

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

RAHIM WILLIAMS
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 19-60277

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the district court erred by applying the Sentencing Guidelines cross reference under U.S.S.G. § 2K2.1(c)(1)(B).

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

On February 8, 2017, the Grand Jury for the Southern District of Mississippi returned an Indictment charging Mr. Williams with felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The district court case number is 3:17cr13-HTW-FKB. Mr. Williams accepted responsibility for his actions by pleading guilty to the charge.

The district court sentenced Mr. Williams to serve 120 months in prison. The court entered a Final Judgment on April 19, 2019. The district court's Final Judgment is attached hereto as Appendix 1.

Mr. Williams filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on April 19, 2019. The Fifth Circuit case number is 19-60277. The Fifth Circuit affirmed the district court's rulings via an Opinion filed on March 6, 2020. The Fifth Circuit filed a Judgment on the same day. The Fifth Circuit's Opinion and Judgment are attached hereto as composite Appendix 2. The Fifth Circuit's Opinion was not designated for publication, but it appears in the Federal Appendix at 796 Fed. App'x 848. A copy of the Federal Appendix rendition of the opinion is attached hereto as Appendix 3.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on March 6, 2020. This Petition for Writ of Certiorari is filed within 150 days after entry of the Fifth Circuit's Judgment as required by Rule 13.1 of the Supreme Court Rules, which was amended by this Court's Covid 19 related Order dated March 19, 2020. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. UNITED STATES SENTENCING GUIDELINES PROVISION INVOLVED

The Sentencing Guidelines provision at issue is U.S.S.G. § 2K2.1(c)(1)(B).

This provision states:

(c) Cross Reference

(1) If the defendant used or possessed any firearm or ammunition cited in the offense of conviction in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense, apply—

* * * * *

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Id.

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Williams for felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Williams arose from the laws of the United States of America.

B. Statement of material facts.

As stated above, Mr. Williams fully accepted responsibility for his wrongdoing by pleading guilty to the subject felon in possession of a firearm charge. Not only did he pled guilty in district court, but also the probation officer that conducted an in depth interview with Mr. Williams opined that he accepted full responsibility for his actions. So Mr. Williams' guilt regarding the felon in possession charge is not at issue on appeal.

At issue is whether the district court erred by applying the Sentencing Guidelines cross reference provision stated in U.S.S.G. § 2K2.1(c)(1)(B). This cross section applies if Mr. Williams used the gun that is the subject of the felon in possession conviction in connection with murdering someone. *Id.* Over the

defense's objection, the district court found that Mr. Williams used the gun at issue to kill Stephanie Mejia.

Application of the § 2K2.1(c)(1)(B) cross reference meant that Mr. Williams' offense level under the Sentencing Guidelines was calculated using the homicide Guideline rather than the felon in possession Guideline. U.S.S.G. § 2K2.1(c)(1)(B). Because of the cross reference, Mr. Williams' adjusted offense level increased from 20 to 43. This, in turn, increased his recommended sentence under the Guidelines from 46 to 57 months in prison, to 120 months in prison.¹

Relevant facts on appeal are limited to whether Mr. Williams used the gun at issue to murder Ms. Mejia. At the three-day sentencing hearing, the parties presented evidence relating to that issue through exhibits and witness testimony. A summary of that evidence follows.

Officers with the Jackson, Mississippi Police Department (hereinafter "JPD") were patrolling the Beasley Road area when they noticed a wanted person, Michael Tillman, in the front passenger's seat of a car at a McDonald's Restaurant drive through. The officer's drove into the McDonald's parking lot, blocked Mr. Tillman's car in, and ordered the occupants out of the car.

¹ Without the cross reference, Mr. Williams' total offense level would have been 17, which is the subtotal offense level of 20 less three points for acceptance of responsibility. His criminal history category was V. Combining an offense level of 17 and a criminal history category of V results in a Guidelines sentence range of 46 to 57 months in prison. Guidelines Sentencing Table.

Mr. Williams was sitting in the back seat of the car. After he got out of the car, the officers noticed a black bag on the floorboard of the back seat area. Without hesitation, Mr. Williams admitted that the bag was his, admitted that a .45 caliber pistol was in the bag, and admitted that the pistol was his. Because he had a prior felony conviction, the law barred Mr. Williams from possessing the pistol. This incident at McDonalds occurred on Wednesday, January 27, 2016.

A few days earlier on Sunday, January 24, 2016, Ms. Mejia and Janis Evans were killed. Both victims were killed by gunshot wounds. The subject Guidelines cross reference to homicide is based on Mejia's killing, and not Ms. Evans' killing. That is, in this federal suit the prosecution does not allege that Mr. Williams killed Ms. Evans.

