

IN THE
Supreme Court of the United States

CHARLES MALCOLM SPIVEY, JR.,
Petitioner,

v.

ANTONIO DESHAWN PITTS,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

G. ALAN DUBoIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA

ERIC J. BRIGNAC
CHIEF APPELLATE ATTORNEY
Counsel of Record

150 Fayetteville St., Suite 450
Raleigh, N.C. 27601
(919) 856-4236
eric_brignac@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Whether a district court's statutory obligation to consider the "history and circumstances" of a criminal defendant and to refrain from imposing a sentence "greater than necessary" prohibits a district court from imposing a 125-month sentence for a bank robbery on a defendant with severe mental illness.

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UNITED STATES OF AMERICA,
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PETITION FOR WRIT OF CERTIORARI

Petitioner Antonio Deshawn Pitt respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

The Fourth Circuit's Opinion affirming Mr. Pitt's sentence is attached at Pet. App. a1 and is reported at 797 F. App'x 778 (4th Cir. 2020).

LIST OF PRIOR PROCEEDINGS

1. *United States v. Antonio Deshawn Pitt.*, No. 5:14-cr-227-D, United States District Court for the Eastern District of North Carolina.

Final judgment entered on November 23, 2015.

JURISDICTION

The Fourth Circuit issued its opinion on March 16, 2020. Pet. App. a1. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

18 U.S.C. § 3553(a)(1)-(2):

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;

STATEMENT OF THE CASE

This is a sad story about a shy kid who started to suffer from mental illness.

He ended up robbing a bank for no real reason other than the voices in his head told him to do it. And he brandished a gun when he did it. The district court punished him for that crime; when it did so, it properly accounted for how dangerous armed bank robbery is. But it erred because the 125-month sentence it imposed did not properly account for the mental illness that caused this shy kid to rob the bank in the first place.

Antonio Pitt grew up in Wilson, North Carolina. He was an incredibly shy child who rarely approached or talked to strangers. He was a model student, and his teachers often remarked that they wished all of their students had his attitude.

But this shy manner became more of an issue as he became a teenager and his peers interpreted his shyness as stupidity. Teenagers, being cruel, would make fun of him for his shyness, which “no doubt bothered him” and caused him to work harder to try to “fit in” with his peer group.

And after high school graduation, he seemed on his way to finding a place to fit in. He enlisted in the United States Army and hoped to turn it into a career. But it was not meant to be. Mr. Pitt has severe mental illness in his family on his father’s side. Those illnesses tend to manifest in one’s early 20s as a result of a significant life change. Mr. Pitt joining the military after high school, sadly, triggered these mental illnesses inside him. He began using illegal drugs to self-medicate, which caused the Army to discharge him for failing a drug test.

Leaving the Army left him without what little structure he had left in his life. He tried to kill himself several times by intentionally crashing his car.. He stayed home and slept all day; he stopped engaging in activities that he used to enjoy like hunting and fishing with his family; he would use drugs and sleep in his car.

His drug use crossed into dangerous territory, and he began smoking cigarettes laced with embalming fluid. This use left him “spaced out” and unrecognizable to his family. He smoked marijuana daily and used PCP and Vicodin.

Doctors eventually formally diagnosed him with depression and bi-polar disorder. Unfortunately, Mr. Pitt did not take his prescribed medications because of

their unpleasant side effects. His family tried to keep him in inpatient treatment, but they could not force him to remain there because he was an adult.

Eventually, his mental illness took a very dark turn. In 2014, he entered a State Employees Credit Union in Wilson, North Carolina wearing a wig and dark glasses. He brandished a gun and demanded money. He took around \$22,000, but a dye pack exploded on the money, so he ended up leaving with \$2,000. He fled on a bicycle and, not surprisingly, was caught. He told investigators that the voices in his head told him to rob the credit union and that he had been planning the robbery for a month.

A grand jury sitting in the Eastern District of North Carolina indicted him on one count of federal bank robbery in violation of 18 U.S.C. § 2113(a) and (d) (“Count 1”); and one count of brandishing a firearm in furtherance of that bank robbery in violation of 18 U.S.C. § 924(c) (“Count 2”). He pleaded guilty to both counts.

In preparation for sentencing, the United States Probation Office prepared a presentence report that recommended an advisory Guidelines range of 41-51 months on the bank robbery and the mandatory statutory minimum 84-month sentence on the firearm count. At sentencing, Mr. Pitt’s attorney argued for a sentence below that range. Considering his mental illness, his resulting self-medicating substance abuse, his lack of criminal history, and the mandatory 84-month sentence on the gun count, she argued that he needed a sentence below the advisory Guidelines range on the robbery count. The United States asked for a sentence at the bottom of the Guidelines range. The district court agreed with the

government and sentenced him to 41 months on Count 1 and to 84 months on Count 2, to run consecutive to the first sentence, for a total sentence of 125 months of incarceration. He timely appealed.

The Fourth Circuit affirmed the sentence, holding that “the [district] court carefully evaluated the § 3553(a) factors and gave due consideration to Pitt's arguments in mitigation, including his mental illness, when imposing a sentence at the bottom of the Guidelines range. Pitt, therefore, has failed to rebut the presumption of reasonableness accorded his sentence.” Pet. App. a3.

