

IN THE
Supreme Court of the United States

JAMAR PARKER,
Petitioner,

v.

UNITED STATES OF AMERICA,
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

JENNIFER C. LEISTEN
ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Where the district court failed to consider or address Petitioner's mitigating arguments and focused exclusively on his criminal history, whether the 168-month sentence is procedurally and substantively reasonable.

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Petitioner Jamar Parker 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The Fourth Circuit's unpublished opinion is available at 806 F. App'x 231 (4th Cir. 2020); *see also infra*, Pet. App. 1a.

LIST OF PRIOR PROCEEDINGS

- (1) *United States v. Jamar Ke-Shawn Parker*, District Court No. 7:18-CR-117-D, Eastern District of North Carolina (final judgment entered Aug. 6, 2019).
- (2) *United States v. Jamar Parker*, United States Court of Appeals for the Fourth Circuit, No. 19-4579 (decision issued May 27, 2020).

JURISDICTION

The Fourth Circuit issued its opinion on May 27, 2020. Pet. App. 1a. This Court’s jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 3553(a) of Title 18 of the United States Code sets forth the factors the district court must consider when sentencing a defendant and states that the “court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing.

STATEMENT OF THE CASE

A. District Court Proceedings

Petitioner Jamar Parker’s criminal behavior is inextricably intertwined with substance abuse and mental health issues that began with a troubled childhood. When he was born, his parents were addicted to drugs and could not care for him. As a result, Petitioner was placed in a series of ten foster care facilities. He never returned home. Growing up in foster care, he suffered from anxiety, insomnia, and a depressed appetite. Looking back now, Petitioner describes himself as an “angry and rebellious” child, prone to “acting out.” (Fourth Circuit Joint Appendix 88; hereinafter “J.A.”). At one foster care home, he was beaten with wooden paddles for his misbehavior. He was only five years old at the time. Social services removed him from the home after learning of the physical abuse. At the age of six, Petitioner was diagnosed with depression and anxiety and was prescribed Adderall, Zoloft, and Ritalin. (J.A. 88-89).

Shortly after Petitioner entered foster care, his mother went to prison for stabbing a person. When she was released, social workers attempted to maintain a relationship between Petitioner and his mother by permitting visitation every other week. Petitioner's mother, however, rarely attended these visits. Ultimately, the Department of Social Services terminated the attempted visits between Petitioner and his mother as ineffectual and "too upsetting for the child." (J.A. 52; 88-89).

When he was twelve, Petitioner was adopted by his foster mother and finally found a stable home. He continued counseling for his mental health issues, and he thrived at school, even attending classes for gifted children. However, at around fifteen or sixteen, he began using marijuana and stopped going to counseling. He also began to get in trouble with the law, accumulating several misdemeanor convictions for marijuana possession. (J.A. 82-83; 88-90).

Nonetheless, Petitioner persevered in his education and graduated high school with a 2.59 grade point average. He went on to attend some college classes and became interested in the music industry as a songwriter. Eventually, he opened his own recording studio in Wilmington, North Carolina. Unfortunately, however, he also continued to sell narcotics to supplement his income. Between 2008 and 2015, he was convicted of six drug-related felonies and two misdemeanors in state court. The longest sentence he received in state court was a sentence of 35 to 42 months. (J.A. 83-87; 90).

In 2016, Petitioner was shot in the back while attempting to stop a fight between two men. He sustained gunshot wounds to his torso and right hand, resulting in a

partial amputation of his ring finger. After this experience, Petitioner founded an organization called “Choose Life” for local youth, educating children about music and the music industry. (J.A. 54-56; 89).

The instant federal case arose after investigators in Wilmington used a confidential informant to purchase 0.2 grams of heroin from Petitioner on eight occasions between November 21, 2017 and April 23, 2018. In total, Petitioner sold the confidential informant 1.82 grams of heroin. There was no evidence that Petitioner possessed a weapon during the transactions. He was indicted and pled guilty to two counts of distributing and possessing with the intent to distribute a mixture and substance containing a detectable amount of heroin. (J.A. 81-82).