Based on shell casings found where the killings occurred, the killer shot Ms. Mejia with either a .45 caliber round or a 9-millimeter round. One of the prosecution's expert witnesses could not determine the caliber of the bullet fragments recover from Ms. Mejia's body and could not identify the gun that the bullet was fired from. But he opined that one or more of the spent shell casings found at the scene were fired from the .45 pistol that JPD officers took from Mr. Williams days later. Another expert for the prosecution opined that one bullet slug recovered from the door of the vehicle at the scene of the killing was fired from the .45 pistol taken from Mr. Williams.

Other relevant forensic evidence is the fact that JPD officers dusted the crime scene for fingerprints. Officers recovered fingerprints. However, the prosecution did not provide any evidence at the sentencing hearing about whether officers recovered Mr. Williams' fingerprints, or about the identities of any person associated with the recovered fingerprints.

The purported fact that shell casings and a bullet slug found at the scene of Ms. Mejia's killing were fired from the gun taken from Mr. Williams raises the question of when and where he got the gun. Mr. Williams testified that he bought the gun from a person named J. Kelly. The two of them were at Summer Park Apartments in Jackson when he bought the gun. He bought the gun for \$150 on January 25, 2016, which was a day after Ms. Mejia's killing. When he bought the gun, Mr. Williams did not know that it was used in any murders.

Mr. Williams' sister, Tkeyah Williams, testified at the sentencing hearing. She provided an alibi regarding his whereabouts on the day of Ms. Mejia's killing. Mr. Williams and Ms. Williams lived in the same home during the January 2016 time frame. On the day of the killings, January 24, 2016, they were together. She remembered that they went to pick up her son and went to the store.² Also, Ms.

² Notwithstanding the district judge's lengthy questioning of Ms. Williams, she stood behind her testimony that Mr. Williams was with her at the time of the murders. The district judge's questions to Ms. Williams covers 48 pages of the sentencing transcript. In an unrelated case, another district judge in Southern District of Mississippi characterized similar questioning by the judge in this case as "cross examination." *See United States v. Donald Ray Quinn*, Criminal No.

Williams confirmed that Mr. Williams bought the .45 pistol after Ms. Mejia's death.

The prosecution's primary source of evidence linking Mr. Williams to Ms. Mejia's murder came from a video-recorded interview of Mercedez McCarty by a JPD officer. In the video, Ms. McCarty stated that Mr. Williams admitted to killing a "Mexican girl," and that he used a gun that was still in his possession to kill her. However, on the witness stand at the sentencing hearing, Ms. McCarty said that she lied to the police and that Mr. Williams never made those statements to her. In fact, after the JPD interview, Ms. McCarty apologized to both Mr. Williams and Ms. Williams about lying during the interview.

As to the reason why she lied, Ms. McCarty testified that the officer pressured her into implicating Mr. Williams. An officer threatened to charge her

3:92cr121-DPJ-FKB, in the United States District Court for the Southern District of Mississippi. The other judge stated:

I do want to say for the record – I meant to say it early on – that I obviously read the order of recusal and, Ms. Stewart, your motion to try to get some context of what was going on.

I started to read the first transcript. And as I sort of got into what sounded like a cross-examination, I decided to stop reading it. And this may be overly cautious, but I didn't want – I didn't want there to be any suggestion that any bias for recusal by the prior judge might taint my review of the case so I elected not to read that, I guess it was a 95-page transcript. I read your motion, but I tried to separate my thought process from that of the original judge. I did want to put that on the record.

Hearing Transcript, pp. 21-22 (emphasis added). The hearing transcript is available for this Court's review under docket entry number 31 in *Quinn*, Case No. 3:92cr121, in the Southern District of Mississippi.

with a crime. Ms. McCarty testified that she would say anything to get home to her daughter.

After hearing all of the evidence, the district court held that it would apply the cross reference to homicide in its Sentencing Guidelines calculation. The court stated:

Now, while the court is providing here a bench opinion on this matter, *the court intends to follow this bench opinion with a written opinion.* That written opinion would differ from the presentence investigation report in only one respect. *The written opinion will contain citations of authority.* This reliance by the court on the PSR will only deal with the factual issues here, that is, the court emphasizing paragraphs 10, 11, and 12 on the cross-reference issue.

The district court never rendered a written opinion containing law supporting its application of the cross reference to homicide.

Both before the sentencing hearing and during the hearing, the defense objected to applying the subject cross reference in the Guidelines sentence calculation. The court ordered Mr. Williams to serve 120 months in prison, to run consecutively to his undischarged state court sentences.

