

No. _____

In the
Supreme Court of the United States

Barry Lalane Harrell,

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

- I. Whether the district court erred when it sentenced Petitioner significantly above the policy statement range without adequate justification?

PARTIES TO THE PROCEEDING

Petitioner is Barry Lalane Harrell, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
INDEX TO APPENDICES	iv
TABLE OF AUTHORITIES	v
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.....	4
I. The District Court plainly erred when it imposed a sentence significantly above the policy statement range without adequate justification	4
CONCLUSION.....	5

INDEX TO APPENDICES

Appendix A Judgment and Opinion of Fifth Circuit

Appendix B Judgment and Sentence of the United States District Court for the
Northern District of Texas

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>United States v. Chandler</i> , 732 F.3d 434 (5th Cir. 2013)	3
<i>United States v. Harrell</i> , 791 F. App'x 479 (5th Cir. Jan. 23, 2020) (unpublished)	1
Statutes	
18 U.S.C. § 3553(a)	1, 3
28 U.S.C. § 1254(1)	1

PETITION FOR A WRIT OF CERTIORARI

Petitioner Barry Lalane Harrell 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is located within the Federal Appendix at *United States v. Harrell*, 791 F. App'x 479 (5th Cir. Jan. 23, 2020) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment and sentence is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on February 14, 2020. 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:

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—
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
- (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.

18 U.S.C. § 3553(a).

STATEMENT OF THE CASE

On May 25, 2012, Barry Lalane Harrell, Petitioner, was sentenced in the Northern District of Texas to 60 months imprisonment followed by 3 years supervised release. On January 9, 2018, Petitioner's supervised release was revoked and he was sentenced to 12 months imprisonment followed by 2 years supervised release. On March 19, 2019, the government filed a motion to revoke Petitioner's supervised release again, alleging that he failed to report within 72 hours of release from custody and a failure to make restitution payments. On March 21, 2019, Petitioner pleaded "true" to each of the allegations.

At the hearing, Defense counsel asked the district court for lenience, explaining that Petitioner had accepted responsibility for his actions and had committed no new offenses. In fact, the primary reason that Petitioner was unable to report was that he did not have a driver's license or transportation. Petitioner further had been able to maintain steady employment and had upcoming job opportunities in the near future.

Despite a policy statement range of 8 to 14 months, the district court sentenced Petitioner to 24 months imprisonment. In doing so, the district court characterized Petitioner's failure to report as "fairly serious" and found several descriptions of prior conduct criminal by a preponderance of the evidence. Defense counsel did not object to the district court's sentence. The court of appeals affirmed.

REASONS FOR GRANTING THIS PETITION

A non-Guidelines sentence can be erroneous 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. *See United States v. Chandler*, 732 F.3d 434, 437 (5th Cir. 2013). Here, the district court's sentence was in error because the court did not adequately consider the history and characteristics of Petitioner.

The policy statement range, in this case, was 8 to 14 months. When the district court sentenced Petitioner to 24 months imprisonment—nearly twice the top of the range—the court did so without adequate justification. The court focused solely on Petitioner's prior criminal history, reflecting a failure of the court to adequately consider Petitioner's history and characteristics, which the legislature included in 18 U.S.C. § 3553(a) to help ensure a sentence “not greater than necessary” to achieve the legislature's sentencing purposes. 18 U.S.C. § 3553(a). Had the court properly considered Petitioner's history and characteristics, it would have imposed a lower sentence, even if only at the top of the policy statement range, due to Petitioner's efforts to gain employment and maintain a relationship with his grandchildren, while recognizing the mitigating effects of his difficulties in obtaining a driver's license and locating adequate transportation. Further, the court would have recognized that, given these circumstances, a failure to report is not nearly as serious as the commission of a new substantive offense.

The legislature entrusts sentencing with district courts that care about what a defendant has done and the life he has lived. Courts should also consider the defendant's circumstances, which includes work and transportation status. Here, none of these aspects of Petitioner's history and characteristics were considered, reflected in the court's own words. Petitioner should be resentenced with an appropriate balancing of those factors.

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 22nd day of June 2020.

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