

No. _____

In the
Supreme Court of the United States

Jimmy Kit Fields,

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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QUESTION PRESENTED

- I. Whether this Court should grant *certiorari* to determine if it was plain error for a court to impose, without explanation, a condition of supervised release that orders a defendant to abstain from consuming alcohol when neither the defendant's history nor the offense of conviction implicated that the defendant had ever abused alcohol, thus making the condition statutorily unreasonable, a violation of Due Process, and a greater deprivation of liberty than is reasonably necessary.

PARTIES TO THE PROCEEDING

Petitioner is Jimmy Kit Fields, who was the Defendant-Appellant in the court below. Respondent, the United States of America, was the Plaintiff-Appellee in the court below.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jimmy Kit Fields 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is located within the Federal Appendix at *United States v. Jimmy Kit Fields*, 808 F. App'x 551 (5th Cir. 2020) (unpublished). It is reprinted in Appendix A to this Petition. The district court's judgment is attached as Appendix B.

JURISDICTION

The panel opinion and judgment of the Fifth Circuit were entered on May 8, 2020. On March 19, 2020, the Court extended the 90-day deadline to file a petition for certiorari to 150 days.

This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

18 U.S.C. §§ 3583(d)(1) & (2) provide, in pertinent part:

(d) Conditions of Supervised Release.—. . .

The court may order, as a further condition of supervised release, to the extent that such condition--

- (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
- (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D); and (C) to protect the public from further crimes of the defendant; . . .

18 U.S.C. § 3553(a) states, in part:

(a) Factors To Be Considered in Imposing a Sentence.—. . .

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— . . .
 - (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 efficient manner[.]

CONSTITUTIONAL PROVISION

The Fifth Amendment requires:

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 offense 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.

LIST OF RELATED PROCEEDINGS

1. *United States v. Jimmy Kit Fields*, 5:18-CR-00052-C. United States District Court, Northern District of Texas. Judgment entered November 9, 2018.
2. *United States v. Jimmy Kit Fields*, CA No. 18-11499, United States Court of Appeals for the Fifth Circuit. Order directing defense counsel to supplement its *Anders* briefing or to brief on the issue of the substantive reasonableness of the imposed terms of supervised release, entered July 9, 2019.
3. *United States v. Jimmy Kit Fields*, CA No. 18-11499, United States Court of Appeals for the Fifth Circuit. Opinion and judgment affirming the sentence entered May 8, 2020.

STATEMENT OF THE CASE

Jimmy Kit Fields (“Fields”) was charged in a one-count indictment with enticement of a minor, in violation of 18 U.S.C. § 2422(b). (ROA.8–11).¹

The road to Fields’s arrest began in March of 2018, when the father of 13-year-old Jane Doe complained to Portales (New Mexico) police after he discovered that Fields had given Doe a cell phone. (ROA.133). Doe’s father also stated that he noticed Fields staring at Doe’s buttocks and standing unusually close to Doe when Doe’s family encountered Fields during a trip to the zoo. (ROA.133). Despite these complaints, an investigation by the Roosevelt County (New Mexico) Sheriff’s Office (“RSCO”) yielded “no actionable evidence.” (ROA.133).

In May of 2018, the RSCO was called to investigate a report that Jane Doe had run away. (ROA.133–34). During the investigation, Doe returned home. (ROA.134). Doe initially claimed to have gone out for a walk but later stated that she had actually “met with a friend named Kelly in a nearby field to drink alcohol.” (ROA.134). The RSCO investigating officer, however, found this odd because Doe neither smelled of alcohol nor “show[ed] any outward signs of impairment.” (ROA.134).

Eventually, the investigator found Facebook messages between Fields and Doe, in which the two referenced sex between them. (ROA.134–36). In a later interview, Doe admitted to having “sexual contact with [Fields] on four occasions.”

¹ For the convenience of the Court and the parties, the Petitioner has included citations to the page number of the record on appeal below.

(ROA.136). Doe later detailed the sexual encounters in a forensic interview. (ROA.136).

Fields was arrested on Texas state criminal charges of Criminal Sexual Penetration of a Minor on June 1, 2018. (ROA.136). On June 13, 2018, Fields was indicted by a federal grand jury on one count of Enticement of a Minor, in violation of 18 U.S.C. § 2422(b). (ROA.8–11).

Fields entered into a written plea agreement, (ROA.118–25), and signed a factual resume in which he admitted to facts necessary to demonstrate his guilt regarding the federal charge. (ROA.46–56). In that factual resume, Fields stipulated that he “provided Doe alcohol to drink during [one of four] sexual encounter[s].” (ROA.52). There was no mention in the factual resume of Fields using alcohol or sleeping pills to drug his victim, nor was there any accusation that Fields was consuming alcohol in connection with the offense. *See* (ROA.46–56).

At a rearraignment hearing before a federal magistrate, Fields entered a guilty plea on July 27, 2018. (ROA.92–110).

The pre-sentence report (“PSR”) detailed investigations into allegations that Fields had sexually abused two other minor females, Jane Doe 2 and Jane Doe 3. (ROA.137). The PSR reported that Jane Doe 3 claimed that, when she was 13 or 14 years old, Fields groped and fondled her after drugging her with sleeping pills and alcohol. (ROA.137). As of the time of the PSR, no allegations by Jane Doe 2 or Jane Doe 3 had been prosecuted. (ROA.137).

The PSR determined that Fields had a criminal history score of 0, resulting in a Criminal History Category I. (ROA.139). Fields had no prior criminal convictions, and the PSR did not indicate that alcohol was involved in any of the alleged conduct. (ROA.139–40).