V. ARGUMENT

A. Introduction.

At issue is whether the district clearly erred by applying the cross reference provision under U.S.S.G. § 2K2.1(c)(1)(B). By adopting the cross reference, the court used the Guidelines provision for First Degree Murder (U.S.S.G. § 2A1.1) to calculate Mr. Williams' base offense level under the Sentencing Guidelines. This, of course, significantly increased Mr. Williams' Guidelines sentencing range.

For the cross reference to apply, the district court had to find by a preponderance of the evidence that Mr. Williams murdered Ms. Mejia with the gun at issue in the felon in possession charge. The evidence presented at the sentencing hearing did *not* prove that it was more likely than not that Mr. Williams killed Ms. Mejia. Therefore, the district court erred by applying the cross reference.

B. Review on certiorari should be granted in this case.

1. Certiorari should be granted under Supreme Court Rule 10.

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” Rule 10(a) goes on to state that certiorari should be granted when a lower court’s ruling “call[s] for an exercise of this Court’s supervisory power[.]” For the following reasons, this Court should grant certiorari under Rule 10(a).

As described in detail under footnote 2 above, the district judge in this case has a history questioning defense witnesses until he gets the answer that he wants. This is especially troubling in the sentencing context because application of Guidelines sentence enhancing provisions, such as the sentence enhancing provision at issue in this case, are decided by the judge alone. That is, there is no 12-person jury oversight when these provisions are applied.

Further, the burden to prove such sentencing enhancing Guidelines provisions is only by a preponderance of the evidence. *United States v. Hicks*, 389 F.3d 514, 530 (5th Cir. 2004) (holding “a district court may increase a defendant’s sentence under the Sentencing Guidelines based on facts found by the court by a preponderance of the evidence, provided that the resulting sentence does not exceed the statutory maximum expressed in the U.S. Code.”).

Under this scenario, a district judge can increase a defendant’s sentence significantly without any checks and balances at the district court level. And at the appellate court level, review of the sentence is under the very lenient abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 46, 128 S. Ct. 586, 594, (2007) (holding “[o]ur explanation of “reasonableness” review in the *Booker* opinion made it pellucidly clear that the familiar abuse-of-discretion standard of review now applies to appellate review of sentencing decisions.”). Further, in the Fifth Circuit, a practically impossible to beat clearly erroneous standard of review

applies to the district court's fact findings related to sentence enhancing provisions.

United States v. Mitchell, 166 F.3d 748, 751 (5th Cir. 1999).

Under this legal framework, we have a situation where a defendant's sentence can be significantly increased by the decision of a single person, with limited power to reverse that decision on appeal. This Court should grant certiorari to provide a more workable and fair framework to district courts when applying these sentence enhancing Guidelines provisions.

2. The relevant Guidelines provisions.

The Guidelines provision at issue is U.S.S.G. § 2K2.1(c)(1)(B). This provision states:

(c) Cross Reference

(1) If the defendant used or possessed any firearm or ammunition cited in the offense of conviction in connection with the commission or attempted commission of another offense, or possessed or transferred a firearm or ammunition cited in the offense of conviction with knowledge or intent that it would be used or possessed in connection with another offense, apply—
* * * * *

(B) if death resulted, the most analogous offense guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.

Id. The court found that the "First Degree Murder" Guideline, which is a subsection of the "Homicide" Guideline, applies in this case. The First Degree Murder Guideline is found at U.S.S.G. § 2A1.1. It calls for an offense level of 43. U.S.S.G. § 2A1.1(a). That is the offense level adopted by both the probation officer in the PSR and the district court at sentencing.

3. The court erred by applying the cross reference to homicide.

The district court had to find by a preponderance of the evidence that the cross reference to homicide applied under the facts of Mr. Williams' case. *United States v. Kamal*, 488 Fed. App'x 871, 873 (5th Cir. 2012) (citing *United States v. Paul*, 274 F.3d 155, 164 (5th Cir. 2001)). Based on the weight of the evidence presented at the sentencing hearing, this Court should grant certiorari, then find that the district court clearly erred by applying the cross reference.

The only forensic evidence offered by the prosecution came from two gun experts. One testified that one or more of the spent shell casings found at the scene were fired from the .45 pistol that JPD officers took from Mr. Williams days later. However, the same witness testified that he could not determine the caliber of the bullet fragments recovered from Ms. Mejia's body and could not identify the gun that the bullet was fired from.