This petition follows.

REASONS FOR GRANTING THE PETITION

This Court should grant review because the Fourth Circuit Court of Appeals “has decided an important federal question in a way that conflicts with relevant decision of this Court.” Sup. Ct. R 10(c).

Congress requires that the district court impose a sentence “sufficient, but not greater than necessary, to comply with” the statutory purposes of sentencing. 18 U.S.C. § 3553(a). Those purposes include

(1) the nature and circumstances of the offense and the history and characteristics of the defendant; [as well as]

(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.

18 U.S.C. § 3553(a)(1)-(2).

This Court requires circuit courts reviewing sentences to “consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard.” *Gall v. United States*, 552 U.S. 38, 51 (2007). In so doing, the appellate court must “take into account the totality of the circumstances” and review the sentence to ensure that the district court complied with its statutory mandate. *Id.* If a district court abuses its discretion in imposing a sentence, the appellate court must vacate that sentence. *Id.*

The Fourth Circuit, by affirming Mr. Pitt’s sentence, was unduly deferential to the district court, contrary to this Court’s instruction to review sentences for an abuse of discretion.

Mr. Pitt was a shy young man who had his life ahead of him before his mental illness destroyed him. He tried to kill himself several times. That failed, and he brought his self-destructive behavior out against others, committing an armed bank robbery, claiming that voices in his head drove him to do it. The district court properly held that armed bank robbery is a serious and dangerous crime. Indeed, Mr. Pitt acknowledged as much, pleading guilty to a crime with a seven-year mandatory minimum sentence.

But, by law, sentencing is about more than the crime. It is also about the person being sentenced. And Mr. Pitt’s exceptional mental illness puts him outside the mine-run of typical defendants. A sentence of 125 months is greater than necessary to punish him. A downward variance would have provided adequate

punishment while also properly accounting for the role his mental illness played in his behavior. And the Fourth Circuit had an obligation to so hold.

The Section 3553(a) factors provide the framework on which to determine whether the law supports the district court's sentence, but the appellate court's review must go beyond simply checking these factors. The courts must instead "ensure that the sentence caters to the individual circumstances of a defendant."

United States v. Howard, 773 F.3d 519, 531 (4th Cir. 2014)(internal quotations omitted).

"Ensuring that the sentence caters to the individual circumstances of" Mr. Pitt mandated vacating the sentence. Congress and the United States Sentencing Commission want to protect people from gun-based violence. Thus, they recommend high sentences for individuals guilty of committing gun-related crimes. But those high sentences do not and cannot account for the individual circumstances of every defendant. Instead, district judges have an obligation to account for those individual circumstances when imposing sentence and must vary downwardly from the recommended sentence if that recommendation would create a sentence "greater than necessary" to punish a defendant. 18 U.S.C. § 3553(a).

125 months is a long time to spend in federal prison. For someone like Mr. Pitt—who has no prior criminal convictions at all—a far shorter sentence would provide adequate deterrence to future criminal conduct. *Id.* § 3553(a)(2)(B). Whatever marginal benefit the 125-month sentence imposed would provide over the

84-month mandatory minimum sentence does not outweigh the statutory obligation to avoid sentences greater than necessary.

The 125-month sentence also does not properly account for Mr. Pitt's history and characteristics. *Id.* § 3553(a)(1). Several factors went into calculating the advisory Guidelines range—(1) the serious nature of robbery; (2) the fact that he stole from a financial institution; (3) the fact that he had to restrain someone to commit the offense; (4) the amount stolen; and (5) the fact that he accepted responsibility for his crime. These factors combined to create an advisory Guidelines range of 41-51 months on the robbery.

Nothing in that range accounted for Mr. Pitt's mental illness. Nothing accounted for the voices in his head that told him to rob the bank. Nothing accounted for the sweet, shy young child he was before his demons destroyed him and he started crashing his car into trees and robbing banks. The district court, however, had an obligation—mandated by statute—to account for it. And it erred by not accounting for it.

Mr. Pitt did not present a case of someone with minor mental illness or whose mental illness was unrelated to their crime. This is someone driven by his mental illness. Someone whose crime does not make sense if not viewed through the lens of that “history and characteristics.” And the court had an obligation to impose a sentence that accounted for it—a sentence below that advised by a Guidelines range that would have been unaltered had Mr. Pitt had no mental illness issues at all.

The district court should have downwardly varied from the advisory Guidelines range, imposing a sentence that would adequately protect the public and provide deterrence while also properly accounting for the Mr. Pitt's mental illness. It did not. That failure was an abuse of discretion. The Fourth Circuit had an obligation to correct that sentence. It did not. That failure directly contradicted this Court's precedents.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

G. ALAN DUBOIS
FEDERAL PUBLIC DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA


ERIC J. BRIGNAC
CHIEF APPELLATE ATTORNEY
OFFICE OF THE FEDERAL PUBLIC
DEFENDER
EASTERN DISTRICT OF NORTH CAROLINA
Counsel of Record
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
eric_brignac@fd.org

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Counsel for Petitioner