

No. 20-

IN THE
Supreme Court of the United States

LACI LANDERS,

Petitioner,
v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the decision of the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”) has so far departed from the accepted and usual course of judicial proceedings on important matters and, therefore, the decision by the Fifth Circuit calls for an exercise of this Court’s supervisory powers such that a compelling reason is presented in support of discretionary review by this Honorable Court.

More specifically, the Fifth Circuit held the 48-month revocation sentence was not unreasonable despite the fact it was substantially greater than the 12 to 18 month range under the Guidelines policy considerations. As argued below, the sentence was unreasonable because the Fifth Circuit failed to address the totality of the circumstances, which included a total of 117 months in custody for the underlying low-level, single drug offense in this case. Ms. Landers submits that her sentence was unreasonable and therefore respectfully requests that this Court grant this petition.

PARTIES TO THE PROCEEDING

The parties to the proceeding are listed in the caption:

Laci Landers: Petitioner (Defendant-Appellant in the lower Courts)

United States of America: Respondent (Plaintiff-Appellee in the lower Courts)

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PETITION FOR WRIT OF CERTIORARI

Petitioner, LACI LANDERS, respectfully requests this Honorable Court grant this petition and issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit, which has so far departed from the accepted and usual course of judicial proceedings on the issue of requiring a review of the totality of the circumstances as to whether a sentence is unreasonable such that a compelling reason is presented in support of discretionary review by this Honorable Court.

CITATIONS TO THE OFFICIAL AND UNOFFICIAL REPORTS OF THE OPINIONS AND ORDERS ENTERED IN THE CASE

From the Federal Courts:

The Order of the United States Court of Appeals for the Fifth Circuit, *United States v. Laci Landers*, No. 19-50502 (5th Cir. Mar. 18, 2020), appears at Appendix A to this petition and is unreported.

The Judgment in a Criminal Case of the United States District Court for the Western District of Texas, Midland-Odessa Division, appears at Appendix B to this petition and is unreported.

From the State Courts:

None.

GROUND FOR JURISDICTION

On March 18, 2020, the United States Court of Appeals for the Fifth Circuit affirmed the sentence imposed on Ms. Landers. A copy of this Order appears at Appendix A. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. A copy of the Judgment issued by the United States District Court is attached at Appendix B.

CONSTITUTIONAL PROVISIONS

U.S. CONST. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST. Amend. VI

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, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation: to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in this favor; and to have Assistance of Counsel for his defense.

STATEMENT OF THE CASE

Background:

On September 2, 2015, Laci Landers was sentenced to serve 51 months in the custody of the Bureau of Prisons (“BOP”), followed by a 5-year-term of supervised release, based on her plea of guilty to the charge of possession with intent to distribute methamphetamine. ROA.74. Ms. Landers was subsequently released from custody on supervised release.

Ms. Landers’ supervised release was revoked twice before the revocation which was the basis of the appeal. The first was for an admission of using methamphetamine and having contact with her brother, a convicted felon. ROA.74-75, 88-89. Ms. Landers was

sentenced to a 9-month-prison-term and thereafter remained on supervised release. ROA.88-89.

The second revocation was a confession to again using methamphetamine and associating with a felon. ROA.91-92. Ms. Landers was sentenced to another 9-month-prison-term and ordered to a rehabilitation facility. ROA.102. After she completed this sentence, she again continued on supervised release. ROA.102-03.

The third revocation was filed in 2019, and once again involved drug addition and contact with felons. ROA.104-05. The conditions of supervision and the allegations of non-compliance with those conditions were set forth in the following fashion:

“The defendant shall participate in Alpha Home, a residential substance abuse treatment program for up to ninety (90) days and follow the rules and regulations of that program. The program may include testing and examination during and after program completion to determine if the defendant has reverted to the use of drugs. The probation officer shall supervise the participation in the program (provider, location, modality, duration, intensity, etc.). During treatment, the defendant shall abstain from the use of alcohol and any and all intoxicants. The defendant shall pay the costs of such treatment if financially able.”

On December 18, 2018, Laci Landers was admitted into Alpha Home in San Antonio to [begin] her in-patient treatment. On January 8, 2019, information was received that Laci Landers left Alpha Home on or about January 1, 2019, without permission. Landers’ whereabouts are unknown.