Following the plea, the probation officer prepared a presentence investigation report in Petitioner’s case. (J.A. 79-96). The probation officer determined that Petitioner was accountable for 1.92 grams of heroin. With such a small quantity of drugs, the base offense level was only 12. (J.A. 92 ¶ 63). The offense involved no specific characteristics, victim adjustments, or other adjustments for Petitioner’s role in the offense. Nor was there an adjustment for any obstruction of justice. Petitioner’s adjusted offense level, therefore, remained at 12. (J.A. 92 ¶ 68). But because of his previous drug convictions, the probation officer determined that Petitioner was a career offender. The career offender designation raised the offense level by twenty levels, from 12 to 32. (J.A. 92 ¶ 69). With the three-level reduction for acceptance of responsibility, Petitioner’s total offense level was 29. (J.A. 92 ¶ 72). This total offense level, combined with a criminal history category of VI, produced a

guideline imprisonment range of 151 to 188 months—more than triple the highest sentence Petitioner had ever received in state court. (J.A. 92 ¶ 74). Absent the career offender status, his guideline range would have been 30 to 37 months. (J.A. 54). Neither side objected to the presentence report. (J.A. 96).

At sentencing, the district court confirmed that the correct guideline range was 151 to 188 months, and that neither side objected to that determination. The remainder of the hearing, therefore, focused on sentencing considerations under the factors listed in 18 U.S.C. § 3553(a).

Counsel for Petitioner argued that a sentence of 151 months, at the bottom of the guideline range, was sufficient to achieve the purposes of sentencing. She said Petitioner had “a really rough start” being “born to a mom who was addicted to crack and his father was doing heroin” that was “so bad that he was one of those babies who had to be put in foster care,” where he was “bumped around” and “abused at one home.” (J.A. 51). She also noted that “they put him on Adderall and Zoloft and Ritalin” at an early age to “get him under control because he was very depressed and had a lot of anxiety.” (J.A. 51). It was “no surprise,” she said, “[the] start that he had . . . of where he ended up.” (J.A. 52). She acknowledged that Petitioner’s childhood did not “excuse anything at all” but “he did not have two solid parents who were guiding him from early on and whatever was missing remained missing for a very long time.” (J.A. 52).

Petitioner was now “in a lot of turmoil,” counsel said, “about the fact that he’s leaving behind his children”—precisely as he was left behind as a child. (J.A. 53).

She explained that he had managed to create an “intact family” with his fiancée, with whom he had a newborn daughter, but that he recognized he was “not going to be here for her or his other children for a long time.” (J.A. 53).

Due in part to the trauma he suffered as a child, counsel for Petitioner emphasized his need for mental health treatment, as well as substance abuse treatment. With appropriate treatment, she argued that he had ample potential to lead a productive, law-abiding life. Among other things, Petitioner was a “very creative” and “smart man” who had graduated high school and started a business “despite all the setbacks.” (J.A. 51). She said “he had that ability to do better, he became a songwriter, he started trying to make music and do some positive things and he never could quite get one foot out of the street to stay on track.” (J.A. 53). As an example, counsel pointed to Petitioner’s “Choose Life” organization for youth in his community. He “was taking kids in the studio, trying to show them how to work the equipment, how to play instruments, different things like that” which, she argued, “demonstrate[d] that he has the ability to be a positive influence on children.” (J.A. 54). Yet at the same time, Petitioner “made the sad, sad decision to try to supplement with illegal activity, such as making a quick buck by selling heroin on the side.” (J.A. 54). Thus, although Petitioner “actually had jobs where he’s worked and made legitimate money trying to provide and be a father and doing some good things,” his persistence in selling drugs and doing “the wrong thing at the same time” brought him into federal court. (J.A. 54).

Counsel pointed out that because Petitioner had received lenient sentences in the state justice system, he “never contemplated that he would face this kind of sentence today” and thus “wasn’t really taking things as seriously as he should have.” (J.A. 51, 53). The career offender designation, she noted, resulted in a substantial increase to the guideline imprisonment range, particularly given the small quantity of drugs involved in the case.

The district court observed that there was “a lot of cognitive dissonance” in Petitioner’s behavior and that it was “ironic” that he would start an organization called “Choose Life” and “yet deal the poison that kills 70,000 people a year.” (J.A. 55). Counsel acknowledged that “[h]eroine is a deadly disease in our community and we understand that.” (J.A. 56). She said, “Your Honor, Petitioner has gotten off to a bad start but he doesn’t have to finish bad.” Counsel requested a sentence at “low end of the guideline in spite of what his history has been.” (J.A. 56).

Petitioner also personally addressed the district court. He said that he had spent the past ten months in custody “thinking about how far I’ve got throughout my life from where I’ve been, in foster care and adoption to child abuse to being shot” and had dwelled on “one thing” which “t[ore] [him] up”—knowing that he had “children that I’m leaving behind to go to prison.” (J.A. 57). Petitioner described his strong relationship with his three boys, who were “all preteens” in “their most impressionable years, being in middle school and going through high school.” (J.A. 57). He emphasized that he never promoted drug dealing as a way of life for his children; on the contrary, he “enrolled all [his] kids in Boys and Girls Club and

extracurricular activities and . . . kn[e]w [their] teachers on a first name basis.” (J.A. 57).

