Petitioner respectfully submits that this Court should grant *certiorari* to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted this 12th day of March 2020.

Respectfully submitted,

JASON D. HAWKINS
Federal Public Defender
Northern District of Texas

/s/ Kevin Joel Page
Kevin Joel Page
Assistant Federal Public Defender
Federal Public Defender's Office
525 South Griffin Street, Suite 629
Dallas, Texas 75202
Telephone: 214.767.2746
E-mail: joel_page@fd.org

Attorney for Petitioner