“The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer.”

On January 8, 2019, Facebook pictures of Landers and Nathaniel Wayne Peasley, a known felon, were received by text. One of those photos was dated December 6, 2018. Landers did not have permission to associate with Peasley.

ROA.104-05.

The Hearing on Revocation

A final revocation hearing was held on April 9, 2019. ROA.121-30. Ms. Landers appeared at that hearing with court-appointed counsel. ROA.121-30.

The following exchange initially took place on the record between the Court and Ms. Landers:

THE COURT: Let me ask you as to each of the allegations how you plead, true or not true.

The first one is that the defendant shall participate in Alpha Home, a residential substance abuse treatment program for up to 90 days and follow the rules and regulations of that program. It may includ[e] testing and examination during and after the program completion to determine if the defendant has reverted to the [use of] drugs.

Is that allegation that you failed to comply with that condition true or not true?

THE DEFENDANT: Yes, sir, it's true.

THE COURT: Okay. The second one is: the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.

Is that true or not true?

THE DEFENDANT: Yes, sir.

THE COURT: Yes, it's true or not true?

THE DEFENDANT: True.

ROA.123.

The probation officer then provided the factual basis for initiating the revocation proceeding:

On December 18, 2018, Laci Landers admitted into Alpha Home in San Antonio for inpatient treatment. On January 8, 2019, information was received that Laci Landers left Alpha Home on or about January 1, 2019, without permission and her whereabouts were unknown.

On January 8, 2019, Facebook pictures of Landers and Nathaniel Wayne Peasley, a known felon, were received by text. One of the photos was dated December 6, 2018. Landers did not have permission to associate with Peasley.

ROA.124. The Court next found the factual basis supported the allegations, as well as Ms. Landers' "pleas of true." ROA.124. The Judge then noted the Guidelines punishment range and further explained:

The Court finds the most serious grade violation to be a Grade C.

Criminal history category I.

12 to 18 months under the guidelines. There is a five year statutory maximum.

ROA.124.

With the assistance of Ms. Landers, her attorney next argued to the Court:

MR. ROGERS: While not offering this as an excuse, Your Honor, I'll let Ms. Landers flesh out where I miss things. But she indicated when I was speaking with her this morning that when she got to the halfway house, everybody had the flu.

THE DEFENDANT: The rehab.

MR. ROGERS: The rehab. Sorry. The rehab. So she went about two weeks without any kind of treatment or doing anything basically sitting in there.

Unfortunately, she was in a relationship as she's admitted with Mr. Nathaniel Wayne Peasley. While she was on the phone with Mr. Peasley, he cut off his monitor. She had also received news that her mother's boyfriend of 12 years had left her on Christmas day—her mother's boyfriend. So she basically left, hooked back up with Mr. Peasley, and was later located.

Some things I would like for the Court to consider is she relayed to me at the age of 13 she was diagnosed with bipolar disorder. She also has depression. And in 2008, she had a severe car wreck. She has metal rods and metal in her knees, some facial damage. She is currently on Wellbutrin for depression, Trileptal for mood stabilizers, and Gabapentin for her nerve pain. She indicates she has chronic pain. Those are, I think, some factors that the Court can consider.

She has indicated that at the time in the halfway house she wasn't on her meds.

THE DEFENDANT:

Correct.

MR. ROGERS:

Some of this occurs when she goes off of her meds. She indicated that when she was at FCI Carswell, they gave her her meds. That was a medical facility.

I don't want this argument to hurt her because she's camp status, but at camp they don't give her her meds. So there seems to be—she's got some mental issues and a component to this that the Court needs to think about or address.

ROA.124-26.

Ms. Landers then addressed the Court. Roa.126. She initially stated she believed her attorney had "really said it all." ROA.126. Nonetheless, she acknowledged she had left

Alpha Home because of the influenza outbreak, but went on to confess that she “was already on the verge of leaving.” ROA.127.

In response, the prosecutor announced to the Court:

MS. WHITE: Your Honor, the defendant was before the Court in 2017 for methamphetamine use and failure to follow instructions. She was given nine months at that point. Then in April of 2018, she was again revoked for methamphetamine possession and use; association with a known felon; and leaving the district without permission. In essence, two of the three violations she’s again before the Court for today, she was sentenced then to nine months as well as the inpatient treatment.