At Fields’s sentencing hearing, the court imposed a sentence of 235 months of imprisonment and a twenty-year term of supervised release. (ROA.114, 116). In addition to imposing the standard conditions of supervised release, which included a requirement that Fields “refrain from excessive use of alcohol,” (ROA.78), the district court also imposed several special conditions of supervised release, including ones requiring that him to have no unsupervised contact with minors and one requiring that Fields must “abstain from the use of alcohol and all other intoxicants.” (ROA.79). In his sentencing hearing, the district court announced the alcohol abstinence condition, but it provided no specific explanation for imposing that condition. (ROA.115–16). The court only generally stated that its reason for imposing the term of supervised release was to “see that [Fields] reassimilates himself back in society, that he obtains suitable employment, and that he maintains a law-abiding lifestyle.” (ROA.116). Mr. Fields raised no objections to the court’s sentence.

Initially, Fields’s counsel found no non-frivolous basis for appeal and filed an initial brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), along with a motion to withdraw. The court of appeals, however, ordered additional briefing on the issue of whether the district court plainly erred by imposing a special condition prohibiting him from using alcohol or other intoxicants.

As a result, Mr. Fields's counsel filed an initial brief with the court of appeals arguing that the district court plainly erred by imposing the alcohol abstinence condition where there was no evidence that alcohol or any intoxicant was related to the offense of conviction. The district court, however, affirmed the condition, stating that Mr. Fields could not show error, plain or otherwise, because it believed that Mr. Fields' "swore in his factual resume that he used alcohol and sleeping pills to drug his underage victim."

REASONS FOR GRANTING THIS PETITION

- I. **This Court should grant *certiorari* to determine if it was plain error for a court to impose, without explanation, a condition of supervised release that orders a defendant to abstain from consuming alcohol when the defendant's history contains no allegation of alcohol abuse and the offense of conviction did not involve the defendant's consumption of alcohol, thus making the condition statutorily unreasonable and a greater deprivation of liberty than is reasonably necessary.**

A condition of his supervised release requires Petitioner to refrain from consumption of alcohol throughout his 20-year term of supervised release. That condition is unreasonable, especially in the absence of an explanation.

Fields's Fifth Amendment right implicated in this case is the right to not be deprived of life, liberty, or property without due process of law, specifically:

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 offense 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 V.

Congress requires that the conditions of release be reasonable. Other than the mandatory conditions set forth in 18 U.S.C. § 3583(d), any additional condition must be "reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D)" and must involve "no greater deprivation of liberty than is reasonably

necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C), and (a)(2)(D). . . .” 18 U.S.C. §§ 3583(d)(1) & (2).

Moreover, a district court must explain its reasons for imposing the conditions of release in a particular case. *See, United States v. Salazar*, 743 F.3d 445, 451 (5th Cir. 2014), citing 18 U.S.C. § 3553(c). Here, the sentencing judge made no effort to explain its decision to impose the alcohol-abstinence condition.

The alcohol-abstinence condition impinges upon Mr. Fields’s freedom without any corresponding benefit to his rehabilitation or public safety. It is not tied to any of the statutory factors. The “nature of the offense”—for both the original offense and the conduct that led to revocation—while sexual, involved no inherent connection to Mr. Fields’s alcohol use. The only connection between alcohol and the offense of conviction was Mr. Fields’s providing alcohol to the minor victim, which concerned the minor’s consumption of alcohol, not any by Mr. Fields himself.

There was no demonstrated need in the facts presented here to require Mr. Fields himself to abstain from alcohol consumption. Nothing in Mr. Fields’s background or history suggests an inability to modulate his consumption of lawful substances like alcohol. The only times when alcohol was discussed in Fields’s PSR came (1) when Jane Doe falsely claimed to have been drinking in a field with a friend and (2) when Jane Doe 3 claimed that Fields drugged her with alcohol and sleeping pills. Regarding the initial claim by Jane Doe, the investigator disbelieved the story that the girl had been out drinking because he observed no alcohol on the girl’s breath or any other signs of impairment. Regarding the uncharged allegations made by Jane

Doe 3 that Fields used alcohol to impair her, there was nothing to show that Mr. Fields's own alcohol consumption influenced any of his actions.

Thus, there is absolutely no suggestion or explanation that this condition might deter him from committing any other offense. If the court's concern was to prevent Mr. Fields from using alcohol to seduce minors, that would already be accomplished by the unchallenged condition constraining him from unsupervised contact with minors. *See* (ROA.79).

The record provides no reliable indication that Mr. Fields ever abused alcohol. The Fifth Circuit has previously reversed similar conditions on plain error review when neither the instant offense nor the defendant's history suggested that a complete abstinence condition was necessary. *See United States v. Garcia-Flores*, 136 F. App'x 685, 689 (5th Cir. 2005). More recently, that court held that a similar condition was "debatable" where the defendant had a family history of substance abuse, a prior history of daily alcohol consumption, and severe mental health issues that caused him to abuse a minor. *United States v. Mason*, 626 F. App'x 473, 475 (5th Cir. 2015).

The text of the supervised-release statutes show that the error was plain. The error affected Petitioner's substantial rights because it restricts his freedom to engage in lawful but non-excessive consumption of alcohol for the entire 20-year period of supervised release. The unauthorized condition also seriously affects the fairness and public reputation of judicial proceedings, as demonstrated by other similar cases in which the Fifth Circuit has granted relief on plain-error where there was no history

of substance abuse. *See United States v. Flores-Guzman*, 121 F. App'x 557, 558 (5th Cir. 2005) (“[W]e agree that the district court plainly erred in prohibiting Flores-Guzman from ‘drinking or using any addictive substances’ during his supervised release.”); *accord Garcia-Flores*, 136 F. App'x at 689 (“The district court plainly erred in adding the special conditions precluding any use of alcohol and tobacco by Garcia and Acosta.”).

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 2nd day of October, 2020.

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