

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

REINALDO VASQUEZ-RIVERA, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

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

PETITION FOR WRIT OF CERTIORARI

Petitioner, REINALDO VASQUEZ-RIVERA, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINION BELOW

A copy of the judgment of the United States Court of Appeals for the First Circuit in this case is included in appendix A.

JURISDICTION

The United States Court of Appeals for the First Circuit entered its judgment on February 21, 2020 . Jurisdiction is conferred upon this Court by 28 U.S.C. § 1254(1), which grants the United States Supreme Court jurisdiction to review by writ of certiorari all final judgments of the courts of appeals.

STATUTORY PROVISIONS INVOLVED

This case involves among other provisions, the factors set forth at 18 U.S.C. §3553(a) and (c), 18 U.S.C. §3583(e)(3)), Sentencing Guidelines, Section 7B1.4(a), standard of review and general principles.

STATEMENT

Pursuant to the Sentencing Guidelines, Section 7B1.4(a) in the instant case the applicable sentencing guidelines based on a Criminal History Category of V and a Grade C violation, results on an imprisonment range from 7 to 13 months.

At the sentencing hearing, Defendant-Appellant argued for the court not to revoke the supervised release term, or in the alternative to impose a time served sentence. The government requested the higher end of the applicable guideline.

The district court did not consider the parties' recommendations and instead sentenced the Defendant-Appellant to twenty-four (24) months, that is eleven (11) months above the upper end of the advisory guidelines sentencing range, and

imposed a new supervised release term of three years. Defendant-Appellant's sentence was substantively too harsh.

The Defendant-Appellant challenges both the procedural and substantive reasonableness of his sentence. The district court abused its discretion in imposing an above-Guidelines sentence.

REASONS FOR GRANTING THE WRIT

In a two (2) page judgment the Court of Appeals for the First Circuit affirmed the district Court's judgment and rejected the issues raised on appeal that the judgment of the sentencing court was unreasonable because the district court failed to address his non-frivolous arguments in favor of a lower within range sentence requested by the Defendant-Appellant or to sufficiently explain why it imposed the sentence.

A district judge should address the party's arguments and 'explain why he has rejected those arguments.'" *United States v. Carter*, 564 F.3d 325, 328 (4th Cir. 2009) (quoting *Rita v. United States*, 551 U.S. 338, 357 (2007)).

A district court may commit procedural error by, among other things, "selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence." *Gall v. United States*, 552 U.S. 38, 51, 128 S. Ct. 586, 597 (2007). In sentencing a defendant, the district court "should set forth

enough to satisfy the appellate court that [it] has considered the parties' arguments and has a reasoned basis for exercising [its] own legal decision-making authority." *Rita v. United States*, 551 U.S. 338, 356, 127 S. Ct. 2456, 2468 (2007). The district court did not clearly explain the reasoning behind the GSR it was applying. The district court's explanation of the sentence was insufficient.

The judgment of the Court of Appeals in this case conflicts with decisions reached by this Court and other Circuit Court of Appeal, regarding reasonableness review for guidelines sentences.

In its Judgment the Court of Appeals for the First Circuit stated:

" We also reject Vasquez-Rivera's argument that the district court imposed a substantively unreasonable sentence. Contrary to Vasquez-Rivera's assertion on appeal, the district court was under no obligation to give equal weight to all sentencing factors, see *United States v. Hassan-Saleh-Mohamad*, 930 F.3d 1, 9 (1st Cir. 2019), and Vasquez-Rivera otherwise offers no non-conclusory reasons to conclude the sentence was excessive, see *United States v. Benitez-Beltran*, 892 F. 3d 462, 472 (1st Cir. 2018)."

The Court of Appeals has decided an important question of federal law that conflicts with relevant decisions of this Court, as stated above. Finally, this Court should grant certiorari in the interests of justice."

Although the Chapter 7 policy statements are not binding, district courts are required to consider them. See, e.g., *United States v. Yopp*, 453 F.3d 770 (6th Cir.

2006) (vacating a sentence for the court's failure to consider the Chapter 7 policy statements). The Ninth Circuit has held that secs. 3553(a)(4)(B) and 3553(c) require a district court to provide its specific reasons for imposing a sentence outside the Chapter 7 guideline range. *United States v. Miqbel*, 444 F.3d 1173 (9th Cir. 2006) (vacating and remanding for resentencing for failure to provide reasons).

CONCLUSION

For all of the foregoing reasons the petitioner, Reinaldo Vasquez-Rivera, respectfully requests that this Court grant the petition for writ of certiorari, and accept this case for review. In the alternative, Mr. Reinaldo Vasquez-Rivera requests that his petition be granted, his sentence vacated and his case remanded.

Respectfully submitted, in San Juan, Puerto Rico, on Thursday, March 12, 2020.

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