The government believes that she had no intention of completing treatment. Her excuse today before the Court that everyone had the flu so she just left doesn’t bode well given that she has walked away from supervision before and has associated with a known felon in the past and did so again.

The government believes that a sentence at the high-end is appropriate.

ROA.127.

The Judge then sentenced Ms. Landers, and in doing so confirmed her addictive nature and explained:

The Court has reviewed the policy statements contained in Chapter 7 of the guidelines in determining the appropriate disposition of this matter in relation to the defendant’s repeated violations of her conditions of release and, frankly, repeating the same violations, including using methamphetamine, association with a known felon. Those are repeated offenses.

This time, you know, I guess, if there is a positive in there, there’s—you know, this time we don’t have a positive UA because you left and we couldn’t find you, whereabouts unknown. That’s tough to take a UA, I guess. So . . .

The defendant is committed to the custody of the United States Bureau of Prisons to serve a term of imprisonment of 48 months.

Upon release from the Bureau of Prisons, reimposition of supervised release is not imposed.

And you'll be—the Court will be out of your life then. I've given you an upward departure because you continue to violate and you continue to violate really the same—most of the same conditions.

You're not going to listen. You abscond. We couldn't find you. It's just getting worse and worse. I feel like we're spiral down out of control. Maybe it will help you to get the Court out of your life.

ROA.128-29.

Ms. Landers' Observation

Ms. Landers requested that she be incarcerated at a medical center. She explained that “[t]he medical center is where I do better because I get to stay on my meds. Every time I've relapsed is because I've been off my medication.” ROA.129.

The Essential Objection

Ms. Landers' attorney made the following objection to perfect an appeal:

MR. ROGERS: But for purposes of the appeal, Your Honor, we would object that the sentence is both procedurally and substantially unreasonable. It was a sentence of 48 months. The statutory maximum is 60, but it is a Level C violation with a guideline range of 12 to 18 months.

ROA.130.

The Appeal

Ms. Landers timely filed a notice of appeal. ROA.113-14. The issue was briefed by both parties at the Fifth Circuit. The single issue on appeal was whether the sentence, which was substantially above the policy guideline range, was substantively unreasonable. (Appendix A). The Fifth Circuit affirmed the decision of the District Court. (Appendix A).

The Opinion of the Fifth Circuit:

The Fifth Circuit observed “Ms. Landers admitted to leaving a residential-substance-abuse treatment program without permission and associating with a known felon without permission.” (Appendix A, page 3). The Appellate Court then affirmed the sentence as reasonable because “the court undertook an individualized assessment of the facts and gave a reasoned justification for the sentence.” (Appendix A, page 3).

Petition for Writ of Certiorari

This Petition for Writ of Certiorari is now filed with this Court. For the reasons set forth below, Ms. Landers respectfully contends this case deserves encouragement to proceed further and therefore respectfully requests that this Court grant this Petition and allow this matter to proceed.

**ARGUMENT AMPLIFYING REASONS RELIED
ON FOR ALLOWANCE OF THE WRIT**

I.
Legal Background

Ms. Landers objected to the District Court that the revocation sentence was unreasonable. ROA.130. Thus, as the Fifth Circuit explained: “the substantive reasonableness of a sentence imposed on revocation is subject to the same standards to review whether an initial sentence is substantively reasonable.” (Exhibit A, page 2) (citing *United States v. Warren*, 720 F.3d 321, 332 (5th Cir. 2013)). In accordance with precedent of this Court, the Fifth Circuit defined the standard of review as a consideration of “the

totality of the circumstances, including the extent of any variance from the Guidelines range.” (Exhibit A, page 2) (quoting *Gall v. United States*, 522 U.S. 38, 51 (2007)).