Petitioner likewise emphasized his plans for the future, which were to “finish my schooling, get more help” and “try[] to better myself for my family” by “taking as many courses that I can.” (J.A. 57). Once he was finished, Petitioner said he intended to move with his family to Texas and “let my past be my past.” (J.A. 58).

Counsel for the United States pressed for a sentence of 185 months, at the high end of the guideline range. The government admitted that the offense was “fairly straightforward” but argued that a high-end sentence was nonetheless warranted given Petitioner’s “long history of dealing narcotics.” (J.A. 58). Petitioner had squandered his potential, the government said, which was “starting to be realized even with the criminal history that he had amassed over the previous decade and a half.” (J.A. 59). In the government’s view, Petitioner’s “noteworthy accomplishments” only threw his “refusal to get out of the drug trafficking lifestyle” into sharper relief and demonstrated his commitment to criminality. (J.A. 59-60). Despite being convicted multiple times in state court, and despite the opportunities he had created for himself, Petitioner had failed to correct his behavior. Counsel for the United States said there was “no indication that he was willing to exercise his abilities for good and . . . no indication that he was in any way anything but committed to dealing heroin.” (J.A. 61). The government argued that a top-end guideline was therefore necessary to provide just punishment, to protect the public, and to deter Petitioner and others from criminal conduct. (J.A. 62-63).

Counsel for Petitioner responded that he did not possess a firearm, he was not involved in “any gang-related activity of any kind,” and that the sentence he was facing was significantly longer than the longest sentence he had ever served. (J.A. 63). A 151-month sentence, counsel argued, would be “sufficient but not greater than necessary to meet the purposes of sentencing” and would likewise address Petitioner’s need for treatment for his drug addiction and mental health issues. (J.A. 63).

Upon consideration of the case, the district court imposed a sentence of 168 months on each of the two counts, to be served concurrently. The court also sentenced Petitioner to concurrent terms of three years of supervised release on each count. In rejecting his request for a lower sentence, the court explained that a sentence at the bottom of the guideline range was not “sufficient in this case to justly punish” Petitioner, who was a “relentless” career offender “dealing poison.” (J.A. 67). The court entered its judgment on August 6, 2019. (J.A. 6; 70-76). Petitioner timely appealed to the United States Court of Appeals for the Fourth Circuit. (J.A. 77).

B. Court of Appeals Proceedings

On appeal to the Fourth Circuit, Petitioner argued that his sentence was procedurally and substantively unreasonable. The Fourth Circuit rejected this argument and affirmed the judgment of the district court. This petition followed.

THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

Petitioner argued to the Fourth Circuit that the sentence he received is procedurally and substantively unreasonable. The Court of Appeals rejected Petitioner's argument and affirmed the district court. Thus, the federal claim was properly presented and reviewed below and is appropriate for this Court's consideration.

REASONS FOR GRANTING THE PETITION

To withstand appellate review, a sentence must be both procedurally and substantively reasonable. *Gall v. United States*, 552 U.S. 38, 50 (2007). Procedural reasonableness requires the sentencing court to "adequately explain the chosen sentence." *Id.*; see also *Rita v. United States*, 551 U. S., 338, 356 (2007) ("The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decisionmaking authority"). And to be substantively reasonable, the chosen sentence must account for the "totality of the circumstances." *Gall*, 552 U.S. at 51.

Here, the 168-month sentence is neither procedurally nor substantively reasonable. At sentencing, the court focused exclusively on Petitioner's prior criminal record and gave scant attention to relevant mitigating factors. The court did so despite the fact that Petitioner's career offender designation resulted in a dramatic increase to the otherwise-applicable guideline range. Thus, the career offender designation already more than accounted for Petitioner's criminal history, leaving the court with little justification for its sentencing rationale. The court

appeared to give no weight to the efforts made by Petitioner to overcome his traumatic childhood, the business he built, or the positive contributions he made to his community. And the court never addressed Petitioner's arguments about his mental health or drug addiction. The sentence is therefore procedurally and substantively unreasonable.

