

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHRISTOPHER GOODIN, 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

Dated: July 6, 2020

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QUESTION PRESENTED

Does the Constitution's guarantee of trial by jury extend to awards of restitution under the Mandatory Restitution For Sexual Exploitation of Children Act?

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the United States District Court for the Northern District of Ohio and the United States Court of Appeals for the Sixth Circuit:

- United States of America v. Goodin, Case No. 19-3554, 2020 U.S. App. LEXIS 17140 (6th Cir. May 28, 2020)
- United States of America v. Goodin, Case No. 1:18-cr-00617 (N.D. Ohio, May 29, 2019)

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Christopher Goodin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit was not published. It appears at United States v. Goodin, Case No. 19-3554, 2020 U.S. App. LEXIS 17140 (6th Cir. May 28, 2020) (Pet. App. 1a).

JURISDICTION

The Sixth Circuit's opinion was filed on May 28, 2020. There was no petition for rehearing. The Sixth Circuit's mandate issued on June 19, 2020. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the right to trial by jury found in the Sixth Amendment to the Constitution. It says:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...

U.S. Const. amend. VI

The case also involves 18 U.S.C. § 2259(b)(2)(A) and (3). That statute says:

(2) Restitution for trafficking in child pornography. If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) Determining the full amount of a victim's losses. The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

. . .

(3) Enforcement. An order of restitution under this section shall be issued and enforced in accordance with section 3664 [18 U.S.C. § 3664] in the same manner as an order under section 3663A.

18 U.S.C. § 2259(b)(2)(A) and (3).

18 U.S.C. § 3664 says that the court shall determine restitution by a preponderance of the evidence:

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government.

18 U.S.C. § 3664(e).

STATEMENT OF THE CASE

Goodin pled guilty, without a plea agreement, to a three-count indictment that charged him with sexual exploitation of children, contrary to 18 U.S.C. § 2251(a), receipt of visual depictions of real minors engaged in sexually explicit conduct, contrary to 18 U.S.C. § 2252(a)(2), and possession of

child pornography, contrary to 18 U.S.C. § 2252(A)(a)(5)(B). (Indictment, R. 8, Page ID # 21-22).

In the course of investigation officers found sexually explicit photographs of two minor children on Goodin's cell phone. Goodin had solicited the pictures. Officers also found child pornography on Goodin's laptop computer. (Presentence Investigation Report ("PSR"), R. 20, ¶¶ 9-11, 14-16, 19, 24, Page ID # 169-172, 176).

The National Center for Missing and Exploited Children identified several series of known files on Goodin's cell phone and computer. At sentencing some of the persons depicted submitted claims for restitution. The PSR recommended an award of slightly more than \$150,000. (Id., R. 20-1, Page ID # 199-279, R. 20-7, Page ID # 575-758).

Goodin did not object to the claims in the district court, but he did on appeal. He argued that the victims' requests for damages did not provide information that this Court suggested district courts should consider in these kinds of cases. See *Paroline v. United States*, 134 S. Ct. 1710 (2014). The request for restitution did not give a tally of how many criminal defendants had contributed to the general losses of the victims or any prediction about the number of future offenders likely to get caught and then ordered to pay restitution. Goodin did not produce or distribute copies of images and the

PSR did not say how many images of each victim he possessed.

The victims' attorneys also made seemingly excessive claims for attorney fees for things like "civil suit assessment-\$600", "preparing opposition material for supervised release-\$250", and \$400 to notify client of supervised release hearing and of unsupervised release. (PSR, R. 20-7, Page ID # 725-26, 734).

In addition to specific objections to the way the restitution award was calculated, Goodin also argued that having the judge determine restitution by a preponderance of the evidence violated his right to a jury trial with its higher standard of proof beyond a reasonable doubt.

The Sixth Circuit rejected the arguments. It said that because Goodin did not object to the amounts in the trial court it would apply the plain error standard of review and that that standard of review determined the outcome of Goodin's appeal.

The court acknowledged that the PSR did not "walk through the Paroline factors and did not specifically calculate the number of other perpetrators or the quantity of each victim's images possessed by Goodin." But the court said the amounts requested were small portions of the total losses claimed and no further fact-finding was required "when the requested amount appears facially reasonable and the defendant failed to object."

United States v. Goodin, 2020 U.S. App. LEXIS 17140 at *14.

The court rejected Goodin's constitutional challenge, noting that it had repeatedly rejected the argument in earlier published decisions. (Id., at *18–19).

Goodin now seeks review in this Court.

REASONS FOR GRANTING THE WRIT

Because restitution is a criminal penalty and because the Sixth Amendment requires a jury to find any fact that increases a defendant's criminal punishment, the Court should grant the petition to make clear that criminal defendants have the right to have a jury decide the amount of restitution the defendant must pay.

Restitution plays an important part in criminal prosecutions. In child pornography cases it is mandatory.

This Court has held that the jury must decide the facts necessary that support a term of incarceration. *Apprendi v. New Jersey*, 530 U.S. 466 (2000). And, if a court orders a defendant to pay a fine to the government a jury must also find the facts necessary to justify that punishment. *Southern Union Co. v. United States*, 567 U.S. 343 (2012). These precedents should also apply to restitution ordered in a criminal case. Yet none of the circuits have said so, even though they have noted the anomaly of requiring a jury trial as to facts that enhance punishment or support a fine but not for restitution. See *Hester v. United States*, 139 S. Ct. 509, 510 (2019) (Gorsuch,

J. dissenting from the denial of certiorari) (collecting cases).

The Court has held that restitution in a criminal case is a criminal penalty. *Pasquantino v. United States*, 544 U.S. 349, 365 (2005) In *Hester*, the government conceded that restitution is imposed as part of a defendant's criminal prosecution. Brief for Respondent at 8, *Hester v. United States*, 139 S. Ct. 509 (2019) (No. 17-9082).

As a criminal penalty restitution should require a jury's finding of the supporting facts. Thus, Goodin's petition seeking to make this clear presents an important issue "that has not been, but should be, settled by [the] Court." Sup. Ct. R. 10(a).

CONCLUSION

While Goodin did not raise his constitutional objection in the trial court, that omission should not hinder the Court from taking on and deciding the important issue his petition raises. Neither the Sixth Circuit nor the district court could have granted Goodin's request that a jury determine restitution beyond a reasonable doubt, bound as they were by existing Sixth Circuit precedent.

The Court should grant the petition for certiorari, vacate Goodin's restitution order and remand the case for a full restitution hearing, with a jury, and with the government bearing the burden of proving restitution

beyond a reasonable doubt.

Dated: July 6, 2020

Respectfully submitted,

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