II.
Argument Before the Fifth Circuit

In accordance with *Gall*, Ms. Landers argued the extent of the variance above the policy Guidelines range was excessively high. (Opening Brief, page 14). As noted above, the 48-month sentence was 3 times above the mid-range of the policy range, which was a term of imprisonment of 15 months. (Opening Brief, page 14). Ms. Landers further argued all of her violations of supervised release were related to her drug addiction. (Opening Brief, page 15). In fact, she noted her need for drugs was directly related to her involvement with felons. (Opening Brief, page 15). Ms. Landers also established she never possessed weapons and she was not violent. (Opening Brief, page 15). She further directed the Fifth Circuit’s attention to her bipolar diagnosis and the severe injuries she suffered in a car accident. (Opening Brief, page 16). Hence, Ms. Landers concluded the sentence of 48 months was unreasonable because she would now have to serve a total of 117 months in the custody of the BOP for the single offense from 2015, and the subsequent revocations for drug addiction. (Opening Brief, pages 14-16).

III.
Argument in Support of the Petition

This Court has established that Circuit Courts must consider “the totality of the circumstances, including the extent of any variance from the Guideline range” when determining whether a challenged sentence is unreasonable. *Gall*, 552 U.S. at 51. The Fifth

Circuit has specifically referred to this necessity of a review of the totality of the circumstances to determine the substantive reasonableness of a sentence. *United States v. Gerezano-Rosales*, 629 F.3d 393, 398 (5th Cir. 2012). Indeed, in the Fifth Circuit's opinion the Court duly observed this was the rule of law for review in this case. (Appendix A, page 2).

Respectfully, while the Fifth Circuit discussed the need for a review of the circumstances in this case, the totality of the circumstances were not evaluated and, in fact, not discussed. More specifically, two of the important circumstances went unaddressed by the Fifth Circuit. The first was that Ms. Landers's original sentence and her subsequent revocations totaled a sentence of 117 months for a low level drug offense. (Opening Brief, page 16). In 2015, Ms. Landers received 51 months for possession with intent to distribute a controlled substance. (Opening Brief, page 16). The three revocations for drug use resulted in revocation sentences totaling to 66 more months in the custody of the BOP. (Opening Brief, page 16). Therefore, the Fifth Circuit should have addressed whether it was reasonable to upward depart to order Ms. Landers to serve 117 months in prison for a single possession with intent to deliver conviction and her personal drug addiction. *Gall*, 552 U.S. at 51 (requiring courts to consider totality of circumstances when imposing criminal punishments). Thus, this Court should grant this Petition.

Another circumstance the Fifth Circuit did not consider was the extent of the departure. *See* (Appendix A). The policy Guidelines range was a prison term of 12 to 18 months. (Opening Brief, page 16). The District Court departed up to a 48 months in custody

for this revocation sentence. (Appendix A, page 3). However, the Fifth Circuit affirmed that increase in light of its observation that the sentence was justified based on multiple violations of probation. (Appendix A, page 3). Again, the circumstances established Ms. Landers had already received two 9 month sentences for revocations and two extensions of her supervised release for those violations which were based on behavior identical to basis of the revocation before the Court. (Opening Brief, page 16). Respectfully, this is another circumstance which was argued to the Fifth Circuit which the Court did not consider. (Appendix A). Hence, Ms. Landers submits this Court should grant this Petition.

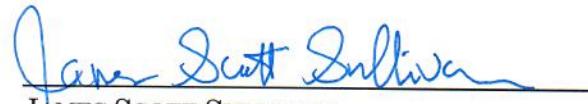
Ms. Landers also asserts, as she did before the Fifth Circuit, that the sentence in this case was substantively unreasonable because she received a 117 month sentence for a drug possession case and her corresponding drug addictions. (Opening Brief, page 16-16). Indeed, considering the original sentence was 51 months, and that the revocation sentences for drug addiction collectively totaled to 66 months, established that the final revocation sentence was unreasonable under this Court's precedent and 18 U.S.C. § 3553(a). (Opening Brief, pages 10-16).

CONCLUSION

For these reasons, Ms. Landers requests that this Court grant this Petition to assure the sentencing decision in this case does not conflict with the decisions of this Court.

WHEREFORE, Petitioner, LACI LANDERS, respectfully requests that this Honorable Court grant this petition and issue a Writ of Certiorari and review the decision of the United

States Court of Appeals for the Fifth Circuit. Ms. Landers also requests such other relief to which she may be entitled under the law and in equity.



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