Counsel for Petitioner pressed several nonfrivolous arguments in favor of a lower sentence, including arguments about his mental health and drug addiction. She noted that Petitioner had been prescribed Adderall, Zoloft, and Ritalin as a child to treat his anxiety and depression, and that he needed additional mental health treatment as an adult "to be able to deal with some of the trauma that he suffered as a child." (J.A. 52). Counsel explained that Petitioner had attempted to "get things in order" but that he needed "a lot more help with that, mental health," as well as substance abuse treatment. (J.A. 53). Counsel argued that a sentence of 151 months "would address all the concerns that we have regarding mental health, drug addiction, as well as his desire to get education to be more productive when he gets released." (J.A. 63).

In sentencing Petitioner, however, the district court did not respond to counsel's arguments about his mental health and drug addiction, beyond recommending treatment for those conditions. Instead, the court focused on Petitioner's "relentless" history selling "poison." (J.A. 67). Where, as here, the record shows that the court did not address or consider the defendant's mitigating arguments prior to sentencing, the sentence is procedurally unreasonable and should be vacated.

Chavez-Meza v. United States, 138 S. Ct. 1959, 1964 (2018); *accord Rita*, 551 U.S. at 341 (noting that appellate courts must set aside sentences they find unreasonable).

The sentence is likewise substantively unreasonable for several reasons. First, the sentence is unreasonable because the district court relied on erroneous facts and made unwarranted assumptions in sentencing Petitioner. At the hearing, the district court repeatedly referred to heroin as a deadly “poison” that “kills 70,000 people a year.” (J.A. 55). And the court squarely blamed Petitioner for such deaths. The court said that Petitioner “deals heroin which is killing . . . 70,000 Americans each year.” (J.A. 55). Addressing Petitioner directly, the court repeated its claim that there were “70,000 funerals a year in America because of heroin dealers like you.” (J.A. 55). In the court’s view, Petitioner had “poison[ed] other people’s children to feed [his] own children.” (J.A. 66).

But there is no evidence that the heroin sold by Petitioner “poisoned” or killed anyone. The presentence report does not include any information about heroin-related deaths or injuries caused by Petitioner, and he was not charged with or convicted of a heroin-related death or injury. Indeed, if that had been the case, Petitioner’s statutory sentencing range would have been much higher. *See* 21 U.S.C. § 841(b)(1)(C) (providing mandatory minimum sentence of twenty years to life “if death or serious injury results from the use of [heroin]” sold by the defendant).

The court’s assumption that the heroin sold by Petitioner had “poisoned” people, shows that the court misunderstood the nature and circumstances of the offense, as well as the history and characteristics of the defendant. *See* 18 U.S.C. § 3553(a)(1) (court must consider nature and circumstances of the offense and history and characteristics of the defendant). Because the court sentenced Petitioner based on erroneous facts and unsupported assumptions, the sentence is unreasonable. *See United States v. Berry*, 553 F.3d 273, 284 (3d Cir. 2009) (“A defendant cannot be deprived of liberty based on mere speculation.”).

Next, the sentence is unreasonable because the court focused on a single factor—Petitioner’s criminal history—to the exclusion of other relevant sentencing considerations. The court appeared to give little consideration to Petitioner’s traumatic childhood, his attempts to improve his life through education, the music business he started, the youth-advocacy organization he founded, or his role as a father. Nor did the court credit the fact that Petitioner sold only small amounts of heroin. And the court never addressed Petitioner’s lifelong mental health issues or his struggle with drug addiction. Instead, the court viewed Petitioner’s life as nothing more than a “relentless” career as a “heroin dealer” who sold “poison.” (J.A. 67).

The court’s unwavering focus on Petitioner’s criminal history was particularly misplaced where application of the career offender guideline already accounted for his past offenses. The career offender status elevated Petitioner’s offense by twenty levels, resulting in a guideline range that was well above the 30-37 month range

that would have otherwise applied for an offense involving such a small quantity of drugs and no aggravating factors such as possession of a weapon, victim adjustments, or obstruction of justice. This dramatic increase to Petitioner's guideline range should have more than satisfied the court's concern about just punishment and adequate deterrence. Thus, the court's justifications do not support the sentence imposed here. At bottom, the 168-month sentence is greater than necessary to satisfy the purposes of sentencing under § 3553(a). Because the court's sentence is not justified under the totality of the circumstances, the sentence is substantively unreasonable and should be vacated. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

CONCLUSION

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

Respectfully submitted,

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


JENNIFER C. LEISTEN

ASSISTANT FEDERAL PUBLIC DEFENDER
Counsel of Record
EASTERN DISTRICT OF NORTH CAROLINA
150 Fayetteville St.
Suite 450
Raleigh, N.C. 27601
(919) 856-4236
jennifer_leisten@fd.org

OCTOBER 24, 2020

Counsel for Petitioner