Another expert for the prosecution opined that one bullet slug recovered from the door of the vehicle at the scene of the killing was fired from the .45 pistol taken from Mr. Williams. It is important to note, however, that no evidence linked this bullet to the actual killing of Ms. Mejia. That is, there was no evidence that this bullet ever struck Ms. Mejia's body.

The testimony from the two gun experts was an attempt to link Ms. Mejia's murder with the gun found in Mr. Williams' possession three days later. However,

if Mr. Williams obtained the gun after the murder on the 24th, but before his arrest on the 27th, then he could not have committed the murder.

Mr. Williams took the witness stand to address when he bought the .45 pistol. He bought the gun on January 25, 2016, a day after Ms. Mejia's killing. Ms. Williams also testified that Mr. Williams bought the gun after Ms. Mejia's killing. He purchased it for \$150 from a man named J. Kelly. The sale took place at Summer Park Apartments in Jackson.

As Mr. Williams testified, the sale of guns between two people who do not know each other well is a common occurrence in Jackson, Mississippi. When he bought the gun, Mr. Williams did not know that it was possibly used in a murder.

Other relevant forensic evidence, or lack thereof, came from a JPD officer concerning fingerprints lifted from the crime scene. An officer dusted the scene for fingerprints and actually recovered fingerprints. However, the prosecution did not present any evidence linking the fingerprints to Mr. Williams. A reasonable inference can be drawn from this scenario that Mr. Williams' fingerprints were not found at the crime scene.

The only other evidence connecting Mr. Williams to Ms. Mejia's killing was a video-recorded interview between a JPD officer and Ms. McCarty. On the recording, Ms. McCarty states that Mr. Williams admitted to killing a "Mexican girl," and that he used a gun that was still in his possession to kill her. However,

Ms. McCarty recanted those statements when she took the witness stand at the sentencing hearing. Ms. McCarty testified that she lied to the police and that Mr. Williams never made those statements to her. Also, testimony at the hearing proved that after the JPD interview, Ms. McCarty apologized to both Mr. Williams and Ms. Williams about lying during the interview.

Ms. McCarty did not just take the witness stand and state that she lied to the officer – she also provided reasons why she lied. She testified that the officer pressured her to implicate Mr. Williams. The officer threatened to charge her with a crime. Also, Ms. McCarty testified that she would say anything during the interview to get home to her daughter. This recanting of prior statements made to the JPD officer undermines the validity of the statements made during Ms. McCarty's recorded interview.

As to alibi evidence, the defense relied on the testimony of Ms. Williams. She testified that Mr. Williams was with her when Ms. Mejia was killed on January 24, 2016, so Mr. Williams could not have committed the murder.³ Mr. Williams lived with Ms. Williams during January of 2016. On January 24, she remembered that they went to the pick up her daughter and go to the store. Mr. Williams provided consistent alibi testimony at the sentencing hearing.

³ See *supra*, footnote 2.

4. Conclusion: The court erred by applying the cross reference to homicide.

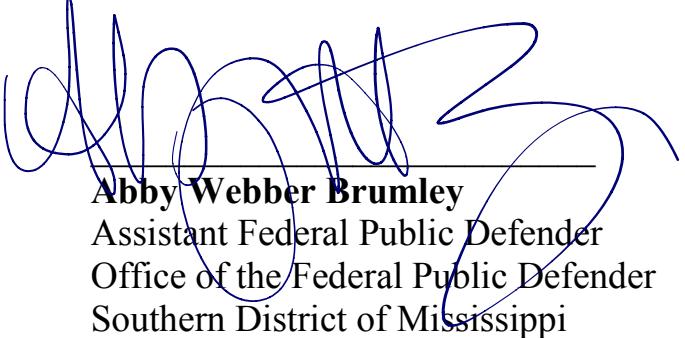
In summary, the prosecution provided no forensic evidence that directly linked Mr. Williams to Ms. Mejia's killing. Mr. Williams bought the subject gun after the killing. This is supported by the fact that when he was arrested on January 27, Mr. Williams admitted to the JPD officers that he had a gun and that it was his. If he knew that the gun was possibly used to kill Ms. Mejia, why would he have made that admission? He would not have – such an admission would defy logic.

Further, Ms. Williams provided solid alibi testimony that she was with Mr. Williams at the time of the murder. Mr. Williams corroborated that testimony. The only evidence to the contrary was from statements made on Ms. McCarty's video-recorded interview, which she soundly recanted on the witness stand at the sentencing hearing. Under these facts, this Court should grant certiorari and find that the district court clearly erred by applying the Guidelines cross-reference to homicide.

VI. CONCLUSION

Based on the arguments presented above, Mr. Williams asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted July 31, 2020, by:



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